

## Closed Consultation

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

21 January 2020

- The deadline for submission of responses was **15 June 2018**.
- [Download the full consultation paper below \[#download\]](#)

### Next steps

- [Download analysis of responses \[#download\]](#)
- [Download post consultation position \[#download\]](#)
- [Download all consultation responses \[#download\]](#)

## Foreword

Legal services matter to us all. They can help us at some of the most important and potentially vulnerable moments in our life - whether passing money onto loved ones, buying a house or handling a relationship breakdown. Most people are happy with the service they receive from solicitors and regulated law firms, but things can and do go wrong. It is crucial that the public can trust that when things go wrong the right protection is in place. The principle that all regulated law firms should have a minimum level of indemnity insurance, with an additional safety net of the Compensation Fund, has served the sector well.

Our analysis of 10 years of insurance claims against law firms suggests our current approach is too rigid. The legal sector is increasingly diverse, with solicitors and firms practising in many different ways. Our rules could mean some firms, particularly those working in low risks areas, are spending more on cover than is necessary. The evidence shows that this burden falls particularly heavily on small firms.

We also know that our insurance rules can put new firms off entering the market - a market that the Competition and Markets Authority (CMA) has concluded needs to be more open and competitive to better serve the public.

Our proposals aim to tackle these problems by taking a pragmatic approach that gives firms more flexibility to choose the right level of insurance cover to fit their business and its customers. There would be an opportunity for firms, particularly smaller ones working in low risk areas, to reduce their insurance costs. The public could still have confidence in a minimum yet appropriate level of protection, while potentially benefiting from lower costs and more choice.

A balance needs to be achieved. Many people struggle to afford legal services, with only one in ten making use of it when they experience a legal problem. When so many people are struggling to access solicitors' expertise, we need to be confident that the protection is set at the right level. The lower costs of insurance should, if the market is working well, ultimately flow through to lower prices for the users of legal services.

In the same spirit, we are also reviewing how, in a changing world, we are operating the Compensation Fund. We want to make sure it has a clear purpose as a hardship fund so that people who are vulnerable and deserve it the most continue to be protected. Nobody wants to see victims of dishonest solicitors out of pocket, losing the home that they were buying or seeing a family member's hard earned savings lost. But should the Compensation Fund be there to protect the wealthy, the handful of people who put their money into dubious investment schemes seeking a high return or other organisations who have more considerable resources?

We realise this consultation deals with complex areas with no easy answers. That is why in recent years we have carried out extensive engagement and research to make sure our proposals are based on the best evidence available. Making sure we arrive at the right level of

the appropriate protection will be a fine balance, so we are keen to hear a wide range of views to make sure we get it right.

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## [Executive summary](#)

### What are we consulting on

Whether moving house, passing on an inheritance or handling a relationship breakdown, people often use solicitors at critical moments in their life when they might be at their most vulnerable.

Most people are happy with the service they receive. Yet if things go wrong the financial and personal consequences can be far reaching. We make sure there is a minimum level of financial redress available if a solicitor or an individual working in a firm we regulate, is dishonest or incompetent. We protect the public's money in two ways by:

- requiring that all the firms we regulate have a minimum level of Professional Indemnity Insurance (PII). People who have suffered a loss may be able to claim if their law firm has, for instance, not acted carefully or looked after their money properly
- running the Compensation Fund, which is available to eligible applicants when other avenues of redress have been exhausted.

Access to these protections play a key role in maintaining public confidence in using regulated law firms. We are consulting on whether the rules around our PII and the Compensation Fund protections are appropriate.

### Why consult now - the case for change

We are currently reviewing and modernising our whole regulatory approach to make it simpler and to target what matters. We are making certain there is a sharp focus on high standards, while getting rid of unnecessary bureaucracy that does not protect the public but pushes up costs or restricts access to solicitors. In keeping with this reform, we think it is the right time to review our approach to financial redress to make sure it offers appropriate protection.

In reviewing our approach to PII, we have analysed 10 years of insurance claims against law firms. It suggests that our current approach is disproportionate and not targeted for risks of different firms. In its current form it is:

- **Too costly for some:** PII is the single highest cost of regulation. The evidence shows that most claims relate to a few areas of work. Conveyancing makes up more than half of claims. Our rules mean that some firms currently spend more on cover than is necessary.
- **Particularly problematic for small firms:** The evidence shows that the cost of PII falls particularly heavily on small firms. The high premium for run-off insurance can stop solicitors retiring and closing their practices when they want to. This is a growing issue with small firms having an increasingly older profile. One-in-five of the firms we intervene into is the result of disorderly firm closures.
- **Dampens competition:** The legal sector faces a big challenge. Many people struggle to afford legal services. Most people and small businesses – nine out of ten – do not use solicitors when they have a legal problem. The CMA has concluded that the sector needs to become more open and competitive. Just as the issue of 'run-off' cover can make it hard for firms to exit the market, the cost of minimum cover can make it difficult for new firms, with potentially innovative ideas, to enter the market.

Last year, we asked law firms for an increased contribution to the Compensation Fund due to forecast changes in the type of claims made. We need to make sure the Fund is sustainable and has the right tools to use this money in an appropriate and targeted way to best protect the public and small businesses. We need to review how we operate the Fund in light of:

- **Potential confusion around its purpose:** The current rules and eligibility criteria are complex and lead to a lack of a clear purpose for the Fund. Is it there to provide support for everyone who has suffered losses in set circumstances? Or should it target only those



who have faced particular hardship? Our current position is complex, simultaneously trying to offer wide support, while focusing on hardship in some instances.

- **Changing risks and higher value claims:** Historically, payments from the Fund have been for relatively small amounts, but we are now seeing new types of claim. In some instances, we are seeing the re-emergence of claims linked to solicitors' involvement in large scale dubious investment schemes offering very high returns. These could result in demands on the Fund that, if eligible for payment, could threaten its viability.

## What are we proposing and the benefits: PII

PII protects users of legal services and solicitors from the financial consequences of claims. We plan to keep core terms in place to make sure people and small businesses are still covered when they most need it. However, we are proposing to introduce more flexible options for firms to get insurance that suits the risks of their business.

Key changes we propose include:

- **Reducing the claims limit:** Currently firms must have minimum cover of £2m, rising to £3m for firms with certain structures. We plan to reduce this to £500,000 for all firms apart from claims for conveyancing services. Some 98 percent of historic claims in our data set would have fallen within this limit.
- **Having a higher limit for conveyancing:** Those carrying out conveyancing services would need a minimum of £1m cover, reflecting the higher risks of working in that area and making sure the public are protected where problems are most likely.
- **Flexibility around who the cover should protect:** There would be no need for our minimum terms to include cover for financial institutions, corporate and other large business clients. We also propose to introduce a conveyancing component in insurance so that only firms that need cover for this work are required to buy it.
- **Make changes to run-off:** We would maintain a six-year run-off period, but aim to tackle the problem of how expensive this type of cover is by proposing caps of £3m for firms that need conveyancing services cover and £1.5m for other firms. This would make it easier for firms to close properly and reduce the risk that solicitors delay retirement unnecessarily.

## What are we proposing and the benefits: Compensation Fund

The Compensation Fund is crucial in protecting the public and small businesses, while maintaining trust in the profession.

Key changes we propose include:

- **Greater focus on hardship:** Narrowing eligibility to only those people that need the most protection. This would mean that the very wealthy, or an organisation that cannot prove hardship, would not be able to make claims on the Fund. Barristers and other experts also could not claim.
- **Reducing the maximum payment:** Currently the maximum sum receivable from the Fund is £2m. We propose reducing this to £500,000.
- **More robust assessment of claims:** We want to strengthen our approach to making sure the Fund is not available to those whose own actions could have prevented a loss. For example, did the applicant, looking to make very high returns from a dubious investment take steps to check the legitimacy of the scheme and any products, as well as the solicitors' involvement in them. We do not believe that the Fund is intended to underwrite dubious investment schemes even if a solicitor is involved in some way.

We will retain the discretion to make sure that the users of legal services affected by the behaviour of solicitors in regulated firms in unique or very unusual circumstances are protected.

## Overall benefit

Overall, our proposals aim to make sure people using solicitors continue to be well protected while providing opportunities for firms to have greater flexibility to buy insurance that best suits their business and clients and, if appropriate, lowers costs.

Key benefits of our proposals include:

- a clear focus on meeting the needs of those who deserve the most protection, while ensuring the longer-term sustainability of the Compensation Fund
- reducing the costs of PII where appropriate, particularly for law firms working in low risk areas of work
- tackling the problem of firms having difficulty closing down due to high run-off costs, which can negatively affect users of legal services
- helping remove barriers for new firms wishing to enter the market, potentially helping improve choice for the public.

There is no single barrier to accessing legal services. Individuals and small businesses often face complex and combined obstacles. However, a major barrier is affordability. These changes may help reduce costs for some firms. So long as the legal services market is competitive and firms pass savings on, this may make it easier for more people to be able to access legal services.

## **Next steps**

We realise this consultation deals with complex areas, with no easy answers. In recent years we have carried out extensive engagement and research to make sure our proposals are based on the best evidence. There is a careful balance to be achieved in getting the level of public protection right.

These are proposals and not a fixed set of reforms. We welcome all additional evidence to help us reach a final decision. The consultation is open from 23 March to 15 June 2018.

# Protections for legal services users

## Do we need to change our approach?

If things go wrong when using a solicitor, we provide financial redress in two ways: firms must have a minimum level of insurance, and our Compensation Fund is an additional safety net.

Professional indemnity insurance

Compensation Fund

### WHY CHANGE?

10yrs of data shows 98% of claims under £500k



Level too high - especially for small firms



Higher value claims threaten Fund viability



Fund's purpose is confused

### OUR PROPOSALS

Reduce claim limit to £500k (£1m for conveyancing)



£500k



Maximum payment reduced



## About this consultation

We make sure the public is protected by taking action when things go wrong. We set and monitor the minimum level of PII cover for the law firms we regulate. Insurance must therefore meet the Minimum Terms and Conditions (MTCs) we set out in our rules. We also operate a compensation scheme to provide a long stop protection for users of legal services. This is a discretionary fund that will in some circumstances, replace money lost by people because of the dishonesty or incompetence of an individual or law firm that we regulate. Law firms and solicitors pay an annual levy towards the Compensation Fund, and we consider claims and make payments.

## Minimum level of insurance

We have reviewed the levels of insurance claims paid to people covering a large part of the market for more than 10 years. Our findings indicate that our current minimum requirements are substantially more than is needed to protect almost all people when things go wrong. Therefore, our regulations are not proportionate and could be imposing higher costs on firms than is necessary. We are proposing to allow more flexible options for firms to get insurance that better suits the risks of the services they offer, while retaining some core terms to properly protect people and small businesses.

## Compensation Fund

The Compensation Fund has been operating for nearly 70 years. We need to make sure we are managing it in as effective way as possible, taking into consideration our regulatory objectives and people's expectations. So we are also asking important questions about whether, as the legal services market and the risks that give rise to potential claims change, we are operating the Compensation Fund with a clear purpose. We do not think that we should manage it in a way to guarantee that all users of legal services are covered for any losses caused by a solicitor or a firm. Instead we are proposing changes that reflect the purpose as a hardship fund to make sure that it is focused on vulnerable people that deserve it the most.

## Protecting the users of legal services

Making sure people are financially protected when they use legal services is a priority for us. Access to these protections play a key role in maintaining public confidence in using legal services. Our proposals reflect a carefully balanced view, that while still making sure people using solicitors are well protected, they provide opportunities for firms, particularly small firms, to lower their cost of insurance. We also include in this paper a range of options for PII that we are not proposing to take forward. We would like your views on these as well as our proposals and whether you have any additional evidence we should consider in reaching our final decisions.

## Looking to the Future

These changes are part of our 'Looking to the Future' (<https://higher-rights.sra.org.uk/sra/policy/future/resources/position-paper/1>) regulatory reform programme. It has a sharp focus on high professional standards and the reduction of unnecessary bureaucracy, reducing costs and removing constraints on an open and competitive legal sector. We have already made several key decisions, including allowing solicitors to provide some legal services outside of regulated firms. We have also presented our new Principles, Codes of Conduct and Accounts Rules. We have also consulted on how to make information more accessible to potential users of legal services, to help them find services they need and information on prices.

## Research

We have already published our PII market trends and claims analysis. This provides us with evidence on the type and level of claims made by people covered by firms' PII policies over the period 2004 to 2014. Our findings from this analysis are summarised in this consultation paper and also in more detail in our initial impact assessment. We also encourage you to consider the evidence set out in the external economic review [EPC Potential options for SRA PII requirements](https://higher-rights.sra.org.uk/sra/consultations/consultation-listing/access-legal-services/#download) (<https://higher-rights.sra.org.uk/sra/consultations/consultation-listing/access-legal-services/#download>), we commissioned on the options to reform the scope of PII cover. This report evaluates these



against the principles we have established for our financial protection arrangements and identifies likely impacts. We have also commissioned [external research \[https://higher-rights.sra.org.uk/sra/consultations/consultation-listing/access-legal-services/#download\]](https://higher-rights.sra.org.uk/sra/consultations/consultation-listing/access-legal-services/#download) on peoples' appreciation of of the risks involved in legal services and how they value the protections available to them.

## Our proposals in brief

### Minimum PII requirements

The data shows that over a 10 year period, around £1.6 billion was paid to users of legal services from the MTCs layer of insurance cover. This figure includes the actual value of the settled claims and claimants' costs. An additional £400m was paid under the policies for firms' defence costs. Most claims have been paid as a result of problems in a limited range of legal work. Commercial legal work, such as mergers and acquisitions, and conveyancing stand out as giving rise to the most high value payments. Other areas of law rarely give rise to high value payments. The analysis is summarised below.

Legal service	Claims total value (where area specified)	Settled claim average payment	Claims value where 98% claims paid	Claims value at risk if new limits	Claims total value at risk if new limits	No. of claims at risk if new limits
Conveyancing	51%	£69,600	£520,000	£53m	3%	79
Commercial	15%	£261,900	£2,620,000	£51m	3%	85
Landlord and Letting	8%	£56,900	£480,000	£25m	1%	43
Pensions,Tax,Trusts, Wills & Probate	8%	£66,100	£460,000	£18m	1%	34
Injury and Medical negligence	8%	£44,000	£340,000	£14m	1%	29
Litigation	6%	£49,100	£440,000	£16m	1%	36
Employment, Family and other	4%	£31,700	£250,000	£6m	0.3%	12
Block claims or Unspecified	-	-	-	£77m	4%	124

We think the current 'one size fits all' approach to minimum insurance cover means our regulations are not proportionate or targeted and could be imposing higher costs on firms than is necessary. We want to allow more flexible options for firms to get insurance that suits the risks of their business and its clients so people remain properly protected. Our proposals are to:

- reduce the minimum level of cover required for each claim to £500,000 apart from claims for conveyancing services
- establish a separate minimum level of cover for each claim for firms providing conveyancing services to £1m
- introduce a separate component in the insurance arrangements for conveyancing services (firms that need cover for conveyancing services would be required to include this component and if they did not, then conveyancing claims would not be covered by the insurance policy)
- to exclude compulsory cover for financial institutions, along with corporate and other large business clients (firms will still need to buy appropriate and adequate cover for these clients)
- give firms and insurers more flexibility in their arrangements for defence costs (to maintain consumer protection, defence costs would continue to be excluded from the calculation when an indemnity limit has been reached)
- introduce a total cap for the level of cover over the six-year run-off period (we are proposing a cap of £3m for firms that need cover for conveyancing services and a cap of £1.5m for other firms).

We explain these in more detail in section one.



Firms will still need to make sure they have adequate and appropriate insurance for all the work they do. As is the case now, they will have to assess their clients' needs and buy additional cover where necessary. These changes should help to lower some firm's insurance costs. We expect this to encourage competition and ultimately lead to lower prices for some users of legal services, assuming the market is working well and firms pass these savings onto their customers. We know new firms, often with potential to provide legal services in innovative ways, find the costs of insurance a very significant hurdle to starting their businesses. We think the changes to run-off insurance cover will make it easier for firms to close properly. The profession has an increasingly ageing profile and it is important for public protection that solicitors can retire and close their practices when they want to.

## Compensation Fund rules

The legal services market and the risks to people that use the services of a solicitor has evolved. Individual solicitors and authorised firms pay a contribution each year to cover the cost of claims paid and other costs of operating the Compensation Fund. We have held down contribution levels over the last three years as the fund reserves were judged to be sufficient to cover the existing risks to people using legal services that could result in a claim. Emerging risks from solicitor involvement in dubious investment schemes has led to contribution levels returning to previous levels this year<sup>1</sup>.

We propose to modernise the rules and eligibility criteria that reflect the purpose of the Fund as a proportionate and targeted fund to make sure that any loss does not lead hardship. The proposals are to:

- exclude claims from individuals with net household financial assets<sup>2</sup> above a threshold of £250,000
- exclude large charities and trusts from eligibility and simplify the test we use for assessing whether a payment should be made, so that all eligible businesses, charities and trusts must show hardship to receive a payment
- exclude applications for payment of unpaid fees from barristers and other experts
- for eligible applicants, limit payments to the direct financial losses caused by the actions of the solicitor
- tighten up the circumstances when we make a payment where a firm or solicitor has failed to get the insurance we ask for and extend our eligibility criteria to people that make these types of applications
- reduce the maximum payment from £2m to £500,000 and provide guidance setting out the circumstances when a higher payment might be considered
- apply a clearer and more robust approach to how we take account the applicant's behaviour when assessing claims, for example taking into account the steps a person has taken to confirm that the services being provided by their solicitor are genuine
- require a duty of full and frank disclosure by an applicant, and to equip us with direct investigatory powers that allow us to challenge evidence provided by an applicant.

We explain these in more detail in section two.

## Wider changes to how we regulate

Our review has also highlighted areas where we need to make wider changes to how we regulate that could reduce the overall cost of our financial protection arrangements. This includes strengthening our response to firms that do not pay insurance premiums or are dishonest with their insurer. We explain these in section three.

You can find further information in support of our proposals in the Annexes to this consultation.

- Annex 1 shows how our current PII arrangements compare with other professions.
- Annex 2 is our initial impact assessment.
- Annex 3 includes drafts of the Compensation Fund Rules, Statutory Indemnity Insurance Rules and MTC reflecting the proposals set out in this consultation paper.

## Evaluation

We have identified some key benefits from the changes to make our requirements more proportionate. These include the flexibility for firms to lower insurance costs, tackling the





problem of firms having difficulty closing down and improved choice for the public. These will be the starting point for how we evaluate these reforms. We also recognise that it will take some time for any impact on the legal services market may become apparent and there is some dependency on other reforms designed to encourage a more competitive legal services market. We plan to evaluate the reforms using CSES' evaluation framework in a post-implementation review. We will use the impact evaluation framework to for example, to revisit the rationale, aims and objectives of our reforms to help us evaluate whether they have been achieved and compare actual impacts against the current position and potential/predicted impacts. The review will be informed by a qualitative assessment of how the market is changing. This will involve us surveying and going out to talk to insurers and firms to understand how their behaviours have changed because of the reforms. Much of what we want to achieve, therefore, rests on them taking advantage of the flexibility offered by the proposed PII arrangements. We will also come back to the challenges we have identified with these reforms, to review whether they materialised and the success of the mitigations we identified.

## **Background to consultation**

### **Our current requirements for PII**

Our PII arrangements offer substantial consumer protection. A comparison of our current arrangements with other professions can be found at Annex 1. The areas that distinguish solicitors' PII from arrangements in other jurisdictions and other professions are:

- when a firm closes<sup>3</sup>, insurers must provide the firm with an unlimited six-year run-off policy, even when the premium is not paid
- when arranging an insurance policy, firms and insurers may agree any level of excess on a claim settled under the policy. The insurer is liable for the value of the excess to the client if the firm does not pay
- the policy covers all the legal and professional services<sup>4</sup> offered by the insured firm, even where the firm may have not declared it provides a specific type of legal work on a proposal form
- the insurer must provide cover on a strict liability basis for claims which include losses of money arising out of any breach of the SRA Accounts Rules<sup>5</sup>
- insurers must provide unlimited cover for any legal costs and expenses incurred while defending a claim.

Some 42 insurers signed up to our Participating Insurers Agreement (PIA) in 2017/18 to provide Solicitors PII. Co-insurance and the increase in underwriting capacity from new 'A rated' insurers has resulted in a slight decrease in premiums for all firms. Co-insurance is where insurers share the risk on a firm, is becoming increasingly prevalent, in particular for firms involved in high value commercial work.

The Law Society's PII research report provides us with information on premiums. The average costs of premiums for all firms reduced from £27,209 in 2015/16 to £26,853 in 2016/17. However, for smaller firms they increased from £29,049 to £32,470. Sole practitioners continue to pay the highest proportion of their turnover in premium costs at around 6 percent. The median cost of run-off cover in 2016 remains at 300 percent of a firm's annual premium. The absolute cost of run-off has increased for all firms, but particularly for small firms. Small firms face run-off premiums of on average of £25,000 (or over 20 percent of the annual turnover of their firms). Almost 20 percent of the firms we intervene into are because of poorly managed firm closures.

The cost of claims has reduced as those generated in the recession-driven post 2008 period have now been settled. However, insurers are now increasingly aware of cyber-related claims and the risk of more severe losses from commercial work. They are considering more closely the type and size of practice they are willing to insure, as well as needing more evidence of strong risk management procedures and IT systems before providing firms with insurance.

### **Our current Compensation Fund rules**

The Compensation Fund is already a discretionary fund. Our rules set out the circumstances where we will replace money lost by people because of the dishonesty or incompetence of an individual or law firm that we regulate. They already mean that some payments are prioritised



over others and we have a hardship test for some routes to pay out. The current scope of possible payments from the Fund is wide. The current rules mean that eligible claims are not limited to losses incurred by only the client of a firm. For example, barristers instructed on behalf of a client can make a claim for unpaid fees. It can also be used for other purposes, such as:

- paying grants for litigation costs people have incurred in trying to recover losses from other sources for example the firm itself
- providing access to financial redress where a firm fails to have a valid policy of indemnity insurance in place (which otherwise would have paid the claim).

There is no automatic right to a payment. In exercising our discretion, we consider a range of factors, including whether the:

- loss can be made good by some other means<sup>6</sup>
- activities, omissions or behaviour of the applicant has contributed to the loss being claimed from the Fund
- loss results from the combined activities of more than one party (for example a solicitor conspires with a surveyor to conduct mortgage fraud).

This means that every claim is considered on its merits and we can reject or reduce a payment. For example, a payment will only reflect the proportion of the loss that is directly attributable to the acts of the solicitor or firm. We also expect that claimants are honest when requesting a payment. Where they fail to provide complete information, this can result in lengthy investigations and costly legal challenges.

The methodology used to allocate the cost of the Fund across the regulated community has remained static for many years. Some 50 percent of the funding requirement is met by a fixed contribution from regulated individuals. The other 50 percent comes from a fixed contribution on regulated firms holding client money. Contributions collected from firms and individuals are also used to cover the cost of interventions into firms<sup>7</sup>. This includes the cost of:

- our team of intervention officers
- external services of intervention agents (solicitors' firms on a panel) and for service providers that undertake immediate management of client files on intervention
- archiving, repatriation and ultimate destruction of closed client files taken into our possession at the point of intervention.

## Claims made on the Compensation Fund

Traditionally, payments from the Compensation Fund have been made against a relatively limited range of legal services transactions, including conveyancing, probate and personal injury. This correlates with the most common areas where people seek legal advice. They are also areas of work where solicitors will hold or receive substantial sums of money, most of which belongs to the client and has to be kept in the firm's client account<sup>9</sup>.

Sometimes, it can be difficult to allocate a shortfall in a firm's business or client account to a person's specific legal transaction. This may be because there has been a general failure to account by the firm, resulting in partial losses to all the firms' clients. In some cases, the solicitor may have access to their client's money and assets, but these are held outside of the firm's client account. For example, the solicitor may have access to money held in a personal bank account when acting as an executor to the estate.

The risks people face when using legal services from a solicitor and the expected pattern of claims have a direct impact on the level of contributions we collect from the profession. There is a wide range in the value of individual payments from the Fund. This reflects variations in the value and nature of the transactions that ultimately caused the loss. The average payment from the Compensation Fund has historically been relatively small. The highest average payments<sup>10</sup> are linked to problems with mortgage and other fraud and gross overcharging. But these only represent 4 percent of the number of claims paid out. There have only been a small number of cases since 2011 where the payment has been greater than £500,000. In some of these cases the payment was recovered from the firm when we completed the process of reconciling the firms' accounts.

More detail about historical claims paid by the Compensation Fund is provided in our initial impact assessment.

## Stakeholder engagement

We recognise that this is a major area of reform, and we have shared our initial thinking and analysis with a range of stakeholders. This has helped us to develop our consultation position and test out ideas, and to shine a light on the benefits and possible pitfalls of various different approaches.

We discussed early ideas with the Legal Services Consumer Panel (LSCP), who recognise the need to balance the cost of financial protections with access to affordable legal services. The LSCP suggested that additional research was needed to understand consumer attitudes and what is people's knowledge of the potential risks when purchasing legal services. They felt that this would be helpful in achieving the right balance, and we have since commissioned external research.

Engagement with other legal services stakeholders has also been important in scoping out the proposals in this consultation paper. We have spoken to solicitors, law firms and compliance professionals, including early discussion at our annual compliance conferences and engagement with the Law Society's PII Committee. We have also been in discussion with financial services stakeholders, which has included insurers, lenders and brokers. Some of this has been through our Insurance Liaison Committee, as well as separate meetings with brokers and representative bodies. Our proposals have been informed by engagement with these groups.

We are taking forward a full schedule of engagement work during the consultation period, to make sure that we are not only discussing the proposals and their possible impacts, but also taking on board views and perspectives from as wide a range of people and organisations as possible. Our programme includes focus groups, roundtables, committee meetings and online channels, and will cover discussions with members of the public, consumer groups, regulated professionals, insurers and lenders. We welcome views from as wide a range of people as possible, so our work will include talking to charities and Law Centres that support vulnerable groups, and organisations that represent different communities in the legal profession.

## People's appreciation of risk when using legal services

There are several financial risks that exist for people when buying legal services. They include if they:

- are not able to access legal advice at all, resulting in a financial loss
- receive a poor service that is not value for money
- receive negligent advice
- their solicitor is dishonest and even takes their money.

Our changes, not only as part of this consultation but our Looking the Future programme and the introduction of the Solicitors Qualifying Examination, are aimed at reducing those risks to people.

Our initial [consumer risk in legal services research](https://higher-rights.sra.org.uk/sra/consultations/consultation-listing/access-legal-services/#download) [https://higher-rights.sra.org.uk/sra/consultations/consultation-listing/access-legal-services/#download] has confirmed that we need to be realistic about people's current level of appreciation of the risks involved in purchasing legal services. Everyone is different so people's appreciation of potential problems and their risk appetite varies. That's why we set requirements for financial redress which need to be proportionate to the risks that people face.

## Better information

Surveys of the users of legal services show that where people do shop around, they are much less likely to search on the basis of financial protections than other factors such as price and quality of service. People use legal services often at critical life moments. Thoughts about what might go wrong with a solicitor and how they are protected are often far from mind even though the services they receive can have far-reaching financial and personal consequences.

This is important when considering the information we think we and firms should make available about the protections that are available.

Our research has highlighted the distinction between information designed to:

- help people access and act on information about legal services so they can make informed choices, drive competition for the supply of legal services
- help consumers understand what protections are in place, building confidence and helping regulated firms to access untapped demand for legal services.

The availability of information on redress could mitigate the risk to people that they choose a firm that does not have appropriate PII cover. Simple approaches such as comparing the level of cover to the value of their property transaction could provide them with information that indicates whether the firm is under or over-insured. This information should not be so complex that it distracts from other information that could help them choose providers that offer better value for money. We will explore how best to provide information for example through the use of regulatory logos and provision of checklists. This could help people better understand how they are protected when they choose a SRA regulated firm.

We recognise that information will need to be presented in different ways to meet the needs and preferences of different people. We will engage with members of the public and businesses about this, including through our wider work on better information. We will use the outcomes from this work to help inform people about how firms are regulated by us, the work they do and that they have PII in accordance with our MTCs and have access to the Compensation Fund.

## **Putting our proposals into practice - our approach to drafting the rules**

### **Protecting users of legal services reforms**

The draft rules at Annex 3 include the proposals we think are necessary to make sure we have proportionate requirements for public protection for the firms we regulate. The draft rules include changes to our MTCs for PII policies if the proposals go ahead. We have reviewed these more widely alongside the other obligations we put on insurers in our Participating Insurers Agreement (PIA). As a result of this review, we are proposing a number of changes to the MTCs to bring them up-to-date.

We also want to remove unnecessarily duplication between the MTCs and the PIA and to make them more relevant for both insurers and a modern legal services market. We explain this in paragraphs 62 to 64.

We have also looked at the PII arrangements that apply where a Registered European Lawyer (REL) is a principal in a firm and wants to rely on their home state PII cover. Our review has resulted in simpler rules and confirmation of which MTCs are varied when the firm is given a partial exemption from the need to have qualifying insurance.

### **LTF reforms**

As part of phase one the LTF reforms, we have already confirmed the protections for clients of solicitors working in non-LSA regulated firms. We have decided it is not proportionate to require the solicitors that work in these firms to have insurance that is equivalent to our MTCs. We have also confirmed the position that clients of solicitors working in non-LSA regulated firms would not be able to make a claim on the Compensation Fund.

Clients that use a solicitor in these firms will receive a range of standard consumer protections. Additional protections will also arise because the solicitor will be subject to our individual Code of Conduct and professional standards. When we lift the restrictions on solicitors working in firms outside our regulation, we do not want to introduce requirements that unnecessarily reduce the availability of lower cost options for people that need such services.

In phase two of our LTF reforms, we are proposing to allow individual self-employed solicitors to provide the full range of legal services without the need for the firm to be authorised by us. If this proposal goes ahead we will continue to allow clients of these individual solicitors to have access to the Fund. We have also decided that this should be the case for clients of solicitors working in special bodies.



The rule changes to reflect the above are also included in the draft rules included at Annex 3 of this consultation.

## Timescale

Our aim is to make the rules so that they are in place for when we expect to implement the LTTF reforms. If, however it takes longer to get the wider reforms to our requirements for public protection right, we will implement the rule changes in stages.

## Consultation questions

### Question 1

To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

- Strongly agree
- Somewhat agree
- Neither disagree or agree
- Somewhat disagree
- Strongly disagree

Please explain your answer.

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### Question 2

To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

- Strongly agree
- Somewhat agree
- Neither disagree or agree
- Somewhat disagree
- Strongly disagree

Please explain your answer.

Please provide any additional comments on the alternative option that this could be at the election of the law firm.

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### Question 3

Do you think our definition for excluding large financial institutions corporations and business client is appropriate?

- Yes
- No

If no, please provide an alternative way of drafting the exclusion definition.

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### Question 4

To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

- Strongly agree
- Somewhat agree
- Neither disagree or agree
- Somewhat disagree
- Strongly disagree

Please explain your answer.

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### Question 5

Do you think our proposed definition of conveyancing services is appropriate?

- Yes
- No

If no, please explain what you think should be an alternative definition.

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### Question 6

Do you think there are changes we should be making to our successor practice rules?

- Yes
- No

If yes, please explain what these are and provide any evidence to support your view.

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### Question 7

Do you agree with the approach we are taking to bring the MTCs and the PIA up to date?

- Strongly agree
- Somewhat agree
- Neither disagree or agree
- Somewhat disagree
- Strongly disagree

Please explain your answer.

Do you have any detailed comments on the changes we have made to the provisions in the MTCs?

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### Question 8

To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

- Strongly agree
- Somewhat agree
- Neither disagree or agree
- Somewhat disagree
- Strongly disagree

Please explain your answer.

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### Question 9

Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

- Strongly agree
- Somewhat agree
- Neither disagree or agree
- Somewhat disagree
- Strongly disagree





Please explain your answer and what evidence you have to support your view, or if you have a view on an alternative level for the cap.

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### Question 10

To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

- Strongly agree
- Somewhat agree
- Neither disagree or agree
- Somewhat disagree
- Strongly disagree

Please explain your answer.

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### Question 11

Are there any positive or negative EDI impacts from the proposed changes to our PII requirements that you think we have not identified?

- Yes
- No

If Yes, please explain what you think these impacts are.

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### Question 12

Are there any options for changes to our PII requirements that we are not proposing or have not identified that we should consider further?

Please explain why and provide any evidence that supports your view.

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### Question 13

To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?

- Strongly agree
- Somewhat agree
- Neither disagree or agree
- Somewhat disagree
- Strongly disagree

Please explain your answer.

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### Question 14

Are there any options for changes to how we manage the Compensation Fund that we have not identified that we should consider further?

Please explain why and provide any evidence that supports your view.

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### Question 15

To what extent do you agree that we should exclude applications from people living in wealthy households?



- Strongly agree
- Somewhat agree
- Neither disagree or agree
- Somewhat disagree
- Strongly disagree

Please explain your answer.

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### Question 16

Do you think our proposed measure of wealth and threshold for excluding these application is appropriate?

- Yes
- No

If no, do you have any suggestions for an alternative measure of wealth and or at what level the threshold should be set?

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### Question 17

Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

- Yes
- No

If yes, please set out your suggestions and reasons for the change.

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### Question 18

Do you think we have set out the right approach for assessing when a maximum payment has been reached?

- Yes
- No

If no, please explain why.

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### Question 19

Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

- Yes
- No

If no, please explain you answer and any suggestions you have for alternative approaches.

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### Question 20

What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

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### Question 21

Do you think setting out clear Guiding Principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?



- Yes
- No

Please explain your answer.

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## Question 22

Are there any positive or negative EDI impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

- Yes
- No

If Yes, please explain what you think these impacts are.

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## Question 23

Can you suggest any other approaches or strategies that the SRA might adopt to prevent firms being victims of cybercrime attacks?

### Notes

1. The total contribution for 2017 increased to £11.1m from £8.5m in 2016. The individual contribution was raised to £40 (compared to £32 in 2016) and the firm contribution became £778 (compared to £548 in 2016)
2. We define this in paragraph 105 in the consultation paper
3. If there is a successor practice to the ceased practice, then the requirement to provide run-off cover does not apply unless the firm elects to be insured under the run-off cover
4. For licenced bodies the policy covers only their regulated activities
5. The duty to remedy breaches rests not only on the person causing the breach, but also on all the principals in the firm and extends to replacing missing client money from the principals own resources, even if the money has been misappropriated by an employee or another principal
6. The Compensation Fund has the option of seeking redress from the individual at fault, but this is often impractical due to the costs of legal action and the limited chances of a successful recovery
7. For 2017/18 we have estimated that intervention costs will be in the region of £6.9m
8. According to the [Legal Services Consumer Panel Tracker Survey 2017](https://www.legalservicesconsumerpanel.org.uk/what-we-do/research-and-reports) [https://www.legalservicesconsumerpanel.org.uk/what-we-do/research-and-reports], 31 percent of respondents had sought legal advice for conveyancing, 13 percent for probate and 7 percent for accident or injury claims.
9. A "client account" is an account of a practice kept at a bank or building society for holding client money, in accordance with the requirements set out in the SRA Accounts Rules 2011
10. These are unredeemed mortgage, conveyancing fraud, gross over-charging and other fraud

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## Downloadable document(s)

- [Post consultation position - PII \(PDF 9 pages, 176KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/pii-post-consultation-position.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/pii-post-consultation-position.pdf]
- [Analysis of responses - PII \(PDF 25 pages, 424KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/pii-analysis-of-responses.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/pii-analysis-of-responses.pdf]
- [Summary of responses - Compensation Fund \(PDF 14 pages, 217KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/compensaiton-fund-balancing-costs-access-legal-services-summary-feedback.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/compensaiton-fund-balancing-costs-access-legal-services-summary-feedback.pdf]
- [Consultation responses \(PDF 783 pages, 12MB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/pii-consultation-responses.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/pii-consultation-responses.pdf]
- [Consultation: Protecting the users of legal services: balancing cost and access to legal services \(PDF 93 pages, 983KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/protecting-users-legal-services-consultation.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/protecting-users-legal-services-consultation.pdf]
- [Indemnity insurance claims data and other evidence \(PDF 40 pages, 1.5MB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/indemnity-insurance-claims-data.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/indemnity-insurance-claims-data.pdf]



- [Annex 1: Comparison of PII arrangements by professional groups \(CSV 16KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/pii-annex-1.xlsx) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/pii-annex-1.xlsx]
- [Annex 2: Initial Impact Assessment \(PDF 44 pages, 944KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/pii-annex-2.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/pii-annex-2.pdf]
- [Annex 3: SRA Compensation Fund Rules \(PDF 8 pages, 328KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/pii-annex-3-compensation-fund-rules.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/pii-annex-3-compensation-fund-rules.pdf]
- [Annex 3: SRA Indemnity Insurance Rules \(PDF 18 pages, 1.1MB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/pii-annex-3-indemnity-insurance-rules.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/pii-annex-3-indemnity-insurance-rules.pdf]
- [Annex 3: Glossary for draft SRA Indemnity Insurance Rules \(including the draft MTC\) and draft SRA Compensation Fund Rules \(PDF 12 pages, 395KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/pii-annex-3-glossary.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/pii-annex-3-glossary.pdf]
- [Report: EPC Potential options for SRA PII requirements \(PDF 62 pages, 1.1MB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/pii-potential-options-sar-pii-requirements.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/pii-potential-options-sar-pii-requirements.pdf]
- [Report: EPC Consumer risk in legal services \(PDF 34 pages, 923KB\)](https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/pii-consumer-risk-legal-services.pdf) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/pii-consumer-risk-legal-services.pdf]

[Back to closed consultations](https://higher-rights.sra.org.uk/sra/consultations/consultations-closed/) [https://higher-rights.sra.org.uk/sra/consultations/consultations-closed/]