

SRA consultations ‘Review of the Assigned Risks Pool’ and ‘Indemnity Insurance Rules: Successor Practice Definition’

Initial feedback report on responses to consultations

March 2010

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Introduction

1. In November 2009 the Solicitors Regulation Authority (SRA) launched the following two consultation papers:
 - Assigned Risks Pool Review; and
 - Indemnity Insurance Rules: Successor Practice Definition
2. Both consultations closed in February 2010 and this report sets out an initial summary of the responses received, ahead of a full feedback and evaluation report being published during spring 2010. The full report will confirm the final agreed outcome for both consultations.

Assigned Risks Pool Review

3. The consultation paper on the review of the Assigned Risks Pool (ARP) was published on 19 November 2009 and closed on 12 February 2010.
4. This paper summarises the key points emerging from the responses we received. A summary by number of the answers to the various questions posed is at Annex 1. A breakdown of the composition of respondents and a list of those respondents who have consented to their details being publicised is at Annex 2.

Summary of responses

Proposal 1 – the ARP to cease to provide ARP policies, save to firms already covered by the ARP

5. The proposal to close the ARP to new entrants was the most radical of the proposals. Although this proposal has its supporters, there is a large body of opinion, representing many interests (including some Qualifying Insurers), that oppose the idea. The main reasons given by respondents are as follows:
 - Without other action this would merely transfer the high cost of claims from a pool on to individual insurers. Furthermore, the transfer would be on a very different basis, with some insurers gaining considerably and those insuring small firms losing in such a dramatic fashion as to cause them to reconsider being in that sector of the market at all.
 - The SRA has currently no practical way of ensuring early closure of those solicitors firms who were unable to obtain market insurance.
 - It would have a disproportionate effect on Black and Minority Ethnic (BME) solicitors firms and the SRA has not demonstrated that it can justify that.
 - Abolishing the ARP does not address the real reasons for high claims; namely, the lack of effective regulatory mechanisms to enable the SRA to deal with failing firms, and some onerous terms in the Minimum Terms and Conditions.

- This year's Qualifying Insurer's Agreement does not provide for such a change nor its consequences (particularly transfer of run-off cover to the last insurer), so any insurer could refuse to accept the change.
- There are all sorts of foreseen and unforeseen consequences for both solicitors firms and for insurers from imposing such a change that would make it foolhardy so to do.
- It would place insurers in the position of determining who should practice or not. This is properly the role of the SRA as the regulator.
- The assumptions made from analysis of the first eight years of the ARP's existence do not apply to the most recent 2 years. In particular, it cannot be deduced that all 262 firms in the 2009/2010 pool are failing firms that should immediately be shut down.
- There are a wide range of alternative proposals that could significantly reduce the cost of the ARP without all the disadvantages of proposal 1.

Proposal 2 – new firms not eligible for an ARP policy after 30 September 2010

6. The second proposal, that new firms should not be eligible for an ARP policy after 30 September 2010, attracts fairly widespread support. There are clearly views expressed that this will limit consumer choice and restrict innovation, but all the larger stakeholders seem to support this change. Interestingly this support not only comes from insurers but also from stakeholders such as the Law Society and the Sole Practitioners Group.

Proposal 3 – reducing the maximum period a firm can be in the ARP

7. If the ARP survives, there is widespread support for the third proposal of limiting cover to 12 months (currently the maximum is 24 months).

Successor Practice Definition

8. The consultation paper reviewing the definition of 'Successor Practice' was also published on 19 November 2009 and closed on 12 February 2010.
9. This paper summarises the key points emerging from the responses. A summary by number of the answers to the various questions posed is at Annex 3. A breakdown of the composition of respondents and a list of those respondents who have consented to their details being publicised can be found at Annex 4.

Summary of responses

10. The Successor Practice consultation generated less interest than the Assigned Risks Pool Review, with the vast majority of respondents in favour of the proposed change. The only serious concern that has been expressed by both a qualifying insurer and the Law Society is the 30 day period in which a firm can

make an election. Both respondents seem to be proposing that all firms should have the option of buying run-off cover upon cessation, but that it would have to be in place and paid for as at the date of cessation/merger/de-merger (or otherwise the successor practice provisions as they currently stand would apply). The Law Society is also concerned about the wording of clause 8.2 (which contains the definition of successor practice) which would still apply if the election fails or is not taken. They suggest that the definition needs to be clarified to help solicitors understand and apply it.

Equality Impact Assessments

11. The statistics and evidence gathered through meetings held during the consultation period, in particular with BME stakeholders, suggests that all three of the proposals put forward in the ARP consultation document had the potential to have indirect adverse impact on race equality, and to a lesser extent age equality. For this reason it was clear that a full equality impact assessment (EIA) would be required before any final decisions are taken. An Initial EIA has already been carried out, but the full EIA is now underway.
12. An initial EIA has also been carried out regarding the proposed change to the rules relating to “successor practice”. This initial EIA has concluded that, as the change proposed is permissive only and could be advantageous to any firm, there is no adverse impact toward equality and diversity.

Annex 1

Assigned Risks Pool review - snapshot of responses to questions

Proposal 1 – Cease issuing ARP policies

1. Do you agree that the ARP should cease to provide ARP policies, save to firms already covered by the ARP?

Ø **130 responses** **Yes 34** **No 84** **Abstain 12**

2. Do you agree that the Qualifying Insurance in existence as at 30 September should be extended for one month for firms that have not obtained Qualifying Insurance in the market as at 1 October?

Ø **130 responses** **Yes 84** **No 31** **Abstain 15**

3. Do you agree that if the firm fails to effect Qualifying Insurance, or closes without successor practice, on or after 1 October, the previous year's Qualifying Insurer would be required to provide the balance of the 6 years run-off cover starting on that 1 October?

Ø **130 responses** **Yes 80** **No 31** **Abstain 19**

4. Do you agree that the change should be introduced with effect from 1 October 2010?

Ø **130 responses** **Yes 52** **No 62** **Abstain 16**

Proposal 2 – New firms will not be eligible to be issued with an ARP policy after 30 September 2010

5. Do you agree that new firms should not be eligible to be issued with an ARP policy with effect from 1 October 2010?

Ø **130 responses** **Yes 65** **No 51** **Abstain 14**

Proposal 3 – Reducing the maximum period a firm can be in the ARP

6. Do you agree that the maximum period a firm can be covered by the ARP should be reduced from 24 months to 12 months with effect from 1 October 2010?

Ø **130 responses** **Yes 54** **No 58** **Abstain 18**

Options

Respondents were asked to select the option that they preferred the most.

- Option 1 – Proposal 1 (cease issuing ARP policies)
 - 36 respondents preferred this option

- Option 2 – Proposal 2 (new firms will not be eligible to be issued with an ARP policy after 30.9.2010)
 - 8 respondents preferred this option
- Option 3 – Proposal 3 (reducing the maximum period a firm can be in the ARP)
 - 18 respondents preferred this option
- Option 4 – Both proposal 2 and 3
 - 23 respondents preferred

2 respondents preferred all the proposals

41 respondents abstained from this section

1 respondent preferred options 1 and 4

Annex 2

Assigned Risks Pool Review - breakdown of respondents

We received 130 responses in total to this consultation paper. They were submitted by, or on behalf of, a range of respondents, including law firms of varying composition and size. The breakdown of these respondents is as follows:

• Solicitors in private practice	89
○ Sole principals	32
○ Partnerships	23
○ LLPs/Ltd Companies	16
○ Unknown constitution	18
• Solicitors in employed practice	5
• Representative groups	9
• Local law societies	5
• Other legal professionals	3
• Other regulator	1
• Trainees/students	4
• Qualifying Insurers	7
• Brokers	3
• Members of public	2
• Other	2

Respondents to the Consultation

This list includes shows only those respondents who agreed to their names being used for publication:

- Anthony Harris & Co
- Arch Solicitors
- Aslam Mazhar
- Association of British Insurers
- Barry and Blott

- Beachcroft LLP
- Beale & Co Solicitors LLP
- Bernard Cordell
- Birmingham Law Society
- Black Minority Ethnic Forum
- Black Solicitors Network
- British Insurance Brokers Association
- Cambridgeshire Law Society
- D Cameron
- Christopher Mathew Solicitors
- Conninghams
- Crowther solicitors
- Equality and Diversity Committee of the Law Society
- Girasol Services
- Hampshire Incorporated Law Society
- K Hathaway
- Henmans LLP
- ILEX Professional Standards Ltd
- KSRI Solicitors
- Laura Garcia
- The Law Society
- Legal Services Consumer's Panel
- Libra Managers (agents of Barbican Syndicate 1955)
- Lincoln Solicitors
- Linklaters LLP
- Macrory Ward
- Mandy Peters Solicitors

- Nathaniel
- O Omatusli
- Professions UK Ltd
- RHY Law LLP
- Ravals Legal Service
- Red Law Solicitors
- Samuel Ross Solicitors
- The Sole Practitioners Group
- Stainforth Solicitors
- The Contracts Team Ltd
- Three Clear Solutions Ltd
- Van Arkadie & Co Solicitors
- Vincent Sykes & Higham LLP
- QBE (Insurance) Europe Ltd
- Quinn Insurance
- Zurich Professional & Financial Lines

Annex 3

Successor Practice Definition – snapshot of responses to questions

1. Do you believe that the definition of successor practice is causing significant problems for Firms that wish to cease practice?

Ø **39 responses** **Yes** 30 **No** 4 **Abstain** 5

- √ Are you in favour of introducing flexibility into the definition of “successor practice”? Please give reasons in support of your answer.

Ø **39 responses** **Yes** 32 **No** 5 **Abstain** 2

- √ Are you in favour of the proposed amendment to the definition of successor practice?

Ø **39 responses** **Yes** 26 **No** 8 **Abstain** 5

- √ Do you foresee that the proposed change will have any adverse equality and diversity impacts?

Ø **39 responses** **Yes** 2 **No** 29 **Abstain** 8

Annex 4

Successor Practice Definition – breakdown of respondents

We received 39 responses in total to this consultation paper. They were submitted by, or on behalf of, a range of respondents, including law firms of varying composition and size. The breakdown of these respondents is as follows:

- Solicitors in private practice 23
 - Sole principals 6
 - Partnerships 4
 - LLPs/Ltd Companies 8
 - Unknown constitution 5
- Representative groups 3
- Local law societies 4
- Other regulator 2
- Trainees/students 1
- Qualifying Insurers 3
- Brokers 2
- Other 1

Respondents to the Consultation

This list includes only those who have agreed to their names appearing in a list of respondents for publication.

- The Law Society
- Association of British Insurers
- Barry & Blott
- Beachcroft LLP
- Birmingham Law Society
- Black Minority Ethnic Forum
- Black Solicitors Network
- British Insurance Brokers Association

- City of Westminster and Holborn Law Society
- Hampshire Law Society
- Harvey Cohen
- Henmans LLP
- ILEX Professional Standards Ltd
- Legal Complaints Service
- Legal Risk LLP
- Munich Re UK General Branch's
- N D Clifford
- Professional UK Ltd
- Solicitors First LLP
- The Law Society Property Section Executive
- The Law Society
- Zurich Professional and Financial Lines