Changes to minimum compulsory professional indemnity cover

Summary of consultation responses

Regulatory Policy Unit

1 August 2014

1. Introduction

1.1. On 7 May 2014 we issued a consultation paper seeking views on a range of proposals to change the level of compulsory indemnity insurance cover. These were designed to ensure that regulation is proportionate and targeted, and to reduce costs for legal services providers and consumers.

1.2. The consultation closed on 18 June 2014 and this report summarises the key points emerging from the responses, and the SRA's position as a consequence.

1.3. A summary by number of the answers to the questions posed is at **Appendix 1**. A breakdown of the composition of respondents and a list of those respondents who consent to their details being publicised is at **Appendix 2**.

2. Overview and next steps

2.1. The proposals are to:

(i) Reduce the level of mandatory cover to £500,000;
(ii) Introduce an aggregate limit on claims;
(iii) Restrict the compulsory cover to individuals, micro-enterprises, trusts and charities to £2m;
(iv) Reduce run-off cover to a minimum of three years;
(v) Require firms to assess the appropriate level of cover beyond the minimum.

2.2. There are 142 responses to this consultation. This is one of the highest response rates in recent years and has prompted great debate from a wide spectrum of stakeholders. Many of the respondents provide detailed responses to the consultation document, with a clear indication of disagreement for the proposed changes. Others do see the proposals as positive. However, a key theme of dissent is criticism of the timing, the perceived haste and the lack of an impact assessment. Other common themes are the potential for disproportionate negative impacts on small firms and on

lender panels, the risk of reduction to cover without lowering premiums, and the potential loss of clarity and client protection.

2.3. The Law Society is strongly opposed to the proposals in principle. It does accept that there are elements that will benefit from reform. However it feels that a rushed timetable for decision and implementation will lead to chaos in the market and significant damage to consumer protection. It states that the proposals require reconsideration and support by proper evidence and full impact assessments.

2.4. Those that supported proposals came from a number of sectors. Some were individual practitioners. The Law Centres Federation felt that they were an important part of a move to more proportionate regulation for 'low risk' providers and ensuring that any protection is focussed on the most vulnerable clients. QBE, the insurance provider with the largest market share for solicitor's Professional indemnity Insurance (PII), supported the proposals as a step towards a better balance between consumer interests, the commercial interests of providers and the need for a vibrant insurers market.

2.5. We have listened carefully to the consultation responses. We remain concerned that the level of insurance premiums drives costs for firms in ways that may make it more difficult to compete. This is particularly the case for small firms – the Law Society's 2013-4 survey stated that 'the cost of premiums remains by far the most important factor in decisions about which insurer to use for nearly all firms. A higher proportion of sole practitioners gave cost as the most important factor in their decision'. The survey also confirmed that, although the differential had fallen, sole practitioners paid a higher percentage of their income in premiums than other firms.

2.6. High costs of regulation also restrict access for clients. There is a body of research that shows that clients struggle to access legal services –including small businesses, clients that are not eligible for legal aid and cannot afford a lawyer on their own account. A fair regulatory system needs to balance protection of those clients that can access services with extension of that access. If a regulatory system that is designed so that no client ever loses out will operate at an unjustifiable and unsustainable cost.

2.7. The timing of the consultation was motivated by our desire to assist practitioners and insurers in negotiating less rigid terms and lower premiums for the 2014 renewal process, which for most firms will be in October. Although a common theme of those against the proposals has been that they will not reduce premiums, the advice we have obtained is that the reduction of the minimum limit per claim should reduce premiums by between 5 -15%. Some have suggested there will cost increases as a result of the proposals and some have suggested higher savings might be realised.

2.8. In our consultation we stated that a final impact assessment would be prepared as part of the decision making process and invited applicants to submit data as part of their responses. We have also gathered data during the consultation period, and are confident from our assessment of the likely impacts that it is right to proceed with the following proposals for October 2014:

- The reduction of the level of compulsory cover to £500,000.

- A revised outcome in the Code to assess and purchase an appropriate level of insurance cover.

2.9. Although we remain confident that there are merits in the other proposals put forward, and there has been some measure of support for them, we have listened to concerns about the need to further assess impacts on the market and do not intend to introduce them for October 2014. A delay will provide:

- Further time to gather data, consider impacts and engage with stakeholders to help ensure that the introduction of these measures occurs in a way that allows the market to react appropriately.
- An opportunity to consider the proposals in the round with a number of other ideas for changes to the MTC to benefit providers and consumers that have been put forward in response to this consultation.
- The ability to combine further changes to the MTC with a wider review of the Compensation Fund arrangements.

Next Steps

2.10. We will seek the approval of the LSB to the rule changes to introduce the reduction in the compulsory indemnity cover to per claim to £500,000 and the revised SRA Code of Conduct Outcome from **1 October 2014**.

2.11. In **July 2014** we will launch a wide ranging call for evidence in relation to the PII Market.

2.12. By the **end of 2014**, we will issue a consultation paper inviting further views in relation to the delayed proposals and other proposals for changes to the MTC. These other proposals might include consideration of provision of run off cover when the premium is not paid; provision of cover for fraud by partners; cover when negligent or wilful misrepresentation on proposal forms; and how defence costs are covered. This will be accompanied by a consultation paper on the future of the Compensation Fund.

2.13. We will announce the results of this consultation in **April 2015**, with implementation of changes on **1 October 2015**.

3. The Responses

Question 1: Do you agree with reducing the compulsory cover to £500,000?

3.1. 34 respondents agree and 92 disagree. The remainder are unsure, unclear or unequivocal at this stage.

3.2. This question generates much of the discussion and the largest division between support and opposition.

3.3. The Law Society does not agree with the proposal. It is concerned that it will distort, and potentially detrimentally effect, consumer protection and the legal services market. The proposal fails to take into account house price inflation; risks increased premiums for less cover, and unpaid defence costs. It will impact particularly on smaller firms: lender panels will move towards using licensed conveyancers instead of solicitors; loss of charity and trust work; and a

threat to work requiring undertakings. This erosion will reduce choice for consumers and contribute adversely to the viability of small firms' presence on the High Street, a significant number of which are BAME firms, in turn risking the diversity of the profession. Additionally, unrated insurers with an unsustainable business model may enter the market MTC cover at an unsustainably low premium.

3.4. Supporters of this proposal believe the current level of compulsory cover is disproportionate for small and new firms and restricts competition. Part time or very small firms do not need such a high level of cover and for many small practices £500,000 will be adequate. One firm commented that when they moved from sole practice to limited company, their insurer raised their premium, 'not because we were higher risk but simply because the rules required us to have 3m cover instead of 2m'. Some advocate reducing the level further, allowing consumers who want to benefit from a high level of insurance to pay extra for it, or for PII to be offered on an "a la carte basis", or for it to be wholly optional. One respondent agreed with the proposal but suggested a higher limit where firms hold client money.

3.5. Others did not object to the proposal, but indicated that they did not feel that it would make savings. For example, one of the participating insurers stated "There will be a selection of firms whereby a limit of £500,000 is adequate - criminal law firms, low-end employment firms, matrimonial law firms, etc, etc - however the limit will be driven by what the lenders require, if the firm wishes to carry out conveyancing". Other suggestions include requiring firms to state their insurance limit on paperwork or permitting clients to "contract out".

3.6. Whilst there is much support for the proposal, the majority of the comments are from those who oppose the idea. These include the general points made about timing and impact referred to above, but also include:

- The proposed limit is too low and will leave firms and clients exposed to uninsured claims resulting in inadequate protection and reputational risks. Average property prices in London are already close to £500,000. Scepticism that this proposal will reduce premiums. The average claim falls within £500,000 and so is already priced within that level. There is the risk of reduced cover at the same, or even, an increased premium cost. Additional cover may be expensive and hard to obtain, especially for smaller firms. The only types of firm that are likely to be able to purchase such a low limit with confidence are firms engaged solely in criminal and immigration work. Such firms already pay very low premiums in any event. The Sole Practitioners Group, for example, felt that the advantages of any small reduction in premium would be outweighed by the problems of not having sufficient cover.
- It will create disparity, confusion and risk for firms as well as for clients.
- Confusion as to involvement of the Compensation Fund to meet any "shortfall" where claims are outside the cover and how clients are otherwise to be protected.
- Alarm about the impact on undertakings and the conveyancing process.
- Lenders will restrict further their conveyancing panels with particular impact on many market town small firms. This will distort the conveyancing market towards a predominant use of other conveyancers

such as Licensed Conveyancers whose master policy will better suit lenders' requirements. This is anti-competitive.

- Insurers will benefit from this proposal, the profession and clients will not.

3.7. The Legal Ombudsman opposed the £500,000 limit, but stated that 'we believe there should be a minimum level of compulsory cover, but consider that the amount of cover should vary depending on the size, nature and value of the work undertaken by a particular firm.' The Legal Services Board Consumer Panel felt that there was not enough evidence of consumer benefit to support the move.

SRA response

3.8. The SRA's position on this issue is that the current minimum level of cover of £2 million any one claim (£3 million for LLPs and limited companies) exceeds the needs of many small firms and their clients. The proposed minimum level of cover of £500,000 for all firms will provide a more appropriate minimum for the smallest firms. However, this proposal is coupled with the proposed introduction of a new outcome in the Handbook that will require firms to assess and purchase the level of cover that is appropriate for the firm and its clients.

3.9. The two proposals together will provide proportionate and targeted protection to firms and their client and will mean that firms will not be required to pay for cover that they and their clients do not need. There are a variety of factors impacting on the price of professional indemnity insurance so it is difficult to isolate the impact on price of one particular factor. Based on the proposed reduction in the minimum sum insured, Marsh UK have advised the SRA that they anticipate premium savings will range from 5% to 15% although they are more likely to be at the lower end of the range. QBE who have the largest share in the market stated in their response that in their estimation the reduction to a limit of £500,000 'would likely result in premium reductions of no more than circa 15% at best.' Others respondents suggested premiums would not fall.

3.10. Nevertheless we do not consider that as an initial step in reforming the market such a price reduction is insignificant, especially for a small firm. Overall prices will be driven partly by competition, and if one insurer offers reductions others will follow or lose market share. We accept that we will need to go further in reforming the market to further increase competiveness. However decreasing regulatory burden whilst increasing access to justice for consumers is not a question of taking one step – it will take a series of incremental reforms across a range of areas and this policy change needs to be seen in that context.

3.11. We received a lot of general comments on the large number of claims that may exceed £500,000. However one large insurer told us that they have had significantly under 200 claims over that amount in all categories over the last 15 years.

3.12. Many of the comments focussed on conveyancing in particular. Reference has been made to average house prices particularly in London, and that the growth

of prices has meant either that all firms doing conveyancing will need to purchase cover significantly in excess of £500,000 or that large numbers of clients will lose out if they do not The average house price in England and Wales is £169,500 and in London it is £417,500[1] . An analysis of claims data from the Solicitors Indemnity Fund (SIF) over a five year period prior to 2000 indicates that only 0.22% of conveyancing transactions result in a claim. The average value of settled claims expressed as a percentage of average house prices over the five years was 41.4% (-although this percentage was falling as house prices increased). Allowing for the increase in house prices and applying the SIF pattern of conveyancing claims by value we estimate that over 99.99% of conveyancing negligence claims would fall with the £500,000 limit.

3.13. Regarding conveyancing panels, a number of large lenders have stated to us that they remain committed to maintaining a large panel of firms regardless of these proposals. We believe that the decision not to proceed this year with the other proposals, including those to restrict the scope of the MTC to individual clients and small enterprises will provide more scope for these issues to be considered.

3.14. The responses of a number of practitioners that do not agree with the proposal focus on the fact they consider that they will need higher cover for their firm. However it is important to remember that the limit is a minimum, not a maximum and it is right that firms will continue to purchase a level that meets their own and consumer's needs. We have considered the issue of the cost to firms of 'additional' cover over the £500,000 and the likelihood of this being on different terms from the MTC. Our discussions have indicated that there is no reason to believe that a firm seeking renewal with its existing insurer and that wishes to continue to purchase cover up to the previous maximum will lose out as a result of this change. It is anticipated that insurers competing for a firm's business will offer cover based on the existing MTC, assuming it satisfies the insurers underwriting criteria.

3.15. Reaction from the market will vary – for example one large insurer indicated in their response that they will be unlikely to offer coverage under £1m. However this will be the first time that insurers will be able to compete on coverage terms given the new limit, and we will need to monitor the market and ensure the next stage of reforms takes into account any developments

3.16. We discuss the impact of the proposal on small firms and consumers in more detail in our impact statement. We believe that the measure may benefit small firms by providing them with greater flexibility of cover. Further, given the level of minimum insurance cover that will remain, and the duty on firms to arrange cover that is appropriate- we do not consider that the change will adversely impact on vulnerable consumers.,

3.17. Concern has been expressed at the potential impact on the Compensation Fund. If a professional indemnity claim is not met by a firm's professional indemnity cover then it will not fall to the compensation fund to deal with under the uninsured claim provisions. Grants under rule 5 of the SRA Compensation Fund Rules are made only in circumstances where a firm does not have in

[1] http://www.landregistry.gov.uk/public/information/public-data/hpi-background

place any policy of qualifying insurance. However there is the potential for the Fund to be exposed to a higher pay-out if a firm with a minimum cover of £500,000 dishonestly appropriates client money leading to a claim above that amount. However, the MTC do not provide cover to principals involved in the fraud or dishonesty. Therefore sole practitioner claims involving fraud and dishonesty on the part of the sole practitioner are already picked up by the Compensation Fund so the proposal will not affect that position. Second, failure to account claims on the Compensation Fund are subject to the hardship test so not all claims that are part paid by professional indemnity insurance will be eligible to be topped up by the Compensation Fund. Finally, the Compensation Fund is discretionary.

3.18. We also carefully considered the Consumer Panel response as one of the few consumer voices to be heard. Mindful of their openness to the challenge of balancing access and consumer protection we have sought to build a stronger evidence base to inform and support a final decision. We also take into account the way that the Consumer Panel has itself balanced access and consumer protection in calling for a greater recognition of fee charging McKenzie friends as a legitimate feature of an evolving legal services market. In its report,[2] the Consumer Panel falls far short of calling for any compulsory PII insurance for fee charging McKenzie friends and states "Since affordability is the main reason why litigants choose to use a McKenzie friend, regulation could reduce access to justice." It is exactly this balance that we are seeking to strike in these proposals.

3.19. One other factor we considered was recent LSB decisions where it exercises oversight in regard to the regulatory arrangements of other Approved Regulators. In particular we consider the decision of the LSB on the ICAEW application to become an approved regulator and Licensing Authority for probate activities to be relevant.[3] In this decision the ICAEW PII levels of a minimum of £500000, with ICAEW suggesting in its guidance that firms obtain more where appropriate, were approved by the LSB.

Question 2: Do you agree with introducing a cap on insurers' liability?

3.20. A majority of respondents disagreed with this proposal, although there was a significant minority in favour.. The remainder are unsure or have not replied.

3.21. The Law Society does not support this proposal. It is troubled by the absence of an identified appropriate monetary cap level, and the impact of the "claims made" basis of PII. Also it is concerned how consumers will be able to judge the sufficiency of a firm's insurance. While this may cap an insurer's exposure,

2 http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/2014%2004%2017%20MKF_Final.pdf

3 http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/20131211_decision_notice_ICAEW.pdf

it is not clear how often this will make a difference in practice or whether that difference can be passed on in lower premiums. There is anxiety for smaller firms as astute consumers will take their future business to larger firms where there might be more confidence of sufficiency of cover and greater level of protection.

3.22. Other responses shift between believing a cap may encourage more insurers into the market, to it being a risky move leading to confusion and lack of cover in some cases. Some feel it will allow insurers greater flexibility to structure the appropriate cover for each firm and so may result in reduced premiums. Others are concerned the proposal will add indirectly to the cost of insurance overall for firms and so clients. There is much confusion as to the operation of any cap and how the true cover will be known. It is stated that no form of aggregation language has been outlined in the proposal, and there is much concern about the legal implications of tinkering with such a complex issue in haste. Some respondents commented that much more legal, actuarial and general process support work is necessary to support such a proposal. Many are concerned too that this will lead to increased pressure on the smaller end of the market as financial institutions will not accept a move to aggregate limit.

3.23. Those that supported the cap generally felt that the current system of unlimited sideways exposure was an important factor in restricting entrants to the current PII market.

SRA response

3.24. The SRA's position is that currently insurers have unlimited sideway exposure to claims which may act as a barrier to new entrants. The introduction of a cap can make the market more attractive to new entrants and depending where the cap is set could put downward pressure on premiums in the longer term. However, there are implications for consumers of legal services as a cap introduces uncertainty as to whether there will be any cover available should a claim be made. The degree of uncertainty will depend on where the cap is set.

3.25. Whilst we are still of the view that a cap has a role to play we accept that further work needs to be done to fully assess the impact of caps at varying levels. For this reason we propose that the introduction be deferred to allow further consideration of the proposal as part of the wider review of the minimum terms and conditions of compulsory professional indemnity insurance.

Question 3: Do you think any such cap should be £1,500,000, £5,000,000 or another figure?

3.26. If a cap where to be introduced, the opinion of those that responded to the question was roughly evenly divided on the level that should be set. Many respondents however indicated, as above, that they did not support the idea of a cap at all.

3.27. As before, the Law Society does not support the proposal which it feels is fundamentally flawed placing both consumers and firms at an "intolerable level" of risk. It believes the current "any one claim"' wording should remain.

3.28. Suggestions range from a cap of £50,000, through to whatever a firm chooses. Ideas include basing it on the size of the firm and the type of work, the fee-earner and the turnover of a firm, with larger firms having higher limits. On the other hand, there are many reservations: that a low cap is inadequate if there is a number of claims; about the potential for impact on undertakings; and the possibility that for some firms cover may be exhausted early in the policy period. There were concerns about lack of clarity for consumers, even where firms have stated what their cover is - both as to when the limit is reached and how the cap is to be applied.

SRA response

3.29. The SRA's position on this issue is as stated in response to question 2.

Question 4: 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"?

3.30. Opinion was evenly divided for those respondents that replied to this question.

3.31. The Law Society does not support the proposal, believing that the disadvantages of a cap will not be balanced by any advantages from changing the definition of a claim.

3.32. The main concern of respondents that were opposed was that aggregation clauses are the most difficult and contentious clauses in PII insurance and even the best drafted clauses are open to dispute. It was said that as the current aggregation clause reflects the legal position and has been adopted by many markets, it is unclear why such a clause would be tampered with at this time. Other concerns include the additional financial impact on firms given the potential for an excess to be applied to each claim where it is not "one claim". There is disquiet over the interpretation of "one claim" or "one series of related acts" in what is a highly legal subject, and that change through the mode of this consultation is inappropriate. Some thought it unlikely that insurers will accept such an introduction, leading to a reduction in insurer numbers or increased premiums.

3.33. Comments from those that supported the claim included that this was a necessary corollary to an aggregate limit. A number of respondents felt that greater certainty in the definition of ‘a claim’ was desirable.

SRA response

3.34. The SRA’s position on this issue is that this proposal is linked to introduction of a cap and any change should be considered as part of the wider review of the minimum terms and conditions of compulsory professional indemnity insurance.

Question 5: Do you agree with limiting the compulsory cover requirements to individuals, small enterprises, charities and trusts?

3.35. A majority of respondents disagreed, with a substantial minority agreeing..

3.36. The Law Society does not support the proposal. It stated that there seems to be the expectation that a firm will be able to assess the value of a client's turnover at some given time. They feel it is naïve to assume that large financial institutions will not require firms to hold such cover and that this cover is crucial to ensuring a wide and a diverse range of legal services suppliers. The Law Society sees no savings from this proposal.

3.37. Comments from respondents opposed include:

- Lack of clarity and confusion for consumers as well as firms. This proposal does not protect the interests of consumers;
- Alarm about the definition of “individuals" and of "small and medium enterprises", as well as for the beneficiaries of trusts;
- Anti-competition issues as small firms may lose attraction for commercial and lender clients. It does not encourage an independent, strong, diverse and effective legal profession;
- It is unreasonable or unrealistic to expect larger firms to self-insure entirely;
- It will need a robust professional obligation properly to inform clients of what the insurance arrangements are, including information about future years' PII cover given the "claims made" way in which PII works.

3.38. The Council of Mortgage Lenders felt that this reform could have unforeseen effects on the conveyancing market – that lenders would insist on this cover in any event and that some would review their panels as a result.

3.39. Comments from those that supported the proposed or a similar restriction include the need to focus on the more vulnerable consumers. The Legal Services Board Consumer Panel were content with the proposal on the basis

that it was right to prioritise those consumers that are less able to give voice to their own interests.

3.40. Other suggestions include allowing professional and sophisticated clients to contract out of protection, bearing in mind the impact of the Unfair Contract Terms Act 1977 as to the reasonableness of any such limitation.

SRA response

3.41. The SRA's position remains that the protection afforded by compulsory professional indemnity cover should be focussed on the least sophisticated clients. However, we accept that a number of stakeholders have concerns about a number of issues including lack of clarity in the wording which we need to address. The issue of timing is also of particular concern to lenders and we accept introduction on 1 October 2014 would give them little time to prepare for the change in an orderly manner. This could adversely affect the interests of clients. We are going to return to the proposal as part of the wider review of the minimum terms and conditions.

Question 6: Do you agree with reducing the run-off cover to 3 years?

3.42. Again this question prompted a great deal of debate.

3.43. The Law Society does not support the proposal. The grounds include: The assumptions underpinning this proposal are flawed. A large number of consumers' claims will not be met, with no discussion of how those losses will be redressed. Some claims, such as conveyancing, take many years to emerge. The proposal will erode the existing confidence that consumers have in a profession that up to now has been able to ensure no clients suffer loss. The ability to purchase extended run-off cover is unknown and will not result in lower costs; rather the higher costs will be passed on to consumers.

3.44. Other comments from those opposed echo the Law Society's position: limitation periods and the slow emergence of many claims; the availability and affordability of longer run-off for the conscientious retired solicitor who wants, and deserves, to "sleep easy"; confusion given the "claims made" nature of PII; and the application of aggregation. . Support for the measure from practitioners centres on the removal of what is perceived as a "retirement tax" and "age discrimination". The costs of run-off cover are seen as preventing people from retiring as they cannot afford to do so, sometimes with resultant quality, conduct or financial issues. Some responses advocate less than three years or no run-off cover at all. A number of insurance companies felt that the restriction of run off cover could have a positive effect on the market.

3.45. Other suggestions include:

- Extend the "SIF fund" beyond 2020, or otherwise expand the current “post six year" run-off cover indefinitely;
- Build in some flexibility to require a longer period of run-off where a firm has a history of late emerging claims;
- Apply an aggregate limit for the run-off period;
- Move to "date of event" cover.

SRA response

3.46. The SRA’s position on this issue is that the current arrangements are flawed as they impose a significant exit cost on many sole practitioners who wish to retire. Indications from further data that to which we have been given access are that that the proportion of claims that are made within the first three years is much higher than the 60% referred to in the consultation paper. However, we believe that there is merit in undertaking further research and discussion before making any final decision.

Question 7: Do you agree with the proposed changes to Code of Conduct Outcome?

3.47. Opinion was fairly equally divided on those that responded to this proposal.

3.48. The Law Society does not support the proposal, believing it will place another additional layer of burdensome regulation on small firms. The same issues about the "claims made" nature of PII work and on aggregation apply and will lead to uncertainty. The Law Society feels that a firm that innocently gets its assessment of cover wrong will be subject to sanctions, and wonders how this will be "policed".

3.49. Objectors believe that such a measure will reduce the level of protection for consumers when compared to compulsory terms. They are concerned too about the potential for accidental breach or lack of cover as firms do not know necessarily what future instructions they may receive within a policy period. Concerns were expressed about how such an Outcome could be enforced in retrospect. On the other hand, some respondents believe no Outcome is needed because the point is already covered by the Principle 8 requirement for firms to carry on their business in accordance with sound financial and risk management principles and well-run firms will therefore identify the risks they face and purchase cover beyond the regulatory minimum if appropriate.

3.50. A number of practitioners that supported the measure did so with the corollary that they felt that it would be important to introduce such a principle if any of the other measures were introduced. .Comments included the fact that it might lead to a more considered approach from firms, and that the measure should be supported if it results in firms engaging more on the subject.

3.51. The Legal Services Consumer Panel supported the proposal, stating that, whatever the minimum level of cover, it is important that firms undertake their own risk assessment and ensure that they hold the level of cover they need in relation to the risks that their business raise.

3.52. There was strong support from insurer respondents for the measure. For example, Zurich stated that this would be an appropriate change regardless of whether other measures were implemented given the work profiles of many firms.

SRA response

3.53. The SRA will proceed with this proposal. Our view is that a reduction in the minimum cover for any one claim should be coupled with an express obligation on firms to assess what level of professional indemnity insurance cover is appropriate for the practice. The firm is in the best place to assess its potential exposure to claims arising from work undertaken in the past which are covered by its policy and its current and future needs during the policy period.

3.54. The new outcome will provide additional client protection as it is not limited to the compulsory layer and it will make it clear that firms should opt for the minimum level of compulsory cover only if it is appropriate.

3.55. Whilst we have noted the concerns relating to the proposal, it is interesting that they range from 'good firms do this anyway' to 'firms cannot be expected to have the knowledge to do this'. In some ways, this issue goes to the heart of the programme of changes to regulation that the SRA is taking forward. It reflects the move from burdensome, restrictive 'one size fits all' rules to allowing firms to take more responsibility for the management of their own business whilst maintaining important principles of client protection.

3.56. In some ways it is surprising and indeed worrying that some respondents consider that a professional firm should be unable to assess its insurance needs. Nevertheless, we accept that are real concerns with how the revised Outcome will operate –and whether for example the SRA will take a harsh punitive 'after the event' approach if a firm ever gets a claim that exceeds their limit. We accept that the corollary of giving firms the duty to assess the needs that are appropriate to their clients is that they have to be given the latitude to do so. As one respondent pointed, no firm is ever 100% insured, and the intention of the obligation is to ensure firms obtains the right protection overall, not that their insurance covers all possible liability in all work that thy take on. We have endeavoured to reflect these concerns in the final drafting of the Outcome, and will consider, with the Law Society and others whether further guidance is necessary.

Question 8: Do you have any views about our assessment of the impact of these changes?

3.57. The Law Society is critical of what it feels is superficial analysis, the lack of consultation with key stakeholders, and inadequate impact or equality and diversity impact assessments. Points include: the proposed timing is too tight to address the unforeseen consequences of these changes. More time is needed for the market to adjust, and to produce guidance.

3.58. Others' concerns predominantly concentrate too on the same points, particularly lack of data and request more time for full investigation of the consequences, some of which may be unintended or anomalous, as well as leading to gaps in client protection, especially for vulnerable clients. Many are highly sceptical of reductions in premium or of improved access to legal services for consumers. There are concerns that the changes favour large firms to the detriment of small ones, and that the risk to consumers is much underestimated. There is disquiet that these changes may destabilise the market and put the future of High Street conveyancing firms at risk. Others wonder how the SRA will "police" the existence or not of suitable cover.

SRA response

The SRA's response is that we have listened to the concerns expressed and have decided not to proceed at this stage with the proposals to introduce an aggregate limit on claims; to restrict the compulsory cover to individuals, micro-enterprises, trusts and charities to £2m;and to reduce run-off cover to a minimum of three years. These proposals will be developed as part of a wider review of the minimum terms and conditions of compulsory cover for implementation in 2015 and we will be able to look at impacts in the wider context.

3.59. Nevertheless we consider that we have sufficient information to reasonably make the decision to reduce the MTC minimum limit to £500,000 and to amend the Code of Conduct outcome, for the reasons given earlier in this paper and our finalised impact statement in relation to those proposals

Question 9: Are there any impacts, available data or evidence that we should consider in finalising our impact assessment?

3.60. The Law Society referred to its concerns about the lack of data, and stated that impacts on premiums, consumers, the Compensation Fund, BAME clients and firms and lenders should be considered. They were also concerned about the use of historic claims data.

3.61. Many other responses feel that the consultation paper makes too many assumptions and that more engagement with stakeholders, including

consumers, insurers and lenders, is required. A number stated that the time allowed for consultation did not allow them to consider this issue properly. The implications cannot be viewed in isolation from the Compensation Fund, which together with professional indemnity insurance, form the entirety of consumer redress. Some identify the possibility for unmet claims against non-principal fee earners. A common theme was the need for a fuller impact assessment in relation to BAME clients and providers

SRA response

3.62. We refer to the response to question 8 above, and to our published impact statement. Whilst we have obtained further data during the consultation period, we accept the need to obtain more information in relation to the outstanding proposals and the further ideas that have been submitted. We will therefore be issuing a call for evidence later this month This will include a request to insurers to co-operate by providing anonymised information.

Question 10: Are there any other aspects of the Minimum Terms and Conditions for PII that you think we should review?

3.63. The Law Society's view is that the effectiveness of the MTC as a whole should be examined, coupled with analysis of why there has been instability in the market, and work to examine how to reduce the barriers to, and costs of, retirement.

3.64. Suggestions from others include:

- Tailor insurance to specialist work (such as immigration or employment only);
- Incorporate regulatory defence costs as standard cover;
- Reduce the MTC still further, or remove them entirely;
- Allow claims to be avoided due to dishonesty/non disclosure/misrepresentation/non payment of premium;
- Put PII on a "date of event" basis (as opposed to “claims made”);
- Review the financial strength rating of insurers;
- Review the operation of the successor practice rules;
- Require lenders to have separate representation;
- Introduce controls over clients' money - reduce the frequency of solicitors holding client money and explore Escrow Accounts;
- Allow full cover for all elements of poor service awards.

3.65. Non MTC related suggestions are to look at the disparity between premiums for incorporated and unincorporated practices, and the resistance from the insurance market to making payments through "restrictive interpretation".

SRA response

3.66. The SRA's response we will consider these comments and suggestions as part of a wider review of the minimum terms and conditions of compulsory cover for implementation in 2015.

Appendix 1: Summary of responses

Question	Yes	No	Unsure Unclear No response
Question 1 Do you agree with reducing the compulsory cover to £500,000	**34**	**92**	**16**
Question 2 Do you agree with introducing a cap on insurers' liability?	**32**	**83**	**27**
Question 3 Do you think any such cap should be £1,500,000, £5,000,000 or another figure?	**£1.5m** **16**	**£5m** **18**	**108**
Question 4 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"?	**46**	**48**	**48**
Question 5 Do you agree with limiting the compulsory cover requirements to individuals, small enterprises, charities and trusts?	**36**	**84**	**22**
Question 6 Do you agree with reducing the run-off cover to 3 years?	**47**	**81**	**14**
Question 7 Do you agree with the proposed changes to Code of Conduct Outcome?	**50**	**59**	**33**

Appendix 2: Respondent Information

We received 142 submitted by, or on behalf, of a range of organisations as follows:

Breakdown of Respondents

• The Law Society	1
• Firms in private practice	90
• Other legal professional	2
• Representative groups	10
• Local law societies	22
• Participating Insurers	10
• Brokers	6
• Academic	1

Respondents to the Consultation

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

- Jacky Lewis Family Law
- Minim Law Limited
- Julian Cohen
- A. L Hughes & Co.
- Martin Ross
- Steeles Law Solicitors Limited
- Ian Newbery & Co
- Mark Robinson Transactional Intellectual Property Services
- Legal Risk LLP
- Colin Palmer & Co
- Access Law LLP
- Devon & Somerset Law Society
- Elvin & Co
- Miller Insurance Services LLP
- Hailsham Chambers
- Chancery Pii
- AON
- O'Neill Patient Solicitors
- Bryan & Armstrong Solicitors
- Mark Cook Solicitors
- Mayfield Bell
- Law Centres Network
- Southern Area Association of Law Societies
- International Insurance Company of Hannover
- Birmingham Law Society
- PNCR Ltd
- Hertfordshire Law Society

- Libra Barbican
- Phil Crier Licensing Limited
- Duchennes
- The Building Societies Association
- Driver Belcher Solicitors
- DAC Beachcroft
- Scotts Wright
- The Conveyancing Association
- Manchester Law Society
- Clifton Ingram LLP
- Yewco Law
- Just Employment Solicitors
- R & B Legal Limited
- Rowe Radcliffe
- Lewes Smith
- Kiteleys Solicitors Limited
- Paul Finn Solicitors
- Starr Companies
- Newnham & Jordan Solicitors
- The Kent Law Society
- Sue Petritz Solicitor
- Tunbridge Wells, Tonbridge & District Law Society
- Outer Temple Chambers
- Lockton Companies LLP
- Leung & Co
- JLT Specialty Ltd
- Warner and Richardson
- The Legal Ombudsman
- The Legal Services Board Consumer Panel
- Zurich