

**Solicitors  
Regulation  
Authority**

## **Consultation responses**

# **Removing barriers to switching regulators**

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July 2017

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Legal Services Consumer Panel

Liverpool Law Society

MJP Conveyancing

The Law Society

# Removing barriers to switching regulators

Response ID:20 Data

## 2. Your identity

### 1. Surname

Demeritt

### 2. Forename(s)

Julie

### 3. Name of the firm or organisation where you work

Bar Standards Board

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Attribute my/our response and publish my/our name.

### 5. Please identify the capacity in which you are submitting a response. I am submitting a response... in another capacity

Please specify: Regulator of Barristers

## 3.

### 1. Do you agree that we should remove the obligation for run-off cover when a firm switches from the SRA to another Approved Regulator?

We agree with the SRA's objective of facilitating an open and liberal market by removing unnecessary regulatory restrictions, while maintaining appropriate consumer protection. The automatic requirement to pay not only run-off cover from the time associated with one regulator, but then also cover for the same period under a different policy with the new regulator is potentially onerous if it leads to duplication of costs.

That may prevent firms from switching regulators. We acknowledge however, the need to protect consumers' interests by ensuring that when a firm switches to another regulator, adequate insurance is in place to cover work that was completed while under the previous regulator on similar terms.

The SRA rightly points out that there is a risk that the arrangements of the new Approved Regulator will not require the firm to have PII cover for claims made after it starts to regulate the firm, but which arise out of client matters concluded before that date. Similarly, the new Approved Regulator may allow a lower level of PII cover or a less advantageous set of Minimum Terms and Conditions (MTC). This could lead to differing levels of protection for clients, which could not have been foreseen by them when engaging the firm.

The BSB has considered this proposal from the point of view of our current PII rules, assuming an SRA firm were to move to be regulated by the BSB. At present, our authorisation process does not consider prior practices that were regulated by another Approved Regulator. Hence there would be no requirement in our rules for a policy to be in place to cover claims made in relation to that prior practice. That could be rectified if we imposed a condition on the entity's authorisation and/or the entity voluntarily sought extra cover, assuming an insurer was willing to provide cover beyond our MTCs (although that would likely involve the payment of an additional premium if the firm was switching to a new insurer). It should also be noted that our MTC's were set up for a very specific risk profile, which may differ significantly from the risk profile of a prior practice under SRA regulation. We note that the SRA proposes to invite other Approved Regulators to ensure their arrangements adequately consider these issues. It is unlikely that the BSB would be prepared to do this by amending its MTCs, as we believe this would significantly affect the willingness of insurers to provide cover on those terms. We would be prepared to consider individual arrangements on a case-by-case basis, assuming the entity has found and can maintain appropriate insurance to cover the prior practice.

With that in mind, we would be concerned if the SRA granted a waiver from its own insurance requirements

without first consulting the Approved Regulator that the firm was switching to. We believe it will be important that both Approved Regulators are satisfied that appropriate arrangements are in place to protect consumers.

The SRA notes that the Legal Services Board (LSB) has oversight of all PII arrangements of Approved Regulators. However, it is not the LSB's role to ensure that situations like this are catered for. The LSB approved our regulatory arrangements for a specific purpose; entities specialising in legal advocacy, litigation and advice services. The BSB's regulatory arrangements do not envisage authorising firms of a type more suited to regulation by the SRA (hence our MTC's do not require cover for such prior practices). Firms regulated by the SRA have a different risk profile and therefore the regulatory arrangements are necessarily different, including MTCs.

4.

**2. If you have answered yes to Question 1, do you agree with our method for delivering this proposal?**

The proposal potentially provides greater flexibility in allowing SRA regulated firms to switch to other approved regulators. However, it may not remove barriers to the extent envisaged if it increases the cost of insurance after the firm changes regulator (or if the firm is unable to get insurance at the level required to cover claims from the prior practice). We agree that the SRA could only grant such waivers on a case by case basis. The SRA would have to be satisfied that clients were appropriately protected, the new Approved Regulator would have to be equally satisfied and the insurer would have had to agree to the new arrangement.

We do not agree that it is not the SRA's place to consider the adequacy of the regulatory arrangements of other Approved Regulators when granting waivers from the insurance requirements. It should consider the need to protect those persons who were clients of the firm whilst subject to SRA regulation. Once a firm has moved out of the SRA's jurisdiction and into the jurisdiction of another Regulator, the SRA does not have any control over its continuing practice and on-going insurance arrangements. This should therefore not be done lightly or without clear safeguards put in place and agreed with the new Approved Regulator.

5.

**3. Do you have any further comments on our proposal or on the changes to the PIA or terms of the core waiver proposed?**

The BSB is very happy to discuss reciprocal processes with the SRA to facilitate what the SRA is trying to achieve. Collaboration on this issue might bring real benefits. However, we would advise against proceeding with this proposal without these discussions and without considering the issues raised above.

6.

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

We agree with the SRA's assessment of the impact of these changes but do not feel they have sufficiently taken account of the relationship between this proposal and other Approved Regulators' authorisation processes, for the reasons discussed above.

# Removing barriers to switching regulators

Response ID:18 Data

## 2. Your identity

1. Surname

2. Forename(s)

3. Name of the firm or organisation where you work

CILEx Regulation

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Attribute my/our response and publish my/our name.

**5. Please identify the capacity in which you are submitting a response. I am submitting a response... as another legal professional**

Please specify:: Approved Regulator

## 3.

**1. Do you agree that we should remove the obligation for run-off cover when a firm switches from the SRA to another Approved Regulator?**

Yes, CILEx Regulation supports this. CILEx Regulation acknowledges that the obligation for run-off can act as one of a number of significant barriers for firms looking to switch regulator.

## 4.

**2. If you have answered yes to Question 1, do you agree with our method for delivering this proposal?**

Although the SRA has provided some information on the method of delivering this proposal, CILEx Regulation will need more detailed information before it can comment with any certainty.

CILEx Regulation appreciates that there are many important issues that need to be considered to ensure the successful transition of firms from one regulator to another. One of these issues is ensuring continuous consumer protection, which the SRA has touched upon in this consultation.

We thank the SRA for inviting other Approved Regulators to ensure that the arrangements adequately consider the appropriate levels of consumer protection. We accept the SRA's invitation to provide this feedback and welcome the opportunity to take part in any ongoing discussions.

## 5.

**3. Do you have any further comments on our proposal or on the changes to the PIA or terms of the core waiver proposed?**

No.

## 6.

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

As highlighted in answer 2, there are many considerations that CILEx Regulation would like to discuss with the SRA, other Approved Regulators and Insurers on this subject. CILEx Regulation believes that it is important for these discussions to take place so that collaboratively all Approved Regulators can better support the transfer of firms between regulators, whilst at the same time ensuring that consumer protection mechanisms remain intact.

**CLC's Response**  
**Solicitors Regulation Authority**  
**Removing Barriers to switching Regulators**  
**A Consultation Paper**  
**July 2016**

The CLC welcomes the opportunity to respond to the SRA's Consultation Paper Removing Barriers to switching Regulators.

**About the CLC**

As an Approved Regulator and Licensing Authority under the Legal Services Act 2007, the CLC is authorised to license and regulate individuals (licensed conveyancers and probate practitioners) and CLC practices, including ABS, in the provision of conveyancing and probate services, as well as other non-reserved legal activities. It currently licenses 1,300 individuals and 230 practices (45 of which are ABS). It estimates that CLC practices account for 10-15% fee income generated in the provision of conveyancing services in England and Wales.

**General Comments**

The CLC is grateful to the SRA for publishing this consultation in advance of the further work to review its wider arrangements for professional indemnity insurance. The CLC has long argued that changes along the lines proposed are needed in light of the Legal Services Act 2007 (LSA 2007).

One of the effects of LSA 2007 is to enable practices to choose the most appropriate regulator for their type of practice and we have been informed by SRA practices that the cost of run off insurance is a barrier to moving to regulation by the CLC or another legal regulator. The proposals in this consultation therefore help to make a reality of the flexibility that is enshrined in the Act.

In determining our response to this Consultation, we have had in mind the LSB's statement 'It is for those who seek to maintain restrictions to justify them rather than for those who argue for their removal to justify change'<sup>1</sup>.

**Response to the Consultation Paper**

1. Do you agree that we should remove the obligation for run-off cover when a firm switches from the SRA to another Approved Regulator?

*CLC Response*

Yes. The CLC has long argued that there is an urgent need to change the SRA's existing requirements for firms to take out run-off cover if they wish to transfer to a more appropriate regulatory regime.

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<sup>1</sup> Paragraph 38 at [http://www.legalservicesboard.org.uk/news\\_publications/publications/pdf/regulatory\\_objectives.pdf](http://www.legalservicesboard.org.uk/news_publications/publications/pdf/regulatory_objectives.pdf)

That requirement is acting as a major obstacle to firms exercising the choices made possible by LSA 2007.

The CLC agrees that it would be wrong for the SRA to have an 'equivalence' requirement (ie to consider the adequacy of the regulatory arrangements of other Approved Regulators under the oversight of the LSB). After a determination has been made whether to introduce the changes proposed (assuming that is an outcome of this consultation), the CLC will wish to have discussions with the SRA to agree on the exchange of information to manage the transfer of any practices and ensure that past clients continue to be protected appropriately under future PII arrangements. It should be noted that under the CLC's new PII arrangements and the Participating Insurers Agreement, all insured practices benefit from run-off cover at no cost at the point of closure of the practice.

2. If you have answered yes to Question 1, do you agree with our method for delivering this proposal?

*CLC Response*

Yes. It is important that this issue is addressed without further delay and so issuing waivers as an interim measure is a sensible way forward. It will be important for the SRA to ensure that any revised PII arrangements put into place following a further consultation later in 2016 fully dismantle the current barriers to free choice of regulator.

3. Do you have any further comments on our proposal or on the changes to the PIA or terms of the core waiver proposed?

*CLC Response*

No.

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

*CLC Response*

The SRA notes that the current arrangements amount to 'unjustifiable regulatory restrictions' and it is therefore desirable that they should be removed on those grounds alone, quite apart from the positive impact that they will have in making a reality of liberalising measures established by Parliament through LSA 2007. Not making the proposed interim changes to allow waivers and the promised reforms to give practices genuine and practical freedom of choice of regulator will continue the considerable negative impact of the current arrangements.

## Removing barriers to switching regulators

### Response by the Council of Mortgage Lenders to the SRA consultation paper

#### Introduction

1. The CML is the representative body for the residential mortgage lending industry that includes banks, building societies and specialist lenders. Our 137 members currently hold around 95% of the assets of the UK mortgage market. In addition to home ownership, CML members also lend to support the social housing and private rental markets. CML members use legal professionals in the course of their mortgage business.

2. We welcome the opportunity to respond to this consultation. Enquiries on the content of this response should be sent to [jennifer.bourne@cml.org.uk](mailto:jennifer.bourne@cml.org.uk)

#### General comments

3. We agree with the principle that the legal sector should be an open, competitive market which allows legal professionals the ability to operate within the most appropriate regulatory framework.

4. We therefore agree in principle that removing restrictions to firms' ability to operate within their chosen regulatory framework will help facilitate such a market. The restriction currently operating to trigger run-off cover under the SRA's rules and PII arrangements does appear to present difficulties, especially as a firm is not technically closing, but merely changing the regulatory context within which they want to operate.

5. Our primary concern is to ensure that our members have appropriate protections in place, should they need to call on them in the event that they need to make a claim under professional indemnity insurance of a legal professional. The main areas that our members will want reassurance on are firstly, that a firm moving to a different approved regulator does not indicate a drop in the levels of protection that the consumer (including our members) enjoys; that there is no 'gap' in protection in the event a firm does change regulator; and that a firm moving regulators does not increase any risk for consumers. For example, risks associated with perceived lower regulatory standards attracting firms, or wishing to be subject to higher standards to avoid the ramifications of staying with their existing regulator, for example a higher cost of regulation due to PII costs.

6. In practice, the Legal Services Board should provide adequate reassurance on the first and third points. But the second point can only be addressed through co-operation between regulators.

7. The consultation addresses the second issue in part. We welcome the SRA's intention to make a decision to waive the existing requirements in relation to run-off taking into account the firms individual circumstances, including evidence of future insurance arrangements. We would urge that, prior to any change being made, that the Approved Regulators and Legal Services Board satisfy themselves that there is no potential for any gaps in consumer protection as a result of switching regulators.

#### The CLC's changes to their PII Arrangements

8. We [responded](#) to the CLC's recent consultation on a Participating Insurers Agreement, to exist alongside and eventually, it appears at least, to replace their Master Policy provisions for professional indemnity insurance. We noted in our response that their proposals were linked to the proposal contained in this consultation and requested evidence of their plans in the event that the SRA declined to make a change to their PIA. It is not clear what might happen in the event that the SRA decide not to make the proposed change.



9. As this consultation highlights - and as CML noted in our response to the CLC's consultation - making it easier for firms to switch regulators may inadvertently increase the risks to consumers.

### **Conclusion**

10. We are broadly supportive of the proposed change, to avoid firms triggering the run-off provision under the SRA rules if they wish to move regulator. However, there are potential risks to consumers around reduced protections; and the potential for firms to move regulators to avoid meeting higher standards, for example. Approved regulators such as the SRA must work closely with the Legal Services Board to guard against such risks for consumers, especially as firms can more easily switch regulators.

July 2016

# Removing barriers to switching regulators

Response ID:12 Data

## 2. Your identity

### 1. Surname

Maxey

### 2. Forename(s)

James

### 3. Name of the firm or organisation where you work

Express Solicitors Limited

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Attribute my/our response and publish my/our name.

### 5. Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of my firm.

Please enter your firm's name:: Express Solicitors Limited

## 3.

### 1. Do you agree that we should remove the obligation for run-off cover when a firm switches from the SRA to another Approved Regulator?

Yes, we strongly agree with this proposed change. Without this, as you have identified at paragraph 7 leading up to the question it will be in practical terms most unlikely that solicitors firms will contemplate switching Regulators.

## 4.

### 2. If you have answered yes to Question 1, do you agree with our method for delivering this proposal?

Yes, we agree with the proposed method for delivering this proposal.

## 5.

### 3. Do you have any further comments on our proposal or on the changes to the PIA or terms of the core waiver proposed?

We agree with the proposal. We hope that it can be implemented as soon as is possible because at the moment there is a real barrier to changing Regulators.

## 6.

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

No, we agree with the assessment of the impact and believe that the proposal to remove the obligation for enough cover when a firm switches from the SRA to another approved Regulator is important and should be moved forwards and implemented.

# Removing barriers to switching regulators

Response ID:19 Data

## 2. Your identity

### 1. Surname

Kew

### 2. Forename(s)

Geoffrey

### 3. Name of the firm or organisation where you work

Hewetts

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Attribute my/our response and publish my/our name.

### 5. Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of my firm.

Please enter your firm's name:: Hewetts

## 3.

### 1. Do you agree that we should remove the obligation for run-off cover when a firm switches from the SRA to another Approved Regulator?

Yes

## 4.

### 2. If you have answered yes to Question 1, do you agree with our method for delivering this proposal?

Yes

## 5.

### 3. Do you have any further comments on our proposal or on the changes to the PIA or terms of the core waiver proposed?

The sooner this happens the better. Its quite iniquitous that members of the profession cannot retire because of the cost of run off and cannot change regulator without paying it.

## 6.

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

No

## Consultation: Removing barriers to switching regulators

### Consultation questionnaire form

This form is designed to be completed electronically—in MS Word. Please save it locally before and after completing it.

#### Question 1

Do you agree that we should remove the obligation for run-off cover when a firm switches from the SRA to another Approved Regulator?

We agree that the SRA should remove the obligation for run-off cover when a firm switches from the SRA to another Approved Regulator.

## **Question 2**

If you have answered yes to Question 1, do you agree with our method for delivering this proposal?

We agree that the suggested proposal would work.

However, in our opinion the most effective way to deliver the proposal is through the use of Slip Endorsements. The brokers for RICS and ICAEW have used this method to make quick changes to the agreement. We expect that these changes could be made in time for the October renewal period which would allow people to change providers at a natural renewal date rather than having lots of people switch mid-term.

### **Question 3**

Do you have any further comments on our proposal or on the changes to the PIA or terms of the core waiver proposed?

We have no further comments

## **Question 4**

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

**Our only other concern is where one entity decides to obtain cover for its regulated and unregulated activities from different insurers / different Approved Regulators. We would be worried that the regulated product would be wider in coverage and would not want claims excluded under a different policy finding a way back to the regulated policy that has not been underwritten or priced for.**

**We see two solutions to this issue:**

- 1. Do not permit the purchase of a non-regulated activities policy alongside a regulated activities policy**
- 2. Create a standard endorsement that excludes liability arising from non-regulated activities to be used where a firm decides to cover different parts of their business with different insurers or Approved Regulators**

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to [consultation@sra.org.uk](mailto:consultation@sra.org.uk), by **14 July 2016**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

Solicitors Regulation Authority  
Regulation and Education - Switching Regulators  
The Cube  
199 Wharfside Street  
Birmingham  
B1 1RN





# ICAEW REPRESENTATION 109/16 REGULATORY REPRESENTATION

## **SRA consultation on proposals to remove barriers to switching regulators**

ICAEW Professional Standards welcomes the opportunity to comment on a consultation by the Solicitors Regulation Authority (SRA) *Removing barriers to switching regulators*, which was issued on 21 April 2016 and is available at this [link](#).

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. We provide leadership and practical support to over 145,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

ICAEW was granted status as an approved regulator and licensing authority for the reserved legal activity of probate in August 2014. Since that time it has authorised and licensed over 200 accountancy and other firms as probate practitioners and alternative business structures (ABSs).

In addition ICAEW as a regulatory body is:

- (a) the largest Recognised Supervisory Body (RSB) and Recognised Qualifying Body (RQB) for statutory audit in the UK, registering approximately 3,300 firms and 8,400 responsible individuals under the Companies Act 1989 and 2006.
- (b) the largest Prescribed Accountancy Body (PAB) and Recognised Accountancy Body (RAB) for statutory audit in Ireland, registering approximately 3,300 firms and 7,500 responsible individuals under the Companies Act 2014.
- (c) the largest single insolvency regulator licensing some 750 insolvency practitioners as a Recognised Professional Body (RPB) under the Insolvency Act 1986 out of a total UK population of 1,700.
- (d) a Designated Professional Body (DPB) under the Financial Services and Markets Act 2000 currently licensing approximately 2,300 firms to undertake exempt regulated activities under that Act.
- (e) a Supervisory Body recognised by HM Treasury for the purposes of the Money Laundering Regulations 2007 dealing with approximately 13,000 member firms.
- (f) an accredited body under the Financial Conduct Authority (FCA) Retail Distribution Review (RDR) arrangements.

In discharging these duties ICAEW is subject to oversight by the Legal Services Board (LSB) the Financial Reporting Council's Conduct Committee, the Financial Conduct Authority, the Irish Auditing and Accounting Supervisory Authority (IAASA) and the Insolvency Service.

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For more information, please contact Duncan Wiggetts, Executive Director Professional Standards  
[duncan.wiggetts@icaew.com](mailto:duncan.wiggetts@icaew.com)  
[icaew.com](http://icaew.com)

1. We welcome this consultation by the Solicitors Regulatory Authority (SRA) on proposals to amend its professional indemnity insurance (PII) requirements for firms wishing to switch regulators. The SRA proposes to remove the requirement on firms to take out 6 years run-off cover in cases where firms cease to be regulated by the SRA and move to another approved regulator.
2. Since 2014 ICAEW has been an approved regulator and licensing authority for probate activities under the Legal Services Act 2007 (the Act). Currently ICAEW is in the process of applying to the Legal Services Board (LSB) for approval to regulate the other five reserved legal activities under the Act<sup>1</sup>. As one of 8 approved legal services regulators in England and Wales we strongly support efforts by the SRA to remove regulatory barriers to firms wishing to move regulators for valid commercial and/or strategic reasons. This is consistent with the Act's regulatory objectives of improved competition and access to justice and is an effort by the SRA to reduce duplication and unnecessary regulation on firms that is not in the interests of consumers.

### **Proposal**

3. Under the SRA's present minimum terms and conditions (MTCs) firms wishing to switch regulators are treated as if they have ceased to practise, automatically triggering a requirement to obtain 6 years' run-off cover. Firms are required to comply with this obligation even if they move to another approved regulator and take out replacement PII which provides cover for work carried out in the past (referred to as 'retroactive cover'). In the consultation the SRA states that the premium that is payable by firms for such run-off cover is typically around three times the firm's annual premium, although premium levels will vary depending upon the firm's particular circumstances.
4. The SRA is proposing to vary the terms of its agreement with participating insurers to allow the run-off cover requirement to be waived where a firm is moving to another approved regulator. This is to complement its existing power to issue waivers to firms in respect of this obligation in appropriate cases.
5. We would respond to the four questions set out in its consultation document as follows:

#### **Question 1: Do you agree that we should remove the obligation for run-off cover when a firm switches from the SRA to another Approved Regulator?**

6. We strongly support this proposal by the SRA to amend its run-off requirements for firms wishing to move regulators. We consider that this initiative is consistent with section 52(1) of the Legal Services Act which imposes an obligation on approved regulators to "make such provision as is reasonably practicable to avoid regulatory conflicts" with the arrangements of another approved regulator.
7. Firms which we accredit for probate are required to comply with ICAEW's PII regulations but hold a minimum level of cover of £500k per claim in connection with claims arising out of probate and estate administration. As is the case with all firms that engage in public practice, ICAEW requires accredited probate firms to hold cover with a participating insurer, which complies with the requirements of our minimum approved wording and provides retroactive cover of at least 6 years (ie, cover for claims in relation to any civil liability arising out of the conduct of professional business by the firm in the last 6 years).
8. Our regulatory arrangements, including our requirements for mandatory PII, were approved by the LSB as the oversight regulator in 2014 when we received designation as an approved

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<sup>1</sup> Namely the conduct of litigation, rights of audience, reserved instrument activities, notarial activities and the administration of oaths (although the application in respect of the conduct of litigation, rights of audience and reserved instrument activities is limited to these activities where they relate to the supply of taxation services only).

regulator and licensing authority for probate. It is the LSB's role to approve the regulatory arrangements of each approved regulator and in determining such requests it has regard to the specific circumstances surrounding the conduct of activities by practitioners in that market and perceived risks to the Act's regulatory objectives. It does not consider that 'one size fits all' in judging the appropriateness of bodies' regulatory arrangements due to the diversity of the legal services market and each body's regulated community.

9. For this reason we agree that the SRA should waive the requirement on insurers to provide automatic run-off cover for firms wishing to move regulators in appropriate cases. To maintain the requirement would result in duplication of firms' PII arrangements which poses a significant financial barrier to (particularly smaller) firms wishing to move regulators. This would be contrary to the Act's objectives of promoting competition and creating a more diverse legal services market, and would result in unnecessary cost for firms which is likely to be passed on to consumers. The initiative is also consistent with the challenge laid down for regulators in the Enterprise Act 2016 to remove unnecessary regulation on businesses and promote growth.

**Question 2: If you have answered yes to Question 1, do you agree with our method for delivering this proposal?**

10. Yes. As the SRA notes in the consultation there is a risk that consumer protection could be compromised if firms move regulators purely to reduce their compliance obligations. This in turn runs the risk of so-called 'regulatory arbitrage' if regulators then look to relax their requirements in order retain firms within their regulation.
11. Nonetheless a regulator's arrangements should not restrict the ability of firms to choose the regulator that best meets the needs of their business. This is in keeping with the intention of the Act which provides for multiple legal services regulators with different regulatory arrangements.
12. Nor do we think that it would be appropriate for the SRA to assess the PII requirements of the other regulator for equivalence in considering requests for waiver. It is the LSB's role to assess the appropriateness of each body's regulatory arrangements. Further, as the SRA notes, firms' PII arrangements are not static and will change over time even if a firm remains with one regulator. Firms may increase or decrease their limit of indemnity (subject to prescribed minimum limits) and the scope of cover may change with changes to the minimum terms. Therefore from a consumer protection perspective there is no guarantee that the PII cover that will be available in the case of a claim will be the same as that held by the firm at the beginning of the engagement. This lends weight to the argument that the SRA need not concern itself with the firm's future PII arrangements once the firm is under the regulation of another body.
13. However we would recommend that in determining any request for waiver the SRA satisfy itself that the firm is not in fact ceasing and that the PII arrangements of the new approved regulator will require retroactive cover to be in place. Any firm seeking to move to the ICAEW will need for example PII that provides at least 6 years retroactive cover. Should cover under a firm's future policy only apply from the date when it moves across to the other regulator, run-off cover would need to be in place to ensure appropriate consumer protection.

**Question 3: Do you have any further comments on our proposal or on the changes to the PIA or terms of the core waiver proposed?**

14. We have no further comments on the proposals.

**Question 4: Do you have any views about our assessment of the impact of these changes and are there any impacts, available data or evidence that we should consider in developing our impact assessment?**

15. We agree with the SRA's impact assessment that these changes are likely to affect smaller firms as larger firms are likely to have PII cover in excess of the minimum requirements set down by the approved regulators. The proposals should improve competition in the market by reducing cost and enabling firms to choose the regulator that is most appropriate for their business. This should support growth and innovation in the market amongst both traditional providers of legal services and alternative business structures. It should also have a flow on beneficial effect for consumers by reducing cost while not compromising on consumer protection if retrospective cover is in place under the new regulator's arrangements. We consider this proposal to have few risks and would encourage the SRA to proceed with the proposal in accordance with the timetable set out in the consultation.

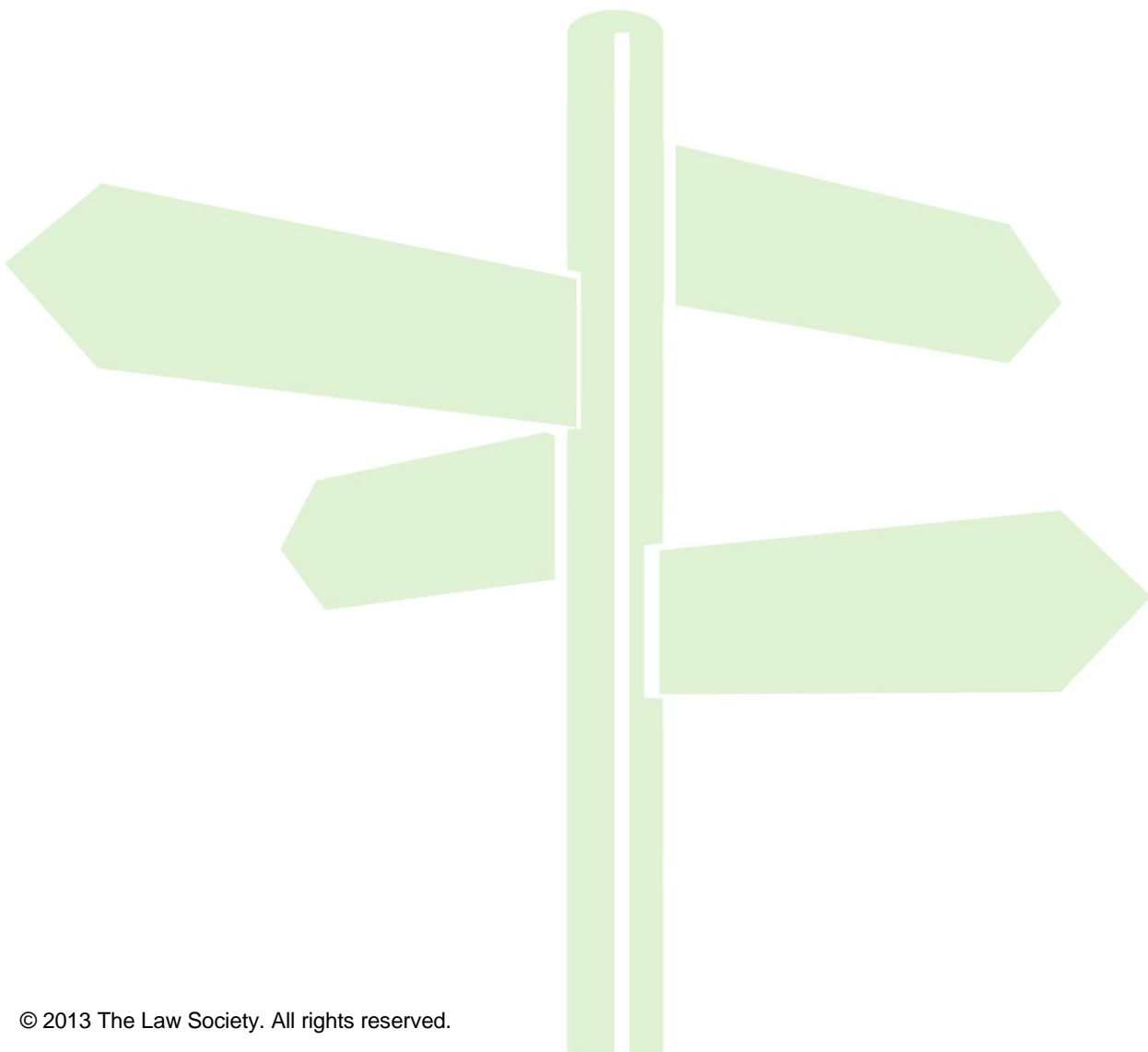


The Law Society

## **Junior Lawyers Division - consultation response**

Removing barriers to switching regulators

July 2016



## **Junior Lawyers Division response to SRA consultation**

### **Removing barriers to switching regulators**

In April 2016 the Solicitors Regulation Authority (SRA) published a consultation paper proposing to amend its Professional Indemnity Insurance (PII) requirements to remove a significant barrier to firms who wish to leave SRA regulation to be regulated by another Approved Regulator. The Junior Lawyers Division response is set out below.

#### **About the Junior Lawyers Division**

The Junior Lawyers Division of the Law Society of England and Wales (the "JLD") represents LPC students, LPC graduates, trainee solicitors, and solicitors up to five years qualified. With a membership of approximately 70,000, it is important that we represent our members in all matters likely to affect them either currently and in the future.

#### **Question 1: Do you agree that we should remove the obligation for run-off cover when a firm switches from the SRA to another Approved Regulator?**

In principle, it seems logical to remove the run-off cover obligation when a firm switches from the SRA to another Approved Regulator, so long as adequate safeguards are put in place to ensure consumers remain protected with proper means of recourse.

Consumer protection is paramount. The consultation paper identifies some very real and concerning risks to consumer protection in paragraphs 11 and 13. With different Approved Regulators having varying requirements in regards to levels of PII cover, there is a risk of a reduction in consumer protection. It must, therefore, be the case that the proposed safeguard in paragraph 12, to ensure that any waiver of the run-off cover requirement is conditional upon comparable PII cover being taken out with the new Approved Regulator, is strictly applied. Levels of cover must be comparable and the new policy should be on a claims made basis, applicable to claims prior to the switch of regulator. Consumer protection cannot be sacrificed in order for firms to be able to switch regulator more easily. To do so would damage consumer confidence and the solicitor brand. The JLD asks the SRA to set out guidance as to the circumstances in which it may deem a waiver "appropriate" and the conditions to such waiver which it will apply. This would enable a firm wishing to switch regulator to adequately prepare itself in advance and ensure that there is no "gap" in appropriate cover which could be to the detriment of consumers.

The JLD considers the argument in paragraph 14, that there is a risk that the level of consumer protection can change even where a firm does not switch regulator, to be a weak one. Levels of protection may vary, however, they can never fall below the requirements of the MTC. This ensures an appropriate level of cover and, in turn, ensures consumer protection is maintained.

Paragraph 16 states that any decision to waive is considered on a case by case basis and, in doing so, the SRA can take evidence of the firm's future insurance arrangements into account. This seems a sensible approach. Comparable insurance

arrangements should be a strict requirement and any waiver should be conditional upon this, in order to ensure consumer protection is maintained.

It is vital that a firm will not be able to manipulate the position in order to deliberately avoid the run-off cover requirement in circumstances when it should apply and the JLD suggests that the SRA take steps to ensure this.

**Questions 2: If you have answered yes to Question 1, do you agree with our method for delivering this proposal?**

Subject to the comments in our response to Question 1, the suggested method for delivering the proposal seems appropriate.

**Question 3: Do you have any further comments on our proposal or on the changes to the PIA or terms of the core waiver proposed?**

As suggested in our response to Question 1, making any waiver conditional upon comparable cover being continued will safeguard consumers. The suggested amendments to the wording of the PIA and proposed waiver will need to be revisited if this stance is adopted.

**Question 4: Do you have any views about our assessment of the impact of these changes and, are there any impacts, available data or evidence that we should consider in developing our impact assessment?**

The potential negative impact on consumers, identified in paragraph 27, outweighs the positive impact on firms, outlined in paragraph 26. The risk to consumers can be lessened by the implementation of an equivalence test and any waiver being conditional and potentially revocable.

**Junior Lawyers Division  
July 2016**



# Removing barriers to switching regulators

Response ID:13 Data

## 2. Your identity

### 1. Surname

Khiara

### 2. Forename(s)

Rachel

### 3. Name of the firm or organisation where you work

Khiara Law LLP

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

### 5. Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of my firm.

Please enter your firm's name:: Khiara Law LLP

## 3.

### 1. Do you agree that we should remove the obligation for run-off cover when a firm switches from the SRA to another Approved Regulator?

Yes.

Removal of the obligation to take out run-off cover where a firm ceases to be SRA regulated is consistent with section 52 LSA, which requires the SRA to make such provision in its regulatory regime as is reasonably practicable to prevent regulatory conflicts between the SRA regulatory regime and that of another approved regulator.

We would also agree that the cost of run-off cover could act as a barrier to switching regulator, and serves no public interest benefit where the LSB have ensured that other Approved Regulators have appropriate alternative arrangement in place.

## 4.

### 2. If you have answered yes to Question 1, do you agree with our method for delivering this proposal?

No. This seems unduly complex. As noted earlier in your consultation document, it is for the LSB, and not the SRA, to ensure consistency between the insurance requirements of different Approved Regulators.

## 5.

### 3. Do you have any further comments on our proposal or on the changes to the PIA or terms of the core waiver proposed?

See Qu.2. The waiver route for an outgoing firm which will continue to be regulated is unnecessarily complex, outside the SRA's regulatory reach, contrary to its obligations as an approved regulator under the Legal Services Act, and inconsistent with the Regulatory Objectives.

The SRA should be relieved of its obligation entirely to police firms no longer regulated by it, where it should instead be covered by another regulator's regime. It is not for the SRA to cast judgement as to the adequacy of the alternative approved regulator's insurance requirements.

6.

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

The reverse, however, must follow, in that the PIA should instead make provision for assuming run-off liabilities on a firm choosing to switch to the SRA from another approved regulator.

Under the MTCs, this run-off cover should, however, only be as comprehensive as that required under the firm's previous regulator's insurance rules. It is for the SRA to decide whether it is necessary or in the public interest for a firm switching to the SRA, to give specific confirmation that this threshold has been reached, where the outgoing regulator's PII requirements are lower than the MTCs.

The Solicitors Regulation Authority  
Regulation and Education  
The Cube  
199 Wharfside Street  
Birmingham  
B1 1RN

The logo for the Legal Services Consumer Panel is located in the top right corner. It consists of a large blue circle on the left, and the text 'LEGAL SERVICES CONSUMER PANEL' in white, stacked vertically on the right. 'LEGAL' and 'SERVICES' are in a smaller font, while 'CONSUMER' and 'PANEL' are in a larger, bold font.

LEGAL  
SERVICES  
CONSUMER  
PANEL

13 July 2016

Dear Sir/Madam

## **Removing Barriers to switching regulators**

The Legal Services Consumer Panel (the Panel) welcomes the opportunity to respond to the Solicitors Regulation Authority's consultation on removing barriers to switching regulators by amending its Professional Indemnity Insurance requirements.

In May 2016, the Panel responded to a relevant and related consultation by the Council for Licensed Conveyancers. In that response we reiterated the risks that PII requirements strives to address; that appropriate insurance and compensation arrangements exists to protect consumers from identifiable financial loss due to dishonesty, fraud, negligence or failure to account. This need for consumer protection, including the minimisation of confusion, must remain a priority as Approved Regulators change their PII obligations, or make it easier for providers to move between Approved Regulators.

In 2013, the Panel highlighted gaps and inconsistencies in financial arrangements across the regulatory landscape. This led to a recommendation which asked the Legal Services Board (LSB) and others to work towards centralised protection arrangements for all regulated legal advice providers. The Panel is not against the changes proposed by the SRA. However, we are concerned that these changes will exacerbate an already fragmented landscape and worsen the patchy and inconsistent financial protection currently available to consumers. Discrete changes by different Approved Regulators, compounded by the increased ease in which providers may begin to switch between Approved Regulators will exacerbate the situation we highlighted three years ago.

The SRA has identified risks around reduced and variable consumer protection which must be addressed. We agree that it is beyond the SRA's role to assess the PII arrangements of another Approved Regulator. However, it is the responsibility of all Approved Regulators to ensure that consumer protection does not fall between the gaps of regulatory boundaries. The risk of financial loss to consumers is simply too high not to safeguard against it collectively. There is also a risk to the profession as a whole because the manifestation of this risk is likely to weaken consumer trust, and have harmful impacts on the credibility of the legal profession as a whole. The lead should come from the LSB as the oversight

regulator with full support from all Approved Regulators. We note that the LSB's 2016/17 business plan outlined a piece of work to examine the benefits and risks associated with the changing shape of legal services regulation, including the ability to choose amongst regulators. We urge the LSB to ensure that this work is sufficiently consumer focused. The LSB should respond to market developments by understanding the drivers for switching and mitigate against any risk that is likely to arise, including the risk of further fragmentation.

Finally, we believe the time is right for the sector to revisit our call for a single scheme for improved consumer protection and outcomes. We accept that this may take some time, in the interim we suggest that the LSB should establish or broker a set of principles that bind the regulators together with a duty to avoid consumer confusion and minimise fragmentation and gaps in protection.

### **Reflecting on the consultation questions**

The Panel agrees with the proposal as outlined by the SRA. We agree that the current requirement is unduly restrictive and costly for those who wish to switch between Approved Regulators. At present a firm who wishes to switch from the SRA to another Approved Regulator is treated as if it is ceasing to exist. This automatically triggers six years of costly run-off cover, even if the firm takes out replacement PII for its future business. We consider this to be an unjustifiable cost, which we know will be passed back to consumers.

The SRA's assessment reinforces the Panel's call for a holistic approach to financial protection for consumers.

Yours sincerely



Elisabeth Davies  
**Chair**

# Liverpool law Society Response to the SRA Consultation document – Removing Barriers to Switching Regulators

LLS represents over 2500 members of the legal profession in the Merseyside area. Members are solicitors, barristers and academics. This paper has been produced by the Society's Regulatory Committee. It sets out the LLS response to the SRA's consultation, "Removing Barriers to Switching Regulators."

LLS understands the need to promote competition in the provision of legal services but is concerned that the current proposal could encourage a race to the bottom amongst Approved Regulators, at the expense of protection for consumers and some members of the legal profession.

## Question 1

**Do you agree that we should remove the obligation for run-off cover when a firm switches from the SRA to another Approved Regulator?**

LLS have concerns about the proposal.

LLS agree that it is in the interests of competition that there ought not to be restrictions upon firms moving from one Approved Regulator to another. In responding to this question, LLS is mindful of the Regulatory Objectives set out in section 1(1) Legal Services Act 2007, in particular the objective at (e) – promoting competition in the provision of legal services.

The Act has been instrumental in opening up the legal services market. This is, of course, very much in the interests of consumers of legal services. Freedom to switch to an Approved Regulator that is more aligned with the legal services provided by the entity avoids it having to comply with irrelevant legislation and therefore enables it to price its services competitively. It is, therefore, important that no unnecessary barriers are put in the way of entities changing Approved Regulator. However, we do not want disparities between the requirements of different Approved Regulators to encourage a race to the bottom.

Whilst LLS is not opposed to changes that will achieve the regulatory objective of promoting competition, we are not sure that this proposal best achieves that objective.

LLS recognises that run-off cover exists not only for the protection of the consumer but also, outgoing and former partners of the entity. It is highly unlikely that such individuals will be consulted about an entity's decision to switch to an Approved Regulator which does not insist upon run-off cover, notwithstanding the financial exposure that they will face as a result.

LLS considers that, in order to reach a definitive answer to this question, we would need to know what criteria will be applied in determining whether a waiver of the Rules will be granted in a particular case.

## **Question 2**

**If you have answered yes to question 1, do you agree with our method for delivering this proposal?**

Please see the above response to question 1.

## **Question 3**

**Do you have any further comments on our proposal or on the changes to the PIA or terms of the core waiver proposed?**

As an Approved Regulator, the SRA must ensure that it strikes the right balance between removing a barrier to competition and potentially creating a consumer detriment in some cases. As set out in response to question 1, LLS are keen to know what criteria will be applied when granting a waiver. The extent of due diligence to be carried out at that stage requires careful thought.

## **Question 4**

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

LLS recommends that consideration is given to the report of the LSB published on 4<sup>th</sup> July 2016 "Evaluation – Changes in the Legal Services Market 2006/07 – 2014/15 – Main Report". Whilst the report does not deal directly with this issue, it provides a detailed analysis of changes affecting competition in the legal services market during the period stated.

LLS is concerned that the proposals could lead to entities regulator shopping purely to avoid run-off cover. The concern from a public protection point of view is that entities who are struggling financially are more likely to behave in this way and their owners might well be unable to meet claims personally in the absence of run-off cover.

# Removing barriers to switching regulators

Response ID:6 Data

## 2. Your identity

### 1. Surname

Pett

### 2. Forename(s)

David

### 3. Name of the firm or organisation where you work

MJP conveyancing

**We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.**

Attribute my/our response and publish my/our name.

### 5. Please identify the capacity in which you are submitting a response. I am submitting a response... on behalf of my firm.

Please enter your firm's name:: MJP Conveyancing

## 3.

### 1. Do you agree that we should remove the obligation for run-off cover when a firm switches from the SRA to another Approved Regulator?

Yes

## 4.

### 2. If you have answered yes to Question 1, do you agree with our method for delivering this proposal?

Yes

## 5.

### 3. Do you have any further comments on our proposal or on the changes to the PIA or terms of the core waiver proposed?

Changing from one regulator to another should not be difficult and should not be restricted due to the exclusive and unnecessarily stringent arrangements operating between one regulator and the insurance industry.

How on the one hand can you introduce the flexibility of choosing a regulator that suits your business, and which will benefit the client, and then with the other hand have a rule which places a financial burden of such a magnitude that the cost of switching becomes totally prohibitive. It simply does not make sense and makes a mockery of not only the role of the Legal Services Board but also the legal profession as a whole.

So, you wish for example to switch regulator from the Solicitors Regulation Authority (SRA) to the Council of Licensed Conveyancers (CLC). A logical move if you are a conveyancer because you wish to be regulated by a regulator who understands conveyancing and who has a focused interest in how the conveyancing profession should be allowed to be developed. You make the choice with business interest in mind and with the knowledge that your clients will benefit because of the Council's insight into and knowledge of the conveyancing industry. A regulator that is niche and which does not at least for now wish to be all things to all people.

A perfectly logical decision therefore and one which should be easy to implement.

To be fair the process of applying to the CLC is straight forward and unless there are major issues in the way you run your business, the application should be approved without too much difficulty. The problem however is with the SRA and its agreement with the insurance industry. Under Participating Insurers Agreement (PIA) when one changes regulator this acts as an automatic trigger for 'run off' indemnity insurance. The so called logic is that because PII policies are written on a "claims made" basis rather than the "losses occurring" basis used in general insurance, responsibility for the claim rests with the insurer in place at the time of the negligence. If therefore at the time the claim is made there is no longer an insurance policy in place which accords with the PIA the client may find him or herself uninsured.

The theory behind this is that the PIA minimum term insurance is superior in terms of coverage to the insurance which is required by the CLC. I say in theory because having had some brokers to interrogate the differences they do not seem to be that significant and far reaching. To begin with, the minimum term insurance will still pay out on a claim if the solicitor does not pay the premium or where there has been bad faith on the part of the solicitor which has led to the claim. Interestingly when the Insurance Act 2015 is introduced later this year the latter of these two differences will offer little comfort as the insurer will be able to void the claim in the event of fraud and or deliberate or reckless failure to disclose relevant facts. It's not clear at this stage how this will operate with within the PIA.

Essentially therefore, there is very little difference although when one looks at the cost of insurance there is a substantial and a totally unfair difference in annual premiums. The cost of minimum term insurance and non-minimum term is staggering and does give rise to the question of whether as a profession we have and continue to be mugged when it comes to the extortionately high PII premiums charged. A conveyancing business with a million pound turnover and a clean claims record would with the CLC be looking to pay a premium of around £15,000 compared to a premium of £80,000 for minimum term cover. How can this be justified? The same risks apply irrespective of regulator. The only conclusion is that you are paying £65,000 for the added consumer protection provided by the minimum terms. The fact that the claim will be paid in the event of the wrongdoing of the conveyancer or the failure of the solicitor to pay the premium. One in reply may ask with good reason why should an insurer pay out in these circumstances in any event. More importantly why as a profession should we be paying higher premiums to address the risk presented by the less honest members. Why should we be deprived of the opportunity to choose the type and scope of cover we consider as a professional outfit will address the risk of a client raising a claim?

So the SRA as the situation currently stands will not allow a SRA regulated firm to choose its regulator unless it is satisfied that there will be adequate minimum term insurance in place to cover past claims ( for six years) The practical consequence of this is that although with the CLC, your current year's insurance could for example be as low as £15K, to make the switch and obtain the SRA waiver you would need to put into place a run off minimum term insurance policy which sticking with the present example, could cost as much as £200,00 plus!

A nonsense and a major barrier to the freedom and benefits of choosing your regulator.

I agree the client has to be protected but if as is available insurers are prepared to offer conveyancers looking to switch cover for past claims and which will meet claims providing the conveyancers have not failed to provide full disclosure and paid the premium then I am not sure how it can be said the client will not be protected. To claim otherwise would suggest that CLC conveyancer clients are at more risk than SRA conveyancing clients. If this so shouldn't the public be made aware of this ?

It seems to me that the insurance industry has been able with the full acquiescence of the SRA to hide behind the PIA and charge inflated PII rates making it more expensive for SRA insured back conveyancers to compete with other regulated conveyancers. This cannot be allowed to continue and as a profession we need to stand up and support the SRA with the proposed changes which could if implemented lead to reduction in the level of PII insurance premiums across the board.



6.

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

Please see reply to 3



The Law Society

# **SRA consultation on removing barriers to switching regulators**

The Law Society's response  
July 2016



## Introduction

1. The Law Society of England and Wales ('the Society') is the professional body for the solicitors' profession in England and Wales, representing over 160,000 registered legal practitioners. The Society represents the profession to parliament, government and regulatory bodies and has a public interest in the reform of the law.
2. We have provided below a response to the SRA's [consultation](#) on proposals to amend the terms of the SRA Participating Insurer's Agreement to allow the PII run-off cover requirement not to be activated when a firm switches to another Approved Regulator.
3. We agree that firms should be able to choose the most appropriate regulator for their business to the extent that other Approved Regulators are permitted to regulate them by reference to the reserved activities undertaken by the firm, and provided that client protection is not removed with respect to any claims that might arise out of client matters concluded before the date the firm switched regulator.
4. However, under the SRA's proposals, the switching firm would not be obliged to have comparable SRA PII minimum terms and conditions (MTC) cover in place under the new regulator. The lack of equivalence between the SRA's PII MTCs and the PII requirements of other Approved Regulators has the potential to leave clients of the SRA-regulated business without redress in circumstances where, but for the change of regulator, redress would have been available.
5. The SRA's aim to encourage a competitive market by removing unnecessary restrictions should not be at the expense of diluting solicitors' clients' financial protections. We urge the SRA to amend its proposals so that firms would only be able to switch regulator without triggering run-off on the condition that equivalent SRA MTC cover for a six year period is in place, and covers claims arising from matters concluded before the switch. Clients of a firm that switched regulator might find out at the time they made a claim that they were no longer covered by all of the protections at the level required by the MTC.
6. The consultation paper also lacks detail on how the proposed waiver arrangements would work in practice, including the considerations that the SRA would take into account when determining whether or not to grant a waiver. We request further clarity from the SRA on this point, and propose that defined rules for when firms may switch regulator without triggering run-off (akin to the successor practice rules) would be preferable to the granting of a waiver. The SRA should operate a certain, consistent and transparent process for determining when a firm can switch regulator without triggering the SRA run-off provisions.

### **Question 1: Do you agree that we should remove the obligation for run-off cover when a firm switches from the SRA to another Approved Regulator?**

7. The Society believes that there should not be any reduction in current client protections, and that a firm switching regulators should remain subject to the

obligation for run-off cover unless cover equivalent to the SRA PII minimum terms and conditions (MTC) is in place under the new regulator.

8. The proposals make clear that the SRA will not require firms to secure comparable SRA MTC cover in order for a waiver to be granted. This is a cause for concern for a number of reasons.

#### Level and extent of cover

9. The SRA PII MTCs offer a high level of indemnity for firms and partners and, therefore, protection and redress to clients. The exclusions where the PII will not pay out are very limited. The MTCs require £2 million in compulsory cover for any one claim<sup>1</sup>, including during the 6 year run-off period. There is no limit to defence costs; cover is in place even if material information has not been disclosed to the insurer, or a partner has been dishonest; and there are strict rules about aggregating claims. In 2014, during a review of financial protection arrangements, the SRA proposed to reduce the minimum level of compulsory cover from £2 million to £500,000. The LSB rejected the proposal on a number of grounds, including the absence of robust data analysis to justify the proposal, the risk of unintended consequences leading to harm to consumers and to firms, and erosion of trust in the legal profession. Indeed, the Society considers that the current level of cover ensures that clients are well protected and do not suffer loss that might otherwise be uncompensated. The availability and extent of redress is also important in maintaining public confidence in the integrity and standing of solicitors.
10. However, the high level of consumer protection provided by SRA MTC cover is not currently replicated in the PII arrangements of other Approved Regulators. For instance:

#### BSB

- Level of cover: £500,000 minimum (for an unincorporated firm), as opposed to the SRA's £2m.
- Run-off: £500,000 minimum limit per claim for 6 years, as opposed to the SRA's £2m.

#### CILEx

- Run-off: 6 years conditional on payment of premium, whereas SRA participating insurers are required to provide run-off cover regardless of whether the premium is paid.

#### CLC

- Level of cover:
  - £2m in compulsory cover for any one claim, whereas the SRA requires ABSs, limited companies and LLPs to have £3m cover. There

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<sup>1</sup> Or £3 million for ABSs, limited companies and LLPs

is no such increased cover requirement for CLC-regulated ABSs, limited companies and LLPs.

- cover can be voided in the event of non-disclosure or misrepresentation of a material fact, while SRA MTC cover will not permit insurers to avoid cover on this basis.
- Run-off:
  - £2m limit on claims in aggregate during the run-off period inclusive of defence costs, as opposed to the SRA's £2/3m for each individual claim, exclusive of defence costs.
  - cover only provided on payment of premium, whereas SRA participating insurers are required to provide run-off cover regardless of whether the premium is paid.

### ICAEW

- Level of cover: £1m to £1.5m in aggregate dependant on firm size and £500,000 per claim if an accredited probate firm, as opposed to the SRA's £2/3m minimum level of cover per claim.
  - Run-off: 2 years on terms equivalent to previous qualifying insurance, although guidance recommends 6 years and firms must make 'best endeavours' to secure cover, as opposed to the SRA's 6 year requirement.
11. Under current SRA arrangements, clients of a firm ceasing to be regulated by the SRA are protected by six years' run-off cover on SRA MTC terms. Conversely, under the SRA's new proposals, if a firm switches to another Approved Regulator:
- There is a danger that the new Approved Regulator will not require the switching firm to have PII cover for claims made after it starts to regulate the firm, and which arise out of client matters concluded before that date. Clients who had contracted with an SRA-regulated firm on the understanding that they would be covered for civil liability claims for six years after the firm's closure would find that cover was no longer available when a claim is made. The SRA's consultation paper itself recognises the reduction in consumer protection associated with the proposals.<sup>2</sup>
  - Even if claims arising from matters concluded before the switch are covered, the lack of equivalence in mandatory PII cover means that clients may not be protected to the same extent as they would have been had SRA run-off cover been triggered.
12. Existing or past clients of SRA-regulated firms should not receive a lower level of protection simply because the firm has chosen to change regulator. The reduced level of consumer protection associated with the SRA's proposals can easily be avoided if the SRA only allows firms to switch under certain circumstances. The SRA should guarantee that clients of the SRA-regulated

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<sup>2</sup> Removing barriers to switching regulators, para 13 and 14.

entity are afforded the same level of cover, by only allowing run-off cover not to be triggered where:

- a) there will be continued cover for claims arising from previous matters when the firm was still regulated by the SRA (i.e NewFirm's PII arrangements must cover claims from OldFirm for a six year period); and
- b) the switching firm's PII cover under the new Approved Regulator is equivalent to SRA MTC run-off cover.

#### Effect of movement between regulators

13. The logic behind (b) above is that the SRA's analysis of the potential harm does not adequately address the effect of firms moving between regulators.
14. The PII arrangements of other Approved Regulators are based on analysis of the collective risk profiles of firms regulated by them, and do not envisage a potentially substantial number of SRA-regulated firms switching to fall under their supervision. In this instance, the profile of firms being regulated by other Approved Regulators would alter, and the level of mandatory PII cover may no longer be appropriate.
15. For example, 100 firms switching from SRA to CLC regulation would substantively change the profile of firms under CLC regulation. This is not an unfeasible scenario as SRA-regulated firms carrying out conveyancing and/or probate activities may be attracted by the 'lighter touch' of CLC regulation and the possibility of reduced PII premiums associated with less comprehensive PII coverage, especially given that they would no longer be subject to the SRA run-off premium when switching.
16. The CLC can have little indication of the extent to which SRA-regulated firms might elect to become regulated by the CLC, and what liabilities previously SRA-regulated firms might bring. However, conveyancing is one of the work areas of highest risk and can give rise to high value claims, easily exceeding liabilities in excess of £2 million (including defence costs) over six years, which is the current CLC MTC run-off requirement. We explained in response to the CLC's consultation that the CLC's calculations in setting its minimum PII requirements related only to the CLC's current market and made no attempt to forecast the market should firms switch so as to fall under its regulation.<sup>3</sup> We therefore consider that the CLC's PII arrangements are inadequate to address the liabilities that switching firms could bring, leaving a significant risk that clients of previously SRA-regulated firms are left without adequate protection.
17. Furthermore, CLC run-off cover is only provided on the condition that the premium is paid, whereas SRA participating insurers are required to provide run-off cover regardless of payment. Under the SRA's proposals, a firm switching to CLC regulation could close one year later and not pay the run-off premium, with the result that past clients of the SRA firm are left without

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<sup>3</sup> <http://www.lawsociety.org.uk/policy-campaigns/consultation-responses/clc-consultation-on-new-professional-indemnity-insurance-arrangements-law-society-response/>

redress. The potential absence of any run off cover at all is a highly significant dilution of consumer protections for solicitors' clients.

18. We also note that the CLC's Compensation Fund has been subject to successful challenges in recent years<sup>4</sup>, and we would question whether the CLC Compensation Fund has sufficient reserves or funding opportunities to cover the volume and size of claims that could arise.<sup>5</sup> It is also a matter of concern that there are currently only two options for CLC firms to secure insurance, as just one of these schemes pulling out of the market could have a disastrous effect on firms' ability to obtain PII. In addition to the reduced PII coverage for clients of previously SRA-regulated firms under the CLC's MTCs, there is a further risk to consumers if the CLC's PII framework is itself unstable or unsustainable.
19. In light of the above (using the CLC as an example), we disagree with the SRA's view that because the LSB approves each Approved Regulator's regulatory arrangements, it can be confident that each regulator's PII arrangements are appropriate. This presumes that the profile of firms regulated by each Approved Regulator will not substantively change. Inviting other Approved Regulators to ensure that their arrangements adequately consider the appropriate levels of consumer protection that apply when a firm switches, is insufficient to address the potential harm to consumers. Rather, the SRA should ensure that clients of solicitors' firms are adequately protected by only allowing a firm to switch regulator without triggering run-off where the switching firm's PII cover under the new Approved Regulator covers past claims, and is equivalent to SRA MTC run-off cover.

#### Regulator shopping

20. The SRA's analysis does note the risk that competition between regulators may indirectly lead to outcomes that are not in the public or consumer interest (for example, if Approved Regulators were to reduce consumer protection or avoid disciplinary or enforcement action below an optimal level, simply to attract and retain a larger number of firms). It is imperative that the SRA's proposals do not facilitate a 'race to the bottom' on standards. It is to be expected that firms may be attracted by 'lighter touch' regulation or reduced regulatory costs of other Approved Regulators, including lower PII premiums as a result of less comprehensive PII coverage. The risk of erosion to consumer protection can be avoided if the SRA requires switching firms to have equivalent SRA MTC run-off cover in place under the new regulator.
21. There is also a risk that the lack of equivalence between Approved Regulators' PII arrangements will allow firms to 'forum shop' regulator to reduce the cost of run-off cover, with the result that past clients are left exposed. For example, our response to the CLC's PII consultation discussed the possibility of firms moving from SRA to CLC regulation with the intention of closing down, in order to avoid the cost of SRA run-off cover.<sup>6</sup> We request confirmation that the SRA considered this possibility during its assessment of the impact of its proposals,

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<sup>4</sup> *Queen on the application of Nigel Coatman and Andrew Golub v Council for Licensed Conveyancers* [2012] EWHC 1648 (Admin)

<sup>5</sup> Where claims in the run-off period exceed £2 million in aggregate, clients may apply for a grant out of the CLC's Compensation Fund.

<sup>6</sup> Run-off cover for 6 years is included as part of the premium under the CLC's PII arrangements .

and clarification as to whether the SRA would investigate whether a firm is intending to close imminently, before granting a waiver.

#### Rationale for the proposals

22. The SRA recognises the proposals carry a risk of lower consumer protection, but states that *'A counter factor to this is that the cost of PII can be the trigger for some firms to close, or to struggle on, leading to a disorderly collapse with attendant intervention costs and adverse impacts on clients. The availability of a different regulator that has lower costs (directly or indirectly through lower PII requirements) may help a firm to reduce its costs and continue to trade. This is likely to be to the benefit of the clients of firm that switches regulator and consumers overall by avoiding regulatory costs that are ultimately borne by all consumers.'*<sup>7</sup> The Law Society is not aware of any data on the number of firms who have struggled on, leading to a disorderly collapse necessitating intervention, as a result of the cost of PII. The SRA should carry out a risk assessment to determine whether the reduced consumer protections that the proposals bring is a proportionate response to avoiding any possible effects on the public of interventions and firm closures resulting from the prohibitive costs of PII.
23. We would also highlight that PII costs may not be any lower under other Approved Regulators if (as we suggest is essential) there will be continued cover for claims arising from previous matters when the firm was still regulated by the SRA. NewFirm would effectively have to pay run-off cover from OldFirm, and run-off cover would be triggered as normal when NewFirm eventually closed under the new regulator. As the cost of run-off cover would simply move across, the net effect on the cost of PII is neutral. In relation to the CLC, where six years' run-off cover is included in the price of the premium, an underwriter would price the insurance premium for the first year in the knowledge that it would have to cover six years of run-off claims at some point in the future. A firm switching from SRA to CLC regulation may therefore not find any saving. The supposedly advantageous effects of the proposals on firms could therefore be illusory.

#### ***Question 2: If you have answered yes to Question 1, do you agree with our method for delivering this proposal?***

24. We have not answered 'yes' to Question 1, as we would not support the proposals in their current form. Notwithstanding this, we provide comments below on the proposed method for removing the obligation for run-off cover when a firm switches to another Approved Regulator.

#### Rules rather than waiver

25. We do not consider that the granting of a waiver would be the best method. Rather, there should be set rules for when a firm can switch regulator without triggering run-off cover, in a similar vein to the current successor practice rules which allow run-off cover not to be triggered for a disposing firm where the insurer of the acquiring firm is required to cover claims made against the prior practice. A similar process could take place for a firm switching regulator,

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<sup>7</sup> Removing barriers to switching regulators, para 15.



whereby the firm is required to secure equivalent SRA MTC cover in respect of clients prior to the switch. The SRA should operate a consistent and transparent process for determining when a firm can switch regulator without triggering the run-off provisions, by having a published policy defining the circumstances under which firms would be able to switch.

#### Circumstances where firms may switch

26. In the event that the SRA proceeds with its current proposed method for delivery, the granting of a waiver should be subject to proof that (i) the firm has secured continued cover for claims arising from current or past matters when the firm was still SRA-regulated; and (ii) the new PII cover is equivalent to SRA MTC run-off cover.
27. The consultation paper states that in deciding whether it would be appropriate to grant a waiver, the SRA would be able to look at evidence of the firm's future insurance arrangements, and the nature of the risk posed to the firm's clients. We request further information on the criteria that the SRA would consider as part of this process. For example, would the SRA look at the claims history of the firm (and therefore oblige insurers to provide this information) in order to determine whether the PII arrangements of the new regulator would be appropriate? Under what circumstances would the SRA consider that it would not be appropriate to grant a waiver?
28. In addition, we request further detail from the SRA on what information about the firm would be passed on to the new regulator. Would the SRA as a matter of course provide the regulatory record of the practice and its principals to the new regulator?

#### Informing clients of change in status

29. It is essential that clients of SRA-regulated firms are informed of the change in regulatory status of a switching firm. The SRA should require a switching firm to notify clients in writing of its change in status, and make the change in status clear in its marketing materials. In the absence of any obligation to secure equivalent SRA MTC cover for a six year period which also covers claims arising from matters concluded before the switch, the SRA should also require firms to notify past clients of the change in status in writing.

#### LSB oversight

30. In order for the LSB to be able to exercise its oversight functions effectively, the SRA should inform the LSB periodically of the number of firms switching out of its regulation to become regulated by another Approved Regulator. The LSB should have access to this information in order to be able to monitor and assess whether the PII arrangements of the Approved Regulators are adequate. We would urge the LSB to require this information from all the Approved Regulators, and publish these figures on its website.

#### Compensation Fund arrangements

31. It is unclear how access to the SRA Compensation Fund would be affected by the SRA's proposals. Once the firm switches out of SRA regulation, it is not

clear how access to the Compensation Fund would operate. The SRA should clarify the position, and amend the Compensation Fund Rules as necessary to set out the circumstances in which a claim might be made.

***Question 3: Do you have any further comments on our proposal or on the changes to the PIA or terms of the example waiver proposed?***

32. We note that the wording of the waiver does not envisage that a firm switching regulator may not do so under the same guise. For example, 'Smith & Jones Solicitors' may choose to become 'Smith & Jones Conveyancers'. The template wording therefore requires amendment.

***Question 4: Do you have any views about our assessment of the impact of these changes and, are there any impacts, available data or evidence that we should consider in developing our impact assessment?***

33. Please refer to our response to Question 1.