



ABI response to ‘*Protecting the users of legal services: balancing cost and access to legal services*’

The ABI

The Association of British Insurers is the voice of the UK’s world leading insurance and long-term savings industry. A productive, inclusive and thriving sector, we are an industry that provides peace of mind to households and businesses across the UK and powers the growth of local and regional economies by enabling trade, risk taking, investment and innovation.

Founded in 1985, the ABI represents around 250 member companies, including most household names and specialist providers. The ABI’s role is to:

- get the right people together to help inform public policy debates, engaging with politicians, policymakers and regulators at home and abroad;
- be the public voice of the sector, promoting the value of its products and highlighting its importance to the wider economy;
- help encourage consumer understanding of the sector’s products and practices; and
- support a competitive insurance industry, in the UK and overseas.

We welcome the opportunity to respond to the SRA’s consultation ‘*Protecting the users of legal services: balancing cost and access to legal services*’.

Executive Summary

The ABI and its members feel that, for the large part, there is insufficient evidence that the SRA’s proposed changes will achieve its stated objectives of reducing premiums for solicitors, reducing the cost of legal services for consumers, and improving levels of competition in the legal services market. We set out our reasons for this view in response to the questions below.

We are, however, happy to support the SRA’s proposal to allow greater flexibility around insurance cover for defence costs. We feel that there are circumstances in which this could allow lower cost solutions for solicitors, better alignment of incentives, and improved levels of consumer protection.

Question 1: To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?

Reduction of indemnity limit

According to the SRA’s analysis, the proposed reduction of the minimum indemnity limit could leave a small minority of consumers who have experienced detriment without sufficient access to redress – particularly when combined with the proposed changes to the compensation fund. Even if these claims would be small in number, it does not mean that

this would be a price worth paying to seek to reduce costs for solicitors and their clients. We would argue this case for two reasons.

Firstly, even a small number of cases in which consumers are left without sufficient compensation for receiving poor legal service could have the potential to challenge levels of trust in the legal profession. By way of comparison, in most lines of insurance declined claims are relatively rare. However, a small number of declined claims then reported widely by the press and consumer groups create the false perception that insurers decline high numbers of claims as a matter of course. Partially as a result of this, consumers tend to believe declination rates are multiples higher than they are¹. This is one reason why the insurance industry struggles with issues around reputation and public perception.

A reduction of trust in the legal profession might have the effect of reducing the number of people seeking legal help when they require it. This runs counter to the stated aim of the SRA in its consultation paper.

Secondly, we feel that it should not be assumed that these changes will lead to lower premiums for all solicitors, and by extension lower costs for users of legal services. We will explain our case around this in our response to Question 8.

Flexibility around defence costs

The ABI is supportive of the proposal to allow insurers the option to charge an excess or put a cap on defence costs under the MTCs. Underwriters should have the ability to offer excesses or limits to their clients.

Where solicitors may not necessarily be able to fall back on unlimited defence costs, this may have the effect of improving their incentives to behave more responsibly, for example through greater investment in risk management. In addition, if there is a possibility that solicitors themselves may need to pay some of the costs of defending a claim, this could lead to some legitimate claims being settled more quickly.

Each insurer will take its own view on the cover it offers, and some insurers might decide that they would prefer to continue offering unlimited defence costs as part of their standard cover for legitimate commercial reasons.

Question 2: To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?

ABI can see the intention behind this proposal. However, we have concerns about how it would work in practice.

For example, if these reforms are passed, there will be instances where solicitors may seek to engage new large clients on the basis that any claims against them will not be

¹ <https://www.covermagazine.co.uk/cover/feature/3009716/claims-survey-17-of-consumers-say-insurers-always-try-to-avoid-paying-out>

covered by their professional indemnity cover. However, if the solicitor has contracted with a large firm or financial institution pre-reform then they will need to maintain this type of cover in place for up to 15 years (on the basis of the longstop date under Section 14A Limitation Act 1980) before being able to stop buying this additional level of cover.

There may be instances where a sole practitioner could have trouble determining whether the end recipient of the work they are carrying out is a large business, corporate or financial institution.

Furthermore, it cannot be assumed that this will change how the market operates in practice. In a competitive market, large institutions might insist that any law firm carrying out work on their behalf would be insured up to a level equivalent to what is prescribed by the MTCs.

Question 4: To what extent do you agree that we should introduce a separate component in our PII arrangements meaning only firms that need to have cover for conveyancing services are required to buy this cover?

We feel that a £1 million indemnity limit for conveyancing adds additional complexity to the system and reduces the level of protection for consumers.

Currently firms do not need to take active decisions regarding which types of work they are covered for, as the MTCs require all firms to be covered for every type of work. The confusion around taking this decision for the first time could lead to firms opting not to purchase conveyancing cover at the increased rate when they may require it. The result could be firms carrying out work that fits the SRA's definition of conveyancing while undertaking work in a separate area of practice, for example if a family law solicitor severed a couple's joint tenancy, while not having the required additional cover in place.

The effect of this change is therefore to create potential protection issues for consumers, which in turn could damage the reputation of the legal profession.

Question 8: To what extent do you agree that the changes to our PII requirements provide law firms with more flexible options to potentially lower insurance costs?

We feel that it should not be assumed that these changes will lead to lower premiums for all solicitors, and by extension lower costs for users of legal services because statistics show that historic changes to the minimum indemnity levels under the MTCs did not have a material effect on premiums. For example, in the renewal year 2005/06 the MTCs were doubled to £2 and £3 million, however the average premium for a PII policy barely changed².

There are generally a range of other more important factors that may affect market premium - not least claims costs which would not be impacted by changes to the

² Charles River Associates (2010) Review of SRA client financial protection arrangements

minimum limit of indemnity – and each insurer will take its own view on the premium it offers.

Question 9: Do you agree the proposed level for the cap on cover in run-off provides adequate protection for the users of legal services whilst balancing the need for premiums to be more affordable?

The ABI and its members do not see evidence that, under the current MTCs, a properly managed closure and run-off process is a barrier to solicitors retiring as is claimed in the SRA's consultation.

Furthermore, it should not be assumed that introducing a cap on run-off cover would have a significant impact on cost for solicitors, particularly if this does not impact on claims costs, for the reasons stated in our response to question 8. Again, each insurer will take their own view.

Question 10: To what extent do you agree that the changes to our PII requirements could encourage new firms to enter the legal services market increasing choice for users of legal services?

Members have expressed the view that the legal services market is already highly competitive in areas of practice more frequently used by consumers such as family law and conveyancing. As such, we do not anticipate that any changes in PII requirements would result in a surge in new firms entering the legal services market, save for possibly in a few niche or specialist areas.