



Sent by email only to consultations@cilexregulation.org.uk

2 May 2017

Dear Sir/Madam

Consultation: transitioning towards an insurance backed compensation scheme

The Legal Services Consumer Panel (Panel) welcomes the opportunity to respond to Cilex Regulation's consultation on its compensation scheme.

In the last one year, the Panel has responded to two consultation documents on related topics from the Solicitors Regulation Authority (SRA) and the Council for Licensed Conveyancers (CLC). We also know that the SRA is further considering its own Professional Indemnity Insurance (PII) arrangements with plans to consult in the autumn.

It is important for the Panel to reiterate that our starting point when considering insurance and compensation arrangements is to ensure that there is adequate consumer protection fit for the purpose intended; to safeguard consumers from financial loss due to dishonesty, fraud, negligence and failure to account.

In 2013, the Panel published a policy report¹ which drew attention to the fragmented financial arrangements across the regulated sector. In that report we called on the Legal Services Board (LSB) and others to work towards a centralised protection arrangements for all regulated legal advice providers. Our most recent assessment² suggests that fragmentation is worsening. This is likely to be exacerbated by new compensation models such as the one proposed by Cilex Regulation.

The Panel supports the principle of clear models of financial protection that are reviewed regularly, and understand that this is what Cilex Regulation aims to do. However, we are concerned that nothing has been done to minimise consumer confusion or to align standards and principles around good consumer outcomes. Furthermore, the Approved Regulators have not collaborated to consider arbitrary gaps in consumer protection developing as a consequence of the existence of multiple schemes.

¹ [Legal Services Consumer Panel Financial Protection Arrangements 2013](#)

² In May and July 2016 we responded to the Council for Licensed Conveyancers and the Solicitors Regulation Authority's consultation highlighting the dangers of further fragmentation.

Therefore, our overall message is that the time is right for the sector to revisit our call for a single scheme for improved consumer protection and outcomes. In the interim, we urge all Approved Regulators to get together to rationalise where possible level of coverage and communications about it, and to take any other steps needed to minimise consumer confusion, including the identification of gaps for consumers in coverage and how they will be filled. The LSB should also take a leadership role and broker a set of principles and or guidance for Approved Regulators to mitigate against the concerns we have outlined above.

Reflecting on the consultation questions

Do you agree with our proposal to transition towards a largely insurance backed compensation scheme rather than continuing to rely on a large fund?

The Panel is not against an insurance backed compensation scheme in principle. It is however difficult to assess important details or understand the rationale behind significant changes with little evidence. For example, under the current compensation fund, the rules state that the fund will pay out where a firm misappropriates and fails to account for client money. The fund will also pay where the firm fails to take out professional indemnity insurance. However, under the new scheme Cilex Regulation is proposing that there must be 'dishonesty' in the misappropriation and failure to account before liability will be found. This is a more stringent test. Therefore, a full explanation of the reasoning, justification and evidence to support the change would have been welcomed. This new rule is particularly concerning when one considers the difficulty around proving or disproving 'dishonesty', including problematic issues like where the burden of proof lies, or the standard of proof which would be used. Unfortunately, the Panel is not reassured by Cilex Regulation's assertion that alternative remedies would most likely be available for 'honest errors', as these alternatives have not been outlined in the consultation document.

Do you agree with our proposal to introduce eligibility criteria and the threshold proposed for placing certain organisations outside the protection of the compensation arrangements?

The Panel is concerned that the proposal to introduce eligibility criteria may have unintended consequences for micro-businesses who may face similar, if not the same challenges as ordinary consumers. We are particularly concerned that Cilex Regulation proposes to limit claims by consumers and any other person with assets or income/turnover of less than £1million. There needs to be a clearer explanation of what Cilex Regulation considers assets or income. We foresee a scenario where a lot of consumers would fall outside the eligibility criteria if assets and income include residential abodes and pensions for example. It is our strong view that the current rule which prescribes that claimants must demonstrate hardship as a result of the financial loss remains sufficient. We would however bolster this by suggesting that any criteria for hardship should be clearly set out for public understanding.

Do you foresee any issues with Cilex Regulation seeking to fund professional indemnity insurance run-off premiums where firms are in default but continue to incur liability?

The Panel is concerned about the sustainability of this approach, but we have little information to assess how this would work in the long term.

Do you agree with our proposal to introduce a £2 million aggregate limit on the value of claims which can be made under the compensation arrangement in respect of one firm?

Cilex Regulation has proposed an aggregate limit of £2 million on claims. At present there is no aggregate limit on the financial sums for which claims can be made against one firm. There is only a limit per claim (i.e. £500,000). There is limited evidence outlining why Cilex Regulation has settled on this figure. In lieu of this evidence, it is difficult for the Panel to support such a proposal. In 2013, our research on financial arrangements noted that stakeholders broadly agreed that residential and commercial property conveyancing, will, estate administration and probate are the highest risks areas of law with the potential for larger sums of money to be involved. Cilex Regulation regulates in these areas, therefore at the minimum, the Panel would have liked to see average claims per firm over a period of time.

If you would like to discuss any aspect of this response in more detail please contact Lola Bello at lola.Bello@legalservicesconsumerpanel.org.uk.

Yours sincerely

A handwritten signature in black ink that reads "Jane Martin". The signature is written in a cursive style with a horizontal line underneath the name.

Dr Jane Martin

Chair