

Sent by email only to [Helen.Phillips@legalservicesboard.org.uk](mailto:Helen.Phillips@legalservicesboard.org.uk)

Helen Philips  
Chair, Legal Services Board  
One Kemble Street  
London  
WC2B 4AN



11 April 2019

Dear Helen,

The Legal Services Consumer Panel (the Panel) would like to raise concerns about the Solicitors Regulation Authority's (SRA) rule change application for its Professional Indemnity Insurance (PII) and Compensation Fund arrangements. It is our strong view that aspects of these proposals, specifically those relating to freelance solicitors, go beyond the initial policy endorsement given by the Legal Services Board (LSB). Worryingly, this application also reverses the SRA's own policy statement of intentions following its initial consultation phase. If the SRA has decided to reverse its stated position, it should submit reasons and evidence to support this departure.

The Panel would also like to reiterate that it is not sufficient for regulators to use information remedies to address significant reductions in consumer protection. Moreover, we have consistently said that where information remedies are proposed, such remedies should be tested prior to implementation<sup>1</sup>. The Panel is disappointed that yet again, the SRA is proposing to introduce changes that will result in reduced consumer protection and increase confusion without testing its mitigating remedy.

We have set out below our specific reasons for objecting to this application:

### **Patchy PII cover for freelance solicitors**

The SRA is proposing that only freelance solicitors offering reserved services would be required to purchase PII. Freelance solicitors offering non-reserved services will be under no obligation to have PII. This will lower consumer protection and exacerbate confusion. It is vital that freelance solicitors are adequately and appropriately insured, regardless of whether they are also providing reserved or non-reserved services. There is simply no rationale for this inconsistent treatment of unreserved legal activities by solicitors depending on whether they undertake reserved activities. We know that consumers have very little awareness of the difference between regulated and unregulated providers, let alone the varying protections that come with different service providers. It is therefore unrealistic to expect consumers to comprehend new permutations amongst solicitors, let alone the minute but potentially significant details around the varying protections that come with each type of solicitor.

---

<sup>1</sup> Reference Information Remedies research

These points have already been acknowledged by the SRA. In 2018, the SRA published a post consultation document which stated that *“in response to concerns about PII for (freelance solicitors) we have extended the requirement so that cover must apply to all work conducted by the solicitor or REL, and not just to reserved activities. This will:*

- *Reduce the potential for consumer confusion*
- *Avoid situations where some cases are covered by an insurance obligation and some not*
- *Prevent arguments by insurers over what does or does not constitute reserved legal activities.*

However, the rule change application submitted by the SRA to the LSB reverses this decision by stipulating that *“for solicitors working as freelancers, in order to carry on reserved legal activities, they must take out and maintain indemnity insurance that provides adequate and appropriate cover in respect of the (reserved and non-reserved) services that they provide”<sup>2</sup>.*

We now find ourselves reiterating the arguments which the SRA conceded. To vary protection dependent on whether a freelance solicitor is doing reserved and/or non-reserved work will lead to consumer confusion and unjustifiable discrepancy in protection. It will lead to potential for arguments about what is reserved and non-reserved by insurance companies, as well as add more complexity to an already complex landscape. Worse still, the SRA has failed to submit any evidence to justify its reversal of position. For all these reasons the Panel urges the LSB to reject this aspect of the application.

### **The requirement for ‘adequate and appropriate’ PII for freelance solicitors is not sufficient**

The SRA proposes that freelance solicitors providing reserved services will be required to have “adequate and appropriate” PII. However, the SRA has not defined or explained what ‘adequate and appropriate’ means. We have raised problems with this lack of clarity before.<sup>3</sup> While we recognise that the SRA may argue that this loose description ties in with its wider pursuit of being an outcome focused regulator, it is our strong contention that outcome based principles work best when regulators accept and identify areas that need to be boosted with prescriptive rules or guidance. This is sometimes needed for consumer protection, especially where significant loss of money is a possibility. Indeed the SRA’s own client account rules are more prescriptive than outcome-focused for good reasons. There needs to be a clear definition and explanation of what ‘adequate and appropriate’ means, especially when the SRA is also proposing that if providers do not meet the obligation under this vague description, the risk would be transferred to the consumer, who will be unable to access the Compensation Fund. The Panel strongly disagrees with this transfer of risk. It is the SRA’s duty as a regulator and enforcement authority to ensure that all solicitors have appropriate PII. Where there is failure on the providers’ part to secure adequate PII, and further failure by the SRA to detect and enforce its own rules, the consumer should not bear the risk. Precluding consumers from accessing the compensation fund is an unacceptable level of risk transfer.

---

<sup>2</sup> Page reference in application

<sup>3</sup> LSCP Consultation Response to SRA on PII and Compensation Funds, June 2018.

We hope the LSB carefully considers these points.

Yours sincerely,

A handwritten signature in black ink that reads "S Chambers". The signature is written in a cursive style with a large initial 'S'.

Sarah Chambers  
Chair, Legal Services Consumer Panel