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CLLS response to SRA consultation "Future client financial protection arrangements"

The City of London Law Society ("CLLS") represents approximately 14,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This submission has been prepared on behalf of the PR&RC, although we note that some of the firms represented on the Committee may have views which differ from those expressed in some parts of the submission.

We have set out below some general observations and our comments on the four key proposals that would take effect from 1 October 2011. We have not sought to answer each of the 37 questions posed:

General observations

We have one principal concern with the two proposals which is the overlap/confusion between the responsibilities of the regulator and the responsibilities of the insurers. We do not think that it should be the responsibility of insurers to determine which firms are fit to practise.

Key changes proposed for October 2011

- Proposed removal of the restriction of the single renewal date.
- Proposed removal of financial institutions from the compulsory Minimum Terms & Conditions (MTC)
- Increase in controls over the Assigned Risk Pool (ARP)
- Clarifying of obligations on insurers to provide information to the SRA

Removal of single renewal date

We see no real case for moving away from a single renewal date. The main argument in favour of doing so seems to be that it would allow those firms struggling to get the compulsory cover a greater chance of achieving it. However, we feel that those firms would struggle to obtain the cover irrespective of the renewal date. The only real effect of making the change may therefore be of detriment to all firms – because it would remove the competitive pressure (real or perceived) on insurers to keep premiums down. That point aside, it is our view that the removal of the single renewal date is unlikely to have much impact on the member firms of the CLLS. Such firms do not generally struggle to obtain PII cover and are likely to start the renewal process early and be sufficiently well organised to make sure that there is ample time to prepare for renewal before the

renewal date. In addition it is already possible to renew the top-up cover at a different time from compulsory insurance so for firms such as the CLLS member firms who purchase insurance significantly in excess of the compulsory layer, this is not a significant issue.

Variable renewal dates would potentially give firms the flexibility to have their PII policy renewed on a timetable to match their financial year if they wished to do so, but keeping premiums down is likely to be more important to firms.

Removing Financial Institutions from the MTC

This seems to be a change seeking to address the problems that have arisen in the conveyancing sector and the large number of such firms that have ended up in the ARP. However the scope of the exclusion would impact much more widely. Given the large proportion of claims faced by the ARP which relate to conveyancing work, we would support requiring firms to get extended cover to do this work, and therefore financial institutions to check that their panel firms have it.

However, we do have concerns that if the wording of the exclusion means that firms like our member firms need to get the extended cover, it may have a detrimental effect by adding some uncertainty and complexity to the market.

The current terms of the PII policy for solicitors have served our member firms well and they would want the same level of cover in the future. There is at least a possibility that if the insurers are not bound to provide minimum terms, they will ask for more premium if firms want the same cover.

More importantly, it is the experience of our member firms that when they have claims, they rarely have coverage disputes with the insurers because the minimum terms make it very difficult for the insurers to take coverage issues. It is not in the interests of our member firms to find themselves in a situation where they have to defend a PI claim and, at the same time, fight their insurers on coverage issues as is very common in the US. An increase in policy disputes means incurring more legal costs in resolving these disputes which in our view will lead to an increase in premiums.

From a more general perspective, qualified insurers do not like the minimum terms because it is difficult for them to deny cover on policy grounds. It is evident that the minimum terms greatly reduce the chance of policy disputes and the purpose of having the minimum terms is to protect consumers from being caught by policy disputes between lawyers and their insurers. This seems to us to be good for the profession and consumers.

Increase controls over the Assigned Risk Pool (ARP)

This is not something that will directly affect our members firms. However, it is in the interests of such firms that the ARP is effectively run and fewer firms stay in the ARP at any one time because the ARP is funded by the qualified insurers proportionately to their premium income. The more costly it is to run the ARP, the more likely that those costs will be passed on to the profession as a whole.

This change would reduce the number of firms in the ARP; unfortunately, it is only half of the solution. As mentioned above, the total solution must be to ensure that those who are unfit to practise will not practise. To achieve this objective, the SRA must deal with disciplinary issues effectively.

Clarifying obligations on insurers to provide information to the SRA

We do not think that the CLLS member firms will be directly affected by this proposed change and we have no particular comments.

October 2012 changes

The consultation also addresses some proposed changes for implementation in October 2012 and beyond and seeks views on these changes from the profession. We would comment briefly as follows:

1. Permitting additional exclusions of corporate clients from the minimum terms and conditions, over and above the proposed exclusion of financial institutions

    - See above – the same arguments as above relating to exclusions of financial institutions from the minimum terms and conditions apply.

2. Changing the role of the ARP, possibly by ending its role as a provider of policies of qualifying insurance completely, thereby limiting its role to the provider of client protection to firms that do not have professional indemnity insurance

    - As mentioned above, the ARP does not concern CLLS member firms directly and we have no particular comments.

3. Altering the way in which the ARP shortfall is funded, by considering either a direct levy on the profession or a levy as a percentage of insurance premiums; considering whether the functions of the ARP that remain and those of the Compensation Fund could be combined into the Compensation Fund; and considering whether insurers should be able to cancel policies for non-payment of premiums, fraud or misrepresentation in information provided by the firm to the insurer.

    - We do not favour a direct levy on the profession or a levy as a percentage of premiums.

We do not think that insurers should be given the right to cancel policies on innocent or negligent misrepresentation.