

Solicitors Regulation Authority  
Policy and Strategy Unit - Compensation Arrangements Review  
The Cube  
199 Wharfside Street,  
Birmingham,  
B1 1RN

18 June 2014

(By post and email: [consultation@sra.org.uk](mailto:consultation@sra.org.uk))

Dear Sirs,

**Response of the CLLS Professional Rules and Regulation Committee to the SRA's compensation arrangements review and consultation on the introduction of an eligibility criteria (the "Consultation")**

The City of London Law Society ("CLLS") represents approximately 15,000 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 19 specialist committees. This response in respect of the SRA's Consultation "Compensation Arrangements Review: the introduction of an eligibility criteria" has been prepared by the CLLS Professional Rules and Regulation Committee.<sup>1</sup>

**The Consultation**

The Consultation invites views on the SRA's arrangements for compensating clients who suffer financial loss due to dishonesty, failure to account or civil liability of uninsured practitioners.

The CLLS does not anticipate that the outcome of this consultation will have any significant impact on the clients of City law firms given that, as is likely to be the case for all respondents

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<sup>1</sup> A list of the members of the CLLS Professional Rules and Regulation Committee can be found here: [http://www.citysolicitors.org.uk/index.php?option=com\\_content&view=category&id=151&Itemid=469](http://www.citysolicitors.org.uk/index.php?option=com_content&view=category&id=151&Itemid=469)

from within the profession, we do not expect our clients to need to seek compensation for financial loss caused in these circumstances. Although there may be some cost benefit to City firms, if contributions to the Compensation Fund can be reduced, we have no greater interest in this than the profession as a whole.

In general, City firms support the SRA's initiative to ensure it regulates the profession effectively and efficiently. We are, however, concerned that the SRA is consulting on an important topic that may have significant implications, in particular for consumers who do suffer losses, without explaining clearly what is driving the proposal or providing supporting evidence, that only the SRA can provide, about the impact of the proposal.

The consultation invites respondents to offer alternative suggestions for reducing the burden on the SRA's Compensation Fund. Given the short deadline in which to respond (see further the final paragraph of this response) and the evidence/information available to us, we have been unable to identify any alternatives.

Turning to the specific questions raised in the Consultation:

**1. Do you agree with the proposal to introduce an eligibility criteria for applicants making a claim on the SRA's Compensation Fund?**

- 1.1 We do not think that certain classes of consumer should be excluded, because of their legal nature or characteristics, from seeking a particular form of redress without there being evidence that such a restriction is necessary to meet other regulatory objectives. This is particularly important given that the SRA already has the discretion to decline claims from certain classes of consumer.
- 1.2 The statement (in paragraph 26 of the Consultation Paper) that it is "anticipated that the proposal will result in reduced operation costs of managing the Compensation Fund and this reduction is likely to be reflected in future contributions firms make" is unsupported by evidence to enable us to make a judgement as to whether costs will be saved which, in turn, would lead to a reduction in future contributions.
- 1.3 Is the SRA able to produce financial data in support of the savings it is anticipated will be made? In particular, does the SRA have any indicative figures regarding the cost of investigating claims that do not meet its criteria for discretionary payments? Is there evidence that these expenses will be significantly reduced or eliminated by including eligibility criteria into the Compensation Fund Rules as opposed to better explaining the circumstances in which the discretion may be exercised in respect of particular classes of claimant?
- 1.4 It would also assist to know whether there are any other potential drivers for or benefits of this proposed change. For example, it would be helpful if the SRA could confirm whether there is a concern that by leaving eligibility criteria to the SRA's discretion, the SRA is exposed to potential litigation when it declines claims.

- 1.5 Further, whilst we agree that the Compensation Fund should be available to support those consumers who are most in need, does the SRA have any evidence to suggest that the Compensation Fund, by remaining open to all classes of consumer is (a) failing, or may fail, to meet this objective or (b) may unduly increase the cost of legal services to the public by imposing a disproportionate cost on the profession?
2. **Do you agree that only: (i) individuals; (ii) micro-enterprises (businesses with a turnover not exceeding £2 million); (iii) charities with annual incomes less than £2 million; and (iv) trustees of trusts with net asset values less than £2 million should be able to claim from the SRA's Compensation Fund?**
- 2.1 As noted above, we do not believe that the SRA has provided enough evidence to justify the introduction of eligibility criteria and our comments on this question should be read in the light of this.
- 2.2 In order to evaluate these specific eligibility criteria, is the SRA able to provide data on the impact of the proposed change? This should include statistics showing the number and value of claims made by different classes of consumer (including those falling within the proposed definition of "Applicant" and those who would be excluded) and the percentage of successful claims by each class. This would assist to analyse the potential efficiency savings and the value of protection it is proposed to continue to offer to or remove from each class.
- 2.3 For example, paragraph 5.16 of key supporting document "SRA Compensation Arrangements Review: A snapshot of the current arrangements" states that the "highest claims by value come from lenders: banks and building societies, who will have released mortgage monies to a solicitor in a conveyancing transaction". Although it is noted in paragraph 19 of the Consultation Paper that, as a result of the fact that payments of grants are discretionary, the majority of claims made by corporate and larger organisations tend to be rejected, it is not stated whether the majority of claims made by this more limited class of mortgage lenders are rejected. The papers suggest that the SRA is exercising its discretion to make grants to larger corporations, including mortgage lenders, in some cases. Even if the discretion is exercised only occasionally, it suggests that the value of the grants to this group of claimants may be significant.
- 2.4 If this is the case, the introduction of eligibility criteria may do more than simply reduce operation costs (thereby increasing efficiency and effectiveness); it may exclude a high value (as opposed to a high volume) of claims that are currently successful. Can the SRA confirm what value of recent successful claims would be excluded as a result of the proposed change? The SRA should also confirm why it considers it reasonable to target this group, if it has previously on occasion considered it reasonable to exercise its discretion in favour of claimants in this group. If the actual number of claims by this group is not large (as opposed to the value of the claims it makes) it also suggests that the cost of evaluating and declining these claims may not be particularly high, which raises the question of whether this proposed limitation will bring about its objective of reducing administrative cost as opposed to reducing grants. Moreover, while

recognising that payments from the Compensation Fund are discretionary, excluding mortgage lenders may have the unintended consequence of reducing the attractiveness of solicitors' firms in the placing by such institutions of their conveyancing business.

- 2.5 It would also assist if the SRA could explain what the effect of these changes will be on claims relating to monies which have been misappropriated in a probate matter. It is noted in paragraph 11 of the Consultation Paper that, together with conveyancing matters, these are "the highest claims by value" made on the Compensation Fund. Presumably, if these criteria are introduced, larger charities who lose money as potential beneficiaries will no longer be able to bring a claim. This would be the case even though the charity would not have been involved in the choice of solicitor or terms of engagement. In these circumstances the SRA's suggestion that larger charities might be "better able to protect their own interests and make commercial decisions on the use of legal services and the risks involved" (as suggested in paragraph 15 of the Consultation Paper) would not be a relevant consideration.
- 2.6 We would also be interested to know what evidence the SRA has to suggest that any class of consumer should be better able to protect itself from dishonesty or fraud (as opposed to being better able to protect its commercial interests more generally). We accept that there may well be certain classes of consumer who are better able to bear such losses and that the cost of offering protection to them might be disproportionate, but, again, if the SRA wishes to rely on such an argument it should produce evidence explaining why the cost is disproportionate.

Finally, we should note here that the time given to respond to this consultation was short (just six weeks) and this was exacerbated by the fact that the SRA published four separate consultations on 7 May, each with an 18 June deadline. It has been a challenge to respond in time. For future consultations, we would prefer to have a 12 week period in which to respond – recommended as the norm in the Cabinet Office's Consultation Principles Guidance.

Yours faithfully



M. Sarah de Gay  
Chair, Professional Rules and Regulation Committee

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