The Law Society

Response to SRA call for evidence on client protections

26 September 2014

Summary

1. This is the Law Society's response to the 1 August 2014 Solicitors Regulation Authority (SRA) call for evidence on client protections.[1] It contains the following key points:

    - The existing client protections offer outstanding protection to the public. They may not be perfect and we accept that, at times, they can cause problems for firms, but they both ensure client protection and the reputational integrity of the profession.
    - The SRA has not set out an urgent case for a requirement for changes. Under s28 of the Legal Services Act 2007, the SRA has a general duty to have regard to the principle that its actions are targeted only at cases in which action is needed.
    - The SRA should also follow the guidance of the Regulators Code to ensure that the changes properly comply with the regulatory objectives and are proportionate, effective and targeted.
    - Evidence is crucial and the SRA should not simply rely on stakeholders to provide evidence but should itself do work to ensure that it fully understands the risks and likely impact of changes.
    - The Society sees merit in review of the system but this should not been done piecemeal without any consideration of the impact on firms and their clients. The SRA should indicate what it sees as faults in the current system and says what it would like to achieve. It should then consult on those objectives. Once its objectives have been identified and agreed, it should research how best to achieve them and present its recommendations with a full assessment as to how those changes will impact on the market, the profession and most importantly the clients who rely on firms to protect them.

Lessons learnt from recent SRA consultations on client protections on the nature of evidence

2. The call for evidence follows the SRA's 28 January 2014 consultation on the introduction of a minimum financial strength rating requirement for Participating Insurers and the 7 May 2014 proportionate regulation consultations. It is a recognition of one of the key lessons learnt - that proposals for change should not be made without first establishing the evidential base for the cause of the alleged harm, and then the appropriateness and proportionality of the proposed remedy, accompanied by an impact assessment *prior* to a decision to go ahead with implementing the change.

3. The recent proposals elicited a significant number of representations to the SRA and to the LSB about a lack of supporting evidence and of up to date data to support the proposals and concerns about the resulting risks to clients and to the profession. The representations came from parties with relevant expertise: from the profession, from the insurance industry and representatives of consumer groups and of lenders who as consumers of legal services are clients of firms. The Law Society was pleased that, in the

[1] http://www.sra.org.uk/sra/news/press/client-protection-call-evidence.page

light of this, the SRA postponed implementation of a number of its proposals in order to seek further evidence.

4. The LSB has highlighted to the SRA the absence of data and limited availability of evidence to justify the SRA's claimed costs savings for its proposals.[2] The Law Society shares the LSB's concerns in this respect and has urged the SRA to withdraw its remaining proposal to reduce the minimum level of compulsory PII cover to £500,000. It is disappointing that the SRA has failed to do so since, in our view, consideration of that proposal would benefit significantly from the evidence sought in this exercise.

5. It is therefore vital that the SRA does not use this call for evidence as justification for implementing the deferred proposals without a robust study of the evidence base and without an assessment of whether any new benefits arising from changes outweigh existing ones. This will inform the SRA's assessment on what action is most appropriate for the purpose of meeting the regulatory objectives.

Holistic approach required for client protections

6. A second key lesson learnt was that the arrangements for client financial protections embodied in the compulsory professional indemnity insurance (PII) Minimum Terms and Conditions (MTC) and in the Compensation Fund must be considered holistically. The present arrangements are interlinked and it is likely that changes to one area will have significant 'knock-on' effects elsewhere.

7. We share the LSB's concerns about the SRA's insufficient exploration of the potential impact on the Compensation Fund and the costs to the profession.

Importance of evidence

8. A key significant finding to emerge from the 7 May consultations is that the SRA needs to capture the detailed information at its disposal on how the solicitors' PII market works. Some of the gaps identified were lack of awareness of the claims-made nature of PII, how premiums are set (by factors such as risk profile and gross turnover, rather than by the MTC primary layer value) and how the pooling arrangements work. A related gap was lack of appreciation that a reduction of the risk to insurers would increase consumer exposure and affect the Compensation Fund.

9. The SRA has at its disposal a ready forum through which it can carry out fact-finding through the regular Liaison Committee meetings it holds with insurers and to which the Society sends a representative for the purposes of claims made in the 2012-13 claims year. The Society understands that these meetings no longer include all Participating Insurers, only the top six. Given the diversity of supply, expanding the membership of the group, if only for the purposes of discussion of possible reforms to the client protections, could be a good start in identifying and gathering evidence to inform the SRA's review.

[2] LSB 19 August 2014 letter to the SRA
http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2014/20140819_Paul_Philip_SRA_Warning_Notice_CK.PDF

Sufficient time for consultation

10. As with the 7 May 2014 consultations, the Law Society is concerned that the SRA has given insufficient time for consultation. The timing of this announcement and the duration of the two month period of the call for evidence has overlapped with the holiday period and with the September PII renewal season. Renewal this year has started particularly late as a consequence of the SRA's delayed announcement that there will be no rule change as the 2013-14 MTC would continue in the new Participating Insurers Agreement. Anecdotal evidence suggests that awareness of the call for evidence or priority to respond to it are not high.

Need for inclusive consultation

11. The Society intends over the coming months once again to embark on its own consultation of the profession on what are essentially questions of professional values. This exercise will to inform the Society's response to the next stage of the SRA's planned programme of consultations. As part of that exercise, the Society intends also to engage with the SRA and once more with our relevant stakeholders - the insurance industry, lenders and legal services consumer representatives.

This consultation

12. The SRA's call for evidence has identified five high level issues:

    - The ways in which regulation can reduce the risk of claims arising.
    - The extent to which the loss arising from claims should be apportioned between insurers, the Compensation Fund, firms and claimants.
    - The impact of the PII MTC.
    - The extent to which insurance cover should be more closely aligned to the nature of the legal services provided.
    - The extent to which client protection arrangements are understood by consumers and are a driver of consumer behaviour.

13. This paper gives a brief reminder of the purpose of the existing solicitors' client protections before turning to each of the five headings in the SRA call for evidence.

<u>The solicitors' client protections - existing evidence</u>

14. It is apparent from the SRA's recent consultations on client protections that it has not fully understood how the existing system works.

15. The regulatory regime for client protections in England and Wales is known for the high level of protections it offers. These have been explained more fully in the various responses to the SRA's 7 May 2014 consultations. Briefly, the PII MTC provide considerable indemnity for firms and partners and, therefore, redress to clients. Clients also benefit from the additional safety net provided by the profession through the Compensation Fund, financed by contributions made by the profession. As the SRA itself recently commented

in respect of the Wolstenholmes case where seven former members were disqualified from being directors for trading fraudulently when a total of £13 million was paid out to 2,500 clients:[3]

> *'.[.. clients who had suffered significant hurt by what had happened]. It was to the credit of the Compensation Fund that the losses had been made good'.*

16. The LSB has recognised the holistic nature of the client financial protections. It has stated that the SRA needs to examine the system of financial protections and PII in the round and to be alert to the danger of unforeseen consequences and the risk of the regulatory objectives being prejudiced as a result. The LSB highlighted the need to fully explore and consult on any changes to an element of the existing arrangements for their potential impact on the Compensation Fund.[4]

17. Between them, the complementary client protections re-enforce the profession's covenant of trust to the public - the importance of which was highlighted by the Wolstenholmes sentencing judge when he referred to the profession as:[5]

> '...*a business in which members of the public are entitled to place absolute trust*'.

18. The 2012 SRA annual report recognised the advantages to consumers and to the economy of this unprecedented level of client protections:

> *'Consumers of legal services in England and Wales are better protected than in comparable jurisdictions abroad. This certainly enhances the reputation and offering of solicitors, who will generally see it as a price worth paying*'.

19. That the client protections do not exist purely for the benefit of the public has been recognised by the highest UK court. The House of Lords confirmed in its judgment in *Swain v The Law Society* that the compulsory insurance arrangements are not just for the benefit of consumers, but also for the benefit of solicitors and their staff.[6]

20. That the client protections serve the public interest is relevant to the first of the Act's regulatory objectives - of protecting and promoting the public interest.

21. The LSB's comments on the £500,000 minimum indemnity cover proposal serve as a useful guide which seems equally applicable to any further rule change applications that the SRA might be contemplating making. The LSB

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[3] David Middleton, Executive Director, Legal at the SRA commenting on Tribunal decisions http://insolvency.presscentre.com/Press-Releases/-13m-shortfall-2-500-dissatisfied-clients-former-members-of-legal-firm-Wolstenholmes-get-combined-69cba.aspx

[4] LSB letter dated 18 August 2014 SRA: Warning notice issued persuant to paragraph 21(1)(b) of Part 3 of Schedule 4 to the LEgal Services Act 2007. http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2014/20140819_Paul_Philip_SRA_Warning_Notice_CK.PDF

[5] Case No.2MA3006 10 June 2014.

[6] [1983] 1 A.C. 598

helpfully suggested that in the absence of data, a specific survey and / or modelling exercise might be a reliable basis for the development of forward-looking policy for changes. The LSB also noted the absence of analysis on the impact on the price of top-up cover and on the time that might be required for the market to adjust to the new regulatory requirements, which might impact on the potential cost savings.

22. The SRA might need to seek other sources of empirical data or to commission expert advice and assistance, when considering its consultation questions.

23. Against this background, this response now turns to each of the five SRA consultation headings. The Society has tried to respond to each of these but as we note below, the issues are inter-related. It is not always possible to discuss each in isolation without reference to the others.

1. The ways in which regulation can reduce the risk of claims arising

24. No regulatory system will prevent all claims arising or fraud. There is also a danger that an excessive use of regulation will lead to increased costs on the bulk of the profession which are disproportionate to the risk. The SRA is required under the Regulators Code to ensure that its officers have the necessary knowledge and skills to support those they regulate, including an understanding of those they regulate that enables them to choose proportionate and effective approaches. The SRA therefore needs to be able to assess how far regulation can provide significant assistance.

25. It is appropriate for the SRA to examine whether the way in which it carries out regulation will reduce the risk of claims arising. In theory, the more effective the deterrence and enforcement regime, the lower the costs of insurance and compensation should be. However, such regulation must be appropriately targeted and proportionate and needs to be backed by evidence.

26. The SRA has a number of regulatory tools, including:

    - Authorisation - which ensures that those who enter the regulated system are fit to do so and includes entry requirements and checks on character;
    - Application of conditions in order to regulate the way individual solicitors carry out their work;
    - Regulatory requirements to assist with the handling of clients' money;
    - Supervision of firms;
    - Accountants reports;
    - Casework investigations which include use of information-seeking powers;
    - Risk analysis, risk-based interventions and enforcement;
    - Forensic investigations;
    - Enforcement and disciplinary actions.

27. Some regulatory requirements can carry costs and burdens to the profession. However, there is a paramount obligation upon the regulator to discharge its

roles efficiently and to achieve confidence by speedily removing from the market those who breach requirements and present risk to the public and to insurers. There are examples of potential moral hazard where the performance of SRA could enable some insurers to withhold timely information from the SRA so that the potential liability and risk can be passed on to another insurer. That is unsatisfactory to the working of the market and means the market cannot deliver to its maximum efficiency.

28. In order to assess whether further regulation is appropriate, we consider that the SRA should:

    - Analyse major cases which have resulted in pay-outs from the Compensation Fund to establish the cause and the extent to which regulatory action could have prevented the loss;
    - Use its powers to seek information from the insurers about claims histories and consider whether there are regulatory tools that might address those – we recognize that there are cases of potential moral hazard whereby it may not be in insurers' interests to provide this information but we believe that the regulator's needs should override these;
    - Identify whether there was particular action that could have been taken sooner to deal with the problem;
    - Look at whether it has sufficient ability to prevent solicitors reoffending - for example by the solicitors establishing 'phoenix' firms after they have left their previous, collapsed, firm.

2. The extent to which the loss arising from claims should be apportioned between insurers, the Compensation Fund, firms and claimants

29. In addition to the entities named by the SRA, it might be appropriate to consider also the Financial Services Compensation Scheme (FSCS) which in certain limited circumstances of indemnity failure, will pay out grants to qualifying claimants limited to a cap of £85,000.

30. This question is closely inter-related to the third of the SRA issues on the MTCs and the general issue of PII capacity, discussed below under the next heading.

31. Under the existing client financial protections arrangements of compulsory PII and the Compensation Fund, risk is apportioned as follows:

    a. The firm's PII will pay all claims up to £2m under the minimum terms (£3m for LLPs). There are very limited occasions when the PII will not pay out. Cover will be given if there has been misrepresentation on the proposal and it protects partners against dishonest colleagues. Run-off cover is guaranteed for six years.
    b. Top up cover is available for firms which consider that their work needs greater cover, though the full range of the minimum terms will not apply to top-up.
    c. Where the insurance is insufficient, the firms' partners (and, possibly former partners) are liable for any losses.

d. Where the partners are unable to meet the loss, or there are no partners, the Compensation Fund will consider making an award of up to £2m. This is a discretionary fund and will not pay awards where there has been contributory negligence. It is rare for a lender or other large client to receive an award.
e. Claims which are more than six years old are dealt with by the remains of the Solicitors Indemnity Fund, but this arrangement will only last until 2020.

32. The risk burden on insurers - which have agreed to their obligations and their limited opportunities to avoid claims by signing the Participating Insurer Agreement - is reflected in the pricing of PII policies and run-off cover.

33. If the MTC are relaxed to minimise insurer exposure to risk on the basis that it is acceptable to shift the risk elsewhere, and unless the SRA at the same time improves its ability to identify risk early, the outcome might be prejudicial to the regulatory objectives, since the risk could then be passed to:

a. The owners of individual firms and their employees. They may seek on the open market the same level of protection as that provided under the current MTC (assuming such products are available and that transparency is not compromised in relation to any applicable exclusions) or they might decide to spread liability to former partners and employees; or
b. The Compensation Fund - changing it from a fund of last resort to one which is likely to be called upon significantly more often. Unless significant changes are made at the same time to the arrangements for contributions to the Fund or to limit the purposes for which it is currently drawn on, the bulk of the profession will end up subsidising the least competent members; or
c. Clients, particularly if at the same time changes are made to limit the amount of compensation that clients would be guaranteed. This will alter the public's trust in the profession. The reputational consequences for the profession of allowing consumers to suffer significant loss are considerable.

Clients fall into two broad categories:

(a) domestic and small business clients, who are in no position to assess whether a firm is a good risk or not, and on whom the economic impact (personal or business) can be catastrophic; and

(b) large regular business clients. Lenders and other large clients are, however, likely to develop their own methods of mitigating risks and may impose significant burdens on firms to show that they have appropriate controls.

34. Shifting losses to domestic clients will be prejudicial to the regulatory objectives of protecting and promoting the interests of consumers, protecting and promoting the public interest, improving access to justice and increasing public understanding of the citizen's legal rights and duties.

35. Shifting the risk to large business clients is likely to result on those clients developing their own ways of managing risk which may impose significant burdens on firms and so be prejudicial to the regulatory objectives of promoting competition in the provision of services and encouraging an independent, strong, diverse and effective legal profession.

36. If clients are not to bear the risk and it is thought that the mandatory burden on insurers should be reduced, then the only other options for the risk are firms themselves and the Compensation Fund. In practice, firms are likely themselves to seek either to insure the risk and / or pass the risk on to clients through higher fees. Where insurance is unavailable and firms are unable to meet claims then the costs will fall to the Compensation Fund.

37. We consider that it is essential that the SRA should seek advice about the likely impact of any changes to the present arrangements. In particular, what are the likely additional costs of 'top up' or other insurance arrangements? If insurers are able to avoid particular claims or classes of claims, what will the effect be on (a) insurance premiums, (b) the Compensation Fund, (c) firms and their premiums and contributions to the Fund? How will these changes then affect the fees charged to clients, firms' continuing ability to practice and access to justice?

38. The existing arrangements have the significant advantages of (a) protecting clients and (b) permitting insurers, who have experience in this, to set premiums at appropriate market rates and (c) reducing the exposure of the profession as a whole. The Law Society doubts that changes are likely to prove cheaper for the profession or improve access to justice and the burden is on the SRA to show that these will be achieved from any changes.

3. The impact of the PII Minimum Terms and Conditions.

39. The significant protections embodied in the MTC come at a price. However, it is not clear to us that changes to them will address the problems that some firms face. There seem to be three areas where there are concerns.

    - The terms result in more expensive premiums which some firms cannot afford and which are said to act as a barrier to entry into the profession;
    - The terms act as a disincentive for insurers to enter the market because they are unusual in the context of normal commercial insurance; and
    - The terms make it difficult for firms to leave the market because of the cost of run-off cover.

    Increasing access to justice - barrier to new firm entry

40. While it is very likely that the MTC lead to higher premiums than would be the case if insurers were able to avoid some of the risks, it is not clear to us how far in fact this amounts to a barrier to entry into the profession. The SRA could usefully carry out fact-finding and analysis on the extent to which the cost of insurance inhibits new firms' entry, though this will not be an easy exercise.

41. There will be many regulatory and cost barriers to entry and these will differ according to the type of legal service the new firm will wish to specialise in and the minimum scale of entry that specialism might require. In recent years, the regulatory costs and barriers relating to management of risks by new firms have rightly increased, with requirements for COLP and COFA and anti-money laundering expertise as well as the need to demonstrate risk management and sound business plans. Discussion with insurers or brokers might prove a good starting point, since the assessment of risk will be a key factor they consider and some will be more sympathetic to providing reasonably priced insurance to new firms than others.

42. The SRA will also need to take into account, perhaps through some case studies and economic modelling, the relationship between the cost of PII for new firms and contributions made to and grants paid out from the Compensation Fund. In the Society's view, there is little to suggest that, of themselves premiums prevent professionals entering the market.

43. We are aware also that an number of firms consider that premiums are high and of anecdotes that insurance quotes have led to some firms leaving the market. The SRA should, however, look in to such cases to see how far firms leaving the market could have been avoided by adjusting the MTC

PII capacity

44. There are also perceptions that the MTC provide a disincentive to entry for insurers and that his can create capacity problems. Some in the profession feel that in order to obtain compulsory insurance at an acceptable level, they are obliged to seek that protection through insurers which have no credit rating. Anecdotal evidence suggests that last year it was a mixture of unwillingness of rated insurers to insure certain firms and a decrease in capacity that led to the increase in share of supply for unrated insurers, rather than cheaper policy price, since some unrated insurers are said to be more expensive that rated ones. The entry followed by the swift, unplanned exit of certain unrated insurers has created its own problems.

45. On the facts available, it is difficult to draw any firm conclusions. This is an area where the SRA could usefully carry out an evidence-seeking exercise. Last year's PII renewal was particularly difficult because of the closure of the Assigned Risks Pool, XL reducing its offering in the small firms sector and the failure of Balva. This resulted in less PII capacity being available, affecting in particular small firms and sole practitioners. The Society drew to the SRA's attention in its 24 March 2014 response[7] to the SRA rating requirement consultation for Participating Insurers the findings that emerged from the Society's annual PII survey which suggest that small firms tend to be served by a group of insurers which consist mainly (but not exclusively) of ones which do not serve larger firms; that they attract in particular unrated insurers and that that their insurance needs differ to those of larger firms.

[7] The Law Society response to the SRA rating requirement for Participating Insurers 24 March 2014 http://www.lawsociety.org.uk/representation/policy-discussion/documents/law-society-response-to-the-sra-consultation-on-ratings-for-participating-insurers/

46. Despite last year's problems, the vast majority of firms obtained cover. This year, the initial indications are that the traditionally under-served small firms sector will have more choice and that the comprehensive MTC are not deterring rated new insurer entry. Endurance and Mavern Underwriters (through Novae and Argo) are offering policies across all sectors. Some of last year's syndicate members are offering solo products. Starr Insurance is entering at the larger firms sector level. The Law Society's annual PII survey results will report on market share distribution and impact on overall premium levels.

47. This year's new entry is an encouraging sign. However, we would encourage the SRA to commission research on how to improve stability in the PII market. This would be particular important in looking at the needs of small high street firms which disproportionately represent BAME firms and clients. This might explore the reasons why some rated insurers have remained present since the open market began and why others have come and gone. This could encompass the 'lessons learnt' exercise the Law Society has requested on last year's turbulent PII renewal and include a review of last year's newly-introduced Extended Indemnity Period and the introduction of variable renewal dates.

48. Insurers should be a good source of evidence to confirm or disprove assumptions. In particular, they will have views on how they perceive the MTC as a barrier to entry or expansion and reasons for exit.

The cost of run-off cover and barriers to retirement and orderly closure of firms

49. The SRA proposed in its 7 May consultation document changing the duration of run-off cover from six years to three. The reasons why this would be ill-advised and contrary to the regulatory objectives are evidenced in the consultation responses the SRA received. Many practitioners consider that, for reasons of their own financial protection in retirement, a minimum of six years post-retirement insurance cover must be provided. Having said that, the Law Society's annual PII survey findings last year indicated that the cost of run-off cover can be a barrier to retirement for many practitioners.

50. The fact is that claims can be made against solicitors at least up to 6 years after a negligent action and, in some cases, significantly later. After a solicitor has retired, he or she may well be unable to meet such claims or do so without causing significant hardship. It is, therefore, in both the consumer's and the profession's interest for there to be protection in such cases. We recognise that the requirement to hold such insurance causes problems both for practitioners (as set out above) and for insurers, who are required to provide the cover even if the premium has not been paid.

51. While we accept that this situation is imperfect, the SRA needs to analyse carefully the costs of changes to the arrangements, together with likely consequences in behaviour for solicitors, particularly if a likely outcome is going to be that there will be greater claims on the Compensation Fund.

52. The SRA should commission analysis of the historical experience of claims after practices have ceased since the MTC were established in 2000. A

significant piece of evidence which should be drawn out and analysed relates to data about claims emerging from the 2009 recession which insurers have to underwrite at a risk of loss to themselves. The historical data should be helpful in informing how to mitigate the risk of future claims arising generally and out of periods of recession, as well as how to manage the claims which do arise when the firm is in run-off or the run-off cover has expired.

53. Earlier this year, the Society reached informal agreement with the SRA to take forward exploratory work on post-six year run-off cover when the current arrangements expire in 2020, including a possible further extension from existing funds to post six year run-off cover to 2023, work which we would like to resume in the context of the SRA's programme of review. The Society is aware of at least one scheme in another country which it would be useful to examine in more detail in case it provides evidence to support certain model changes, looking further ahead.

54. The SRA might also wish to carry out analysis and fact-finding around review of the operation of the successor practice rules. The Society's survey last year found that larger firms were more likely to use the rules to merge with another firm than 2-4 partner firms and that no sole practitioners had done so.

55. A key question for which analysis is required is how changes to the MTC (e.g. in respect of the level of cover and run-off terms) would affect clients and, in particular, the willingness of larger clients to use solicitors.

4. The extent to which insurance cover should be more closely aligned to the nature of the legal services provided

56. At present, some legal services are relatively low risk. It is unlikely that many solicitors who simply undertake social welfare work will need anything approaching the full extent of the MTC. Criminal practitioners and those undertaking disciplinary work are also likely to be relatively low-risk. On the other hand, some transactions for consumers and business may have ramifications extending beyond the present minimum cover, as may litigation, particularly involving personal injury.

57. It was not clear from the SRA's review of responses to its 7 May consultation that it understands that very few firms practise only one area of law, nor that just one conveyancing transaction per year could increase a firm's risk profile considerably.

58. Moving to an 'a la carte' approach to purchasing PII to tailor the policy with a firm's risk profile would require consultation by the SRA of the insurance industry, in order to better gauge the potential impact on policy coverage, price and the management of risks. This idea has to be assessed also in relation to the SRA's proposal that consumers should be expected to understand client protections as a driver for their consumption of legal services.

59. Evidence and analysis will also be required to gauge the effect that new requirements might have across the board, on the insurance pool and the overall effects on access to legal services and its price. This might include economic modelling to test out assumptions. The advantage of the MTC is

that they provide a general level of insurance which should be sufficient for most consumer-based practices. Insurers recognise that some areas of practice are riskier than other and price policies accordingly.

5. The extent to which client protection arrangements are understood by consumers and are a driver of consumer behaviour

60. The SRA has argued in the past that consumers should be able to assess the risk of dealing with individual practices and that if the arrangements were changed, consumers should enquire about the extent of a firm's cover - just as they assess the risk of buying standard consumer commodities or services.

61. It is hard to see how this could work in practice. Both types of 'consumers' - (a) domestic and small business clients, and (b) large regular business clients - are unlikely to be able to make risk judgments about a firm's susceptibility to a claim being made and putting them at risk, particularly given the claims-made basis of cover. The level of insurance in one year will not give any reliable idea about the level that is likely in future years when a claim may arise.

62. At the moment, the Society doubts the relevance of this question. In our view, the public's absolute assumption that solicitors are trusted and 'safe' and, therefore, that they do not need to ask for the assurance, will prevail - unless of course ill-thought out regulatory changes lead to that belief being shaken. Clearly, if experience showed this, then behaviour might change significantly. This would be damaging for the reputation of the profession and the trust in it which we refer to at the beginning of this response. If in doubt, the SRA should seek expertise to carry out surveys to better understand smaller 'client' understanding and behaviour in this area.

63. There is clear evidence that sophisticated consumers, such as lender clients of firms, understand the current compensation arrangements and that changes may well affect the attractiveness of the profession, particularly if other providers offer greater protection.

64. Anecdotal evidence suggests that the pass-on cost to customers of the current client protections is probably around £2 - £3 extra on top of the cost of buying a house (Vanilla Research 2013 report for the Legal Services Consumer Panel). If the SRA wishes to pursue this issue, a study which will allow a cost comparison in the event of a shift to more risk for ordinary consumers and to measure changed attitudes, should help assess the extent to which the regulatory objectives might be better met or else prejudiced.

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