

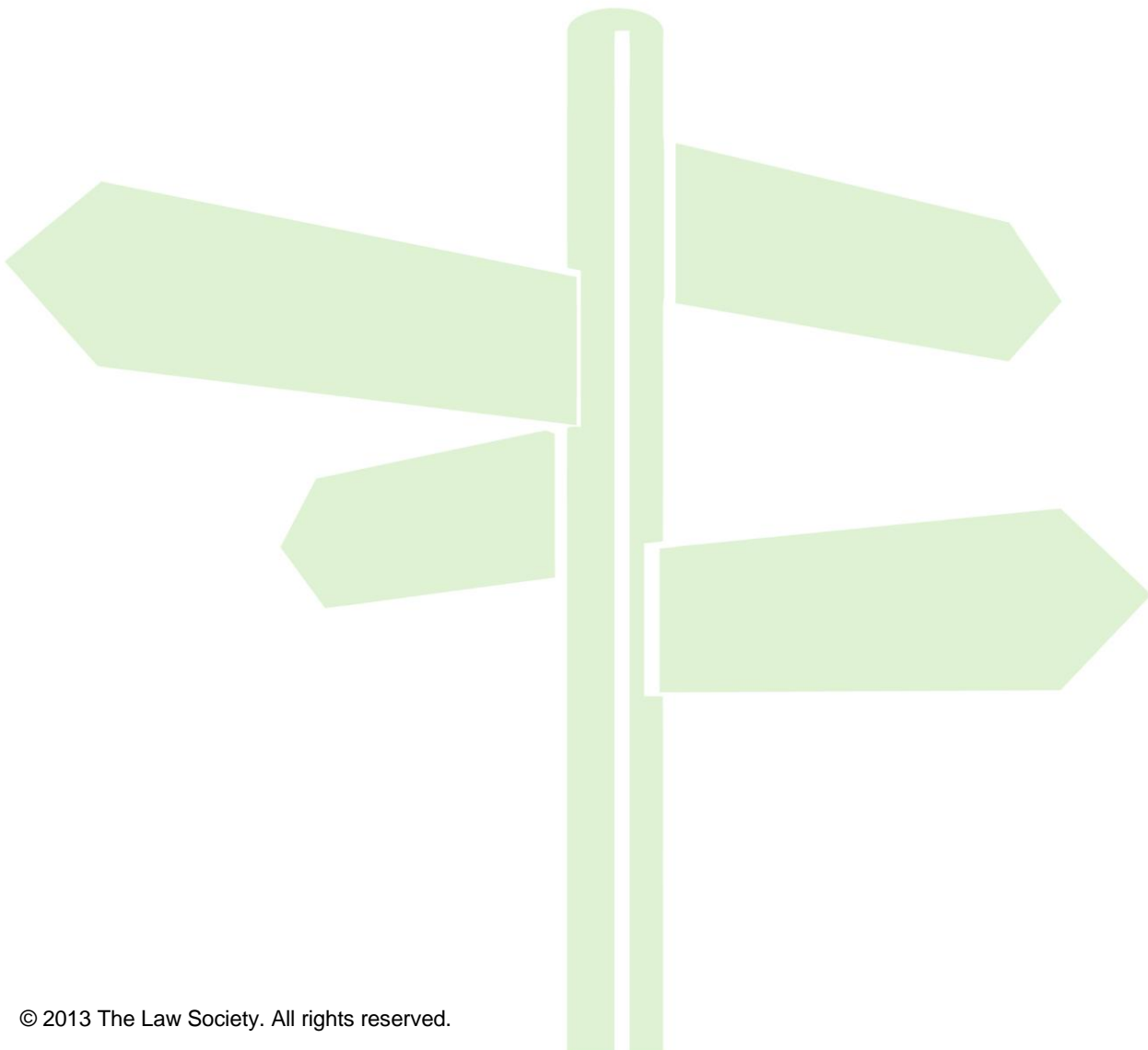


The Law Society

**SRA consultation: Proportionate representation –
changes to minimum compulsory professional
indemnity cover**

Junior Lawyers Division response

June 2014



SRA consultation on "Proportionate regulation: changes to minimum compulsory professional indemnity cover"

Junior Lawyers Division response

The Junior Lawyers Division of the Law Society of England and Wales (the "JLD") represents a body of students, trainees and solicitors (up to 5 years' PQE) across England and Wales.

The JLD, in principle, supports initiatives which are designed to reduce unnecessary regulatory burdens, and reduce costs for firms and clients alike. However, the JLD has a vested interest in preserving client confidence in the integrity of the legal profession and, as such, any deregulation should be proportionate to ensure adequate protection is provided to consumers where necessary.

The JLD has had the opportunity to consider the Law Society's initial concerns in relation to the proposals (<http://www.lawsociety.org.uk/representation/policy-discussion/sra-consultation-on-minimum-compulsory-pii-cover/>). The JLD agrees with the Society's concerns.

In particular and/or further:

1. Do you agree with reducing the compulsory cover to 500,000?

The JLD notes this is a notable reduction from the current compulsory cover. We are concerned that this will have a detrimental effect on client confidence.

Although many businesses will need cover above this anyway (which the consultation paper has noted), because it is dependant on a business's size and exposure to risk, it is unlikely to reduce cover costs for businesses and actually in practice will still be very expensive.

2. Do you agree with introducing a cap on insurers' liability?

In principle the JLD has no objections to imposing a cap on insurers' liability. The JLD accepts that a cap on insurers' ultimate exposure may provide some benefits and in some instances lead to lower premiums.

3. Do you think any such cap should be 1,500,000, 5,000,000 or another figure?

The JLD agrees that this is unlikely to disproportionately effect any vulnerable groups.

The JLD would recommend a higher cap which would offer greater protection and better preserve client confidence. Imposing a cap will be a significant change, therefore this cap should be a high figure to reflect the interests of consumer and clients.

4. Do you agree that the introduction of a cap should be balanced by reducing the opportunity for claims to be added together to treat them as one claim?

Given that there is currently no cap, the JLD is open to the principle of introducing a cap. However, if this is in combination with the removal of the ability for insurers to add claims together this may displease consumers who will be used to knowing in advance how much damages they would be liable for in the event of loss. The aggregate limit is a useful mechanism for both insurers and consumers to know the maximum amount they may have to pay out.

The JLD would therefore not agree with introducing a cap alongside the removal of 'one claims'.

5. Do you agree with limiting the compulsory cover requirements to individuals, small enterprises, charities and trusts?

The JLD does not agree with this proposal.

The consultation paper states that this will improve flexibility and lower costs. It isn't clear to the JLD how the implementation of this will improve flexibility.

The JLD recognises as the SRA does, that many corporate institutions will be more au fait with the elements involved in obtaining cover, however this should not automatically exclude or exempt them from regulatory requirements.

The function of professional indemnity insurance is to preserve client confidence. Limiting the application of compulsory cover would exclude a wealth of businesses which risks damaging consumer confidence. The cover is there for peace of mind which this proposal would take away.

6. Do you agree with reducing the run-off cover to 3 years?

Based on the SRA's own statistics, 60% of all claims are made within the first 3 years of the event. As such, the proposal reducing the requirement for run-off cover for 3 years will not provide cover for 40% of claims that arise more than 3 years after the event, which is still a significant proportion.

The current period of 6 years run-off cover reflects the statutory limitation period for bringing a claim in contract. The JLD notes that this proposal will not reduce the liability of the solicitor or the firm, therefore leaving solicitors exposed personally if additional insurance is not purchased.

7. Do you agree with the proposed changes to Code of Conduct Outcome?

This proposal will require firms to assess their own PII cover needs, without any prescribed guidance from the SRA. The SRA's response to a firm found to have carried out an "insufficient" assessment would be a reactive response and the SRA will have the benefit of hindsight when reviewing a firm's assessment.

8. Do you have any views about our assessment of the impact of these changes?

We answer this at Question 10, below.

9. Are there any impacts, available data or evidence that we should consider in finalising our impact assessment?

We answer this at Question 10, below.

10. Are there any other aspects of the minimum terms and conditions for PII that you think we should review?

Given the nature of the questions provided at Q8-10, the JLD have opted to respond to them collectively. In short, the JLD is concerned regarding the timing of the consultation, the short period permitted for responses to be submitted, and the proposed timetable for implementation of the proposals. The consultation has provided insufficient time or evidence to successfully consider the future "impact of these changes".

The consultation clearly seeks further information, analysis and data from practitioners in order to assess the SRA's proposals, pursuant to Question 9. However, the short time period provided for responses to this consultation may restrict the amount of interested and representative bodies that are able to respond.

Further, the JLD notes that final approval for the proposals will be sought by early August 2014, which could allow only six weeks before the new terms come into effect on 1 October 2014. This is of course a tight timescale to implement potentially significant changes.

The JLD thinks it is important that sufficient time is permitted to ensure that a full consultation is carried out, that the consequences of the proposals are fully explored and that any final proposals include sufficient safeguards to ensure protection for solicitors and clients.