

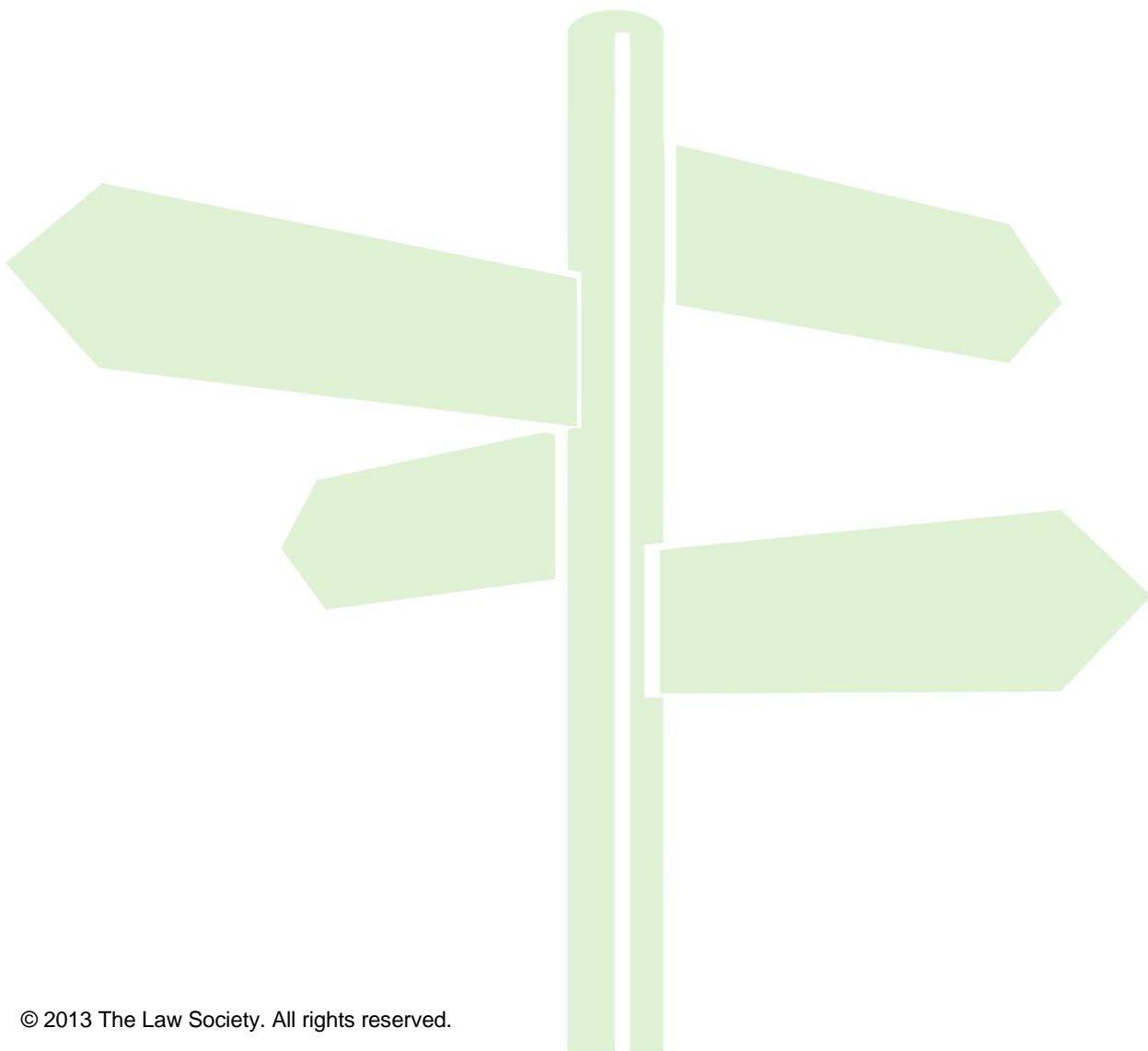


The Law Society

Junior Lawyers Division - consultation response

Removing barriers to switching regulators

July 2016



Junior Lawyers Division response to SRA consultation

Removing barriers to switching regulators

In April 2016 the Solicitors Regulation Authority (SRA) published a consultation paper proposing to amend its Professional Indemnity Insurance (PII) requirements to remove a significant barrier to firms who wish to leave SRA regulation to be regulated by another Approved Regulator. The Junior Lawyers Division response is set out below.

About the Junior Lawyers Division

The Junior Lawyers Division of the Law Society of England and Wales (the "JLD") represents LPC students, LPC graduates, trainee solicitors, and solicitors up to five years qualified. With a membership of approximately 70,000, it is important that we represent our members in all matters likely to affect them either currently and in the future.

Question 1: Do you agree that we should remove the obligation for run-off cover when a firm switches from the SRA to another Approved Regulator?

In principle, it seems logical to remove the run-off cover obligation when a firm switches from the SRA to another Approved Regulator, so long as adequate safeguards are put in place to ensure consumers remain protected with proper means of recourse.

Consumer protection is paramount. The consultation paper identifies some very real and concerning risks to consumer protection in paragraphs 11 and 13. With different Approved Regulators having varying requirements in regards to levels of PII cover, there is a risk of a reduction in consumer protection. It must, therefore, be the case that the proposed safeguard in paragraph 12, to ensure that any waiver of the run-off cover requirement is conditional upon comparable PII cover being taken out with the new Approved Regulator, is strictly applied. Levels of cover must be comparable and the new policy should be on a claims made basis, applicable to claims prior to the switch of regulator. Consumer protection cannot be sacrificed in order for firms to be able to switch regulator more easily. To do so would damage consumer confidence and the solicitor brand. The JLD asks the SRA to set out guidance as to the circumstances in which it may deem a waiver "appropriate" and the conditions to such waiver which it will apply. This would enable a firm wishing to switch regulator to adequately prepare itself in advance and ensure that there is no "gap" in appropriate cover which could be to the detriment of consumers.

The JLD considers the argument in paragraph 14, that there is a risk that the level of consumer protection can change even where a firm does not switch regulator, to be a weak one. Levels of protection may vary, however, they can never fall below the requirements of the MTC. This ensures an appropriate level of cover and, in turn, ensures consumer protection is maintained.

Paragraph 16 states that any decision to waive is considered on a case by case basis and, in doing so, the SRA can take evidence of the firm's future insurance arrangements into account. This seems a sensible approach. Comparable insurance

arrangements should be a strict requirement and any waiver should be conditional upon this, in order to ensure consumer protection is maintained.

It is vital that a firm will not be able to manipulate the position in order to deliberately avoid the run-off cover requirement in circumstances when it should apply and the JLD suggests that the SRA take steps to ensure this.

Questions 2: If you have answered yes to Question 1, do you agree with our method for delivering this proposal?

Subject to the comments in our response to Question 1, the suggested method for delivering the proposal seems appropriate.

Question 3: Do you have any further comments on our proposal or on the changes to the PIA or terms of the core waiver proposed?

As suggested in our response to Question 1, making any waiver conditional upon comparable cover being continued will safeguard consumers. The suggested amendments to the wording of the PIA and proposed waiver will need to be revisited if this stance is adopted.

Question 4: Do you have any views about our assessment of the impact of these changes and, are there any impacts, available data or evidence that we should consider in developing our impact assessment?

The potential negative impact on consumers, identified in paragraph 27, outweighs the positive impact on firms, outlined in paragraph 26. The risk to consumers can be lessened by the implementation of an equivalence test and any waiver being conditional and potentially revocable.

**Junior Lawyers Division
July 2016**