

**Proportionate regulation:  
changes to minimum compulsory professional indemnity cover  
A response by the BSA**

**About the Building Societies Association**

1. The Building Societies Association (BSA) represents mutual lenders and deposit takers in the UK including all 45 UK building societies. Mutual lenders and deposit takers have total assets of over £330 billion and, together with their subsidiaries, hold residential mortgages of over £230 billion, 18% of the total outstanding in the UK. They hold over £230 billion of retail deposits, accounting for 19% of all such deposits in the UK. Mutual deposit takers account for over 30% of cash ISA balances. They employ approximately 39,000 full and part-time staff and operate through approximately 1,600 branches.

**Key points**

2. We welcome this opportunity to respond to the suite of SRA consultation papers into the future regulation of solicitors. This response should be read in conjunction with responses to the other SRA consultations issued in May of 2014.

3. We strongly disagree with the proposed changes to minimum compulsory professional indemnity insurance (PII) cover as each of the changes would significantly weaken the regulatory protection offered to users of legal services regulated by the SRA. Ensuring that financial compensation is available to clients is a key pillar of regulation, and this should be in place irrespective of the type of client. Lenders, as repeat users of legal services have significant exposure to malpractice.

4. The 'claims made' nature of PII means that it is the policy in place when the claim comes in which would pay out. This means that although time-consuming, lenders could check what PII cover is in place at a point in time, but could not be assured that the same level of cover would be in place if a claim was to be made. Ensuring an appropriate minimum level of insurance has always been, and we believe, should continue to be, a function for the regulator.

**Consultation questions****Do you agree with reducing the compulsory cover to £500,000?**

5. We strongly disagree with a reduction of compulsory cover to £500,000. A significant concern over making changes to requirements for professional indemnity insurance is that the 'claims made' nature means that it is the policy in place when the claim comes in which pays out, rather than the policy that was in place when the work was undertaken. This means that a client could have instructed a solicitor on the basis of a higher PII limit under the current rules, but when a claim is made, discovers that there is a lower limit of liability.

6. We believe that the current PII limits have served the profession and their clients well, and see no reasonable argument for a blanket reduction for all firms. We acknowledge however, that different types of work carry different levels of risk, and believe that it could be appropriate to allow a waiver of the higher PII limits for firms undertaking only low risk work. Any firms undertaking conveyancing work should continue to be required to have £2m cover (or £3m for incorporated firms).

**Do you agree with introducing a cap on insurers' liability? Do you think any such cap should be £1,500,000, £500,000 or another figure?**

7. We disagree with the introduction of a cap on insurers' liability, in particular for firms undertaking conveyancing work. Due to the cyclical nature of the property market, a number of insurance claims on conveyancing work can be received within the same year, and under

the current 'any one claim' cover each of these would be paid out. Introducing a cap on liability or a move to aggregated limits could create a lottery whereby claims received early in the insurance year would be paid out, but for those later in the year the limit on claims could already have been met. Firms undertaking conveyancing work can receive insurance claims for large sums, and it would take relatively few of these before the capped limit is met.

8. We note that the consultation states that "We will expect and if necessary require firms that deal with cases or transactions carrying higher risk ... to obtain levels of cover appropriate to provide reasonable protection for consumers". The BSA would welcome information on how this would be required and monitored should it be put in place.

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

9. We do not agree that there should be a cap on insurers' liability and do not believe that reducing the opportunities for claims to be added together would be sufficient to mitigate the increased risk to consumers that this would cause.

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

10. The SRA consulted on the subject of limiting compulsory cover requirements in 2011 and subsequently decided against implementing the proposals. It is therefore extremely disappointing to be consulting again on a proposal which has already been ruled out.

11. Whilst it is correct that lenders can undertake additional checks on PII cover arrangements, this is time consuming and expensive. Although difficult, PII cover can be checked at a point in time, but it is even more difficult for a lender to ensure whether cover remains in place meaning a lender would potentially need to make checks every time a solicitor is instructed. What is even more difficult, is ensuring that cover remains in place for work undertaken, including run-off cover when a firm closes, as if the solicitor declines to put cover in place for previous work the lender would have no mechanism to require them to do so.

12. Many smaller building societies would not have the dedicated legal resources available to undertake these sorts of checks and would likely be driven to use Licensed Conveyancers rather than solicitors, who they could be assured would hold adequate and appropriate insurance required by the regulator, rather than having to assess this themselves. Those who do have the resources to undertake checks on insurance arrangements will naturally need to limit the number of firms on which they are checking, leading to vastly reduced conveyancing panels.

13. The timescale between the consultation closing and the changes coming into force means that it will be virtually impossible for lenders to check the PII details of the solicitors on their panels in time for October 2014.

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

14. We believe that a three year requirement for run-off cover would be inadequate in a large number of cases. In fact, the statistics in the consultation document speak for themselves, if 60% of claims come in during the first three years, this proposal would leave 40% of claims uninsured. Conveyancing issues in particular are likely to take longer to be discovered and become claims, as it is often not until the property is resold that a problem is uncovered. The average property transacts once every seven years, so it would be more logical to increase the period of run-off rather than to reduce it.

15. We note that where a firm has not put in place sufficient run-off arrangements the SRA "may require the firm by regulatory action to take appropriate steps such as to obtain further cover or otherwise reduce the risk to clients". We would welcome details of how this will be monitored and enforced, particularly given that at this point, the firm in question would likely have ceased trading.

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

16. There are a number of possible impacts of the changes which are not included within the assessment. The changes in requirements for PII will lead to a shift in the legal market

with a number of consequences, but essentially, without the regulatory protection provided by the SRA, lenders will be forced to take steps to protect themselves and their borrowers.

17. Firstly, it is likely to mean that only large firms will be allowed access to lenders' panels due to the economies of scale for verifying firms' insurance details, decreasing competition and diversity of the profession. In particular, this could have a detrimental effect on smaller rural practices which undertake only a small amount of local conveyancing work and cannot afford the premiums for additional insurance. Consumers could be prevented from using their own local solicitor for house purchases.

18. Secondly, the number of firms approved to be on lenders' panels is likely to be smaller, again due to the cost of verifying insurance details meaning that it is more difficult for firms to enter into this type of work. It is impossible to predict exactly how lender panels might be affected, but it is hard to envisage lender panels exceeding ten firms and could be considerably less if the change is introduced as hastily as is proposed.

19. Thirdly, lenders are likely to be less willing to use the same solicitor as purchasers, leading to two separate firms being involved with the purchase. This will lead to increased costs to the consumer and increased property transaction times.

20. Finally, lenders will look to other regulators who can verify that insurance is in place, for example the Council for Licensed Conveyancers. It may be that with the creation of Alternative Business Structures, that lenders become less willing to use external firms at all and will choose to bring solicitors in house.

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

21. PII claims are made when there is malpractice or negligence on behalf of a solicitor. If PII costs are too high due to the amount of claims made, this suggests a failure in regulation. We would therefore recommend that the SRA review practice areas where there appear to be high levels of claims made and examine the regulatory and supervisory structures surrounding these areas of work.

**Other comments**

22. We note that the consultation into the changes to regulation by the SRA has a short consultation period of six weeks, with an intention to implement in October 2014. We do not believe that these periods are sufficiently long enough to consult adequately and to prepare for any changes made to the regulatory regime.

**Further information and contact**

23. This response has been prepared in consultation with BSA members. If you have any queries regarding the document, please contact [colette.best@bsa.org.uk](mailto:colette.best@bsa.org.uk).