

<b>To:</b>	Legal Services Board	
<b>Date of Meeting:</b>	15 October 2013	<b>Item:</b> Paper (13) 69

<b>Title:</b>	Financial protection arrangements - response to Consumer Panel advice	
<b>Workstream(s):</b>	Strategy and research	
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<b>Status:</b>	Unclassified	

**Summary:**

On 1 October 2012, the Legal Services Board (the LSB) asked the Consumer Panel (the Panel) for advice on the extent to which regulators' financial protection arrangements, including compensation, are adequate and the appropriate level of risk that consumers should be expected to bear. The Panel published its advice in June 2013 (see **Annex A**) together with a discussion document of the wider issue of how risk and responsibility should be divided between consumers and providers.<sup>1</sup> The advice was presented to the Board's 10 July meeting by Paul Munden.

The Legal Services Act 2007<sup>2</sup> (the LSA) requires the LSB to consider all advice from the Panel. The proposed response at **Annex B** sets out our consideration of the Panel's advice.

For easy reference, **Annex C** reproduces the Panel's summary of the current regulatory requirements with the addition of IPReg and the CLSB.

**Recommendation(s):**

The Board is invited to:

1. Formally thank the Panel for its advice
2. Discuss the proposed response at Annex B
3. Delegate authority to the CEO and Chairman to finalise publication of the response

<sup>1</sup>

<http://www.legalservicesconsumerpanel.org.uk/ourwork/Financial%20Protection/2013%2006%2010%20riskandresponsibility.pdf>

<sup>2</sup> section 11(2)

<b>Risks and mitigations</b>	
<b>Financial:</b>	None
<b>Legal:</b>	None
<b>Reputational:</b>	<p>The issue of financial protection arrangements is a sensitive one and areas of disagreement between the LSB and the Panel may be exploited by external parties. The Law Society has already been sharply critical of the report publicly.</p> <p>If our position differs materially from the SRA's discussion document on the review of its compensation arrangements (due for publication later this year) it may lead to protracted discussions about the issue</p>
<b>Resource:</b>	We do not currently have the resources to take forward any specific proposals as new workstreams. The "next steps" section under each recommendation therefore sets out our proposed approach in the medium-term. This also takes into account the criticism that we have had, particularly from the SRA, of imposing too many additional burdens on regulators. We will continue to liaise closely with the SRA on its review of compensation arrangements.

Consultation	Yes	No	Who / why?
<b>Board Members:</b>		X	
<b>Consumer Panel:</b>	X		Discussions with Elisabeth Davies
<b>Others:</b>			

<b>Freedom of Information Act 2000 (Fol)</b>		
Para ref	Fol exemption and summary	Expires
Annex A	Section 21 – reasonably accessible by other means	N/A
Annex B	Section 22 – intended for future publication	N/A

**Annex A – the Panel’s advice**

<http://www.legalservicesconsumerpanel.org.uk/ourwork/Financial%20Protection/FPA%202013%2006%2010%20final.pdf>

**Annex B – draft LSB response**

[REDACTED]

## Annex C – overview of arrangements

	Professional indemnity insurance	and maximums	Run-off cover	Compensation fund	Hold client money	Use of escrow
<b>SRA</b>	Qualifying insurers, open market, minimum terms and conditions. Cover cannot be excluded because premiums have not been paid.	£2 million maximum for sole practitioners and £3 million for limited liability partnerships and limited companies, on a per claim basis.	6 years – if run-off premiums are not paid the last firm to provide insurance remains on risk for run-off cover.	Discretionary, provides help where a consumer has suffered loss because of dishonesty or failure to account for client money.	Yes	Currently investigating
<b>BSB</b>	All compulsory insurance provided by Bar Mutual Indemnity Fund (BMIF). Higher limits of cover available through BMIF or the open market.	Minimum compulsory level of cover is £500,000 and maximum is £2.5 million.	Cover continues while Bar Mutual continues to provide insurance to the practising Bar as a whole.	No	No	Escrow account (BARCO) has received FSA authorisation and is being piloted.
<b>CLC</b>	Master Policy or through an open market insurer where the CLC is satisfied the cover is at least	£2 million per one claim plus costs and expenses	6 years. Run-off cover is only provided if premiums paid – otherwise claims fall on the	Discretionary, covers fraud, dishonesty, negligence and failure to account.	Yes	No

	equivalent.		compensation fund.			
<b>Notaries</b>	Open market insurance	£1 million	Run-off cover is not required. Some notaries continue their insurance policy after they have ceased to practice in order to provide run-off cover.	No compensation fund – hold fidelity insurance. This provides £1m of cover (across the whole scheme not per notary/claim).  Where solicitor-notaries carry out notarial activities without separating the notarial business they may be covered by the SRA compensation fund.	Yes – but limited numbers of notaries hold client money	No
<b>IPReg</b>	Mutual (PAMIA) or open market	Commensurate with the risks arising from the extent and size of their practice  Any limitation of liability for negligence must be clearly drawn	No specific requirement	Fidelity insurance requirement from 2014	Yes	No

		to the attention of a client and be understood and accepted by them				
<b>CLSB</b>	Open market	£100,000 + loss of documents cover	No specific requirement	No	n/k	No
<b>IPS (proposed scheme)</b>	Open market using qualifying insurers and minimum terms and conditions.	£2 million per claim.  Currently chartered legal executives that work in solicitors firms are covered by the SRA rules.	6 years	Yes, discretionary, will cover sole practitioners and dishonesty. The fund will also be insured.	Yes	Currently being investigated
<b>ICAEW (proposed scheme)</b>	Participating insurers who agreed to meet an approved minimum wording.	£1.5 million for any one claim	2 years	Yes, discretionary and excludes organisations or registered charities with an annual turnover of over £1 million.	Yes	No