

# **Protecting the users of legal services: balancing cost and access to legal services**

## **Initial Impact Assessment**

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**March 2018**

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# Introduction

1. Our position paper "[Looking to the Future](#)" sets out the background for our new vision on how we want to regulate. We are taking steps to achieve this through an ongoing programme of regulatory reform. We have already made several key decisions including freeing up solicitors to provide some legal services outside of regulated firms. We have presented our new Principles, Code of Conduct for firms and individual solicitors and Accounts Rules. We have also consulted on:
  - phase 2 of our Looking to the Future programme which sought views on the key policy proposals emerging from the second part of our Handbook review
  - proposals to make information more accessible to users of legal services that we believe will equip them with the information they need to engage effectively in the legal services market.
2. We are now also reviewing our financial protection arrangements. These set the amount of money that people can receive when they have received poor quality legal services because a solicitor or firm has been negligent, dishonest, or not looked after their money.
3. In our consultation we set out the proposed changes we think are necessary to our Professional Indemnity Insurance (PII) arrangements, so they provide proportionate and targeted protections. We think these changes will allow firms more flexible options to reduce the cost of insurance and in a competitive market, support access to more affordable legal services.
4. We also set out proposed changes to eligibility and how we will assess claims for payments from the Compensation Fund. This is so that the Fund's purpose is clear and continues as a viable hardship fund of last resort for those people that have suffered loss because a solicitor has been dishonest or has failed to look after their money properly.
5. People do not currently focus on these protections when choosing a legal services provider. They often use solicitors at critical life moments and when they are at their

most vulnerable. They are looking for a solution to a problem rather than focusing on what might go wrong and, if it did, how they access arrangements that might provide redress. In our consultation and other separate consultation proposals, we explain the work we are doing to make people more aware of the risks involved in purchasing legal services and the protections available to them. This includes the information we think should be available to help them make more informed choices about their legal services provider.

## Proposed changes

6. The detail of each proposal is explained in our consultation document.
7. Our proposals to change our Minimum Terms and Conditions (MTCs) for PII are to:
  - reduce the minimum level of cover required for each claim to £500,000, apart from claims for conveyancing services (£1m)
  - introduce a separate component in the insurance arrangements for conveyancing services (firms that need cover for conveyancing services would be required to include this component and if they did not then conveyancing claims would not be covered by the insurance policy)
  - exclude compulsory cover for financial institutions, along with corporate and other large business clients (firms will still need to buy appropriate and adequate cover for these clients)
  - allow firms and insurers more flexibility in their arrangements for defence costs (to maintain consumer protection, defence costs would continue to be excluded from the calculation when an indemnity limit has been reached)
  - introduce a total cap for the level of cover over the six-year run-off period of £3m for firms that need cover for conveyancing services and a cap of £1.5m for other firms.

8. Our proposals for changes to our Compensation Fund are to:
- exclude claims from individuals with net household financial assets above a threshold of £250,000
  - exclude large charities and trusts from eligibility and simplify the tests we use to assess whether a payment should be made so that all eligible businesses, charities and trusts must show hardship
  - exclude applications for payment of unpaid fees from barristers and other experts
  - limit payments for eligible applicants to the direct financial losses caused by the actions of the solicitor
  - tighten up the circumstances when we make a payment where a firm or solicitor has failed to get the insurance we require and extend our eligibility criteria to people that make these types of applications
  - reduce the maximum payment from £2m to £500,000 and provide guidance setting out the circumstances when a higher payment might be considered
  - apply a clearer and more robust approach to how we take account the applicant's behaviour when assessing claims
  - require a duty of full and frank disclosure by an applicant, and to equip us with direct investigatory powers that allow us to challenge evidence provided by an applicant.
9. Our review has also highlighted areas where we are making wider changes to the way we regulate that could potentially reduce the cost of financial protection and increase access for the public to good quality legal services. We also explain these in Section Three of the consultation paper.

# Assessing the impact

10. The Legal Services Act 2007 provides a common framework and set of objectives for all legal services regulators, including the Legal Services Board, our oversight regulator. We must always have these in mind when we set the rules used to govern the conduct of the people and firms we regulate. These objectives are to:
  - protect and promote the public interest
  - support the constitutional principle of the rule of law
  - improve access to justice
  - protect and promote the interests of consumers
  - promote competition in the provision of services
  - encourage an independent, strong, diverse and effective legal profession
  - increase public understanding of the citizens' legal rights and duties.
  
11. We set out in this initial impact assessment the key problems that our proposals are designed to address. We have considered the likely impact on a range of stakeholders, including those protected by the Equality Act 2010. We set out the potential benefits and, where we have identified potential risks and challenges, we have set out how these might be managed. Our consultation paper and this initial impact assessment should be read together.
  
12. We have gathered data and evidence from a wide range of stakeholders to inform our assessment. We have already published our [PII market trends and claims data analysis](#). We also commissioned Economic Policy and Competition (EPC) for external advice on the [likely impact of our options to change the MTCs for indemnity insurance](#). We also commissioned EPC to undertake research on [consumer understanding of risks in legal services](#).
  
13. Our overall assessment is that change to our financial protection arrangements will be positive for the public and for firms that we regulate. In summary, our initial impact assessment findings are:
  - The average cost of minimum compulsory insurance could reduce by a range of 9 to 17 percent, with potentially larger reductions in the cost of run-off cover.

This would benefit small firms as relative to income, they pay proportionately more (almost double) for their insurance.

- Firms that have never or do not provide conveyancing services and specialise in lower risk work may achieve reductions in premiums towards the top of the 9 to 17 percent range or potentially above. This is because the flexibility in the minimum requirements may allow them to buy insurance cover more accurately priced to reflect the lower risks of the work they do. Small firms and firms with a black, Asian and minority ethnic (BAME) diversity profile are more likely to gain from this.
- Solicitors nearing retirement or wanting to stop practising should benefit from the proposed changes to run-off cover and are more likely to close their firms properly. This in turn will reduce the risks to clients and others when a solicitor delays retirement or closes their firm in a disorderly way. This sometimes lead to us intervening (with associated costs).
- Small firms may be affected if the additional cost to lenders of checking a firm's PII cover is disproportionate. We think this can be mitigated by better information exchange between firms, lenders and us.
- We expect these changes to lower costs for existing firms and encourage new firms to compete in the market, leading to lower prices and better access to services but only if there is a competitive and diverse market.
- Firms specialising in lower risk work could see the greatest reduction in the cost of compulsory insurance. This includes firms specialising in areas of law such as social and mental welfare law, immigration, consumer debt, family mediation and arbitration. These are areas of law where there are vulnerable people that need access to legal services. This is also true for the areas of law which consumer tracker surveys tell us are more relevant to the BAME community, such as advice on immigration, benefits and user problems.
- A very small number of people with particularly high value claims could lose out if firms do not make the right choices on appropriate cover or lack internal resources to pay these claims.

- The changes to eligibility for application to the Compensation Fund will affect wealthy individuals or wealthy charities and trusts that should have access to other forms of redress or can bear the loss.
  - There will be an increase in the information including financial information that applicants may need to provide to receive a payment from the Compensation Fund. We will manage this by simplifying the application process and provide clear guidance.
  - We will continue our work that aims to make sure that we provide useful information for people about the financial protections that are in place.
14. We are keen to hear your views on our initial assessment of the likely impacts and to highlight any areas where impacts or unintended consequences have not been identified. We would also welcome any available data or evidence that would help us in evaluating the impact of any of the proposals that we implement.

# The problems our proposals are designed to address

15. In this section, we outline the difficulties we see with our current arrangements and how our proposals will help address them.

Area	Problem	How our proposals address these
<b>Proportionate regulation</b>	The current arrangements provide a disproportionate level of protection relative to our regulatory objectives.	The proposals will better reflect the modern legal market and remove the current prescriptive single approach. Protection, through both PII and Compensation Fund, will be targeted at people that need and deserve the most protection.
<b>Market Inflexibility</b>	<p>Our PII arrangements place restrictions/barriers on firms to respond to changing market conditions, inhibiting innovation and competition in the provision of legal services.</p> <p>As well as creating barriers to entry they prevent firms, particularly small firms, from closing their firms properly</p>	<p>Our proposals will provide greater flexibility in firms' insurance cover. This should lead to both lower costs for existing firms and encourage new entrants to compete in the market. As long as the market is competitive, this should lead to lower prices and better access to services.</p> <p>Larger firms and insurers will be more able to discuss terms that reflect risks not covered by our compulsory requirements.</p> <p>Firm closure costs should reduce, allowing solicitors to decide to close sooner. This could reduce the</p>

Area	Problem	How our proposals address these
		number of firm interventions that we carry out.
<b>Information for users of legal services</b>	Users of legal services currently have limited awareness of what can go wrong in legal services and the protections available to them. Increasing confidence by providing better information about redress should grow the legal services market	Alongside engaging with members of the public about these proposals, we will continue research how best to provide information about the financial risks involved in their choice of legal services provider and the protection available to them.

16. In its recent review of the legal services market, the [Competition and Markets Authority \(CMA\)](#) concluded that regulatory costs may hinder entry and exit of small firms to the legal services market. The CMA specifically recommended that regulators continue their work to lower the costs of PII. It is estimated that 4.8 percent of total turnover in the legal services market goes on purchasing professional indemnity insurance. Sole practitioners and small firms pay the highest proportion of their turnover in premium costs. The median cost of securing run-off cover in 2016 was 300 percent of a firm's annual premium.
17. Research from the [Legal Services Board](#) consistently highlights that the cost of insurance is one of the highest cost of regulation. Our MTCs provide a level of cover that exceeds other insurance arrangements an increasingly that of professional indemnity insurance in other markets<sup>1</sup>. While providing extensive financial protection, this affects both the competitiveness of existing firms and acts as a potential barrier to entry into the market.
18. The legal sector's profile is one of increasingly ageing solicitors in small firms<sup>2</sup>. Our current arrangements sometimes create a barrier to orderly closure. This presents

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<sup>1</sup> For example, our run-off arrangements look increasingly onerous compared to other professions and within the legal profession. Several other schemes, e.g. accountants, CLC, financial advisors, include aggregation terms that limit the amount firms can claim in total in a single year or over the run-off period. This will allow premiums to be set without the need for insurers to incur additional costs of re-insurance for catastrophic risk.

<sup>2</sup> The age profile of sole practitioners is older than the general regulated population. For example, 51 percent of sole practitioners are over 55 compared to 21 percent of the overall population

risks to service users that they are not receiving good legal advice. When a firm closes in a disorderly way we are more likely to intervene. We estimate in 2017/18, our intervention costs will be £6.9 million. This compares to around £11 million that is projected to be paid to people that apply to the Compensation Fund.

19. Our current arrangements mean that there is little opportunity for insurers to offer differentiated terms or insurance limits that align more closely to the risks posed by individual firms. This results in users of legal services who have a higher risk of making a negligence claims (e.g. commercial advice and conveyancing) receiving implicit cross-subsidies from users of low-risk services (e.g. immigration and welfare advice).
20. The risks that give rise to potential applications to the Compensation Fund are changing. An area of greater risk will continue be the areas of legal practice where firms have access to a client's money. We are seeing firms becoming involved in the re-emergence of large-scale dubious, or even fraudulent, investment schemes that are difficult for people to identify as scams<sup>3</sup>. Insurance will cover some of these losses, but not where all managers/partners in the firm are said to have been dishonest or have condoned the dishonesty. We therefore need to review our rules to make sure that they remain proportionate and that the Compensation Fund can be a hardship fund of last resort for those people that need it the most.
21. We recognise this is an extremely challenging area of reform. Most people use solicitors at critical life moments and when they are at their most vulnerable. Research suggests that when searching for someone to help, people do not focus on what might go wrong or how they are protected<sup>4</sup>. Access to useful information on financial protection may help them make more informed choices as well as increasing public confidence in regulated legal services providers.

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<sup>3</sup> This is not a new risk and we have issued warnings over several years. In the late 1990s to early 2000s, some US\$500 million passed through law firms in relation to highly dubious investment schemes. These claims have led to large payments in the past

<sup>4</sup> Legal Services Consumer Panel Tracker Survey 2017

# Overview of impacts

22. We provide an outline our initial assessment of the impacts we have identified in the tables below. We recognise that there are risks with our proposals and explain how we think these might be managed. In the remainder of this initial impact assessment we set out in more detail the impact of the changes and where we have identified challenges how they might be managed.

## Professional Indemnity Insurance

Proposal	Firms	Users of legal services	Market	Mitigations (where negative impact identified)
<p><b>To exclude compulsory cover for financial institutions and corporate and other large business clients</b></p>	<p>↑ Removing these clients from the MTCs will allow firms and insurers the flexibility to determine the appropriate insurance arrangements for them.</p> <p>↑ Change may make the insurance arrangements more straightforward by removing the various tiers of insurance provision that currently apply.</p> <p>↓ This could lead to a more complex insurance purchasing process, as firms will need to assess overall insurance requirements. This is based on their existing and projected client base as well as their risk profile. They may need to buy additional insurance policies compared to current arrangements. This could lead to a longer, more costly purchasing process.</p>	<p>↑ The role of a regulator is to protect those who are unable to protect themselves, rather than for those able to do so.</p> <p>↓ Some small businesses may move across the exclusion boundary over time when receiving legal services or between the point at which work is conducted and the claim is made.</p>	<p>↑ There is scope for insurers to develop new terms and conditions associated with PII coverage for these clients. This would permit greater flexibility in both coverage and pricing, reflecting firms' client profile and their work specialism.</p> <p>↓ Lenders may face increased costs in checking whether solicitors/firms have adequate PII cover. They may respond to this by limiting the number of firms they include on their panels. Small firms may be particularly affected.</p>	<ul style="list-style-type: none"> <li>• We will work with insurers with the aim to define exclusions in a way that should allow firms to obtain the cover they need for all their clients. This may mean purchasing top up cover and/or lender cover where they are providing conveyancing services.</li> <li>• Insurers may continue to offer the option for firms to include all clients in an insurance policy that is written to comply with the standards terms in our MTCs.</li> <li>• Lenders concerns could be mitigated by a better exchange of information between firms, lenders and us about a firm's insurance cover.</li> </ul>

Proposal	Firms	Users of legal services	Market	Mitigations (where negative impact identified)
<p><b>Reduce the minimum level of cover required for each claim to £1m for conveyancing services and to £500,000 for other claims</b></p>	<p>↑ A driver of lower premiums, particularly for small firms that conduct low risk work where it is appropriate for firms to hold lower level of insurance.</p> <p>↑ Savings will be made because of the reduced scope of cover and lower reserving or reinsurance costs for insurers associated with high value claims.</p>	<p>↑ Potential improved access to legal services if market impacts lead to more affordable legal services. This may benefit individuals and small businesses access low risk services.</p> <p>↓ If firms under insure this will place some people at risk should the firm lack sufficient internal resources to cover a large claim.</p>	<p>↑ Reduced barriers to entry, leading particularly to small firms increasing competition in legal services.</p>	<ul style="list-style-type: none"> <li>• We expect that this will only affect a small number of people. There were 442 claims above the proposed limits over the entire ten-year period of the data and firms will still need to have appropriate insurance for the work they undertake.</li> </ul>
<p><b>Introduce a separate component for conveyancing services. Firms that provide conveyancing services would be required to include cover for their conveyancing work</b></p>	<p>↑ Increased choice for all firms.</p> <p>↑ This is likely to lower insurance costs for those firms that have not and do not provide conveyancing services.</p>	<p>↓ People would be adversely affected if a firm did not have conveyancing cover and did this work.</p> <p>↓ There is a risk of increased coverage disputes for claims where a firm does not have conveyancing cover.</p>	<p>↓ Lenders may face increased costs in checking whether solicitors/firms have adequate PII cover. They may respond to this by limiting the number of firms they include on their panels. Small firms could be particularly affected.</p>	<ul style="list-style-type: none"> <li>• We will work with stakeholders to explore the precise scope of work that would need to be included in conveyancing services. The final definition would need to capture all the work that generates conveyancing claims.</li> <li>• Lenders concerns could be mitigated by better information exchange about insurance cover between firms, lenders and us.</li> </ul>

Proposal	Firms	Users of legal services	Market	Mitigations (where negative impact identified)
<p><b>To allow firms and insurers more flexibility in their arrangements for defence costs</b></p>	<p>↑ Agreeing a cap on defence costs would be expected to reduce the cost of insurance.</p>	<p>↑ Firms and their insurers will have the flexibility to arrange policies that best meet the needs of the firms, without affecting the protection afforded to users of legal services. This is provided that the prohibition on deducting these costs from awards is maintained.</p>	<p>↓ The presence of defence costs may alter the incentives to insurers to categorise certain costs as defence costs, since insurers would not pay the excess on these. This could potentially lead to unintended consequences.</p>	<ul style="list-style-type: none"> <li>• Our changes should create better incentives on firms to control defence costs.</li> </ul>
<p><b>Introduce an aggregation cap for the level of claims that can be paid under the six-year run-off policy</b></p>	<p>↑ Introducing a cap would be expected to reduce the cost of run-off cover, especially for firms that have never provided any conveyancing services.</p>	<p>↓ People could receive differential outcomes, depending on the timing of a claim that they may not know anything about</p>	<p>↑ We envisage fewer firm interventions arising from disorderly closures. Making run-off cover more affordable could have a positive impact on the orderly exit of firms from the market</p>	<ul style="list-style-type: none"> <li>• Phasing the level of cover over the six-year run-off period would reduce, but not eliminate, the risk of differential outcomes.</li> <li>• Insurers may offer policies which provide for additional cover once a limit has been reached.</li> <li>• Wider developments to create an open insurance market in run-off cover could lead to a competitive alternative to automatic cover. This would be provided by the insurer 'on cover' when the firm closes without a successor practice.</li> </ul>

## Compensation Fund

Proposal	Firms	Users of legal services	Market	Mitigations (where negative impact identified)
<p><b>Exclude individuals with net household financial assets above a prescribed threshold from eligibility to claim on the Fund</b></p>	<p>↑ Firms and individuals can expect contributions they make to the Compensation Fund to remain proportionate.</p>	<p>↑ By ensuring targeted protection, this proposal reaffirms the primary purpose is of a fund of last resort.</p> <p>↓ This introduces new requirements on applicants when making a claim.</p>		<ul style="list-style-type: none"> <li>• We will manage this by simplifying the application process and providing clear guidance.</li> </ul>
<p><b>Exclude charities and trusts (with income/assets above £2m) and simplify the tests we use to assess whether a payment should be made so that all eligible businesses, charities and trusts must show hardship</b></p>	<p>↑ Firms and individuals can expect contributions they make to the Compensation Fund to remain proportionate.</p>	<p>↑ By targeting financial protection, this will make sure that grants will not be made where the applicant cannot demonstrate hardship.</p>	<p>↑ Other markets that operate a compensation fund or similar schemes consider whether the applicant has suffered hardship or will do so if no grant is made. Our Fund will reflect this good/standard practice.</p>	<ul style="list-style-type: none"> <li>• For the Fund to remain viable it is important that steps are taken so that only those that need protection can claim.</li> </ul>

Proposal	Firms	Users of legal services	Market	Mitigations (where negative impact identified)
<p><b>Limit payments to where an eligible applicant has incurred a direct financial loss because of the actions of the solicitor and exclude claims from certain types of people</b></p>		<p>↓ By redefining the scope and eligibility of the Fund, certain types of persons e.g. barristers, that had their fees paid to a solicitor, will be excluded.</p> <p>↓ Some payments, like any costs of applying to the Fund, will now be excluded.</p>		<ul style="list-style-type: none"> <li>• Third parties (for example, barristers and experts) will have a claim for breach of contract if fees are not paid. These people enter a business relationship with solicitors and are in a better position to protect themselves against the risk.</li> <li>• We will simplify the application process and the guidance we provide on how to make a claim. We will engage with organisations like Citizens Advice to discuss the free help they could offer to complete an application.</li> </ul>
<p><b>Reduce the maximum payment for a grant from £2m to £500,000 and provide clear criteria when a higher payment might be considered</b></p>		<p>↓ Claims that have previously been paid may now fall outside of scope.</p>		<ul style="list-style-type: none"> <li>• Claims above the limit are rare and we will have criteria for where payments may exceed the limit in exceptional circumstances that are in the public interest.</li> <li>• We will also review how we treat 'single claims' to determine whether the maximum payment has been reached.</li> </ul>

Proposal	Firms	Users of legal services	Market	Mitigations (where negative impact identified)
<p><b>Tighten the circumstances for making a payment where a firm or solicitor has failed to have PII cover in place and extending the eligibility criteria to these claims</b></p>		<p>↓ Some people/businesses will not be covered by the Fund.</p>		<ul style="list-style-type: none"> <li>• There are other avenues of redress, including access to the Financial Services Compensation Scheme (FSCS), if eligible.</li> </ul>
<p><b>Apply a clearer and more robust approach to how we take account the applicant's behaviour when assessing claims</b></p>	<p>↑ Firms and individuals can expect contributions they make to the Compensation Fund to remain proportionate.</p>	<p>↓ Users of legal services will need to take more responsibility when they choose a solicitor for higher risk services like high return investment schemes to make sure the scheme is genuine and that their advice can be relied on.</p>		<ul style="list-style-type: none"> <li>• We will continue to highlight the risks to firms and people about questionable schemes and products that may involve a solicitor.</li> </ul>
<p><b>To require a duty of full and frank disclosure by an applicant when requesting a payment from the Fund and to provide us with direct investigatory powers allowing us to challenge evidence provided</b></p>	<p>↑ Firms and individuals can expect contributions they make to the Compensation Fund to remain proportionate.</p>	<p>↑ Payments from the Fund will only be made where the applicant can support their application with evidence. This makes sure that the Fund protects people fairly.</p>	<p>↑ This helps make sure that the fund is not misused, and it remains in place for those that need protection.</p>	<ul style="list-style-type: none"> <li>• Seeking information in support of an application will expedite the processing of applications and help determine whether the applicant contributed to the loss by failing to take reasonable steps before giving any money to the solicitor.</li> </ul>

# Contextual information

23. This section provides contextual information that has helped us consider the impact of our proposals.

## The solicitor's profession

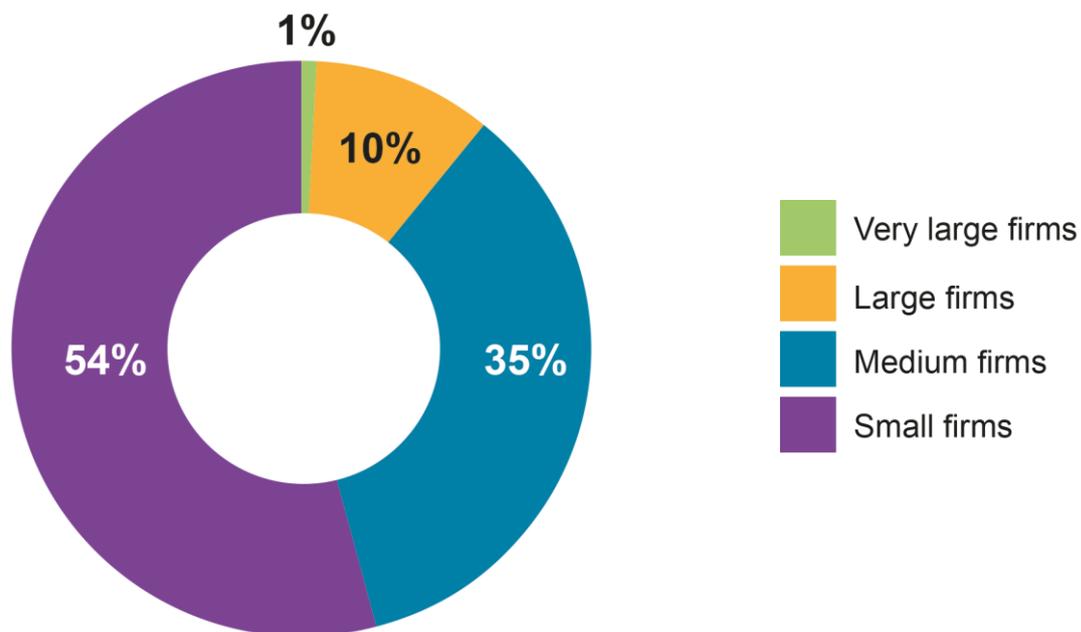
24. The following paragraphs provide information on the solicitor's profession. It has assisted our consideration of the impact on protected characteristic groups and the wider effects of our proposals. Our early analysis has identified that for some groups there may not be any impact.
25. The age profile of solicitors in wills and probate and conveyancing work is older than other areas of work. For example, 19 percent of those working in wills and probate are over 65 compared to seven percent in employment work and nine percent in criminal work. The age profile of sole practitioners is older than the general regulated population. For example, 51 percent of sole practitioners are over 55 compared to 21 percent of the overall population. Around 60 percent of sole practitioners working in wills and probate and conveyancing work are over 55<sup>5</sup>.
26. In terms of ethnicity, BAME individuals make up 18 percent of all lawyers, which is higher than their numbers in the census data for economically active people (13 percent). Asian people are more highly represented among all lawyers (12 percent compared to seven percent of their numbers in the general population) and black people are underrepresented (two percent compared to three percent). A significant number of BAME solicitors work as sole practitioner or in small/high street firms.
27. The breakdown of other staff working in law firms is more closely aligned to the wider population, with 14 percent BAME overall (of which eight percent are Asian and three percent black).

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<sup>5</sup> Data of 138,280 regulated individuals that were practising in April 2017  
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28. Differences become apparent when we look at the breakdown of partners in firms by size. The larger firms (50 plus partners) have the lowest proportion of BAME partners. Asian partners make up just four percent compared with 16 percent in the smaller firms (between two to five partners).
29. More than half of firms we regulate have fewer than four partners. The graph below outlines how the firms we regulate are categorised by size. This is important when considering the impact of our proposals. We regulate around 10,400 firms. We have defined 'Very large' firms as the top 100 firms within the market by turnover. 'Large' firms account for the next 900 by turnover. 'Small' firms were those that generated less than £400,000 turnover and had four or fewer managers. 'Medium' firms are those firms remaining in-between the small and large segments. We consider the potential impacts on all firms by size in this impact assessment.

### Firms by Size



# Access to Legal Services

30. According to the [Legal Services Board](#), more than half of UK adults faced a legal problem in the last three years. But, the [MOJ report](#) for 2014-15 states that only one third of them got professional advice. And, research conducted by [IPSOS Mori](#) shows only 1 in 10 small businesses took advice from a solicitor or barrister. There is no single barrier to accessing legal services. Barriers for individuals and small businesses are often wide ranging, complex and combined. However, research undertaken by bodies such as the Legal Services Consumer Panel shows that one of the main barriers to accessing legal services is the affordability of the services.<sup>6</sup>
31. The Legal Services 2015 report found that of those adults that have used a law firm or solicitor at some point in their lifetime they are more likely to fall in the ABC1 social grade (70 percent) compared to adults in the C2DE grade (53 percent). Additionally, the report shows that usage of legal services increases with age. 85 percent of the over 55's have used them compared with 12 percent of young adults aged 16-24.
32. A total of 34 percent of the public who used a solicitor in the last three years, employed them for will writing and probate services. This is followed by those who used a law firm for legal advice relating to residential conveyancing (24 percent). The third most popular area for legal advice is personal injury/accidents/medical negligence matters (11 percent).
33. According to the [Legal Problem and Resolution Survey 2014-15](#), vulnerable people are more likely to experience legal problems, but often do not seek help from solicitors<sup>7</sup>. For example, we know that in London more than one in five people requesting assistance from their MP have a disability. But as MPs cannot provide legal advice they tend to refer people to those that can. People that have been signposted from one service to another can often suffer from referral 'fatigue' and give up continuing seeking help. This leads to poor outcomes and hinders the proper

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<sup>6</sup> See our paper [Improving access: tackling unmet legal needs](#) for more detail.

<sup>7</sup> The groups that were most likely to experience a high number of legal problems were those with a limiting illness or disability, were unemployed, a lone parent with dependent children, living in a household with an annual income below £15,000 or living in rented accommodation ([Findings from the Legal Problem and Resolution Survey, 2014-15](#); MOJ, 2017).

administration of justice. There is also a risk that vulnerability is increased without the appropriate legal support<sup>8</sup>.

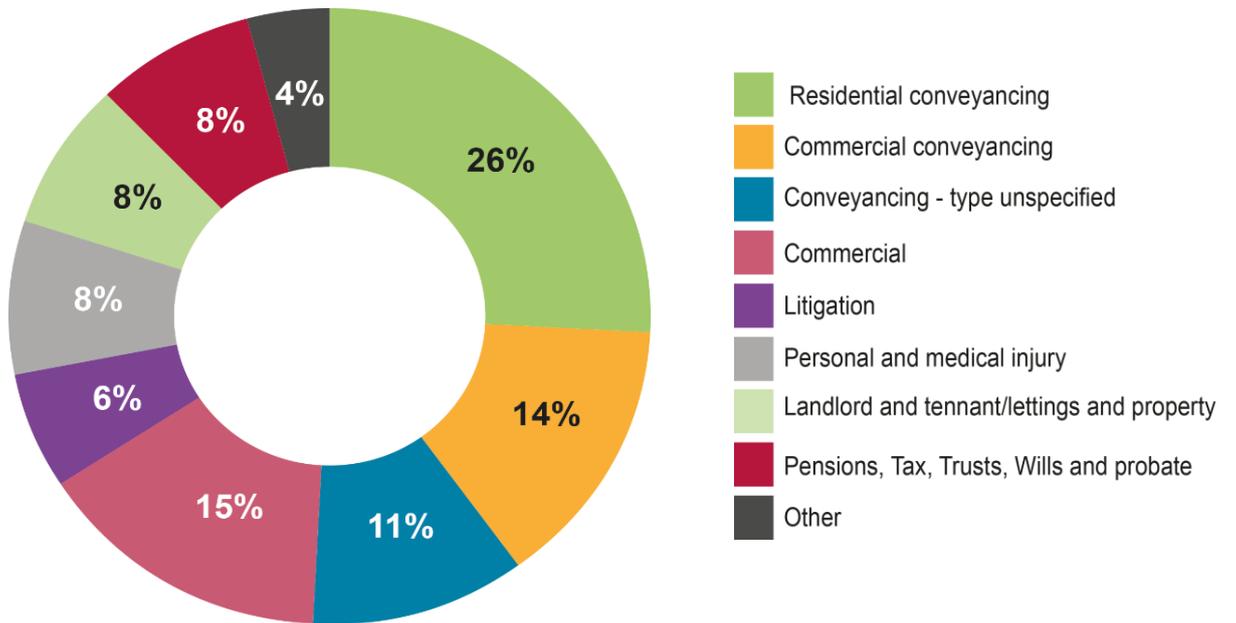
## Analysis of historic PII claims data

34. We received data from firms representing 74 percent of the market (based on PII premiums) over for the indemnity years covering the period 2004 to 2014. The data set includes the claims history of firms in the Assigned Risk Pool (ARP). These are firms that could not access insurance in the open market and the ARP provided an alternative for them. The ARP closed to new firms from October 2013 because the funding of defence costs and the payment of settled claims by open market providers was threatening the viability of the PII market.
35. We have published our [analysis of historical PII claims data](#). Some of the key findings are:
- one in five claims notified to insurers resulted in an indemnity payment and/or defence cost payment
  - the total amount paid to claimants at the point we received the data from insurers was £2bn. Of that, around £400m was paid in defending claims. Part of the indemnity settlement amount of £1.6bn will also include the legal costs of claimants
  - 98 percent of all claims where an indemnity payment was made were settled for less than £500,000
  - a disproportionate number of claims for negligence arise from property work, where insurers have specified a reason for the claim, over 50 percent or £770m of the value of indemnity payments are the result of a failure in conveyancing work.

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<sup>8</sup> Mind the gap an assessment of unmet legal need in London: A Survey of MPs' Surgeries Oct- Nov 2016, All-Party Parliamentary Group on Pro Bono and Hogan Lovells, 2017  
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## Breakdown of total value of claims by reason for claim



# Pattern of payments from the Compensation Fund

36. There is a wide range in the level of payments made from the Fund. This reflects variations in the value of the transactions that ultimately caused the loss. Over the 2011- 2015 period, individual payments for successful claims have ranged up to £990,300.
37. The table below shows the average payment for different types of claims reasons over the same period.

**Average payments from the Fund 2011- 2015**

Claim reason	Average payment (£s)
Unredeemed mortgage	228,967
Fraud – conveyancing	258,537
Gross overcharging	187,416
Fraud – other	125,125
Probate – balance due to estate	45,362
Client account – unspecified	33,743
Other – conveyancing	16,855
Tax avoidance scheme	18,259
Expert and Counsel fees	16,516
Investment fraud	19,785
Damages	8,188
Other	7,837

38. Overall, the average payment from the Compensation Fund has historically been relatively small when compared to some individual payments that have been made. The four leading reasons for claims that have the highest value of average payment<sup>9</sup> represent only four percent of the total number of claims paid out.

<sup>9</sup> These are unredeemed mortgage, conveyancing fraud, gross over-charging and other fraud  
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39. Only a small percentage (numbering less than 25) of single payments between 2011 and 2015 have been greater than £500,000 and four payments have been for more than £1 million. This pattern of claims and values of payments has made sure that the Fund remains viable at the current level of contribution from the profession.

# PII – Impacts

## Solicitors and firms

40. In this section we set out our analysis of the expected reductions in premiums<sup>10</sup> from the proposed changes to the level of compulsory cover and how they might impact differently on firms, including small firms and firms with a BAME diversity profile.

### Lower indemnity limits

41. We can expect this to result in a discount in premiums. This is because insurers providing only this level of cover would have reduced costs to pay or reinsure against the risk of unlikely, but particularly high, value claims. This includes a reduction in their risk for claims that could be treated as arising from ‘similar acts or omissions in a series of related matter or transactions’ – the so-called aggregation clause in current PII policies. This includes risks of claims from incidents that are not associated with a single area of work, for example exposure to internal and external fraud risks, that may result in loss of money from a firms’ client account.

There are a range of views on what the size of any discount might be. When we previously proposed reducing the limit to £500,000 we presented evidence that the impact on premiums might be in the range five percent to 15 percent. This was based on a range of evidence from stakeholder feedback during the earlier consultation on PII reforms in 2014. This included external advice on the discounts that were being offered to some firms at that time. We also observed when we had previously increased the level of cover from £1m to £2m /£3m that premiums increased by five percent.

Some insurers think the impact could be more modest than this saying they already factor into premiums the likelihood that a firm will face a very high claim and they already receive lower premiums. We agree that most of the cost of cover is allocated

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<sup>10</sup> We present our finding as premium reductions assuming favourable market conditions. It is as important to see them as mitigating increases in a less favourable market  
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to the first £500,000. However, our view remains that there is a premium value for coverage above this level and therefore this proposal would reduce underwriting risk for the compulsory layer of insurance. The insurance industry does not take on additional risk at no cost, or to put it another way, does not offer free insurance.

42. Reflecting caution from insurers and that we are now proposing a higher limit for conveyancing cover we estimate the impact of our proposed lower limit would be in the range of 5 to 10 percent reduction in premiums.

### **Defence costs**

43. Allowing firms and insurers to have more flexible defence arrangements is likely to shift some costs back to firms. For example, if a firm agreed with an insurer an excess arrangement that included defence costs then the value of the defence excess would switch from being paid by insurers to being directly incurred by firms.

Unlike the current excess arrangements, a proportion of these costs would need to be paid by firms as soon as a claim starts to accrue defence costs. We expect this would alter firms' behaviour, leading to a reduction in the number of claims unnecessarily defended, leading to a further reduction in defence costs. This could also speed up the time it takes for compensation to be paid to claimants.

44. We have calculated that based on the historic data, if it is assumed that all firms would have had a defence excess of £5,000 (this is around the average level for the usual excess on claims in current PII policies<sup>11</sup>) then insurers' share of defence costs would have been reduced by approximately £80m. This equates to around four percent of claims value over the 2004-14 period. Some insurers and other specialist defence lawyers thought the impact of allowing more flexible arrangements for defence costs could be higher than this. We estimate the impact of our proposed changes to defence cost arrangements could be in the range of a four to seven percent reduction in premiums.
45. This gives a range of 9 to 17 percent premium savings from these changes.

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<sup>11</sup> See [Law Society PII survey](#)  
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## **Exclusions**

46. Alongside the lower indemnity limit, the proposals to exclude financial institutions and large corporate clients from compulsory insurance and to only require firms that have or will be providing conveyancing services to have cover for that work will provide even more flexibility for firms. This is particularly relevant for small firms, that do lower risk work, to have insurance cover better matched to the services they offer.

## **Conveyancing cover**

47. Insurers already identify conveyancing as a key high-risk factor with the potential to have an adverse impact on premiums. Under the current MTCs an insurer must cover any claims arising during legal practice. Therefore, insurers can never be certain that they will not face the risk of a conveyancing claim, even where a firm has stated when applying for cover that it does not do this type of work. This inevitably means there will be some cross-subsidy or an element of risk premium in insurers pricing models.
48. We expect the option for firms to ask for an insurance quote without conveyancing cover to lead to even more accurate pricing by insurers and to lead to the unwinding of any remaining cross-subsidy in the pricing of insurance between conveyancing and other areas of law. If the impact of this is significant we could see some firms delivering lower risk services that do not need conveyancing cover potentially achieve savings towards the top of the range or even more than the range we have identified or potentially above.

## **Small firms**

49. More than half of firms we regulate have fewer than four partners/managers. The benefit of reduced premiums for compulsory insurance will be greater for small firms because they pay proportionately higher premiums relative to turnover. Small firms are seeing premiums rise even in relatively favourable market conditions and they are also more likely to have a problem affording run-off cover<sup>12</sup>.
50. There is also evidence that small firms find it more difficult to get competitive quotes for cover. We think the reforms will both increase existing insurers' appetite to provide

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<sup>12</sup> See [Law Society PII survey](#)  
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cover to small firms and potentially encourage new insurers to enter the market. This may not result in a significant further impact on premiums in a favourable market but would sustain competitive premiums for firms when conditions are less favourable.

51. Small firms are also more likely to continue to need to only purchase the compulsory level of cover. 93 percent of sole practitioners and 78 percent of 2-4 partner firms currently only purchase the compulsory indemnity limits. For larger firms the take up of top-up insurance increases significantly from 68 percent of 5-10 partner firms to 90 percent of 11-25 partner firms.
52. As explained above, the flexibility in the minimum requirements could result in more accurate pricing of premiums for firms that do lower risk work.
53. Nearly 60 percent of small firms generate no turnover from residential property work and are likely to benefit from not needing conveyancing cover. This increases to nearly 65 percent for commercial property work. Firms will however, need to make sure that they are honest in their assessment of work because if they do not secure conveyancing cover and do work in this area then claims would not be covered by the insurance policy.
54. Where firms have a BAME diversity profile, the percentage of firms that generate no turnover from residential property increases to nearly 65 percent and falls to 56 percent for firms with a white diversity profile. Instead firms with a diversity BAME profile have a relatively high proportion of their work where there are no large value claims in areas like criminal and immigration work. This suggests firms with a BAME diversity profile would benefit from increased flexibility in the minimum requirements.

### **Large firms**

55. Our proposals will provide larger firms with greater flexibility to agree different insurance terms with commercial clients. This should allow them to set terms of the insurance cover which could lower the total cost of insurance for larger firms. In some cases, the changes will make overall arrangements more straightforward by removing tiers of insurance. This will allow Multi-Disciplinary Partnerships (MDPs) to harmonise PII arrangements across the different areas of their business, without the need for waivers.

### **Cost of top up/excess layer cover**

56. Firms will continue to need make sure they have ‘adequate and appropriate’ cover and this may mean adding additional layers/buying top-up cover where necessary. Surveys of law firms<sup>13</sup> suggest some firms already carefully assess the level of risk based on the type and value of the work they undertake and buy additional cover to reduce their risk in the event of a high claim. Therefore, we have considered the impact of our proposals on the cost of excess/top-up cover.
57. Currently, we understand that most top-up cover which simply extends the cover to £5m is written on the same terms and conditions as the MTCs. This is because the administrative cost of designing different policy terms for relatively small extensions in cover are not thought to be worth incurring. However, for larger levels of cover, this is not the case and terms which are “non-standard” in other parts of insurance (such as those related to dishonest, misrepresentation, payment of the excess and the level of cover in run-off) may be altered in these policies. Similarly, exclusions for cyber risk could be brought in for larger claims<sup>14</sup>.
58. If this remains the case under the revised limits, then this suggests that firms choosing to maintain insurance at current limits will pay a similar premium, unless this choice reveals the firm represents a greater risk than insurers previously believed. Higher premiums in this case would be risk reflective.

### **Run-off premiums/Compensation Fund contribution**

59. We anticipate the average reduction in premiums from the proposal to introduce a cap on run-off cover will be greater than the 9 to 17 percent we have estimated for annual premiums. This is because it sets an absolute limit on the insurers exposure. As run-off cover becomes more affordable, we can also expect this to result in a reduction in the non-payment of run-off premiums which could reduce premiums even further. We will seek further views from stakeholders during the consultation to help us better quantify this impact.

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<sup>13</sup> See [Law Society PII survey](#)

<sup>14</sup> See EPC report on [Potential options for SRA PII requirements](#) (May 2017)

60. If run-off cover becomes more affordable, then solicitors nearing retirement or wanting to cease practising are more likely to pay for run-off cover and to close their firms properly. This will reduce the risk to users of legal services that occasionally requires our intervention. The data suggests that nearly 20 percent of interventions by the SRA are caused by a firm not closing properly. Our estimated intervention costs for 2017-18 are nearly £7m. If these costs were reduced by a fifth, then this could have meant a potential reduction in the firm contribution to the Fund of nearly £50.

## Users of legal services

61. We expect these changes to provide more flexible options for firms to lower the cost of insurance. If firms pass these on, then this could lead to lower prices and better access to services. We recognise that this relies on there being sufficient competition in the market. An important factor here is the extent that lower entry barriers encourage new firms, often with innovative business models, into the legal services market. It also allows existing firms to be more sustainable. This will be important when evaluating the impact of the changes.

### Equality, Diversity and Inclusion impacts

62. Access to affordable services is essential to reducing inequality in access to legal advice. [National Statistics](#) indicate that these changes will benefit people from 'households below average income' (HBAI) and specifically assist pensioners, disabled people and some ethnic minority groups, as they are more likely to be in this group.
63. As explained above the new flexibility in the minimum requirements could result in more accurate pricing of premiums and reduced premiums for firms that do lower risk work. These include social and mental welfare law, immigration, consumer debt, family mediation, residential care and arbitration work. Vulnerable groups of people are likely to need help in these areas and would benefit if more affordable services were available.

64. As well as reducing costs for existing firms, we can expect this to encourage new entrants into the market to provide these types of legal services. We have evidence that lower insurance costs have been a key driver of new businesses in our Innovation Space, providing increased access for some vulnerable people to legal services.
65. The table below compares these areas of law and whether they are relevant to BAME users' needs<sup>15</sup> with the risk that there will be a high value indemnity claim. This suggests that BAME users are more likely to gain from these proposals if the lower cost of insurance for lower risk work results in price reductions or increased competition in the provision of these areas of law.

#### **Work areas and match to BAME needs**

<b>Type of claim</b>	<b>Risk of high value indemnity claim</b>	<b>More relevant to BAME users' needs?</b>
Conveyancing	High	No
Will writing and probate	Medium	No
Immigration	Low	Yes
Family matters	Medium	Yes
Accident and injury claims	Medium	Yes
Housing landlord and tenant problems	Medium	Yes
Benefits and tax credits/welfare	Low	Yes
Employment disputes	Low	Yes
Consumer problems	Low	Yes
Criminal matters	Low	Yes
Debt or hire purchase	Low	Yes

<sup>15</sup> [Legal Services Consumer Panel Tracker Survey 2017](#)  
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## **Impact on the quality of conveyancing services**

66. The historic data shows that, where a specific reason was identified for the claim, more than 50 percent of the value of all claims settled arose from conveyancing work. The reforms will provide firms with information on the true cost of insurance that provide conveyancing services. This would provide solicitors with better information to assess their appetite for undertaking this type of work or perhaps specialising in other areas of work.
67. We expect this to lead to positive changes in firm behaviour, reducing the likelihood that a conveyancing claim will arise in the first place. This is because the additional premium for conveyancing cover would be expected to reduce the number of firms that undertake only a small number of conveyancing transactions each year. If this reduces the number of negligence claims, then over time this would have a positive impact on the quality of conveyancing services. It is estimated that around eight percent of firms providing conveyancing services have less than five percent of their turnover from conveyancing.

## **Risks and mitigations**

### **Users of legal services: risk that they are not covered by new insurance limit**

68. We have identified that a small number of people could lose out from the reduction in the level of compulsory indemnity limits. Some people with particularly high value claims could receive lower compensation than they currently would. Given the value of these claims these are likely to have serious financial consequences on most people even those on high incomes.
69. To assess the proportionality of this reduction we have considered the evidence on the value of high claims from the historical data provided by insurers<sup>16</sup>.
70. Between 2004 and 2014 and based on extreme worst case assumptions, at most 222 claims and £147m might have been at risk with a £1m limit. Of these, a

maximum of 156 claims and £102m were consumer claims. If the PII minimum threshold are reduced to £1m for conveyancing and £500,000 for other areas of work, at most around 442 claims (£260m) might have been at risk. There is a maximum of 326 (£189m) that were consumer claims businesses, rather than large commercial clients who are more sophisticated and often have in-house legal resources. They should also be able to confirm themselves that their legal services provider has appropriate insurance.

71. A significant proportion of these claims are conveyancing claims. ONS evidence shows that around 1.6 percent or around 14,000 properties sold for £1 million or more in 2015. Yet, between 2004 and 2014 there were only 37 cases in which PII claims for more than £1 million were identified in residential conveyancing. In 2014, this represented less than 0.03 percent of the number of such transactions. Commercial law the next highest category of law with a large proportion of high claims.

72. The table below shows claims at risk for a single limit of £500,000 and a conveyancing limit of £1m.

Issue	Category	Claims at risk	Total claims at risk
Conveyancing v non-conveyancing	Conveyancing	£53 million (3% of total claims) 79 claims	£260 million (13% of total claims) 442 claims
	Non-conveyancing	£208 million (11% of total claims) 363 claims	
	Conveyancing	£53 million (3% of total claims) 79 claims	£260 million (13% of total claims) 442 claims
	Injury, medical negligence, trusts and executory, wills and probate	£25 million (1% of total claims) 53 claims	
	Commercial	£51 million (3% of claims) 85 claims	
	Lettings and Property	£18 million (1% of claims) 24 claims	
	Litigation	£16 million (1% of claims) 36 claims	
	Other (Landlord and Tenant, Pensions,	£98 million (5% of claims)	

	Tax, Employment, Family, Other, Block claims or Unspecified or unknown)	165 claims	
Consumer v non-consumer	Consumer (maximum)	£189 million (10% of total claims) 326 claims	£260 million (13% of total claims) 442 claims
	Non-consumer (minimum)	£71 million (4% of claims) 116 claims	
	Consumer (minimum)	£48 million (2% of total claims) 87 claims	£260 million (13% of total claims) 442 claims
	Non-consumer (maximum)	£212 million (11% of claims) 355 claims	

73. The methodology to obtain the total claims at risk assumes the following:

- all claims of £2-3m are for relevant recognised bodies and relevant licensed bodies without top-up cover
- all of the relevant firms would choose to reduce their cover down to £1m
- all of the relevant firms would have no internal resources to pay for claims.

74. For that reason, the total claims figure is conservative (ie a maximum figure). The rest of the table above then splits this total claim figure according to different categories. The original data does not show the client type and therefore it has been necessary to estimate the consumer and non-consumer claims. This has been estimated as follows:

- minimum non-consumer claim is based on commercial and commercial conveyancing
- minimum consumer claim is based on residential conveyancing, injury, medical negligence, trusts and executory, and wills and probate.

75. Taken together, this evidence suggests that ordinary people and businesses are unlikely to experience a very high value claim above the new limits. There are also several ways that this risk can be managed:

- a. we already require firms to assess the level of appropriate insurance they need for their clients. Firms also need to decide whether to buy additional cover. We expect firms to continue to make the right choices on purchasing additional cover that meets the requirement for appropriate terms on behalf of their clients, where necessary. The data shows that from 2004-2014 there are only 19 cases where a claim was for exactly £2m or £3m where under-insurance could have been theoretically a problem.
- b. some firms will also have insurance requirements imposed by other regulators due to the nature of the work they undertake
- c. we will provide additional guidance so that that firms remain sufficiently proactive in choosing higher or wider cover where this was appropriate to their business. For example, we would expect firms working in residential 'property hotspots' to have in place cover for conveyancing and think about whether they need to secure cover above our minimum requirement. We will work with brokers and look to develop case studies and indicative examples of where additional cover might be appropriate.
- d. we also expect competition by insurers will enable some firms to maintain wide coverage terms in top up policies where they need to buy it.

**Users of legal services: risk of differential outcomes for claims in run-off policies**

76. We have identified that the introduction of a total cap on run-off cover could result in different outcomes for users depending on when they make the claim.
77. Phasing the level of cover over the six-year run-off period would reduce, but not eliminate, the risk of differential outcomes. A more open market in run-off cover could develop, leading to the insurers offering competitive alternatives to automatic cover or options for firms to buy additional cover once a cap is reached.

**User of legal services: risk that firm do conveyancing work without insurance**

78. There is a risk that some firms that do not get conveyancing cover would then continue to provide this type of service. In this situation, firms would not be insured for conveyancing work. If the firm is negligent, it is still liable but may not have the financial resources to pay a high value claim.
79. To discourage this behaviour, we will take firm regulatory action should a firm be identified as providing conveyancing services without being insured. We will make sure that we have a clear definition of conveyancing services and supportive guidance for firms to help understand when they need to have cover for this work. To reinforce this, we will collect information from insurers on who does and does not have conveyancing cover.
80. We will expect firms to explain the level of insurance they have to their clients. We will also provide useful information to clients/potential clients about their protection to help them make informed choices when they choose a legal services provider.
81. We will explore other methods of monitoring under-insurance by working collaboratively with the insurers and other agencies, including the Land Registry.

### **Firms: risk to firms of reduction in size of conveyancing panels**

82. Mortgage lenders often rely on dual representation, where the same solicitor acts for both buyer (borrower) and lender. If the additional cost to lenders of checking the level and scope of cover for individual firms is disproportionate, they may react by limiting the number of firms on their panels.
83. This risk is higher for the proposal to exclude large financial and business clients from scope of mandatory insurance, because they could not guarantee they are covered by the standard MTCs.
84. We believe that insurers will continue to offer the option of a PII equivalent policy covering all the clients of their firms they insure. They are also likely to develop new terms and conditions for both lender cover and separate cover for their corporate clients. This permits greater flexibility in both coverage and pricing, reflecting firms' client profile and work specialism.
85. We will explore the best way for firms to provide information about the scope of their cover. This will mitigate the costs to lenders of checking this for individual firms.

### **Firms: risk of increased firm failure**

86. Firms increase their risk of failure if they under insure and then become liable for a high value claim and cannot pay it from internal resources.
87. Firms will still be obliged to have appropriate insurance for all their clients. We will strengthen the guidance on this and on the information we expect firms to provide to clients on the scope of the cover they have.

### **Firms: risk of more complex purchasing process**

88. We have identified that greater flexibility in policies could lead to a more complex insurance purchasing process. Firms will need to assess their overall insurance requirements, based on their existing and projected client base and risk profile. They

may need to buy additional insurance policies as compared to current arrangements. This could lead to a longer, more costly purchasing process.

89. Firms will need to assess their overall insurance requirements. This could include for example, buying additional policies to cover corporate clients and financial institutions. This may increase the transactional costs to firms to buy the cover they need for all their clients. Separate additional policies could mean a range of claims handling processes for different claims.

# Compensation Fund – Impacts

## Users of legal services

90. The Compensation Fund must remain viable, continuing to act as safety net for those affected by any authorised individuals or firms who have misappropriated, or failed to account for, money during practice. Although the changes would narrow eligibility, people that need the most protection will remain protected. The introduction of criteria to exclude claimants from wealthy households is unlikely to impact on applicants with protected characteristics or BAME backgrounds.
91. We want to make sure that the right people benefit from the Fund. This will mean using the right tools to assess applications so that we make sure payments are justified.

## Solicitors and firms

92. Overall, solicitors and firms can expect contributions they make to the Compensation Fund to remain proportionate having regard to the risks posed to the Fund.

## Risks and mitigations

93. We have identified possible risks to firms and users of legal services and how these risks might be mitigated.

### **Users of legal services: tighter eligibility criteria to confirm who can make a claim on the Compensation Fund**

94. Our assessment is that the greatest impact will be on third parties such as barristers and experts and wealthy individuals, trusts and charities that are more likely to be able to access other avenues of redress and where appropriate, use legal remedies

to recover losses or bear the loss. We do acknowledge that some wealthy charities and trusts can have many beneficiaries that could be affected if a claim is refused and this is linked to how we might review a 'single claim' for determining the maximum payment available from the Fund. However, individuals and organisations of a significant size and wealth are likely to have the resources and tools to help manage any risks of instructing a solicitor and more likely to go to an alternative provider where assurances cannot be given.

95. The introduction of the eligibility criteria to exclude application from wealthy individuals will have less impact on applicants with some protected characteristics or from BAME backgrounds because they are more likely to be on lower incomes. We have estimated that this proposal will impact the top five percent of the wealthiest households. The reduction in protection will only ever therefore, negatively affect a distinct and small group of people. Members of this small group will have to make a judgement as to whether the service provider they select, along with the PII cover and likelihood of failure or monies going missing is right for them.
96. Where we are excluding claims because a firms' insurer is insolvent this is mitigated by alternative redress for example, from the FSCS if the firm meets the schemes eligibility criteria.

**Users of legal services: there is an increased information requirement for individuals to confirm they are eligible and to provide information to support their claims**

97. Our assessment is that these changes are necessary, in order that we protect the right people and can assess claims fairly. We will adopt a proportionate approach. All applicants will be asked to state their net household financial assets. Where the claim is of high value, we will decide on a case by case basis whether we ask applicants to provide verification of the information provided.
98. We will consider whether there is a need to provide guidance for applicants to illustrate what a good application looks like. This will be relevant where applicants have engaged in questionable investment schemes as we will be examining their conduct during the transaction to see if there were steps that could have been taken to limit any losses or identify that the investment was not genuine. As a comparison,

the Financial Ombudsman Service (FOS), provides guidance on applications that are likely to fail because the applicant failed to mitigate their loss.

**Users of legal services: by not paying application costs we might disadvantage applicants that find it difficult to understand and complete the application form themselves**

99. The data on areas of law that give rise to claims, for example, conveyancing, would suggest that applicants will have the capabilities to make a claim themselves or seek out free help. We recognise people have different levels of capability and knowledge to be able to obtain the necessary information. Some will simply not be able to access the necessary information to be able to make an application. We are however, working to introduce a more streamlined and easy to use application process. Where help is genuinely needed to complete an application, we will engage with consumer organisations including Citizens Advice and Which? to look at developing guides and providing free help. Similar help is already in place for application to, for example, the Criminal Injuries Compensation Scheme.

**Users of legal services and firms: higher risk of firm failure if firms are pursued for losses that are no longer covered by the Fund and risk to individual solicitor manager/owners if they become personally liable**

100. Where we have made changes to exclude certain types of claims, firms and individual solicitors will need to consider impacts on their business and whether numerous, high value claims could affect the firm's viability and result in insolvency.

101. Where the firm:

- does not have appropriate indemnity insurance that would cover the loss, or
- where the insurer is insolvent, or
- is insolvent.

individual solicitor owners/managers might be personally liable for claims and pursued for payment.

102. The likelihood that legal or other action might be taken against an individual for these claims will depend on several factors. The trading structure of a company will be one factor. For example, a solicitor member in a Limited Liability Partnership (LLP) will normally be protected from personal liability for business debts and claims.
103. Solicitors that work in firms that are not set up as limited companies or LLPs are less able to limit their liability. The impact on their ability to practise might, therefore, be impaired and might be a greater risk for sole practitioners. This will have a consequential impact on clients of these firms as they may have to seek alternative representation if the firm cannot trade. We will explore during the consultation whether this risk is greater for BAME solicitors.
104. We do not have data on claims that arise from applicants that would now be excluded from claiming because of their net worth. It is however, most likely that these people will be involved in high value transactions and should therefore, be seeking out information that helps them make informed decisions. We also believe that firms that have good systems and controls in place will be able to make sure that barristers and experts are paid promptly.
105. In an instance of an intervention into a firm, where the money is owed to high worth individuals, barristers or experts shows on the firm's accounts, then the statutory trust process will be engaged. Payment can be made from the trust. Where money has been stolen, the individuals will not be protected by the Compensation Fund. These persons will therefore need to take steps to make sure that any monies due to them are protected by the firm and consider other avenues of redress that might be available to them.

## Next steps

106. We will continue to work with stakeholders to explore the issues we have identified during the consultation period, as well as analysing the responses to this consultation. We will update our assessment of the impacts against the proposals that we take forward to implementation. We will work with firms and insurers to evaluate the effectiveness of the changes that we finally implement.