
Leeds Law Society
Response to SRA Discussion Paper
On Consumer Protections
28 June 2024

About Leeds Law Society

Leeds Law Society is an independent body for solicitors in Leeds and Leeds districts. We are run by our members, and our role is to be the voice of local solicitor members and associate members.¹

Background to the SRA's Review and this Response

In February 2024, in response to what it said were '*shifting risks in the sector*', the Solicitors Regulation Authority (**SRA**) published a discussion paper, entitled *Protecting the public: our consumer protection review* (the **Review**).

The stated aim of the Review is to seek ideas on how the SRA can better manage or mitigate risks to consumers, particularly to: (i) ensure that consumers are appropriately protected when using regulated law firms; (ii) maintain public confidence and trust in legal services; and (iii) find the right balance to support a competitive legal market that enables consumer choice while keeping costs down.

The Review covers two main areas: (i) policy and operational approaches to identifying and managing risks; and (ii) the Compensation Fund arrangements in light of identified risks.

The Solicitor's Compensation Fund is a discretionary fund operated by the SRA. All solicitors contribute to the fund through a levy added to the practising certificate fee. The Compensation Fund has come to recent attention following the failure of law firm Axiom Ince, with suspected misuse of money in client account leading to a shortfall estimated to exceed £60m, leading to significant calls on the Compensation Fund.

The SRA is seeking input and insight from stakeholders to improve its approach to consumer protection in terms of its policy and procedures; and to ensure the approach is fit for the changing legal landscape.

Our Response

We note at the outset that the SRA has provided relatively limited information about some of the SRA's current policy and operational approaches. We have therefore sought to keep this

¹ We are a representative body, and the views expressed within this Response are not necessarily the views of the individual members or directors of Leeds Law Society.

Response to some high-level comments and suggestions at this early stage, appreciating that the Review is an ongoing process.

We therefore seek to outline:-

- What are the concerns of Leeds Law Society arising from the SRA's consumer protection review?
- What are our suggested reforms / areas for further consideration?

At the outset, we note that there is some potential ambiguity as to the scope of the Review, in particular, what the SRA means by '*consumers*'.

For the avoidance of doubt, we consider that the Review should address protections for '*those who consume legal services*', rather than a narrower group being individuals '*acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession.*' (i.e. the definition used in the Consumer Rights Act 2015).

A focus on the latter group alone risks skewing the SRA's focus when identifying risks, and where any increase in regulation might be most effective.

1. Risk identification and mitigation

As noted above, there is currently only limited information available about the SRA's risk assessment procedures.

Nevertheless, we suggest that the SRA investigates the following areas further:-

- Greater collaboration with other entities likely to hold information which would assist in identifying risks / steps which could be taken in mitigation, i.e. accountancy regulators, law enforcement, and financial institutions.
- Introducing protocols with banks where client money is held aimed at safeguarding client funds.
- Further guidance to firms on risk management and self-regulation, and consider as a safety net the annual reporting via the CoLP and CoFA roles.

2. Authorisation and approval of entities

We are concerned that the current process for authorisation and approval of entities does not provide adequate regulatory control so as to prevent firm collapse, or worse, fraud. The SRA has very recently issued a new warning notice on mergers, acquisitions and sales of law firms², however the onus of that warning notice is very much on self-regulation.

Whilst we are concerned to ensure that M&A activity amongst regulated firms is not unreasonably inhibited, we consider that this is an area in which greater oversight from the regulator would act as an appropriate check on regulated entities coming into being without having adequate systems and controls in place.

² 17 June 2024:- <https://www.sra.org.uk/solicitors/guidance/mergers-acquisitions-sales-law-firms/>

Such entities pose systemic risk, not merely through the Compensation Fund but also through increased calls on professional indemnity insurance, and (when such entities fail) damage to public confidence in the profession. To the extent that firms are exposed to increased costs, these are likely ultimately passed on to consumers.

The SRA will be aware of the move towards ‘*Twin Peaks*’ regulation in the financial sector in/around 2013, which saw the Financial Services Authority (**FSA**) disbanded and replaced with the Prudential Regulation Authority (**PRA**) and Financial Conduct Authority (**FCA**). The focus of the PRA is broadly to ensure financial stability, with the FCA focusing on conduct of business.

We do not suggest that the SRA should necessarily be split in the same way that the FSA was, but we would advocate a greater focus on identifying and minimising large-scale risk. We would encourage the SRA in its review to consider what can be learnt from the reform to the financial sector and how this could be implemented in the legal sector.

With that in mind, we would suggest:-

- Reviewing procedures for authorising and approving entities, including more robust due diligence into financial viability before acquisitions or mergers.
- Requesting business plans, risk assessments, and draft policies during authorisations to identify red flags early.
- Scrutinising reverse takeovers of larger firms by smaller ones.
- Using an external practitioner panel or acquiring/accessing SRA in-house skills to properly assess financial viability during authorisations, a review of fee levies for authorisation and approval of entities would meet administrative costs of the same.
- Making detailed inquiries when an acquiring firm lacks experience in the acquired firm's work type areas.

3. Monitoring and Supervision

Linked to the above, we are concerned that the SRA is not monitoring firms closely enough, relying too heavily on self-regulation which works well for day-to-day conduct but which can prove inadequate for larger risks, where rogue actors can have an outsize impact.

We suggest:-

- Reintroducing a supportive compliance advice team to increase oversight where high risk is identified.
- Improving the speed of SRA investigations into high-risk firms/individuals to prevent situations like Axiom Ince.

4. Compensation Fund

We consider the Solicitor's Compensation Fund to be an important feature of the solicitor's profession, even if not widely known about by those engaging solicitors. Clients can (generally) take it as read that a solicitor's client account is a very safe place for money to be located, and client accounts are vital for a large amount of work undertaken by solicitors. Without access to client accounts (or some equivalent), this would lead to significant slow-downs in the manner in

which work could be undertaken. The levy is currently raised both on a per-firm and a per-solicitor basis, at a flat rate. This has a disproportionate effect on smaller firms.

Accordingly, we oppose:-

- Further artificially limiting or capping who can claim on the Compensation Fund, as grants are already discretionary.
- Reducing the £2m maximum payout, as this could lead to unanticipated injustices and so undermine consumer protection and public confidence.
- Risk-based firm contributions, as this is likely to be complicated to implement without generating significant additional net contribution towards the Compensation Fund, and could disadvantage smaller firms, creating access to justice issues.

We suggest:

- Recalibrating caps on connected claims may be needed, using a flexible approach.
- A review of the manner in which contributions are made may be worthwhile:-
 - Costs levied per-firm could be calculated in accordance with data already available to the SRA, such as number of partners per firm, maintaining proportionality of payment versus affordability.
 - We would query the basis for raising a levy against firms at all. An alternative would be to raise the entirety of the contributions to the Compensation Fund on a per-solicitor basis. This would keep contributions proportionate to firm size and reflects that the majority of firms meet the annual practising certificate and fund contribution costs³.

5. Approach to solicitors working in-house

In addition to the above, we consider the SRA should be clearer about its approach to the assessment of risk in relation to in-house solicitors, particularly as these are spread between commercial, third-sector, and public sector entities. A number of these already have their own regulatory environment, for example the statutory role of a 'Monitoring Officer' (frequently a lawyer) within local government.

This is relevant both to the SRA's approach to identifying risks (adopting the definition we note above, these in-house solicitors' clients are of course still 'consumers' in the broad sense). This is also relevant to how the SRA approaches the levy. For solicitors working in the public sector, it is likely that their contributions to the levy will effectively be paid for by their employers and so ultimately from the public purse.

In-house solicitors contributing to the Solicitor's Compensation Fund is consistent with them still being part of a single profession. Nevertheless, the nature of that contribution and its calculation would benefit from being explored further as part of the SRA's review.

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³ To the extent that this gave rise to a concern that the costs would fall on individual solicitors, the contribution could instead be calculated on a solicitors-per-firm basis and raised from firms.