

**Response of the City of Westminster and Holborn Law Society  
to the Solicitors Regulation Authority Consultation  
“Assigned Risks Pool Review”**

**The City of Westminster and Holborn Law Society**

The City of Westminster and Holborn Law Society (“CWHLS”) enjoys perhaps the most diverse membership amongst local Law Societies, encompassing as it does, a membership ranging from larger firms, including those which have been called in recent years “the silver circle” down to small high street practices and individual in-house solicitors, including those working for public bodies and government. Our membership includes those who practise at all levels of the profession, including those who regularly represent solicitors in SRA investigations and members of the Solicitors Disciplinary Tribunal, and those who have practised extensively in the field of solicitors’ negligence and professional indemnity insurance.

Membership is voluntary and CWHLS is run by a committee comprising 33 solicitors representing a very wide range of specialisms. Its work is carried out by 11 specialist sub-committees, one of which, the Professional Matters Sub-Committee, concentrates on matters such as regulation of solicitors, matters affecting their practice, including matters relating to professional indemnity etc.

**Response**

**Question 1 – Proposal 2**

Do you agree that the ARP should cease to provide ARP policies, save to firms already covered by the ARP?

(If this measure is introduced on 1 October 2010, firms that are already covered by the ARP as at 30 September 2010 will be able to renew cover with ARP but only for as long as those firms remain eligible for an ARP policy).

Yes

No

Comments:-

We understand that these proposals need to be considered in conjunction with others such as those on Successor Practice Definition (on which we are responding separately, but which we support).

We agree with paragraph 1.2 of the Consultation Paper that the fundamental principles against which the review of the ARP should be conducted are that any reform of the ARP must:

- a. Maintain or enhance the protection given to solicitors' clients;
- b. Minimise the costs to insurers and the profession (costs which are ultimately borne by the consumers of legal services); and
- c. Be fair to the profession.

Subject to one reservation, we believe that these principles are most likely to be achieved by continuing the availability of the ARP for a period of one year for firms that have previously obtained open market insurance but find themselves unable to do so by the renewal date. Such firms need some time to adjust. They will of course have had some notice of their failure to obtain cover, but anecdotal evidence suggests that sometimes insurers have unfairly waited to put unrealistic offers close to the renewal deadline. Whilst any period is arbitrary, we think a year is a reasonable time for firms to find a solution. Realistically their options are likely to be: finding open market cover, merger, sale of all or part of their practice, or closure.

If firms find alternative insurance, then the immediate problem is solved. If they cannot do so in the first few months, it becomes increasingly unlikely that they will do so. We think the ARP should maintain a dialogue with firms within it to review their options. In particular they should remind them that the review of the Successor Practice Rule (which we welcome) may make some form of merger or sale of a practice a realistic option in a way that it has not been hitherto. (This itself is an added reason for reducing the eligible period of ARP membership from 24 months to 12.)

Our reservation concerns payment of the ARP premium. We do not think that membership of the ARP should be a free ride. We accept that firms may need to agree instalment payments with the ARP. However we think they should lose their automatic right to remain in the ARP if they fail to pay their agreed amount of the ARP premium within say 30 days of it falling due. In those circumstances, we believe that the ARP should have the right to wind up a firm. We debated whether a wind-up should be automatically triggered in such circumstances, but concluded that it is best to give the ARP discretion, as they will be able to judge what action is likely to best serve the public interest.

The important point is to reduce the possibility of sudden closures or abandonments of practices. This leaves clients in the lurch (at great cost to the reputation of solicitors) and will often involve an intervention (at considerable financial cost to the solicitors' profession). Because this proposal makes such a result more likely, we oppose it.

### Question 2 – Proposal 1

Do you agree that the Qualifying insurance in existence as at 30 September should be extended for one month for firms that have not obtained Qualifying Insurance in the market as at 1 October?

Yes

No

Comments:-

We do not believe one month is sufficient. As we do not favour the abolition of the ARP, we think the necessary time to adjust is best provided within the ARP. We favour this being provided for a year for the reasons given in answer to Question 1

### Question 3 – Proposal 1

Do you agree that if the firm fails to effect Qualifying Insurance, or closes without successor practice, on or after 1 October, the previous year's Qualifying Insurer would be required to provide the balance of the 6 years run-off cover starting on that 1 October?

Yes

No

Comments:-

This question is part of Proposal 1. Whilst we do not support Proposal 1, we cannot oppose this question in its context. It accords with the intention of paragraph 5.2 of the Minimum Terms and Conditions of Professional Indemnity Insurance for Solicitors and Registered European Lawyers in England and Wales ("The Minimum Terms"). It therefore imposes no greater burden on insurers than they currently have to accept under the Minimum Terms. It also provides an important protection to solicitors and their clients that, for the period of the run-off, legitimate claims against the solicitors will be paid (at least up to the level of cover). It has to be accepted that whilst this will cover most claims, there will be cases where legitimate claims can be brought after the run-off period has expired (for instance claims by minors or in cases of latent damage or concealment). However that is the current position, which involves a compromise between the need to protect solicitors and (in particular) clients on the one hand, and the risks that insurers can realistically be expected to underwrite on the other. We do not propose to re-open that issue now. Firms whose last insurance was from the ARP will presumably continue to receive run-off cover from the ARP.

**Question 4 – Proposal 1**

Do you agree that the change should be introduced with effect from 1 October 2010?

Yes

No

Comments:-  
We do not support Proposal1, but think Proposals 2 and 3 should be implemented from 1 October 2010.

**Question 5 – Proposal 2**

Do you agree that new firms should not be eligible to be issued with an ARP policy with effect from 1 October 2010?

Yes

No

Comments:-  
We think it will be a matter of surprise to many solicitors (as it was to several of our members) that firms can start practice without ever obtaining open market insurance, but relying on the ARP. We can see no reason for this practice to continue. It provides no client protection, and seems a very unsound basis on which to start practice. One of the obligations of starting a practice should be to obtain prior open market insurance. Anything else puts an unfair burden on solicitors and insurers-not least because it is very difficult to price the premiums where a firm has no track record.

**Question 6 – Proposal 3**

Do you agree that the maximum period a firm can be covered by the ARP should be reduced from 24 months to 12 months with effect from 1 October 2010?

Yes

No

Comments:-  
See our answer to Question 1.

### Question 7 – Equality and diversity

What equality and diversity impacts do you believe the proposed changes will have?

Comments

We have nothing to add to what is said in the Consultation Paper. These proposals are most likely to affect small firms. It seems that a disproportionate number of BME solicitors are in those firms. That may change over time. However we believe that the proposals we support are sensible and proportionate ones to protect the public interest.

### Questions 8 – Options

Which of the following options do you prefer the most?

Option 1 – Proposal 1

Option 2 – Proposal 2

Option 3 – Proposal 3

Option 4 – Proposal 2 and 3

Comments:-

We believe that proposals 2 and 3 should be introduced as from 1 October 2010.

We think that if firms fail to pay their due proportion of the ARP premium within 30 days of it falling due, they should lose their automatic right to remain in the ARP, and the ARP should have the discretionary right to wind them up (see the penultimate paragraph of our response to Question 1).

If firms have to leave the ARP without finding any other insurance, then the ARP should continue to provide 6 year run-off cover (see our comments in answer to Question 3).

Thank you for completing the **Consultation questionnaire form**

Please save a copy of the completed form

Please return it, along with your completed **About you form**, as an email attachment to [consultation@sra.org.uk](mailto:consultation@sra.org.uk) by **12 February 2010**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

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