

July 2016

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REGULATING BARRISTERS

Response to SRA consultation paper: Removing barriers to switching regulators

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1. Do you agree that we should remove the obligation for run-off cover when a firm switches from the SRA to another Approved Regulator?

We agree with the SRA's objective of facilitating an open and liberal market by removing unnecessary regulatory restrictions, while maintaining appropriate consumer protection. The automatic requirement to pay not only run-off cover from the time associated with one regulator, but then also cover for the same period under a different policy with the new regulator is potentially onerous if it leads to duplication of costs. That may prevent firms from switching regulators. We acknowledge however, the need to protect consumers' interests by ensuring that when a firm switches to another regulator, adequate insurance is in place to cover work that was completed while under the previous regulator on similar terms.

The SRA rightly points out that there is a risk that the arrangements of the new Approved Regulator will not require the firm to have PII cover for claims made after it starts to regulate the firm, but which arise out of client matters concluded before that date. Similarly, the new Approved Regulator may allow a lower level of PII cover or a less advantageous set of Minimum Terms and Conditions (MTC). This could lead to differing levels of protection for clients, which could not have been foreseen by them when engaging the firm.

The BSB has considered this proposal from the point of view of our current PII rules, assuming an SRA firm were to move to be regulated by the BSB. At present, our authorisation process does not consider prior practices that were regulated by another Approved Regulator. Hence there would be no requirement in our rules for a policy to be in place to cover claims made in relation to that prior practice. That could be rectified if we imposed a condition on the entity's authorisation and/or the entity voluntarily sought extra cover, assuming an insurer was willing to provide cover beyond our MTCs (although that would likely involve the payment of an additional premium if the firm was switching to a new insurer). It should also be noted that our MTC's were set up for a very specific risk profile, which may differ significantly from the risk profile of a prior practice under SRA regulation. We note that the SRA proposes to invite other Approved Regulators to ensure their arrangements adequately consider these issues. It is unlikely that the BSB would be prepared to do this by amending its MTCs, as we believe this would significantly affect the willingness of insurers to provide cover on those terms. We would be prepared to

consider individual arrangements on a case-by-case basis, assuming the entity has found and can maintain appropriate insurance to cover the prior practice.

With that in mind, we would be concerned if the SRA granted a waiver from its own insurance requirements without first consulting the Approved Regulator that the firm was switching to. We believe it will be important that both Approved Regulators are satisfied that appropriate arrangements are in place to protect consumers.

The SRA notes that the Legal Services Board (LSB) has oversight of all PII arrangements of Approved Regulators. However, it is not the LSB's role to ensure that situations like this are catered for. The LSB approved our regulatory arrangements for a specific purpose; entities specialising in legal advocacy, litigation and advice services. The BSB's regulatory arrangements do not envisage authorising firms of a type more suited to regulation by the SRA (hence our MTC's do not require cover for such prior practices). Firms regulated by the SRA have a different risk profile and therefore the regulatory arrangements are necessarily different, including MTCs.

2. If you have answered yes to Question1, do you agree with our method for delivering this proposal?

The proposal potentially provides greater flexibility in allowing SRA regulated firms to switch to other approved regulators. However, it may not remove barriers to the extent envisaged if it increases the cost of insurance after the firm changes regulator (or if the firm is unable to get insurance at the level required to cover claims from the prior practice). We agree that the SRA could only grant such waivers on a case by case basis. The SRA would have to be satisfied that clients were appropriately protected, the new Approved Regulator would have to be equally satisfied and the insurer would have had to agree to the new arrangement.

We do not agree that it is not the SRA's place to consider the adequacy of the regulatory arrangements of other Approved Regulators when granting waivers from the insurance requirements. It should consider the need to protect those persons who were clients of the firm whilst subject to SRA regulation. Once a firm has moved out of the SRA's jurisdiction and into the jurisdiction of another Regulator, the SRA does not have any control over its continuing practice and ongoing insurance arrangements. This should therefore not be done lightly or without clear safeguards put in place and agreed with the new Approved Regulator.

3. Do you have any further comments on our proposal or on the changes to the PIA or terms of the core waiver proposed?

The BSB is very happy to discuss reciprocal processes with the SRA to facilitate what the SRA is trying to achieve. Collaboration on this issue might bring real benefits. However, we would advise against proceeding with this proposal without these discussions and without considering the issues raised above.

4. Do you have any views about our assessment of the impact of these changes and, are there any impacts, available data or evidence that we should consider in developing our impact assessment?

We agree with the SRA's assessment of the impact of these changes but do not feel they have sufficiently taken account of the relationship between this proposal and other Approved Regulators' authorisation processes, for the reasons discussed above.