

CLC Professional Indemnity Framework

Response by the Council of Mortgage Lenders to the Council of Licensed Conveyancers consultation

Introduction

1. The CML is the representative body for the residential mortgage lending industry that includes banks, building societies and specialist lenders. Our 135 members currently hold around 95% of the assets of the UK mortgage market. In addition to home ownership, CML members also lend to support the social housing and private rental markets. CML members use licensed conveyancers in the course of their mortgage business.

2. We welcome the opportunity to respond to this consultation. Enquiries on the content of this consultation should be sent to jennifer.bourne@cml.org.uk

General Comments

3. We note the changes planned by the Council for Licensed Conveyancers (CLC) are intended to increase protections for consumers and this is welcome. We have assumed that all clients, regardless of whether they are individuals or companies, will be entitled to make a claim under the revised framework and terms of the participating insurers agreement (PIA).

4. We have assumed, and would welcome confirmation, that the CLC plan to retain, at least for time being, their Master Policy, for those firms who wish to continue insuring under that arrangement.

5. Overall, we welcome the aim to provide greater protections for firms and consumers, but our members are concerned that the introduction of the provision of free run-off cover may result in the level of protection provided for our members and their customers being reduced, given that the run-off cover provision is £2 million in aggregate over the six year period. We also note that the changes are reliant on a healthy PII market for licensed conveyancers; and in part, a reliance on the SRA changing their PIA to remove barriers for changing regulator. It would be helpful to understand what contingency CLC have in place if either, or both of these requirements do not materialise.

SRA's concurrent consultation on Participating Insurers' Agreement

6. We note that the SRA are proposing to amend their participating insurers agreement (PIA) so that run-off provisions are not triggered on a firm moving to another regulator, but that this consultation ends mid-July, i.e. well after changes will have been made as a result of this consultation. Have the CLC considered what they will do in the event that the SRA do not ultimately change their PIA – albeit we accept that a change to the SRA's existing PIA is the most likely outcome?

7. If, for example, the SRA's PIA was unchanged, would the CLC look to put in place measures to help assist firms who did wish to switch to the CLC?

8. Linked to this, if as the CLC expect, this development leads to more firms switching to CLC regulation, we would welcome reassurance of the measures CLC will have in place to identify any firms who may be looking to move regulator due to poor performance/monitoring or disciplinary issues with their former regulator.

Run off cover changes

9. We welcome the moves to require participating insurers to provide run-off cover free of charge and agree that this in principle at least, should help protect firms and their clients alike in that it will increase the likelihood that firms will have insurance in place post-closure. We would like to have

reassurance that the CLC feels confident that there is a healthy PII insurance market – indicative numbers, for example, insurers who the CLC expect to sign up to the PIA.

10. However, in terms of the run-off cover amount, we note that the amount of total cover will be £2 million over 6 years per firm. This, will, we understand, provide a lesser amount of cover than under the current Master Policy arrangements. Some of our members have experienced losses related to conveyancing which have exceeded £2 million and there is a concern that this level of cover may not provide adequate protection to consumers, our members included, given that claims involving conveyancing can easily reach large sums. As such, our members would prefer to see a higher level of cover amount, or the existing Master Policy cover maintained.

11. Some lenders may wish to guard against the risk that the cover is exceeded by requiring firms who act for them to have higher levels of cover over the run-off period. At least one of our members has indicated that they may review whether they wish to have firms choosing this option over the CLC Master Policy, on their panels.

12. In the event any claims were to exceed the run-off cover in place what assurances are the CLC able to give that the Compensation Fund will be able to provide clients, including our members alternative protection?

13. As part of the overall review of its PII arrangements and move away from a master policy approach we would request that the CLC agree with its insurance providers and members that a process is put in place to proactively notify lenders if a firm's cover lapses. We feel this would mitigate the increased risk of dealing with an uninsured firm.

14. The CLC notes that premiums under the new agreement may be increased, but that market forces may lead to downward pressure in the short-term. It would be helpful to understand how the CLC has assessed the risk of how potential premiums for the new cover might lead to pressure on the Compensation Fund, if firms are unable to obtain cover.

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