

PRIMENEWS *update*

Insurance Brokers specialising in Professional Indemnity

In this edition of our regular solicitors' newsletter, we focus on how the Legal Services Bill may affect a firm's professional indemnity insurance arrangements. In particular the subject of how complaints may be dealt with going forward and the implications of the new complaints handling regime for a firm and its insurers are discussed. We are delighted to introduce Edward Coulson, a partner at specialist insurance litigation firm Robin Simon LLP who offers his own thoughts on the future.

The renewal season for professional indemnity insurance is also happening now! We therefore take this opportunity to provide you with details as to how Prime Professions will assist your firm to secure the best deal for 2007.

If you have any comments on the issues raised in this newsletter, please do not hesitate to contact us. Your observations are always welcome.

THE LEGAL SERVICES BILL

The Legal Services Bill is winding its way slowly towards the statute book. It has completed its passage through the House of Lords where it has been substantially amended. It has now returned to the Commons where the government threatens to reverse the Lords' amendments.

First the big picture. The House of Lords revised the government's original draft bill significantly reflecting concerns about the independence of the legal profession. In particular (and taking the headlines from the Law Society's press briefing):-

- *The Chairman and members of the board of the Legal Services Commission (the LSC – the new overarching professional regulator) are to be appointed by the Lord Chancellor and the Lord Chief Justice (as opposed to being appointed by the Lord Chancellor alone).*
- *The "light touch" regulation of the profession is to be reinforced by a requirement that the threshold for intervention by the LSC is "... an act or omission..." by a front line regulator such as the Law Society or the Bar Standards Board (the new devolved front line regulator for the bar) which has or is likely to have "... a significant adverse impact on the regulatory objectives taken as a whole..." (clause 41(1) – emphasis added).*
- *Provisions ensuring that lawyers are not required to pay the costs of investigations where they are found not to be at fault.*

The Bar Council has made similar representations and both it and the Law Society say (possibly through slightly gritted teeth) that they are content with the current form of the bill.

However, the government is clearly unhappy with it and threatens to reverse these amendments now that the bill has returned to the Commons. The upshot remains to be seen although the scene seems to be set for a confrontation between the profession and the government. Both the bar and the "magic circle" City firms have voiced concern about threats to the independence of the legal profession and, in the case of the magic circle firms, the implications this may have for its reputation overseas.

These issues have implications for the profession's indemnity insurance arrangements, particularly whether the LSC is to be the "light touch" regulator envisaged by Clementi or will impose a much more intrusive regulatory system – possibly along the lines of the FSA – as the government seems to wish. Either way, this will affect insurers' view of the profession. Many of them counted the cost of the FSA's intervention in the pensions transfer claims against financial intermediaries in the 1990s. They will foresee similar situations with the legal profession in the future if the government has its way. This may affect capacity and, subject to the current soft market, pricing.

So much for the big picture but, as so often, the devil lies in the detail. Probably the most significant aspects of the bill so far as practitioners are concerned are the arrangements for a new complaints scheme. A conspicuous feature of the structure of the new regulatory arrangements is the segregation of disciplinary issues from complaints. The former will, by and large, remain the province of the relevant front line regulators (the Law Society, Bar Standards Council etc) whereas the latter will be dealt with by a new Office for Legal Complaints (OLC).

The new obligatory system for handling complaints will enable individual (i.e. private) clients and possibly others – the category has yet to be finalised by the Lord Chancellor – to take advantage of a scheme that is intended to ensure that complaints are "... resolved quickly and with a minimum of formality by an independent person" (i.e. the OLC ombudsman).

The threshold entry requirement for the OLC scheme is that the complainant must have exhausted the solicitor's internal complaints scheme (now a compulsory requirement of the new Code of Conduct) before making a complaint to the OLC (clause 126).

The scope of the complaints which can be dealt with by the OLC is broad. The only requirement seems to be that the respondent must be an "authorised person" in relation to a