



Solicitors Regulation Authority consultation on  
protecting the users of legal services.

**Institute of Legacy Management response**

June 2018

Chris Millward, Chief Executive

## Summary

The Institute of Legacy Management (ILM) is the professional body for legacy professionals – those responsible for the sensitive and successful administration of donors’ final gifts to charitable organisations. Our members deal with others using legal services on a daily basis as well as accessing legal services themselves. We are uniquely positioned therefore to provide insight into the issues on which the Solicitors Regulation Authority is currently seeking input via your consultation on protecting the users of legal services: balancing cost and access to legal services.

We are concerned that charities do not fall within the terms of the proposed narrowed eligibility of “those...that need and deserve the most protection”. Given that charities work with some of the most vulnerable in society, any lack of protection will, by default, fall on them. Additionally, given the large estates which many charities are fortunate enough to benefit from and which their work relies upon, the reduced cover of only £500,000 could impact them disproportionately.

### **Other issues**

The desired reduction in solicitors’ fees and therefore increased accessibility of legal services is reliant upon the solicitor / firms passing on the reduced overheads in their hourly rate. Without a requirement to do so, and with your own consultation stating that you do not expect solicitors to simply reduce their charges, these changes could simply endanger some regular legal service users without benefit to anyone else.

# About the Institute of Legacy Management

The Institute of Legacy Management (ILM) [www.legacymanagement.org.uk](http://www.legacymanagement.org.uk) is the membership body for legacy professionals – those responsible for the successful and sensitive administration of donors' final gifts to charitable organisations.

The Institute was established in 1999 to provide individual legacy professionals with a network of support and dedicated training services. Today it represents and supports more than 600 individuals, working in over 350 charities, not-for-profit organisations and associated professions.

Across the sector, legacy professionals are responsible for over £2.8bn (1) of charitable income each year – income that many charitable organisations rely on for their survival. They are proud to do the work they do, they know they are representing a person's final wishes, and they conduct their work with great skill and compassion.

Ultimately ILM seeks to ensure that every donor's charitable legacy achieves its greatest potential. In working towards that goal, the Institute partners with a range of companies and professional bodies to ensure the legal environment supports and promotes charity legacy giving, and to offer members additional support, information and collaboration opportunities.

We are proud to:

- Act as a crucial network uniting legacy professionals across the UK
- Provide dedicated training services to maintain and improve practices across the profession
- Work with probate professionals and other service providers to improve and strengthen the legacy management process from start to finish
- Maintain and deliver information about the legacy management profession to the wider community
- Help define and share the highest professional standards for legacy management

## Our vision

Ensuring every generous donors' final wishes achieve their greatest potential.

## Our mission

- To support our members in the delivery of professional, proactive and sensitive legacy case management.
- To champion the interests of donors, members and charities to optimise the impact of legacy gifts.
- To drive professional standards and benchmark performance in legacy giving.

(1) Legacy Foresight – Legacy Giving 2017 report

## A unique perspective

As the professional body for charity legacy professionals, ILM is uniquely placed to provide insight into the issues on which the SRA is currently seeking input.

Our members are and deal with others accessing legal services on a daily basis. As a body – given their professional knowledge and experience, and number of estates they are involved in the administration of – they are uniquely exposed to the issues arising.

In 2015, 6 in every 100 deaths (36,080 estates) resulted in a gift to charity. (2)

On average (mean), each ILM member has an ongoing workload of 187 cases (3)

<p><b>How long have you worked in legacy administration?</b></p> <p>Less than 1 year = 7%          1-2 years = 7%          2-3 years = 12%          3-5 years = 20%          5-10 years = 23%          10+ years = 32%</p>	<p><b>What is your organisation's annual legacy income?</b></p> <p>Less than £20,000 = 1%          £20,000 - £400,000 = 5%          £400,000 - £1m = 12%          £1m - £8m = 37%          £8m - £20m = 12%          Over £20m = 32%</p>
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<p><b>What % of your time is spent on legacy administration?</b></p> <p>Less than 20% = 17%          20 - 50% = 14%          50 - 70% = 16%          70 - 90% = 18%          100% = 35%</p>	<p><b>Do you hold a legal or other professional qualification?</b></p> <p>Yes – 64%          No – 36%</p>
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(Data from 2017-member engagement survey)

Mindful of the proposals contained in the SRA's consultation

- Reducing the claims limit
- Having a higher level for conveyancing
- Flexibility around who the cover should protect
- Make changes to run-off

ILM members are keen to help ensure that any changes continue to protect those accessing legal services and that the appropriate safeguards remain in place to ensure testators, and their often-generous final wishes, continue to achieve their greatest potential.

(2) Smee and Ford, 2015 market analysis

(3) ILM member survey 2017

## Methodology

The ILM has encouraged member organisations to engage with the consultation, consider the implications of the proposals and to submit responses on behalf of their organisations.

We have also discussed this at an organisational level in the hope of best reflecting the views of our members, many of whom will not be able to respond to the consultation.

## PII

**Question 1: To what extent do you think the proposed changes to our PII requirements provide an appropriate minimum level of cover for a regulated law firm?**

**Strongly disagree**

Whilst the proposals seem to benefit firms and cover 98% of claims, we are concerned that charities often benefit from very large estates where the potential for loss to the estate and therefore the beneficiaries, can far exceed £500,000. How would this additional loss be compensated?

**Question 2: To what extent do you agree that our minimum PII requirements do not need to include cover for financial institutions and other large business clients?**

**Strongly disagree**

We are very concerned with the proposal that minimum PII requirements do not need to include cover for other large business clients which may, by default, include charities. Whilst they may raise millions of pounds in donations or by other means, since charities exist for the public good and are non-profit making organisations, their funds are committed as soon as they are raised, and reserves are held in accordance with charity law. They are not businesses generating dividends for shareholders, but vital monies to fund often lifesaving work.

The proposal that this could be an election of the law firm depends upon both the business ethics and risk aversion of the firm in question and cannot guarantee security to the charity client in accessing legal services.

**Question 3: Do you think our definition for excluding large financial institutions corporations and business client is appropriate?**

**NO**

As previously stated, whatever level of income is generated by a charity, this is directed towards its charitable objectives and not to shareholders. To exclude such non-profit organisations from protection unjustly exposes not only the charity itself, but its employees and volunteers and ultimately its service users or charitable objectives.



# Compensation Fund

**Question 13: To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it those in most?**

**Strongly disagree**

1. We are very concerned with the proposal to narrow eligibility for claims on the Compensation Fund. Whilst they may raise millions of pounds in donations or by other means, since charities exist for the public good and are non-profit making organisations, their funds are committed as soon as they are raised, and reserves are held in accordance with charity law. The removal of large charities from eligibility for the Compensation Fund misaligns them with commercial enterprises generating income for their shareholders, instead of non-profit making organisations whose income is immediately spent on furthering its charitable objectives, often helping those in hardship themselves.

Notwithstanding the proposed ineligibility, a loss of significant income for a charity, which would also be very unlikely to engage in one of the “high return dubious schemes” mentioned in the consultation document and therefore likely only arise through negligence or other by the solicitor, would result in hardship not just for the charity as an organisation, but its employees and ultimately its service users or charitable objectives.

2. As noted above regarding PII, we are concerned that charities often benefit from very large estates where the potential for loss to the estate and therefore the beneficiaries, can far exceed £500,000. How would this additional loss be compensated?

**Question 18: Do you think we have set out the right approach for assessing when a maximum payment has been reached?**

**NO**

There appears to be a clear inequity of approach towards clients suffering the same loss, based on the number of retainers used as opposed to actual loss suffered.

This would clearly impact charities who might jointly instruct a solicitor to act on their behalf in an estate, or indeed lay executors within an estate which is defrauded. Either way, the donor’s intentions to benefit others is thwarted by the actions of the solicitors and again by the Compensation Fund.

## Dubious Investment Schemes

**Question 20: What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?**

Under the Trustee Act 2000, there is a statutory duty of care placed upon trustees, such that they must exercise skill and care as is reasonable given the circumstances and the knowledge and experience of the trustee. There is the additional duty to obtain and consider proper advice where necessary.

In the scenario of a charity (or charities) being a beneficiary under a reversionary trust, we would expect the trustee (normally the executor of the estate) to obtain professional advice as to how to invest the funds. In this instance, it is reasonable for the trustee to rely on the expertise of the solicitor / accountant who holds themselves out as an expert in this field, subject to a routine check of credentials. It should not be expected for a lay executor to undertake intensive research around products recommended to them by a professional unless the product is sufficiently new or risky to warrant additional checks.

### **Other Issues**

With affordability recognised as a major barrier to accessing legal services, the desired outcome of lower solicitors' fees being levied due to reduced overheads relies upon the solicitor / firm passing on these savings to clients. Without any requirement to do so, and with many solicitors viewing conveyancing and will writing as loss-leaders, we are concerned that the desired benefits will not be realised.