

**EXPLANATORY MEMORANDUM TO  
THE LICENSED CONVEYANCERS (COMPENSATION FOR INADEQUATE  
PROFESSIONAL SERVICES) ORDER 2009**

**2009 No. 501**

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This Instrument will increase the maximum compensation that the Council for Licensed Conveyancers may direct a licensed conveyancer to pay his client in respect of inadequate professional services from £5,000 to £15,000 with effect from 31 March 2009.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Context**

4.1 This Order is made under paragraph 16(2) of Schedule 8 to the Courts and Legal Services Act 1990 (CLSA) which allows the Lord Chancellor, having consulted the Council for Licensed Conveyancers (CLC), to increase the limit of compensation which may be directed by the CLC, in favour of clients of licensed conveyancers who have provided inadequate professional services.

**5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

**6. European Convention on Human Rights**

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

**7. Policy background**

• *What is being done and why*

7.1 Under the current arrangements the CLC has power to make awards in favour of clients of licensed conveyancers where the level of service provided has fallen below the standard reasonably expected of a licensed conveyancer. The current upper limit for awards of compensation is £5,000.

7.2 Following consultation with their members, the CLC made an application to the Ministry of Justice for an Order under paragraph 16 of Schedule 8 to the CLSA requesting an increase to the limit of compensation from £5,000 to £15,000.

7.3 The CLC cites its reasons for raising its compensation limit is to bring it in line with other legal professional bodies, such as the Legal Complaints Service (LCS) and the Bar Standards Board, which both have an upper compensation limit of £15,000. The CLC's view is that clients should have the same level of protection when dealing with licensed conveyancers as they have when dealing with solicitors and barristers – if the levels are not the same there may be a disincentive in instructing a licensed conveyancer. This will be of particular importance in light of the significant changes to the delivery of legal services made under the Legal Services Act 2007 (LSA), specifically the commencement of provisions enabling Legal Disciplinary Practices (LDPs) in March 2009.

7.4 The LSA reforms the way in which legal services are regulated in England and Wales by establishing an oversight regulator, the Legal Services Board (the Board), and an independent complaints handling body; the Office for Legal Complaints (OLC). The LSA will enable greater consumer choice and flexibility in legal services by removing disproportionate restrictions on business structures, allowing lawyers and non-lawyers to set up businesses together for the first time, and enabling services to develop in new, consumer-friendly ways.

7.5 From 31 March 2009 (and before the Board is fully functional, expected in 2010) solicitors and licensed conveyancers (as well as other lawyers) will be permitted to practise together in LDPs. Such practices will be able to apply to be regulated by the Solicitors Regulation Authority (SRA) or by the CLC. The CLC contends that if its compensation limit were to remain unchanged there might arguably be an incentive on some mixed licensed conveyancer/ solicitor practices applying to be regulated by the CLC rather than the SRA. For this reason, the CLC has requested that the Order come into effect no later than the date on which LDPs are first permitted. The CLC's proposals are, therefore, in line with the principles behind the LSA

7.6 Further, the increase to the CLC's compensation limit will move towards the compensation limit which the OLC will be able to award once established in late 2010. Under the new regime the OLC will handle all consumer complaints. It will administer an ombudsman scheme that will provide consumers with a quick, fair and accessible complaints system. This new body will be empowered to make a range of orders for redress including awards of up to £30,000.

- ***Consolidation***

7.7 There are no issues relating to consolidation.

## **8. Consultation outcome**

8.1 Before making any such Order, under paragraph 16 of Schedule 8 to the Courts and Legal Services Act 1990, the Secretary of State is required to consult with the CLC.

8.2 The CLC consulted with the whole of the licensed conveyancers' profession on the proposal to increase the limit of compensation awarded by the Investigating Committee from £5,000 to £15,000 between January and March 2008. The consultation period ended on 31 March 2008. 16 responses were received from members of the profession: 9 were in favour of an increase in the level of compensation to £15,000; 7 were opposed. The consultation document and a summary of the responses received can be found at the download centre on the CLC's website at [www.clc-uk.org](http://www.clc-uk.org)

8.3 The majority of responses received were broadly supportive of the increase in the limit on the basis that it amounted to an acknowledgement of the parity of licensed conveyancers with solicitors and barristers. There were some concerns that the compensation awarded should not be higher than the fee charged, and that clients should not profit from an award made by the CLC under these powers, but should be put in the same position they would have been in had the transaction proceeded normally.

8.4 Concern was also expressed by some licensed conveyancers that the increase could prejudice licensed conveyancers in that their professional indemnity insurers would not respond to awards made by the Investigating Committee. The CLC consulted with indemnity insurers who gave assurances that on receipt of a complaint it remains open to the licensed conveyancer to refer the matter to insurers.

8.5 The CLC asked the LCS to provide a summary of their experience in relation to higher level penalty limits in complaints against solicitors. The limit of compensation which could be awarded against solicitors was increased from £5,000 to £15,000 with effect from 1 January 2006. The LCS commented that at the time the limit was increased there was significant concern that this would open the floodgates for a large number of cases which would have previously been dealt with by the courts and that could alter the way in which its redress system worked. The LCS' experience for the period April 2007 to May 2008 was that 36 cases or 5% of adjudicated complaints (total 714) were awarded compensation between £5,000 and £15,000.

## **9. Guidance**

9.1 Officials from the CLC have been fully consulted and engaged in the preparation of this instrument. Further the CLC will provide informal guidance to licensed conveyancers to ensure they are aware of the options available for responding to complaints alleging losses incurred in excess of £5,000.

## **10. Impact**

10.1 There is no impact on the public sector. The impact on business, charities or voluntary bodies is minimal. As part of its consultation the CLC explored the impact on licensed conveyancers, given that many of its members are sole practitioners and small businesses. The CLC concluded that there will be minimal impact to licensed conveyancers as a result of the change because their indemnity insurers will continue to respond to claims/complaints of poor service made by clients where the sum agreed or awarded by the CLC exceeds the licensed conveyancer's deductible. This would apply whether the limit is £5,000 or £15,000. Because the number of complaints received remains relatively small (under 200 for the year ended 31.12.08) the CLC is able to provide informal guidance to licensed conveyancers to ensure they are aware of the options available for responding to complaints alleging losses incurred in excess of £5,000.

10.2 A full regulatory impact assessment was prepared for the Legal Services Bill in November 2006, and a supplementary memorandum was published in June 2007. Details of the impact on providers of legal services subject to enforcement and the application of sanctions under the LSA are set out at paragraphs 11.14 –11.22 of the RIA. This shows that whilst the legal professional bodies like the CLC will remain primarily responsible for monitoring the conduct of licensed conveyancers, subject to oversight by the LSB, in terms of complaints handling the responsibility for dealing with consumer complaints will be removed from the CLC and given to the new OLC which will with immediate effect be able to make awards of £30,000. It was considered that the new arrangements would not have any significant impact on the providers of legal services. The full RIA can be found at <http://www.dca.gov.uk/risk/ria-legal-services.pdf> and the supplementary memorandum can be found at <http://www.justice.gov.uk/docs/RIA-Supplement-v021.pdf>

## **11. Regulating small business**

11.1 The legislation applies to small businesses.

11.2 There will be minimal impact to small businesses for the reasons set out at paragraph 10.1 above.

## **12. Monitoring & review**

12.1 Upon commencement of paragraph 1 of Schedule 4 to the LSA, the Board will exercise oversight regulation of legal professional bodies and any review of the arrangements will fall within its remit.

## **13. Contact**

Nalini Deen at the Ministry of Justice (Tel: 020 3334 4220 or email: [nalini.deen@justice.gsi.gov.uk](mailto:nalini.deen@justice.gsi.gov.uk)) can answer any queries regarding the instrument.