



Post six year run-off cover and the Solicitors Indemnity Fund

Consultation responses

April 2022

These respondents asked us to publish their responses and their names.

Name	Respondent type
Malcolm Davis	Other
Eleanor Hoggart	Other
Elizabeth Wilson	Other
David Tilley	Solicitor
Charles Palmer	Solicitor
James Anderson	Solicitor
Steven Jonas	Solicitor
Ian Gillam	Member of the public
Tom Rogers	Other
Robert Morfee	Solicitor
Ian Gillam	Member of the public
Michael Hudson	Solicitor
Simon Stowe	Solicitor
Steven Graham Rae	Other
Roger Mitchell	Solicitor
Adam Ali	Solicitor
Helen Merriam	Solicitor
BladeLaw	Law firm or other legal services provider
Timothy Phipps	Solicitor
The Junior Lawyers Division	Law society
Michael Carter	Solicitor
Hubers Law	Law firm or other legal services provider
David "Michael" Orton-Jones	Solicitor
Richard Adams	Solicitor
Legal Risk LLP	Law firm or other legal services provider
Frances Barker	Solicitor
Birmingham Law Society	Law society
Stephen Charles Denham	Solicitor
Tony Steiner	Member of the public
Parfitt Cresswell	Law firm or other legal services provider
John Machell QC	Other legal professional
Kathryn King	Solicitor
Howden Insurance Brokers	Other
Newcastle upon Tyne Law Society	Law society
Alan Edward Short	Solicitor
William Davis	Other
Christine Jackson	Solicitor
John Searles	Solicitor
Paragon International Insurance Brokers	Other
Ben Adams	Solicitor
Kent Law Society	Law society
Nottinghamshire Law Society	Law society
Andrew Melling	Solicitor
Mark Kelly	Member of the public
Professional Negligence Lawyers Association	Representative group

John Merlin Hinton Hutchings	Solicitor
Jeremy Chandler-Smith	Solicitor
Glynis Margaret Mackie	Solicitor
Derby and District Law Society	Law society
Nicholas Woolf	Solicitor
Antonia Shield	Solicitor
Shanade Smith	Solicitor
Anthony Rudge	Solicitor
Peter Knibbs	Solicitor
Gard & Co	Law firm or other legal services provider
Santos Hau	Solicitor
QBE Insurance Group	Other
Nancy Battell	Solicitor
BPE Solicitors	Law firm or other legal services provider
City of London Law Society	Law society
Cardiff and District Law Society	Law society
Jason Pearce	Solicitor
Association of South Western Law Societies	Law society
Black Solicitors Network	Representative group
Fiona Swann	
Malcolm Abel	
Vivien Stern	
J A Longstaff	
Tom Frewin	
Elizabeth Ruth Stevens	
Janis Purdy	
Daniel John Murphy	
The Law Society	Law society
Legal Services Consumer Panel	Representative group
Sole Practitioners Group	Representative group
LawNet Limited	Other

These respondents asked us to publish their names but not their responses

Name	Respondent type
Ian Duncan	Solicitor
Hampshire Law Society	Law society
Susan Midha	Solicitor
Thomas & Meighen Solicitors Ltd	Law firm or other legal services provider
Hertfordshire Law Society	Law society
Jill Trelfa	Solicitor
Adrienne Edgerley Harris	Solicitor
James Towler	Solicitor
Marielyne Butler	Solicitor
Doncaster & District Law Society	Law society
Bournemouth and District Law Society	Law society
Weightmans LLP	Law firm or other legal services provider
DWF Claims	Law firm or other legal services provider

Jodele McConnachie
John Carter
Manchester Law Society

Solicitor
Solicitor
Law society

This document also includes responses from respondents who asked us to publish their responses anonymously.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:7 Data

2. About you

1.
First name(s)

Malcolm

2.
Last name

Davis

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Other

8.
Please specify

Retired Solicitor

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Flawed and thoroughly selfish and self serving

11.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Yes you have the funds and claims are still being made

12.
3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Flawed

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

You are not serving the profession in a beneficial way

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

That is sheer nonsense.No doubt would be expensive if available.How are pensioners supposed to afford this?

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Flawed

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

It is your obligation

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

Flawed

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Flawed

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

No opinion

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

The SIF should remain in force

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

This is totally flawed

24. 15) Do you have information on impacts to inform our assessments?

No

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:22 Data

2. About you

1.
First name(s)

Eleanor

2.
Last name

Hoggart

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Other

8.
Please specify

Retired solicitor

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

It seems fundamentally unfair to remove PSYROC from this who essentially have signed up to & paid for it. I appreciate the question of cost but think this should be a tapered cut off starting with new entrants & those retirees of such long standing that no realistic claim could stand.

11.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

If this consultation is proposed to be a detailed impact analysis of the impact on retired solicitors I would like to have some much more detailed likely impact figures.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

See answer to question 1.

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

This is quite unacceptable for retirees...

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Fine as long as there is no extra cost to retirees.

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

As the apparent point of replacing a perfectly good current system is apparently only to save money, it would appear that the only point of any alternative system is also to save money rather than to give retirees the protection to which they are entitled.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

As above

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Given the proposal is apparently simply to save money, I cannot see how any targeted approach can be fair....those most exposed to the larger claims because of their chosen specialism??

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

See my response to question1

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

If you are having to propose mitigation, then you are accepting there is still a risk worth mitigating, so what is the point.

24. 15) Do you have information on impacts to inform our assessments?

Clearly more impact assessment is required.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:28 Data

2. About you

1.
First name(s)

Elizabeth

2.
Last name

Wilson

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Other

8.
Please specify

Solicitor but also daughter of retired solicitors who have closed their firm

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

For those firms who have already ceased to trade and who are in run-off or are in the post-6 year run off period currently covered by the SIF it is imperative that the SRA and the law society confirm that the SIF will be available to the end of the 15 year liability period post closing of those relevant firms.

If the SIF is to close, it should only be to firms closing in the future and only if run-off insurance can therefore be procured by those firms for the whole of the 15 year period on closing. At the moment, those in the post-6 year period are in a horrible limbo position looking to fund insurance out of their pension income when products are scarce or non-existent and very costly and in some cases like my family, where partners have died in the interim. The ongoing annual threat to close the post 6 year SIF is cruel to former solicitors such as my parents.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Yes, please see my response to the final question in this list.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Fine if you do it with effect for a time in the future so that firms can price that in to their considerations on obtaining insurance and provided that such insurance is actually available - please see my response to the final question for further details.

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

24. 15) Do you have information on impacts to inform our assessments?

My mum and dad were two partners in a four partner high street practice that had been my grandfather's. They closed the practice in 2008 and arranged for another firm to take their staff on. Contrary to public opinion, they made no money when they closed the firm and are not "rich solicitors". They took out the 6 year run-off insurance as is required when they closed the firm.

When that insurance came to an end, it became clear that the law society and the SRA were considering terminating the SIF so they attempted on several occasions to extend the insurance to cover the balance of the 15 year period. Insurers were unable to provide a policy as they said that it was not a known product. We contacted the law society who were kind but essentially couldn't help as the lack of insurance product was a known problem. Insurers they suggested we speak to couldn't assist.

A few years later and they were quoted an extraordinary amount of money to insure the tail of the liability period. But again there was a stay of execution of the SIF so they didn't have to find the money to pay for the insurance.

This issue has caused by parents great angst since they closed the firm. One of the four partners has subsequently died. My father has had ill health for some time.

We have fretted about what will happen when the SIF closes for years.

How could we put together any information the insurers would want to see when the firm closed so long ago? How much would it cost? What were the risks to the estate of the deceased partner and his widow and children? Would my parents and their former partner that survived have the funds to pay for an insurance product now out of their pensions? Would they need to involve the widow and/or children as the beneficiaries of the deceased partner's estate? This is a very real, very difficult issue. Firms that close tend to be those at the coalface of advising on the law. They advise on family law, probate, wills, trusts and conveyancing as well as some crime. They are not wealthy. They have not for obvious reasons retained files or information on the matters they worked on historically. They are pensioners who want to do the "right thing" and make sure there is adequate cover should issues arise.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:75 Data

2. About you

1.
First name(s)

David

2.
Last name

Tilley

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Tilley and Company

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes. The SRA response is self serving and contrary to the interest of the general public which is to retain the best possible coverage of negligence claims against the Profession. It also ignores the contractual nature of the indemnity agreed at the inception of SIF and that the funds would be used for a specific purpose not as now proposed by SRA. Fur the SRA miscalculates the sums due from individual solicitors for the Fund to continue to provide coverage which are minimal and likely to be acceptable to the Profession as a whole.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

The SRA are invited to look again at their mathematics. It is calculated that a levy of approximately £15 per annum would be required to continue the Fund with its present level of indemnity which is minimal for the benefit both to the Public and retired solicitors.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

As above. Please do not use acronyms which I don't understand

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

There is none and is never likely to be any

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

See above

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

See above

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:117 Data

2. About you

1.
First name(s)

Charles

2.
Last name

Palmer

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Gumersalls

9.
Please specify if you are

an in-house solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

We invested to minimise commercial costs and the market surge in premiums shows that the mutual model was wise

12.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Only the market response.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

The funds are there to protect and should continue to be so.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

The funds are there to protect and should continue to be so.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The open market cannot be trusted

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

The funds should be used for their intended purpose.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

The open market cannot be trusted

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

The funds should be used for their intended purpose.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

The open market cannot be trusted

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

The funds should be used for their intended purpose.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

The funds should be used for their intended purpose.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

The funds should be used for their intended purpose.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Within the regulatory arrangements to protect the public and the profession through the SIF, to avoid proliferating bodies and to

avoid the market greed.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

No

25. 15) Do you have information on impacts to inform our assessments?

No

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:136 Data

2. About you

1.
First name(s)

James

2.
Last name

Anderson

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Continuing cover is essential to protect the reputation of the profession. Future Newspaper headlines relating to an insolvent long retired solicitor failing to meet a destitute claimants award when the profession fails to step in would be very damaging. The SIF have provided cover as far as I can see from the report effectively for "all sides" at very reasonable cost (Overheads).

12.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

It doesn't seem to be the best way forward. What happens in the insurer becomes insolvent?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

None

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

None

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

If it is going to be simple to operate then I have no issues. If it becomes complicated as in days of the old policy where risk relating to the type of work and claims history were important then I would counsel against it. The financial contributions for reasons that are known but I shan't go into here became inequitable for many whilst a boon for the few.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

None

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

I have no reason to doubt the accuracy of your analysis.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

None

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

None

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

If I have understood the question correctly I have no views save it might get over complicated as opposed to a flat fee system.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

None

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

It needs to be compulsory in a manner that can be enforced. My own view is that the SIF provide a cost effective and fair scheme, any other scheme will put money in insurers pockets (or other parties hands) lifting the costs. As important, with the SIF there will be no start up costs and no "bedding in" period.

We aren't talking big money here, simply a modest annual levy.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

None save protecting the good name of the profession outweighs, in the long run other considerations.

25. 15) Do you have information on impacts to inform our assessments?

None

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:138 Data

2. About you

1.
First name(s)

STEVEN

2.
Last name

JONAS

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

JONAS ROY BLOOM

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

The SRA should continue to provide PSYROC, through the SIF, on an ongoing basis.

12.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

There is a significant threat both to clients & solicitors if PSYROC is not continued through the SIF, on an ongoing basis. The

threat to remove it creates a disproportionate threat to the interests of clients & solicitors.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

There is a significant threat both to clients & solicitors if PSYROC is not continued through the SIF, on an ongoing basis.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

There is a significant threat both to clients & solicitors if PSYROC is not continued through the SIF, on an ongoing basis.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

History shows that moving insurance to an open market option makes it more expensive, particularly to those who need it most.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Your analysis is flawed in proposing a cut-off to the six year cover. I agree with The Law Society's analysis of it.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

Your analysis is flawed in proposing a cut-off to the six year cover. I agree with The Law Society's analysis of it.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Your analysis is flawed in proposing a cut-off to the six year cover. I agree with The Law Society's analysis of it.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

Your analysis is flawed in proposing a cut-off to the six year cover. I agree with The Law Society's analysis of it.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Your analysis is flawed in proposing a cut-off to the six year cover. I agree with The Law Society's analysis of it.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

I agree with The Law Society's analysis & criticisms.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

I agree with The Law Society's analysis & criticisms.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

I agree with The Law Society's analysis & criticisms.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Your analysis is flawed in proposing a cut-off to the six year cover. I agree with The Law Society's analysis of it.

25. 15) Do you have information on impacts to inform our assessments?

I agree with The Law Society's analysis & criticisms.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:156 Data

2. About you

1.
First name(s)

Ian

2.
Last name

Gillam

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Member of the public

8.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

9.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

PSYROC is not a term approved by the Legal Services Board. No definition is provided and no details as to what it consists of have been published. There is no explanation for members of the public making a claim after six year mandatory cover has expired. The profession are being asked to approve the removal of PYSROC when no-one knows what it means. The Consultation is therefore flawed and meaningless

10.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

11.
3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

12.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

13.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

14. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I was a lead to believe that the SIF already provide a master policy which cover the post six year situation, called the SIR2012. The trouble is that no-one knows what this means and how it is applied to claims. The SRA and SIF and LSB will not give a straight answer. My personal view is that mandatory cover is appropriate for the most dangerous time for claims ie six years. This is established policy at the moment and seems to cover virtually all claims. Someone simply needs to step up to deal effectively with claims which fall through the net of post mandatory cover. The SIR2012 is old and does not provide the effective means of dealing with such claims. This requires up dating to deal with 2021 circumstances. The SRA must first explain though what it is they are trying to update and not hold a consultation on something which is undefined and unapproved.

15. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

16. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

17. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

18. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

19. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

20. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

21. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

22. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

23. 15) Do you have information on impacts to inform our assessments?

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:157 Data

2. About you

1.
First name(s)

TOM

2.
Last name

ROGERS

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Other

8.
Please specify

Former solicitor

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

If the financial arrangements underpinning PSYROC are considered not sustainable, then I am appalled at both the Law Society - the so-called representative body - and the SRA for not addressing this issue properly before now and putting in place simple arrangements to keep it going. It is a singular irony that one of the few good things left that actually protects clients is now facing the axe due to narrow considerations of 'cost'. For me, what sums this whole thing up is the cold, 'Homo Economicus' tone of the consultation document. The SRA thinks that people who go to see solicitors are 'consumers'.

The SRA admits in its consultation that if the profession itself were called upon to fund a sustainable PSYROC scheme, this would involve a relatively small contribution from individual solicitors and law firms. (For reasons I go into below, I would favour contributions from individual solicitors and not from firms/entities). This is the obvious and simplest solution. The SRA also concedes in this consultation that rationalisation measures could reduce operating costs at SIFL. It seems to me that the solution

is to continue with the existing arrangements, but in modified form to make them financially sustainable.

It also seems to me appropriate that the regulator should oversee a funded scheme, as it is ultimately a client protection matter and any such contributions, though small, would have to be mandatory across the profession.

It is ridiculous that the SRA in this consultation tries to over-complicate the matter and paint solicitor contributions as a possible risk to clients in that solicitors and firms would pass on the cost. As the SRA admits in this consultation, the cost to practising solicitors and firms would be tiny in relative terms, thus it seems to me that no such problem would arise.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

A solution should have 'human' factors at the forefront, not cost and economy. The SRA has not considered fully the impact on clients who actually suffer negligence and incur damages for which they cannot recover. The SRA seems to think that the rough average figure of £34,000.00 or so is a low amount for a negligence claim, but this is life-changing money for most ordinary people on ordinary wages who are clients of conveyancing and private client practices and rely on mortgages and have few if any assets. For those people, a loss of £34,000.00 spells catastrophe, and in many cases the damages will be greater still. That is before we get into the non-monetary consequences to clients of unrecoverable damages, which the SRA fails to consider. As the SRA acknowledges, if PSYROC cover ceases, this will mean some claimants have no effective recourse other than against individual solicitors, which could well mean that there is little or no prospect of recovery. The reputation of the profession will inevitably suffer, and the clients involved will suffer, and they will - rightly - never forgive the profession.

The SRA in this consultation rightly touches on the importance of PSYROC to the reputation of the profession, but no deeper analysis of this is offered or considered. These protections instil a culture of client safety. It promotes the sense that a client is safe with a solicitor. Other professions may not have these protections, but that is for them, and often other professions that carry out work similar to solicitors will not have the same risk profile. For instance, non-admitted will writers will not tend to carry out work that is as complex as that undertaken by private client solicitors. The multi-disciplinary nature of most solicitors firms also increases risk.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I believe that the main issue with this is in insurance and contract law. If PSYROC is marketised, there is a risk of it being undermined by insurers who decide to invalidate policies and contest claims. A market solution may not be workable and would in any event depend on the attitude of insurers, who can be very commercial in their approach. It needs to be appreciated that many - maybe most - of the professional defendants in a PSYROC-type claim will be elderly and may not be able to mount a meaningful defence. The point is to provide a safety net of last resort for the profession for those very few claims that arise very many years after a firm has closed.

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

I am not in practice, so cannot give an informed view. I would only say that the MTCs limit the market enough as it is. If you add PSYROC on, you will probably find a still more reduced range of willing insurers and/or you will drive many firms out of business (the latter leading to further regulatory incidents and repercussions, as well as broader social and economic implications).

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

It would be incumbent on solicitors who lack PSYROC cover to declare this fact, which could create two-tier arrangements. That is itself not the major problem. The issue with this is more that most clients are not very informed and will take little notice and only realise there is an issue in the event they have to make a claim and discover that their solicitor had a PI policy that does not

cover long-tail liability.

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

If it is proposed that there be a master policy for the whole class of solicitors, then why not just continue with mutualised arrangements, adding an annual contribution from each law firm and sole practitioner, or each individual solicitor? It is difficult to see what benefit an insurance option would have over mutual indemnity. A master insurer will look at this commercially and seek profit. Given that, on the SRA's own admission, the scope of liability is small, and from a profession-wide point-of-view, the benefits of these arrangements are professional and non-economic rather than financial, why is any fundamental change needed beyond sorting out the financial basis of it?

Consideration also needs to be given to the different effects that, respectively, insurance and indemnity can have on moral hazard. Any long tail liability coverage arrangements arguably present moral hazard because some practitioners may adopt a more high-risk or less diligent attitude to practice in the knowledge that they will always be covered. It is true that in the case of insurance, the practitioner still bears the cost in the form of premiums during the practising phase of the policy term, and he also knows that if long tail claims arise in great number from other practitioners while he is still practising, he will pay a price in the form of an increase in the premiums he pays now. However, I would argue that a mutual indemnity addresses the moral hazard slightly better because it is a single fund established and paid for by the entire profession and there is therefore a bit more direct accountability and, where there are projected financial problems and raised contributions due to solicitor malfeasance, the situation is more transparent, all practitioners have a stake in it, and practitioners can act together through their representative bodies (as well as the regulator) to address these issues. This is especially the case if the mutual fund contribution is taken from individual solicitors, rather than from law firms. In contrast, even if a master insurance is bought by the profession from the marketplace, there will still be opaqueness in the arrangements and it will probably be difficult for the profession to change provider.

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

See my answers to 3 and 4 above, because the effect of a mandatory master policy would be much the same for the profession as the introduction of enhanced MTCs for PI policies. It will weaken the market and drive firms out of business.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

PSYROC should remain a regulatory matter because the heart of this is client protection.

For the reasons given above, my view is that individual solicitors should now pay an annual contribution to PSYROC - as this underscores that it is a mutual indemnity for the entire profession and introduces a counteracting effect to moral hazard, as explained in 6 above. Individual solicitor contributions, as opposed to firm/entity contributions, helps to control costs, introduces accountability from both sides, and also underscores that the protection is of the solicitor individually (as well as the client, importantly) and that the cost is not meant to be passed on by firms/entities to clients.

SIFL should continue to operate under the superintendence of the SRA, as this is a client protection matter.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No, because the SRA consultation ironically makes a compelling case against it. I believe the matter is uncomplicated. The cost of continuing with PSYROC is significant and the value of most claims is small, and claims are few in number, but the case for retaining PSYROC is overwhelming due to the catastrophic impact that abolition would have for clients who do need to claim, and the financial risk to solicitors who paid their annual fees to the SRA and its predecessor in the belief that this risk would be covered.

As already explained, the solution is for SIFL to continue to administer PSYROC with mandatory annual contributions from individual solicitors. under the superintendence of the SRA

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I believe this would be misguided. The simple fact is that all areas of law can attract long tail issues, problems, disputes, 'circumstances' and claims. By selecting out certain legal disciplines from protection, clients will be left vulnerable. There may also be grey areas and complex disputes may arise over what can and cannot be included - and if those disputes arise as part of long tail claims, it will not help the image of the profession as it will look like the profession is trying to deny coverage to victims of negligence.

I also believe that PSYROC contributions should be from individual solicitors in practice, regardless of practice area, as it is one single profession and many solicitors practice in multi-disciplinary environments or firms. For instance, a criminal defence solicitor may think he does not have to worry too much about long tail claims, but he may be working in a firm in which other solicitors offer conveyancing and private client services, and he may become a partner in that firm. A partner, by definition, has general responsibility (and, normally, at least nominal liability) for all areas of practice of that firm.

Even if a practitioner works in a specialist firm that does not offer any 'high-risk' services, that practitioner and his colleagues and partners cannot be sure that later in their careers (or earlier) they will (or has) practise(d) in a firm that does offer high-risk services that result in uninsured claims. Contributions should be throughout the practitioner's career, to protect the whole profession.

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

No, for the reasons given in 10 above.

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

I cannot expand on what I have already said in 10 above.

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

I will repeat what I have stated above. In summary:

(i). PSYROC is an essential element to client protection and should continue, run by SIFL.

(ii). PSYROC should be funded by an annual contribution from each individual practising solicitor.

(iii). PSYROC should remain a regulatory matter because the heart of this is client protection, thus SIFL should remain under the superintendence of the SRA itself.

(iv). If implemented in the right way, a mass-funded PSYROC system can enhance personal responsibility rather than undermine it, because while not a factor looming large for most, it does remove a possible reason for practitioners to attempt to limit their liability in various ways, using conceits such as 'small print' contract terms and incorporating their practices as limited liability companies and LLPs and so on.

(v). Individual solicitors should now pay an annual contribution to PSYROC because this underscores that it is a mutual indemnity for the entire profession and introduces a counteracting effect to moral hazard, as explained in 6 above. Individual solicitor contributions, as opposed to firm/entity contributions, helps to control costs, introduces accountability from both sides, and also underscores that the protection is of the solicitor individually (as well as the client, importantly) and that the cost is not meant to be passed on my firms/entities to clients (again, I stress, a risk entirely in the imagination of the SRA).

(vi). PSYROC is part of wider interconnected arrangements for the profession. My perception is that the SRA favours 'industrialisation' and 'deprofessionalisation' of the law. Ending PSYROC is a further step towards deprofessionalisation because it encourages a climate of limiting liability. A good faith regulator of a profession should consider the entire culture of that profession and how its reforms impact on this to ensure professionalism is maintained. Keeping PSYROC would be a victory for those who want the law, in particular the solicitor branch, to stay professional because it would remove an important incentive towards the commercialisation and corporatisation of legal practice, whereby solicitors try to limit their exposure to future liability by imposing sophisticated contract terms on their own clients, and in some cases, incorporating their practices. Surely the regulator, the SRA, should if anything be encouraging moves back to traditional solo and partnership structures, as those arrangements guarantee the personal liability of law firm owners, and lawyers? Ending PSYROC would be one more step towards a future in which solicitors can wash their hands of liability.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I think ending PSYROC would be a huge mistake. If that is decided, then I hope the profession moves to stop you. But there are mitigation measures that could be taken. The law could be changed to allow solicitors to set up their own mutual indemnity association, either within or without their representative body, the Law Society. I believe that is the only mitigating measure possible, given the impact on people who would be affected by actual claims.

24. 15) Do you have information on impacts to inform our assessments?

The disproportionate impact of ending PSYROC will clearly be on those clients and practitioners of low income and with few assets, especially clients and practitioners who are elderly. Without wishing to be condescending, elderly people are, by definition, vulnerable because they are less able to mount a legal claim or defence due to their weakening mental and physical acuties. Furthermore, some practitioners who come to rely on PSYROC will be those who got themselves into difficulties during practice, and often these people will have few financial means and may also suffer mental health issues. This will cause difficulties for clients seeking to pursue those practitioners for historic claims and will further undermine public confidence in the profession.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:172 Data

2. About you

1.
First name(s)

Robert

2.
Last name

Morfee

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

none

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

It is essential that the public have the security of an insured profession.

12.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

If you want good quality professionals in the legal profession they must sleep easy when they retire. The professional and

fiduciary obligations of a solicitor are heavy. After 48 years as a solicitor (with no claims ever made against me) I am now retired and aged 75. The last firm I worked for is in administration. I expect to sleep easy, so I expect cover. I am willing to pay a levy for it.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

No.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

No.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

No.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

No.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

No.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance

solution or other)?

Yes, but am not qualified to comment further.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

No.

25. 15) Do you have information on impacts to inform our assessments?

No.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:191 Data

2. About you

1.
First name(s)

Ian

2.
Last name

Gillam

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Member of the public

8.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

9.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

In order to replace PSYROC, which is not part of any approved regulation, it is surely necessary to make it clear what exactly is being replaced? Despite much enquiry there is no definition as to what the current Indemnity provides to the public or indeed to the professional. Until the public and solicitors have this information then it is pointless and probably against the rules/law of an open consultation to seek comments and authority to change the meaning of a stand alone, unspecified, undefined and unapproved indemnity. Before continuing with this the SRA need to explain publicly what indemnity they are attempting to replace or close.

10.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing

PSYROC through the SIF on an on-going basis?

11.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

12.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

13.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

14. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

15. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

16. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

17. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

18. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

19. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

20. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

21. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

22. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

23. 15) Do you have information on impacts to inform our assessments?

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:253 Data

2. About you

1.
First name(s)

Michael

2.
Last name

Hudson

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Michael Hudson

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes, the SIF should remain open, it presently has significant assets and it provides protection both to solicitors who have ceased to practice more than six years ago and to their clients. There is also a reputational Risk to the SIF, if it is closed and clients cannot obtain redress, for any reason (for example the solicitor does not have the means to pay (whether or not as a result of the claim) has died and the estate wound up), questions will be asked as to why the SIF was closed, what has happened to its funds, and if they are used to enhance the pensions or salaries of SRA employees the self interest of the SRA will lead to severe criticism of the SRA in the press, Parliament and elsewhere.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

The SIF has funds and these funds have not been exhausted. The funds derive from contributions made by solicitors whilst the SIF was operational, many of whom are solicitors now of retirement age. They can justly consider it is their money and should be returned to them and not appropriated by the SRA for its benefit.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

It won't help those who have retired (or their clients) and whilst it may be useful for those who retire in the future it will not protect those now at risk, or whose will become at risk in the next few years.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

The disbenefits outweigh the benefits.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

In practice it has proved unobtainable and there is no reason to suppose it will ever be obtainable, or obtainable at a realistic price.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

It won't help those who have retired or their clients and whilst it may be useful for those who retire in the future it will not protect those now at risk, or whose will become at risk in the next few years. It is likely to be expensive and difficult to negotiate, the SIF was created because the Master Policy it replaced ran into difficulties

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

My view (and my previous firm acted for insurers, both companies and Lloyds for many years) it that there is not likely to be a suitable or cost-effective master policy available in the insurance market.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

It won't help those who have retired and the only protection for them, and their clients, is to retain the SIF, at least whilst it has assets.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

I fail to see the difference between establishing an alternative indemnity fund and keeping the SIF (if need be by re-opening it as an active fund and solicitors paying into it the contributions they will be required to pay into a new fund), except a new fund will not have access to the assets of the SIF, creating it will incur costs, and it will not protect those who have already retired or their clients. The solution, which appears obvious to everyone except those who will benefit by taking the SIF's assets, is to keep the SIF in place.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-

going provision of PSYROC?

They won't help those who have retired or their clients and whilst it may be useful for those who retire in the future it will not protect those now at risk, or whose will become at risk in the next few years.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

I don't consider this can be dealt with by regulatory arrangements, the SIF should be kept in place as long as it has assets. It is the only way to protect retired solicitors and their clients.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

Yes, they need to be targeted to protect solicitors who have already retired and their clients.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Provide it by continuing the SIF as long as it has assets, and if need be claw back the assets already transferred from the SIF to the Law Society for its pension fund.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

If the SIF does not continue in existence then the SRA should to pay the claims against retired solicitors after the six years' run-off cover has expired; only such an arrangement will concentrate the minds of those proposing to close the SIF.

25. 15) Do you have information on impacts to inform our assessments?

The proposals will impact most heavily on those who are the poorest and least able to bear the loss, whether it be retired solicitors who cannot afford to meet a claim or claimants who are left with an unsatisfied claim. The wealthy will survive, the poorest will not and face financial ruin. The impact on the SRA's reputation, already very low in the profession, also needs to be taken into account for as soon as any unsatisfied claims emerge the SRA's reputation with the public will fall to rock bottom as it has with the profession.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:265 Data

2. About you

1.
First name(s)

Simon

2.
Last name

Stowe

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Simon Stowe

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Do not ignore the danger of claims after the 6-year limitation-period. We all know the Court has power to override it.

12.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

It is proportionate because the risk (taken accross all insureds) is very small.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

That will only give them an excuse to put up the premiums even more, or more might exit the market

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

It will only be exploited by the insurers

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I'm in favour - but why not bring back SIF anyway? It turns out the market-based present alternative was not cheaper - as it was touted.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Bring back SIF

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Misguided.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Yes- though a revived SIF

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

SIF - it was the cheapest by far.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

No

25. 15) Do you have information on impacts to inform our assessments?

No

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:268 Data

2. About you

1.

First name(s)

Steven Graham

2.

Last name

Rae

6.

I am responding..

in a personal capacity

7.

In what personal capacity?

Other

8.

Please specify

Retired solicitor

9.

How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

1. It is in the public interest that solicitors' clients who have valid claims for negligence should be able to make them in the knowledge that the solicitors in question have appropriate professional indemnity insurance in place to meet those claims. This is self-evidently also the case where such claims are brought against retired solicitors. If SIF does not continue to provide PSYROC then as things stand insurance will not be available in respect of PSYROC claims and clients will to that extent be prejudiced. Some retired solicitors will not be able to meet such claims and the clients concerned will suffer loss.

2. I have been associated with the legal profession for 50 years, and throughout that time it has been axiomatic that solicitors should be covered by professional indemnity insurance. This has been part of the reason why the public have reposed their confidence in the solicitors' profession. It is not in the public interest that this should change.

3. It is stated at paragraph 25 of the consultation that the SRA's role is to deliver an appropriate level of consumer protection, rather than one that guarantees no risk to consumers. However given that consumers at present have the protection of PSYROC

it is not appropriate to take a decision which would as things stand deprive consumers of a protection they now enjoy.

4. The SRA is taking an excessively narrow view of what constitutes the public interest. It states that it works to protect members of the public (consultation paragraph 2). Retired solicitors are members of the public as much as anyone else, and it is not in the public interest that they be deprived of the protection afforded by SIF and exposed to uninsured claims which could lead to substantial personal loss and even bankruptcy in their declining years. It is not the case that this is only a matter for the Law Society (paragraph 29).

5. Removal of PSYROC will have most impact on retired solicitors and therefore its impact will disproportionately disadvantage those who have age as a protected characteristic under the Equality Act. I observe that no attempt appears to have been made to establish how many retired solicitors would be impacted by the removal of PSYROC.

6. The consultation at paragraph 31 states that expected PSYROC claims are small in number and value. They may be relatively small in number but they are clearly not small in value, or it would not be being stated that a fund of £32,000,000 is insufficient to meet them going forward. It follows that clients who are not protected by PSYROC are at risk of being unable to recover substantial sums. I observe that so far as I can see such clients will not be able to have recourse to the Compensation Fund as the solicitors against whom the claims are brought will not have been in breach of their insurance obligations.

7. I note that the Virtual Reference Group was in favour of retaining PSYROC. Apart from reasons of consumer protection and protection of solicitors, it apparently referred to the reputation of the profession. If PSYROC is removed a day will inevitably come when a client is unable to recover the amount of a claim because the solicitor against whom it is made does not have the funds to meet it. No doubt in that event the press will get hold of the story and run it on the basis that the much-vaunted protection of the public offered by solicitors' indemnity insurance is illusory. This will damage the reputation of the profession. This would not be in the public interest and is a factor that the SRA is entitled to and should take into account.

8. The consultation at paragraph 52 states that the cost of continuing to provide PSYROC through SIF would be £16.00 per solicitor per annum. It seems to me that this is an eminently proportionate cost. It is suggested that this cost might be passed on to consumers - even if this were so the additional cost would not in my view be in any way disproportionate to the advantages secured by maintaining PSYROC through SIF. I do not agree that this would be anti-competitive and not targeted.

9. The consultation at paragraph 55 states that PSYROC through SIF is a "consumer protection outlier". Even if this is the case it is not a reason for removing it. The solicitors' profession has always prided itself on having the best consumer protection via professional indemnity insurance, and this gives it a competitive and reputational advantage. The remark that will-writers are not obliged to have p.i. insurance is beside the point - it is surely not suggested that this is a good thing?

10. It is somewhat disingenuous to suggest (paragraph 57) that there is no evidence that protection from "long-tail claims" is a material factor affecting entry to the profession or particular areas of practice. Given that at present such protection exists it will not have been a concern for anyone up till now. If the SRA institutionalises a situation whereby retired solicitors have no such protection I would suggest that such evidence is likely to be forthcoming fairly shortly thereafter.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No but as I point out in 1) 5. above the SRA appears to be entirely lacking in information itself as to the number of retired solicitors who will be affected if PSYROC through SIF ceases to be provided. This no doubt is attributable to the excessively narrow view of the public interest which the SRA appears to take (see 1) 4. above). Surely any analysis of proportionality should take into account those solicitors who will be directly affected by what is proposed and who, as pointed out above, are also members of the public and generally speaking have age as a protected characteristic.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

It is in my view surprising that the MTCs do not already require provision of PSYROC on an on-going basis. This would appear to be a lacuna in the present arrangements, and is presumably attributable to the existing provision through SIF. Including PSYROC in the MTCs would remedy this lacuna going forward. I would suggest that whilst insurers may say they would leave the market in that eventuality this may be special pleading at this stage and once the MTCs were amended insurers might well accept the new position. It has always been my understanding that in general insurers will cover any insurable risk, subject to appropriate premiums.

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

The obvious benefit is that it would resolve the PSYROC issue going forward. It is not clear to me how the SRA can say on the one hand that few consumers benefit from PSYROC and the sums paid are modest (paragraph 49) and yet that if PSYROC is included in the MTCs insurers will leave the market (paragraph 66). I do not agree that it would be a disproportionate regulatory invention.

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

No

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I would have thought that if a master policy could be taken out with a partner insurer then the funds remaining in SIF (after making a suitable reserve for SIF liabilities) could be made available to that insurer under the partnership agreement as initial funding. The ex-SIF funds could be ringfenced so as not to form part of the insurer's money but be available to help meet claims. This would I suggest make the proposal more attractive to an insurer and also help keep down premiums. Also I would suggest that it is not a reason for not doing something to say it may be challenging.

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I have no information but would suggest the SRA find out. I would have thought however that such a policy would need to be bespoke.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Again if an alternative indemnity fund is set up via another structure then residual SIF funds could be used as seedcorn funding as suggested at 6) above.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

No

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

I think there might be some merit in targeting by limiting the maximum claim payout to say £1,000,000, on the basis that most claims are apparently of low value, and it would reduce the amount required to be retained for actuarial purposes, thus prolonging the life of SIF. I would however need further information as to the potential benefit and detriments.

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes for the reasons set out above. The precise mechanism is for further discussion. As regards other arrangements I would point out that one possibility that does not seem to have been considered at all is that of retired solicitors making contributions to SIF or whatever other mechanism is set up. I appreciate that the SRA does not have any power to make a levy on retired solicitors, but I do not see any reason why it should not solicit voluntary contributions. These would need to be covenanted, but I would have thought retired solicitors would be prepared to make such contributions, subject to the cost being reasonable, and certainly if the alternative were to be uninsured. I understand that the SRA may not have records of retired solicitors but the Law Society should have, and if these were deemed insufficient a publicity campaign could be mounted to bring the matter to the attention of retired solicitors and invite them to contribute.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Firstly I would point out that the so-called measures of mitigation will be of no benefit whatsoever to clients of firms that have already closed. They are not measures of mitigation at all. Explaining the position to firms going forward will not remove the problem.

Secondly the suggestion that clients should be told that they should take out insurance themselves when a firm closes is in my view wrong in principle. It amounts to telling clients that they should protect themselves at their own cost because the profession's regulator can no longer be bothered to protect them. This would be detrimental to the reputation of the profession, and involve extra cost to the public which I would suggest would be disproportionate.

The other step that should be considered is the inclusion of PSYROC in the MTCs as suggested above.

24. 15) Do you have information on impacts to inform our assessments?

I repeat the point made above, namely that the removal of PSYROC without adequate replacement would have an adverse impact mainly on retired solicitors who will have the protected characteristic of age. I observe again that the SRA does not appear to have made any effort at all to find out how many retired solicitors would be affected. I find it difficult to see how issues such as proportionality can be adequately assessed in the absence of any evidence as to how many people are actually going to be affected.

In response not to this question but to paragraph 89 I consider that if SIF is closed any residual funds should certainly be used for the purpose of providing indemnity and should only be handed over to the Law Society on that basis.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:282 Data

2. About you

1.
First name(s)

Roger

2.
Last name

Mitchell

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Howard Outred and Co

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

12.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

13.
3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-

going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:317 Data

2. About you

1.
First name(s)

Adam

2.
Last name

Ali

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Ridley and Hall

9.
Please specify if you are

an in-house solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I agree that the PSYROC should be continued through the SIF

12.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

N/A

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

n/a

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

n/a

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

n/a

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I expect that this will not be appealing to insurance underwriters

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:339 Data

2. About you

1.
First name(s)

Helen

2.
Last name

Merriam

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

GWBHarthills LLP

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Your analysis fails to take account of honest solicitors like myself who paid large amount in insurance for the period of the practice and had a good claims record and assumed they would enter retirement without worry of future claims. As I closed my practice in 2004 and have had no claims since I am unlikely to obtain insurance on my own account

12.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

i think cover should only be for negligence not dishonesty

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

only as above

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

only as above

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

I understand from the The Law Society they have been unable to identify any providers

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

No

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Only that your cost benefit analysis excludes the protection of honest solicitors as above. If a plumber retire they disappear. We cant

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

no

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

no

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Negligence . The only problem with a 15 year cut off is that time runs not from the date of the negligence but the date of discovery

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

As above

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance

solution or other)?

Yes for the reasons above and by a a levy on practising solicitors and those who wish to remain covered like myself

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

What about the risks to solicitors?

Also the risk to clients where solicitors simply dont have the funds to pay

25. 15) Do you have information on impacts to inform our assessments?

No - only the impact on my mental health having paid insurance including run off in good faith to be left unexpectedly unprotected

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:340 Data

2. About you

1.
First name(s)

Alexander

2.
Last name

May

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law firm or other legal services provider

8.
Please enter your organisation's SRA ID (if applicable)

626566

9.
Please enter your organisation's name

BladeLaw

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

PSYROC should be provided through the SIF if it can be offered on a cost-effective basis. I have heard it said that the cost to do that would be £16 per fee-earner or £240 per firm per annum. I also understand that the average claim is around £35k. As a sole practitioner in the truest sense of the word, I don't want to pay £240 per annum for something that is effectively worth £16 per annum. I would much rather take the risk of having to pay out a claim myself. This is particularly so because, like most sole practitioners like me, with no staff, know what we do and know that we have not cut corners and that the risk of a claim is extremely low.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

See above

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I think it would be sensible for our insurance to be provided on the basis of when the claim arose rather than when the claim was made. In order to make this viable, the profession should look more closely at how to reduce the risk for insurers by better regulating ourselves rather than limiting insurers risks by limiting the benefits to claimants.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

See above

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

I would prefer to self-insure but would not want to be forced to insure as the "open market" for our insurance does not appear to be that open at all.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

See above

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

See above

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

See above

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

See above

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

See above

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

See above

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC

should be targeted?

See above

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

See above

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

See above

25. 15) Do you have information on impacts to inform our assessments?

Unless arrangements deal reasonably with single fee-earner firms as well as larger firms, such sole practitioners will exit the market and either become unregulated or find other, more reasonable, regulators. In either case, the consumer will lose out as the offering within the solicitors' market will be reduced.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:367 Data

2. About you

1.
First name(s)

TIMOTHY

2.
Last name

PHIPPS

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Mason Baggott and Garton

9.
Please specify if you are

an in-house solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes , it is in my view essential.

12.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

No

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

No

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I agree it with those views

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I agree with those views

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

No

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes, for the protection of any clients, and therefore for the protection of the profession's reputation, via the SIF. There will be

very few cases that will "fall" into this category after the mandatory 6 year insurance period has passed.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

No

25. 15) Do you have information on impacts to inform our assessments?

No

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:392 Data

2. About you

1.
First name(s)

Suzanna

2.
Last name

Eames

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

The Junior Lawyers Division

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

The JLD disagree with the SRA's preferred position that on-going PSYROC does not continue through SIF. The following points relate to the JLD directly. The main concerns which have been outlined but which are not limited to:

1. Protection of solicitor's reputation and maintaining public confidence

By way of a consumer protection issue, the JLD does not believe that the proposals put forward by the SRA provide sufficient protection. Notably, there is concern regarding access to justice which is currently delivered through PSYROC. There is a belief that this action is not in keeping with maintaining the public's confidence in the profession.

2. Solicitor's joining the profession

The JLD worries that without the long-lasting protections in place, such as PSYROC and SIF (or other alternatives) junior lawyers will be less likely to enter the profession, in particular to open their own practices. Alternative insurance on the open market is likely to be more expensive for the junior professionals. This in turn could have an adverse effect on the diversity within the profession.

3. Training of junior members

A further concern for the JLD is focused on smaller practises with training principles who are reaching retirement age. It is thought that if there are not sufficient protections for these solicitors then they are less likely to wish to undertake the training of junior members on the basis that this may increase their own liability.

4. The allocation of the SIF residual funds

The JLD are sceptical that there has been little to no dialogue as to the percentage of the residual fund which could be transferred to The Law Society. Without any reassurances that this would be made available to support an alternative scheme it would be difficult for the JLD to comment.

Note: The JLD do not wish to comment on the proportionality of the regulatory arrangements, the competition aspect of SIF or whether the regulatory requirements have been fulfilled by the SRA.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

24. 15) Do you have information on impacts to inform our assessments?

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:408 Data

2. About you

1.
First name(s)

Michael

2.
Last name

CARTER

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

I am retired

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I am 74 years of age. How can it be fair that I should have to provide PSYROC now?

12.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

You should continue the provision of PSYROC.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Is there any information as to how much it would cost?

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

This should be done.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

How can I know this?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

No.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

I do not know what this means.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes. To provide public reassurance. Via SIF.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having

PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

No.

25. 15) Do you have information on impacts to inform our assessments?

No.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:419 Data

2. About you

1.
First name(s)

Muhammad

2.
Last name

Al Mamun

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law firm or other legal services provider

8.
Please enter your organisation's SRA ID (if applicable)

625459

9.
Please enter your organisation's name

Hubers Law

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

We acknowledge that the Legal Services Act 2007 requires that the continuation of PSYROC must be justified taking into account the regulatory objectives set out in the Act which include:

- protecting and promoting the interests of consumers,
- protecting and promoting the public interest,

- promoting competition in regulated services,
- improving access to justice
- encouraging an independent strong, diverse and effective profession.

However, there are various aspects of the analysis that Howden challenges and some additional issues we consider should be included within the analysis. We make the following points:

Consumer and public protection:

We consider the issue of consumer protection has been dismissed too quickly in the consultation document. The claims data confirms that conveyancing is the main area of work where PSYROC is providing redress. This is an important detail in the debate. For most consumers, their home will usually be the most significant life asset and the absence of available redress will be potentially life-changing in the event they suffer loss. Shortcomings in the legal service provided upon purchase can become apparent well beyond the standard six-year limitation period, for example when the consumer comes to sell the property. If the firm has closed and six-year run-off cover has ended, then it is likely that the consumer will have difficulty securing recovery against an entity that no longer exists or retired principals who, quite understandably, might make arrangements to protect their personal assets in the absence of PSYROC.

It is acknowledged that the frequency of paid claims is not high, but a prediction of circa 31 to 45 paid claims per annum should not be considered de minimis and disregarded either. As noted above the impact on individual claimants if they cannot secure redress also needs to be considered alongside the issue of frequency.

Consideration should also be given to the nil claims and not just those that result in payment. Our review of the Willis Tower Watson (WTW) report suggests that almost half the claims under PSYROC do not result in any payment (exhibit 1.11). We can therefore broadly expect the number of future matters forecast by WTW to double if nil claims were to be included.

There is merit in a scheme that facilitates the consideration of all claims brought by consumers of legal services, including those that are unsuccessful. Existing PSYROC arrangements provide a framework that enables historic matters to be dealt with (rejected or accepted) efficiently, ensuring that those consumers who have suffered loss (or think they have suffered loss) have a clear pathway to submit their claim and achieve closure in a timely way.

Comparison with other professions

It is accepted that no requirement for PSYROC is imposed by other regulators such as ICAEW, CILEX and CLC. However, the absence of a requirement in those cases does not mean that is the correct approach or justify the removal of PSYROC for solicitors. In our view, there is a greater "public protection" need for solicitors to have PSYROC compared to other professions given the amount of conveyancing work that is undertaken by the profession and the significant and life-changing impact that a conveyancing-related claim can have on an individual claimant. It is acknowledged that it is not a requirement for licensed conveyancers, but that is a very small community in comparison to SRA-regulated practices and there is a genuine question as to whether there have ever been any claims against a CLC-regulated firm more than 6 years post-closure.

Access to justice

In paragraph 57 the consultation document notes:

".....future funding of PSYROC will increase the cost of regulation and is likely to increase costs for consumers and therefore, potentially, barriers to accessing legal services."

On the contrary, we consider that the firm-based levy that has been indicated (£240 per firm per annum) would easily be absorbed within the overheads of firms and sole practitioners. It is not at a level that could realistically result in any tangible increase in costs passed on to consumers – and certainly not at a level that would create a barrier to accessing legal services.

However, if solicitors are now faced with the future prospect of having to fund open market PSYROC or organise their personal

affairs in a way that would ensure either the availability of funding for or protection against claims post-run-off, then that will involve significantly greater cost.

In our view, the retention of PSYROC based on a levy across the profession is the least detrimental alternative from the perspective of access to justice.

The barrier to entering the profession.

The analysis provided confirms that a number of PSYROC claims are brought against traditional partnerships and sole practitioners. This is another important issue in the debate and the SRA should not underestimate the potential impact the removal of PSYROC could have on the future of the profession. It could present a disincentive for solicitors to set up as sole practitioners or traditional partnerships to offer legal services.

If there is a barrier to entry then there should be a concern that this would also reduce competition, leading to increased costs to consumers, again impacting access to justice. Limitation of liability.

The consultation document does not discuss the fact that solicitors are not able to limit their liability below the minimum level of insurance cover they are required to hold. This issue is very relevant to the discussion. It is not a position that is consistent with the modern commercial world.

If there is a regulatory requirement that solicitors cannot limit their liability to consumers to protect their position, then we would argue that the availability of an arrangement to ensure redress to consumers should likewise be a regulatory issue.

Costs of administering PSYROC.

We encourage the SRA to further review the costs of SIF. The consultation document notes (para 49) that "consumer redress payments have historically made up approximately 58% of total costs." The balance of 42% relates to the costs involved in administering the fund and defence costs. In our view, this seems high.

The fact that SIF has been extended on an ad hoc basis in recent years could have led to increased costs. Once there is certainty regarding the future of PSYROC and its funding, there are strategies that could be deployed to save costs, including the potential to engage with third parties to provide administration services and/or manage claims at more cost-effective rates, in the same way, that open market insurers do. We consider that this could be achieved without compromising quality.

Further, balanced against the important issue of public protection, we do not consider that a cost to the profession at £240 per firm per annum is disproportionate.

Cross-subsidy by firms not impacted by PSYROC. The consultation notes (para 36) that "most claims relate to sole practitioners and small firms, with only 10% relating to firms with six or more partners." This is cited in support of the argument that a levy across all firms would involve an element of cross-subsidy by large firms for the benefit of small firms which "could be seen as disproportionate, anticompetitive and not targeted" (para 53).

We are concerned about this analysis as a review of the WTW data (exhibits 2.1.1 to 2.1.4) confirms that "the majority of claims were made by practices where the practice type and size are not captured in the data". (narrative to exhibit 2.1.3). The SRA's reference to only 10% of matters relating to firms with six or more partners, does not take into account the considerable number of claims that cannot be classified. History tells us that large firms can fail and fall into run-off and accordingly while we accept that there are more PSYROC claims against smaller firms, large firms are also at risk.

In addition, some principals in large firms might have previously been involved in a small firm as a principal, and some move to a smaller firm or establish themselves as a sole practitioner/small firm in a niche area as they transition towards retirement.

Given these factors, we consider that a levy across all firms would be a proportionate and fair approach. The same debate arises with reference to the area of practice. The report notes (para 35) that

conveyancing claims have accounted for approximately 74% by value and 76% by number since 2000. Wills, trusts and probate claims account for approximately 11% of claims by value and 12% by number for the same period. Again the SRA notes a concern about cross-subsidisation by those firms that do not undertake conveyancing, wills, trust and probate, to those firms that do.

In response, we note that while PSYROC claims predominantly fall within these areas of work, there are other practice areas that are the subject of PSYROC claims. No area of work is entirely risk-free. Areas of work undertaken within a firm can also change over the years. We do not consider that the imposition of a modest levy across all firms is disproportionate or anti-competitive. In contrast, it ensures that all firms are on a level playing field by having the same access to cover in the event of a PSYROC claim.

Impact on succession

We do not consider the SRA should underestimate the potential adverse impact that this issue could have on successor practice arrangements. It is our observation that since elective run-off was introduced to the MTCs, there has been an increasing tendency for acquiring firms to insist that prior practices take elective run-off cover. In some scenarios the premium is paid by the successor, in others, it is paid by the prior practice, but in either scenario, the prior practice has the comfort of knowing that PSYROC will respond at the end of the 6-year run-off period.

It is our concern that the absence of PSYROC will make such a scenario less attractive and could be a barrier to some struggling practices and individuals closing their practice. This is not in the public interest and provides further support for the continuation of PSYROC from a regulatory perspective. The SRA has made some suggestions as to how this concern could be addressed which we comment on in response to Q14 below.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

We have nothing to add to the points made in response to Q1 above.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

The existing requirement to provide 6 years run-off cover is one of the more unattractive aspects of solicitors' PII from the perspective of the open market. In our view, if the SRA were to move to a scenario whereby the market is required to offer cover for more than 6 years, this could compromise the appetite of open market insurers to engage in solicitors' PII at all.

The number of insurers who have left the solicitors' PII market over its 21-year history demonstrates that it is a challenging area. This is further confirmed by the fact that while we are currently seeing increased premiums and the hardest market since SIF continued over successive renewals, no new insurers consider it sufficiently attractive to provide capacity. In our view, increasing the duration of run-off cover under the MTCs could further compromise the potential for new markets to engage.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

We have nothing to add to the points made in addition to Question 3 above.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The closure of SIF has now been on the agenda for some years and the open market has not offered a clear solution. We do not consider that this will change. While some insurers might indicate that they would be prepared to offer cover in some instances, we expect that this would be very limited and restricted in the following ways:

- Cover would only be offered to closed firms with the very best risk profiles
- Firms that have already been closed for some time might have difficulties accessing the information required by underwriters
- Long term policies are unlikely and ongoing renewals would be required
- Cost is likely to be difficult if not prohibitive for retired practitioners
- It is likely that cover would be more restricted than the MTCs.

Given the above issues, we do not consider that PSYROC on the open market is a realistic solution.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

We do not consider there is an appetite in the open market to participate in a master policy. Even if there were, the same limitations and restrictions noted in our response to question 5 above would also apply. The SRA should also be concerned about the longevity of a master policy option. It has previously failed as a solution to solicitors' PII leading to the formation of SIF.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

We have nothing to add to the points made in response to Q6 above.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

In our view, the appropriate option would be to maintain SIF with adjustments to ensure longevity and affordability. This will inevitably involve the need to levy the professional and the most cost-effective way to do this is with a standard per firm annual levy and a review of current operational issues to ensure that administration and defence costs are kept to an acceptable level. We do not consider that this presents issues in relation to proportionality or targeting as explained in our response to Q1 above.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

We have nothing to add to the points made in response to Q6 above.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

We agree with the conclusion reached in paragraph 79 of the consultation that limiting the scope of cover to conveyancing, wills trusts and probate would achieve very little in terms of reducing the overall cost of PSYROC. There would inevitably be additional administrative costs and complexity and uncertainty for both the profession and consumers, for little gain. Likewise, the claims history for PSYROC to date suggests that capping the limit of indemnity below the MTC compulsory limit is unlikely to achieve any significant savings. Furthermore, we consider this would create an inconsistency between the minimum level of cover under PSYROC and the amount at which the profession can limit its liability. This would be confusing for consumers and as indicated in our response to Question 1 above, we consider that the regulatory requirement preventing solicitors from limiting their liability below £2m or £3m should be matched with a regulatory-based solution to ensure the availability of cover.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

We do not consider that a targeted approach to PSYROC would be appropriate given:

- the limited savings that would be achieved
- the cost of the added administrative burden,
- the mismatch with the MTCs that would be created
- the potential for confusion and uncertainty

- the inconsistency between the regulatory prohibition on limiting liability and a the regulatory-based solution that does not ensure the availability of matching cover.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

We have nothing to add to the points made in response to Q610 and Q11 above.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes, we do consider that PSYROC should continue to be provided for within the SRA's regulatory arrangements and would propose that SIF continue with funding via a firm-based levy on the profession. Our views have largely been set out above, but by way of summary, the reasons why we take this view are as follows:

- If there is a regulatory prohibition on solicitors limiting their liability below the minimum MTC cover they are required to hold, regulatory arrangements should likewise provide a mechanism to ensure cover.
- At a levy of £240 per annum per firm, maintaining PSYROC is proportionate to the consumer protection it provides. The majority of claims relate to conveyancing and involve a claimant's most significant personal asset. The protection for consumers involves only a modest cost to the profession.
- The absence of PSYROC could impact access to justice if the profession is required to plan for the increased cost of market PSYROC (if available) on closure or ensure that they will be in a position to fund any PSYROC claims that arise.
- The absence of PSYROC will potentially be a barrier to entry to the profession in that the prospect of uninsurable liability post-closure of practice could be dis-incentive to new start-ups.
- A "per firm" levy is affordable and proportionate. It ensures that the owners of larger practices, who are less likely to use the cover, are not required to make a disproportionate contribution. Most of the funding will come from sole practices and smaller firms that are more likely to benefit from the cover.
- While most claims arise from conveyancing, wills, trusts and probate, no practice the area is immune from claims and £240 per firm per annum is proportionate to ensure protection for consumers of all legal services.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

We do not consider that the 2 actions proposed would adequately mitigate the risks to clients of firms not having PSYROC and we comment on each in turn:

a) Providing support to firms to help them understand their options when they close and how to attract a successor practice. There is already an industry of professionals in the market who undertake this work, including independent consultants, accountancy practices, professionals within banks that hold client account funds and specialist PII brokers. The reality is that for many firms, closure and run-off or succession and elective runoff are the only options. You cannot re-write a claim or disciplinary history and over the last 21 years of the open market, acquiring firms have become acutely aware of the need for caution when succeeding to another practice. A Practice Note or information and advice note from the SRA is not a solution. It is not possible or appropriate to comment on what changes to the successor practice rules would achieve without any indication in the consultation as to what they would or could propose.

b) Providing information to clients when a firm closes including information on taking insurance cover themselves. This would need to include past clients for whom the firm might no longer have current contact details. It could be a confusing issue for many clients and cause a great deal of stress and concern. There is also a question of the availability of appropriate insurance products and the ability of consumers to meet such a cost.

25. 15) Do you have information on impacts to inform our assessments?

We have nothing further to add to the points made above.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:423 Data

2. About you

1.
First name(s)

David "Michael"

2.
Last name

Orton-Jones

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes. The analysis is comprehensive and well done but does not reach the right conclusions.
Although I am still on the roll of solicitors, I am long since retired from my firm so do not have a current vested interest in run off cover
I was a member of the national Council of the Law Society and represented financial services for some years.
I was involved in debates about SIF and am sorry it is no longer as it was.

12.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing

PSYROC through the SIF on an on-going basis?

Yes. I am aware that solicitors have given up practice because of concerns about obtaining run off cover.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

NO

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

NO

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

I believe the market is hardening rapidly and it may be difficult or impossible for new entrants to obtain suitable cover in the future. This will especially hurt solicitors from disadvantaged and minorities groups. The largest firms will be able to self insure.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Insufficient knowledge

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

Don't know

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No comment

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I don't support your conclusions

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Don't know

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance

solution or other)?

I am not enthusiastic about the role of the SRA which appears to lack understanding of the needs of the public for competent and affordable legal representation.

Minorities will be particularly disadvantaged.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

No

25. 15) Do you have information on impacts to inform our assessments?

I am deeply concerned that well informed potential entrants to the profession will be deterred by the knowledge that run off cover may be impossible to obtain.

They are probably unaware at present so the impact may not have been felt yet.

I should much prefer a levy on individuals or firms to insure the whole of the profession so that all contribute a small annual sum. We are advised that the cost will be minimal.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:448 Data

2. About you

1.
First name(s)

Richard

2.
Last name

Adams

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

12.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

13.
3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes, through SIF, as the market is not interested, there are currently no viable alternatives and the Law Society is forbidden from intervening in regulatory activity.

I do not accept the SRA view that the removal of PSYROC will not affect the number of people entering the profession or reduce those willing to undertake work in high-risk areas. Rather, the ending of SIF will give rise to clear detriment to consumers.

In my view no sensible solicitor will be willing to enter a profession unable to obtain comprehensive professional indemnity insurance, and so long as claims can be brought outside the 6 year run-off period (as I understand from your published material and from Chris in the December 2021 online presentation, 10% of such claims are) the failure or cessation of firms for reasons outside the control of individual solicitors leaves those solicitors exposed.

If available insurance does not match potential liability, there is a hole where there ought not to be one.

Doctors do not have this worry. Why is it in the public interest that solicitors should?

Clearly, in the public interest SIF must continue pending the creation of a better alternative indemnity scheme.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:468 Data

2. About you

1.
First name(s)

FRANK

2.
Last name

MAHER

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law firm or other legal services provider

8.
Please enter your organisation's SRA ID (if applicable)

494979

9.
Please enter your organisation's name

Legal Risk LLP

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

The existing arrangements should continue, funded by a levy on firms or per practising solicitor. Comparison with other professions or branches of the legal profession fails properly to reflect the greater risk to consumers applicable to SRA regulated firms, which may be more likely to include claims affecting persons under a disability (children, those with mental health issues), particularly in personal injury and trusts, where time limits may not expire until many years after normal limitation periods (even after the 15 year longstop in s.14B Limitation Act 1980). Many cases may involve conveyancing, and a house is the largest single purchase most people are likely to make.

Although the primary purpose of SIF is protection of consumers, the analysis in the consultation is wrong to dismiss entirely the protection of solicitors. SIF was established under section 37 of the Solicitors Act 1974, the provisions of which protect not only consumers, whose interests must of course be the first consideration, but also solicitors and their staff: *Swain v The Law Society* [1983] 1 AC 598 at p.618 B-C. Amendments to section 37 in the LSA 2007 did not affect this.

Further, the SRA has created an onerous liability regime for solicitors –

- a) restricting their ability to limit liability below the compulsory per claim insurance limit (£2/3m), when that limit may not be available to them anyway, for example because of aggregation (and SIF provides only £1m);
- b) through published guidance – 'We would therefore not expect to see caps put on liability to clients as a matter of routine' – compare the guidance from the RICS, which promotes the use of liability caps among firms, saying '[indemnity limits and liability caps] are not really related, and there is no legal or regulatory reason why a liability cap needs to be anywhere near as high as the insurance policy limit';
- c) a change slipped into the 2019 Codes of Conduct which the SRA interpret as requiring solicitors to inform former clients of potential claims, even though the fiduciary relationship has ended.

The insurance market appears unwilling to provide cover, though we are aware of isolated exceptions. In any event, such cover will only be provided on an annual basis, and in the event of a claim may not be renewed, further putting consumers at risk. Staff may be exposed to personal liability (see *Merrett v Babb* [2001] EWCA Civ 214) but be unable in practice to buy insurance. Even the former partners in a firm may have inadequate information to obtain cover if it were ever available.

Although this is largely perceived as a small firm issue, changes in the profession, such as the acquisition of a larger firm by a non-law firm (e.g. large accountants, as has happened), could leave clients of large firms exposed.

The SRA suggests that The Law Society should arrange cover for its members, but post-LSA 2007 The Law Society, which derives its powers from Royal Charters, appears to have no power to implement an insurance scheme: such powers as it had were transferred to the SRA. Nor does The Law Society have power to compel payment of premiums or contributions to provide such cover; a voluntary scheme in our view would be unsustainable.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

It is hard to understand why it might not be proportionate to maintain SIF when an average claim is estimated at £38.6k and the contribution required is £16 per head. In fact the £16 is potentially an overestimate, as no account is taken of investment income on a fund of say, £20m.

The amounts may be significant for consumers, who may be disadvantaged, for example in the case of an undervalued settlement of a claim by a child whose brain damage is discovered subsequently. If such a claimant were to go uncompensated, the public and the press would express disbelief that that outcome was preferred to a simple levy of £16 (or less) per solicitor. They would probably be surprised that the continuance of the Fund had even attracted a debate when the need for it is so obvious.

The issue cannot be addressed through provision of information by firms to consumers, because insurance is written on a claims made basis, and the effect of allowing SIF to close would have retrospective effect, impacting consumers (and solicitors and their staff) who would not have known that cover would be withdrawn in future.

Unlike other professions, we already have a mechanism in place providing protection for consumers, and for solicitors and their staff. If we did not, we might not create it, but we do, so the SRA should not allow it to wither on the vine when the current arrangements expire on 30 September 2022. If St Paul's Cathedral did not exist, we probably would not build it today, but it does, and we take steps to preserve it. Maintenance of an existing fund, SIF, is easily the most straightforward solution.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Adding to the burden on insurers through the MTCs would be wholly unsustainable, when insurers are already pressing to reduce the scope of cover.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Page 67 of the Willis report refers to practice type (LLP etc.) LLPs did not exist before 2000 and for various reasons did not start to become mainstream until 2008. Limited companies were permitted from 1992 but were uncommon until more recently. At best, they protect solicitors and their staff (subject to our earlier reference to *Merrett v Babb*), but they do not protect consumers.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The writer is aware of one insurer writing five policies for £2,000 each. In the current insurance climate, it is doubtful whether renewal terms would be offered after a claim. Bearing in mind the number of firms which have collapsed and failed to pay run off, serious doubts exist as to the ability of former partners and staff individually to provide the consumer protection afforded by SIF.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

The insurance market conditions for professional indemnity generally are particularly difficult at present. Similar difficulties in 1986 led to the formation of SIF, because the Law Society was advised by its brokers that there was doubt whether the Master Policy slip could be filled for the 1987/88 year. History may repeat itself, even if brokers advise that cover may be available now (as to which we have doubts, though that is a question for brokers not us as solicitors.)

Establishing a master policy, even if cover could be found now, could be setting the profession up for a further problem in early course. Given that SIF already exists, there seems little reason to change. Purchasing stop loss insurance for SIF is a more flexible solution to make use of insurance, subject to availability.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

See Q6. This is a question for brokers to address.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

SIF would appear to be a reasonably cost effective model for an exposure which seems relatively contained and predictable based on several years' historical claims figures. A master policy would add cost, and a captive insurer, although a possibility, would add complexity as well as cost.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No further comments at this stage but we are willing to provide further information on any queries arising from previous answers or generally.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Consumers do not choose their lawyers on the basis of unknown and unforeseeable insurance arrangements in years to come, so a targeted approach is unlikely to operate fairly. Given the relatively low sums involved for the profession as a whole, and the fact that administrative costs would largely be unchanged, a targeted approach may not represent a proportionate response when the current arrangements are functioning effectively.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

No.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes, through SIF, on the basis that (a) it is proportionate for the reasons set out above and (b) it is a cost-effective method of providing consumer protection.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Incorporation of solicitors' practices does not protect consumers, and will not invariably protect solicitors and their staff who (a) are exposed to direct action in reliance on *Merret v Babb*, and (b) may accept personal appointments as executors or trustees, for which it is difficult to put in place any effective mitigation in smaller firms. (Large firms may have trust corporations in place which are not a viable solution for small firms.)

Passing the burden to successor practices is not an option. In our experience, advising hundreds of firms and solicitors, and insurers, on successor practice insurance issues, firms are increasingly reluctant to take on such liabilities; due diligence is difficult given duties of confidentiality.

25. 15) Do you have information on impacts to inform our assessments?

We can enlarge on the above if required.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:499 Data

2. About you

1.
First name(s)

Frances

2.
Last name

Barker

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Ellisons Solicitors

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I consider that PSYROC should be provided wherever a practice ceases, with the cost spread across the profession. That would spread a risk, at low individual cost and remove a major risk and penalty for being in the wrong place and the wrong time. It would provide consumer protection, without the cruel, no-fault, consequence of no cover for individual lawyers in the later stages of life. It would allow for the retirement of those who wish to do so, even if they do not have succession in place, with a reasonable contribution if that were deemed necessary, say at 50% of the previous year's profit.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I fear that in a hardening market this would be simply unaffordable for small firms.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

1. I fully support consumer protection, but urge that the whole matter is considered with in mind the indirect benefit to consumers of having a healthy local provision of legal services by small firms.

2. Especially as women are more financially risk-averse, we need to ensure that there is not a major disincentive to younger women in respect of taking equity, if they may be exposed to run off costs. I certainly would not have taken equity myself some years ago, had I realised such a potential risk of personal bankruptcy, faced as a likely prospect but very thankfully avoided for me by merger.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Spread the risks/costs across the profession by building in to costs of PC a contribution toward the premium and then no consumer will be left without protection.

25. 15) Do you have information on impacts to inform our assessments?

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:503 Data

2. About you

1.
First name(s)

Janet

2.
Last name

Abe

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Birmingham Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes. The low weight that you apply to the protection of clients/consumers from retired solicitors that have no insurance and may be rendered bankrupt seems inappropriate and unhelpful.

A payment of £16 per solicitor per annum is a very small price to pay to protect consumers and retired solicitors alike. It would also help to preserve the reputation of the profession as a profession where mistakes are covered by insurance from cradle to grave. It is a unique selling point for our profession and should be preserved not thrown away for £16 per annum. The payment would in fact be lower than £16 as it would be offset by investment income on a £20m fund.

The SRA should continue SIF. There is no other sensible alternative.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Yes. You do not say at paragraph 66 from whom you have heard that insurers may leave the market if you amend the MTC. Your evidence in your paper is that the extra cost is small. Which insurers have said to you that they would leave the market solely for this reason, rather than for other reasons, such as the losses underwriters suffer on solicitors PII or for lack of underwriting capacity in the Lloyds market? Where is the evidence?

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

No

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Yes. As a profession, we had a Master Policy before the SIF was created in 1987. There seems no logic in 2022 to establish a new Master Policy instead of the SIFL (as distinct from the SIF).

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Yes. You are unclear what alternative service you have in mind instead of the SIF or the SIFL, but it could be you are thinking of a claims handling business or indeed a bolt on to a broker service (ignoring for the moment the inherent potential conflict of interest there as the broker's duty is to the insured). What is not identified, is whether you have factored in the wealth of knowledge and experience plus technical skill that the team at the SIFL and their lawyers already have of the nuances of dealing with long tail claims. One anticipates that would be difficult, albeit not impossible, to replicate elsewhere at a lower cost.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Yes. Your proposed cap in the light of your evidence of the typical value of claims impacting on the PSYROC seems to be immaterial.

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

No. Splitting the solicitors' profession into what may be seen as a gold and not gold standard would seem in the interests of no one.

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes. It makes sense to stay within the skill set best placed to deal with what have always been notoriously difficult claims left in the notification system.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Yes. Does TLS support the retired solicitors who find themselves unexpectedly uninsured, possibly some years after having retired and long since lost touch with their firm and their partners? It is unclear from your paragraph 91 how far your discussion with TLS has progressed.

24. 15) Do you have information on impacts to inform our assessments?

No

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:543 Data

2. About you

1.
First name(s)

Stephen Charles

2.
Last name

Denham

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Denhams

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes the analysis seems to be weighted more in favor of discontinuing PSYROC through the SIF rather than considering the interest of consumers . Removal of the current system may encourage firms to seek successor practices at any cost with less consideration to the needs of their existing and former clients .The current system allows firms to point clients toward other firms who will look after them rather than a successor practice at any cost.

12.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing

PSYROC through the SIF on an on-going basis?

I could not see reference to the number of solicitors who currently benefit from the sleep easy factor ie who do not have a successor practice. Consumers will have confidence in solicitors generally if they know that ultimately if they have a valid claim beyond 6 years it will still be settled and not left to chance. The SRA would still have control of the situation and possibly the main focus should be on the best way to fund the scheme.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

that might be worth exploring and seems sensible but the existing solicitors and consumers currently benefiting from PSYROC would need similar protection as part of the deal. Year on year the burden would be less as ongoing it would all be picked up by the minimum terms and conditions.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

no

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

That would be a nightmare as my experience with PI insurers is they will charge as much as they can for as long as they can. Some solicitors will end up being very elderly or infirm trying to deal with this potentially for the rest of their lives eg a claim for negligent will advice only coming to light after the testator's death. Solicitors may just take a chance and not insure post 6 years or transfer assets out of their estate much earlier and make it as difficult as possible for consumers to obtain recompense even with a valid claim.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

yes there should be ongoing PSYROC on reasonable terms perhaps targeted to those type of firms most likely to experience claim but borne by the profession generally not only to provide the sleep easy factor for solicitors but from an SRA point of view avoid the scenario of a successor practice at any cost (which is not good for consumers as sometimes firms cannot find a good fit with another firm). Also consumers will be provided with confidence knowing there is recompense available post 6 years and not subject to reliance on all sorts of factors relating to whether the solicitor is insured, has funds, has gone missing etc

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

There should be some targeting toward high claim scenarios of firm types and work types but the profession as a whole should

bear the cost as public confidence in solicitors will benefit the SRA and solicitors generally

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes the SRA would retain control over an important public confidence issue which has not caused the public to lose confidence in the present system but may well do once there are one or two cases each year where genuine claims have been left unsatisfied . The SRA should keep control of the fund and seek additional funds from the legal profession generally (perhaps targeted)

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

The whole idea on this point is not a sensible way forward and to my mind will only have a negative impact on public confidence and is a backward step.

25. 15) Do you have information on impacts to inform our assessments?

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:546 Data

2. About you

1.
First name(s)

Tony

2.
Last name

Steiner

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Member of the public

8.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

9.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I have expressed my views in answer to question 13

10.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

I have expressed my views in answer to question 13

11.
3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I have expressed my views in answer to question 13

12.
4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our

MTCs to require the provision of PSYROC on an on-going basis?

I have expressed my views in answer to question 13

13.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

I have expressed my views in answer to question 13

14. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I have expressed my views in answer to question 13

15. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I have expressed my views in answer to question 13

16. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

I have expressed my views in answer to question 13

17. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

I have expressed my views in answer to question 13

18. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I have expressed my views in answer to question 13

19. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

I have expressed my views in answer to question 13

20. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

I have expressed my views in answer to question 13

21. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

I write this response as a consumer of legal services both as a private individual and in business.

Instructing a solicitor is something that I do not do lightly but when I do so it is in the knowledge that I am using a professional organisation with appropriate cover should anything go wrong.

I have watched with interest the progress of the debate around PSYROC and it concerns me greatly that, in the circumstances where PSYROC is currently available and would offer relief, I will, in the future, have to pursue a claim through the Courts. My sense is that were I placed in such a position I would be unlikely to be able to afford legal advice and representation and hence be deterred from bringing my claim.

Others have put additional arguments for the continuation of PSYROC more eloquently. The relative cost per firm for the continuation of PSYROC through SIF is miniscule – not even an hour's fee earning for most practitioners.

It will be irrelevant to the ordinary man or woman that they cannot easily be compensated for the mistakes of others because it was deemed unnecessary to protect the few – for those individuals, however many they might be, this is likely to be catastrophic and life changing.

As a consumer, the nub of the issue is that the absence of PSYROC will affect some private individuals who, in their legitimate course of seeking legal advice and assistance, will ultimately be let down by the very system that has sought to protect them.

22. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I have expressed my views in answer to question 13

23. 15) Do you have information on impacts to inform our assessments?

I have expressed my views in answer to question 13

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:551 Data

2. About you

1.
First name(s)

Nigel

2.
Last name

Harper

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law firm or other legal services provider

8.
Please enter your organisation's SRA ID (if applicable)

71480

9.
Please enter your organisation's name

Parfitt Cresswell

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

We understand that since 2007 PSYROC has provided protection for clients of around 9000 law firms that have closed without any successor practice and have now reached the end of their run off period. The absence of continuing cover for both these firms and those yet to close and their clients will remove the certainty of protection for consumers of legal services. Given that your responsibilities as regulator are fundamentally designed to provide protection for consumers of legal services it is our view that your obligations must include the provision of this protection for all consumers of legal services before, during and after the performance of those services.

The assessment of the impact of the most likely developments in the future of legal services is inadequate. There is little doubt that the legal services market faces considerable and accelerated consolidation particularly among firms offering consumer law services. The majority of small high street law firms are unlikely to exist in the current form in the foreseeable future. There is clear evidence that such consolidation has already taken place in other professional services markets - opticians, veterinary services, estate agents, accountancy to name but a few - and it is unquestionable that legal services will follow suit. The owners of these firms are getting older and an increasing number of them will close without the benefits of any successor practice protection especially as there is very little appetite amongst younger solicitors to take over the burden of owning and operating small law firms in the face of increasing online competition. Of the new firms that are being established, most of them offer selected and restricted 'niche' type legal services that are unlikely to attract much consumer risk, as opposed to the more traditional and wider ranging high street legal services which require longer term protection for consumers. As a result many thousands of consumers will be faced with little if any protection after the expiry of run off cover. Given this we see no advantage to terminating or replacing the current arrangements at least until that consolidation process has taken place. Failure to do so will be seen with the benefit of hindsight as extremely damaging to the reputation of the profession and those responsible for protecting suppliers and users of legal services.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

An independent analysis of the market has shown that a levy of just £240 per firm per annum would be sufficient to enable the continuation of the PSYROC on an on-going basis. We do not understand how it can possibly be maintained that this sum can be considered to be disproportionate to the benefits to be gained by the public, clients and the profession and we as a firm would most certainly be prepared to pay this fee and probably significantly more if necessary.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

There seems little doubt that this step would result in a significant reduction in providers of insurance services in the market resulting in an acceleration in the number of firms forced to close on run off terms and the resultant damage to consumer protection as outlined in 1 above. Higher levels of risk and a reduction in the number of firms able to offer legal services will of course result in higher costs for the consumer.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

We cannot see how firms that have already closed can benefit from retroactive PSYROC cover on amended MTCs

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Cover on the open market as a voluntary option will leave firms exposed to significantly higher costs from insurers and is only likely to be available to those firms which present the lowest risk. We cannot see how this can be of benefit to consumers who have purchased legal services from providers who represent the higher levels of risk.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

We are not in a position to comment on this

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

We are not in a position to comment on this

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

We are of the opinion that there is not a viable alternative model that will offer a ongoing suitable level of protection to clients for PSYROC

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

We are not in a position to comment on this

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

The purpose of the SRA and PSYROC is to ensure consumer protection and the targeted application does not provide the certainty of protection the consumer needs. It also presents an unequal approach to the profession which is not acceptable. Removing and diminishing the protection to clients will weaken the profession as a whole.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

See 10 above

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

We are not in a position to comment on this

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

We strongly believe that PYSROC cover must be provided through the continuation of SIF and that if this results in higher costs and /or requires some form of additional levy payable by the profession then this should be imposed for the benefit of all concerned.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Irrespective of the level of individual responses received to this consultation the Law Society remains representative of the whole profession and its representations together with those of the leading insurers are we believe almost unanimous in their support of the continuation of the SIF arrangements.

25. 15) Do you have information on impacts to inform our assessments?

We are not in a position to comment on this

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:557 Data

2. About you

1.
First name(s)

John

2.
Last name

Machell QC

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Other legal professional

8.
Please specify

Barrister

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

What I say below is addressed to Q1, Q2 and Q13, although my comments do not depend upon the precise means by which regulatory arrangements are made to ensure continued PSYROC is available, and my comments proceed upon what appears to be a reasonable assumption that PSYROC will continue not to be available from commercial insurers.

The preliminary view that the SRA has indicated in the consultation paper has been reached using an analysis that is built on a false premise, and a decision not to continue to implement arrangements in some form that ensure the availability of PSYROC would be a breach of the SRA's regulatory obligations and would be susceptible to judicial review.

The approach adopted in the consultation paper is one that assumes that the SRA has an open regulatory choice as to whether to continue to implement arrangements that ensure the availability of PSYROC and an open choice that is to be made by

balancing relevant factors (including protection of the public and cost).

That is a false starting point. It is a false starting point because it assumes that protection of the public (including the nature and extent of the harm that might be caused to the public by the unavailability of PSYROC) is something that simply goes into the balance along with other considerations such as cost.

But that is not right because it fails to give proper effect to the primacy of the regulatory obligation to act in the best interests of the public, the regulatory status quo and the reasons for the status quo. Protection of the public is paramount; and in this context the public interest is served by compulsory insurance (up to a minimum). Uninsured claims are a bad thing both from the perspective of an individual affected client and more generally from the perspective of the reputation of the profession and its regulators. That is the regulatory status quo and it is a status that is the result of a regulatory/political policy decision made long ago and one that is not open to reconsideration (save in extremis, which is not suggested).

The regulatory starting point is that (subject to a minimum level of cover) claims by clients are to be covered by insurance. Section 37 of the Solicitors Act 1974, whilst expressed in permissive terms, was clearly enacted and has been implemented in the context of a policy decision that claims would be insured and that solicitors would be compelled, by regulation, to comply with the arrangements put in place (originally) by the Law Society. That is consistent with the obligation of the regulator, when exercising its powers in relation to insurance, to act in what it considers to be the best interests of the public: "In exercising its statutory functions the duty of the Council is to act in what it believes to be the best interests of that section of the public, even in the event (unlikely though this may be on any long-term view) that those public interests should conflict with the special interests of members of the Society or of members of the solicitors' profession as a whole. ... the paramount purpose was the protection of that section of the public that makes use of the services of solicitors": *Swain v The Law Society* [1981] 1 AC 598 at 608E-F and 610F-G.

The public interest in compulsory and always available insurance, and the regulatory obligation to implement arrangements to satisfy that public interest, is not (save in extremis) one that is to be weighed against supposed countervailing considerations that may arise from time to time.

The implementation of this policy has always been on the footing that insurance is only compulsory up to a minimum and this obviously gives rise to a risk that a consumer will have a claim that overtops the minimum, but the minimum level has been set from time to time to ensure the risk to a consumer is negligible. (Commercial clients are able to take a more informed approach to the risk, including by instructing only solicitors who take out top up policies.)

No doubt the considerations that have informed the minimum level of cover would come into play in extremis if the availability of insurance (commercial or captive) at any coverage level in a particular situation (such as PSYROC) was prohibitively expensive. But (despite bumps in the road) that situation has never arisen and, critically in the present context, it is not suggested in the consultation paper that arrangements for continued provision of PSYROC would be prohibitively expensive. On the contrary, the paper demonstrates that the cost to the profession of continued arrangements through SIF would be negligible.

Having reached the conclusion that continued arrangements for PSYROC can be made (for example, through SIF) without the cost being prohibitive, the regulatory obligation is simply to implement those arrangements. In other words, the regulatory status quo should be maintained. It is wrong in principle, in these circumstances, to engage in a regulatory balancing exercise that seeks to examine the extent of the harm to the public and weighs that against other supposed countervailing factors including cost.

Given the public interest in compulsory insurance and its availability through SIF at negligible (or at least reasonable cost), the SIF arrangements for PSYROC should continue (unless some other method can be achieved).

I make the following further points.

First, the argument made in paragraph 52 that continued arrangements would benefit a very small number of consumers, but would have a negative impact on the large number of consumers who might have to meet the cost, is a bad one. The cost to solicitors or their firms of an annual levy to continue the arrangements would be negligible and there would appear no basis for an

assumption that such a negligible increase in overall costs would result in any conscious decision to raise prices, but, even if one can make that assumption, then the cost per consumer would be vanishingly small and one that would clearly be in the public interest.

Secondly, again given the negligible cost, the suggestion that future funding of PSYROC is potentially a barrier to accessing legal services is plainly a bad one (paragraph 57).

Thirdly, the point made in paragraph 53 about cross subsidisation is, again, a bad one. The cost of regulation and the protection of the public is one that necessarily, or at least often, involves cross subsidisation. Nor can it really be said that there would be any material effect on competition between professionals regulated by different bodies.

Fourthly, a decision not to continue to implement arrangements that ensure the availability of PSYROC is one that risks harming the reputation of the profession and the SRA. There is a clear and obvious real risk that, if PSYROC is not available, a meritorious client claim will go unsatisfied. In that situation the profession and the SRA would risk very serious and obvious adverse publicity: the story – which would be written in terms suggesting a public scandal – would be: meritorious client loses their home because of a mistake made by a solicitor and a regulator who made a clear and deliberate decision not to continue a regulatory policy that has been in force for the best part of 50 years all to save rich/entitled solicitors £16 per year each. Such a story would (rightly) cause serious and lasting reputational damage.

The views expressed are my own and not those of my Chambers.

I have a personal interest in PSYROC because my deceased father-in-law was a partner in a firm that closed more than 6 years ago without a successor practice.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

See Q1.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential

operating models for and costs of establishing and maintaining an alternative indemnity fund?

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

See Q1.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

24. 15) Do you have information on impacts to inform our assessments?

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:561 Data

2. About you

1.
First name(s)

Kathryn

2.
Last name

King

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

BPE Solicitors LLP

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I am concerned that any decision by the SRA to close SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts (WTW) who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

I believe the SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

SIF should continue in order to protect consumers of legal services from being unable to gain redress for long-tail claims. The SRA makes clear that it recognises the problems there will be for consumers trying to pursue claims against solicitors who have retired, disappeared or deceased. Consumers will have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. We do not need to spell out those potential problems there.

To close SIF would also pose a threat to diversity, client choice, and access to justice by creating barriers to setting up small firms, and barriers to firms undertaking what are fundamental and crucial areas of work (such as conveyancing, wills and probate). To close SIF would mean the long-term erosion of a diverse profession and a steady reduction in consumer choice.

I would respectfully point out that the SRA is supposed to be improving access to justice, and encouraging an independent, strong, diverse and effective legal profession. (Regulatory objectives c and f.)

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

As set out above, in the absence of PSYROC claimants may have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. This is why I support the Law Society's proposal that a levy on firms to maintain the SIF would be a proportionate response to provide ongoing protection for consumers.

A decision to keep SIF going would be a proportionate and wholly justified course of action. The solution to keeping SIF continuing indefinitely is obvious and straightforward. No other solution is available for the provision of PSYROC.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I agree with the view that to amend the MTCs to require insurers to provide PSYROC would lead to hugely increased and unsustainable PII premiums, forced firm closures, and departures of insurers from the market. The insurance industry is making that very clear to the Law Society.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Apart from what I have already said, no. This question is one for the insurance industry.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The Law Society have been advised that this is not a feasible option and I agree. No insurance would be available. The insurance industry has already confirmed that. Please see the comments above.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I agree with the SRA analysis that this is not a feasible option.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I agree with the Law Society's position that PSYROC should not, and could not, be provided through a master policy. A suitable

vehicle (SIF) is already in place. SIF works and is viable into the indefinite future with extra funding by way of a compulsory levy on the profession. There is absolutely no point in trying to reinvent the wheel. In any event is highly unlikely that there will ever be a master policy available in the market, at any cost. I understand that the insurance industry has already said as much to the Law Society.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

See the comments above. Following extensive investigation by the Law Society it appears that an alternative indemnity model is not feasible.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No. This is a question for insurers.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I agree with the SRA analysis that targeted PSYROC would be counterproductive. A potentially small savings in costs would be offset by increased administration and its associated costs, and uncertainty and confusion for affected consumers, and a lower level of protection. This would not be a sensible solution.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle, SIF. No, it should not be targeted for reasons stated above.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See above.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

As stated above, regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle SIF, although I acknowledge that this will require financial support.

The Law Society have suggested, and I agree, that SIF can be financed by a small annual levy imposed on the practising profession with the PC fee. Calculations suggest that this could be an individual levy of approximately £16 per annum or a flat firm levy of approximately £240 per annum. They and I favour a flat firm levy. This is a simple and obvious solution and I understand from the Law Society is a solution suggested by WTW in their actuarial analysis commissioned by the SRA.

I understand from the Law Society that no other insurance solution exists. There is no open market insurance solution available, nor is there ever likely to be. This has been explored at length by The Law Society, and also it seems by the SRA. And I understand that the insurance industry would never be interested in operating a master policy, nor being involved in any "alternative indemnity scheme". I understand that the SRA acknowledges this.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I do not think these proposed mitigations are realistic, nor are they proportionate to the risks to the public and the damage to public confidence if SIF is closed. They will certainly not mitigate the damage that will be caused to public protection, the reputation of the profession, and public confidence in the profession.

I consider that the notion of the SRA "ensuring appropriate information is provided to clients at the time a firm closes" is

misguided. It is not credible to insist on a closing firm telling their clients how to sue them if they have been negligent. The same applies to developing guidance to consumers when they have a claim. The mitigation factor is minimal. Added to this will be the additional costs of the SRA setting up and running a department to deal with consumers' queries and concerns.

25. 15) Do you have information on impacts to inform our assessments?

See the comments above.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:569 Data

2. About you

1.
First name(s)

Jenny

2.
Last name

Screech

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Other

8.
Please specify

Howden Insurance Brokers

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

We acknowledge that the Legal Services Act 2007 requires that the continuation of PSYROC must be justified taking into account the regulatory objectives set out in the Act which include:

- protecting and promoting the interests of consumers,
- protecting and promoting the public interest,
- promoting competition in regulated services,
- improving access to justice
- encouraging an independent strong, diverse and effective profession.

However, there are various aspects of the analysis that Howden challenges and some additional issues we consider should be included within the analysis. We make the following points:

Consumer and public protection:

We consider the issue of consumer protection has been dismissed too quickly in the consultation document.

The claims data confirms that conveyancing is the main area of work where PSYROC is providing redress. This is an important detail in the debate. For most consumers, their home will usually be the most significant life asset and the absence of available redress will be potentially life-changing in the event they suffer loss.

Shortcomings in the legal service provided upon purchase can become apparent well beyond the standard six-year limitation period, for example when the consumer comes to sell the property. If the firm has closed and six-year run-off cover has ended, then it is likely that the consumer will have difficulty securing recovery against an entity that no longer exists or retired principals who, quite understandably, might make arrangements to protect their personal assets in the absence of PSYROC.

It is acknowledged that the frequency of paid claims is not high, but a prediction of circa 31 to 45 paid claims per annum should not be considered de minimis and disregarded either. As noted above, the impact on individual claimants if they cannot secure redress also needs to be considered alongside the issue of frequency.

Consideration should also be given to the nil claims and not just those that result in payment. Our review of the Willis Tower Watson (WTW) report suggests that almost half the claims under PSYROC do not result in any payment (exhibit 1.11). We can therefore broadly expect the number of future matters forecast by WTW to double if nil claims were to be included.

There is merit in a scheme that facilitates the consideration of all claims brought by consumers of legal services, including those that are unsuccessful. Existing PSYROC arrangements provide a framework that enables historic matters to be dealt with (rejected or accepted) efficiently, ensuring that those consumers who have suffered loss (or think they have suffered loss) have a clear pathway to submit their claim and achieve closure in a timely way.

Comparison with other professions:

It is accepted that no requirement for PSYROC is imposed by other regulators such as ICAEW, CILEX and CLC. However, the absence of a requirement in those cases does not mean that is the correct approach, or justify the removal of PSYROC for solicitors.

In our view there is a greater "public protection" need for solicitors to have PSYROC compared to other professions given the amount of conveyancing work that is undertaken by the profession and the significant and life-changing impact that a conveyancing-related claim can have on an individual claimant. It is acknowledged that it is not a requirement for licensed conveyancers, but that is a very small community in comparison to SRA-regulated practices, and there is a genuine question as to whether there have ever been any claims against a CLC-regulated firm more than 6 years post closure.

Access to justice:

At paragraph 57 the consultation document notes:

".....future funding of PSYROC will increase the cost of regulation and is likely to increase costs for consumers and therefore, potentially, barriers to accessing legal services."

On the contrary, we consider that the firm-based levy that has been indicated (£240 per firm per annum) would easily be absorbed within the overheads of firms and sole practitioners. It is not at a level that could realistically result in any tangible increase in costs passed on to consumers – and certainly not at a level that would create a barrier to accessing legal services.

However, if solicitors are now faced with the future prospect of having to fund open market PSYROC or organise their personal affairs in a way that would ensure either the availability of funding for or protection against claims post run-off, then that will involve significantly greater cost.

In our view the retention of PSYROC based on a levy across the profession is the least detrimental alternative from the perspective of access to justice.

Barrier to entering the profession:

The analysis provided confirms that a number of PSYROC claims are brought against traditional partnerships and sole practitioners. This is another important issue in the debate and the SRA should not under-estimate the potential impact the removal of PSYROC could have on the future of the profession. It could present a disincentive for solicitors to set up as sole practitioners or traditional partnerships to offer legal services.

If there is a barrier to entry then there should be a concern that this would also reduce competition, leading to increased costs to consumers, again impacting access to justice.

Limitation of liability

The consultation document does not discuss the fact that solicitors are not able to limit their liability below the minimum level of insurance cover they are required to hold. This issue is very relevant to the discussion. It is not a position that is consistent with the modern commercial world.

If there is a regulatory requirement that solicitors cannot limit their liability to consumers to protect their position, then we would argue that the availability of an arrangement to ensure redress to consumers should likewise be a regulatory issue.

Costs of administering PSYROC:

We encourage the SRA to further review the costs of SIF. The consultation document notes (para 49) that "consumer redress payments have historically made up approximately 58% of total costs." The balance of 42% relates to the costs involved in administering the fund and defence costs. In our view this seems high.

The fact that SIF has been extended on an ad hoc basis in recent years could have led to increased costs. Once there is certainty regarding the future of PSYROC and its funding, there are strategies that could be deployed to save costs, including the potential to engage with third parties to provide administration services and/or manage claims at more cost-effective rates, in the same way that open market insurers do. We consider that this could be achieved without compromising quality.

Further, balanced against the important issue of public protection, we do not consider that a cost to the profession at £240 per firm per annum is disproportionate.

Cross-subsidy by firms not impacted by PSYROC:

The consultation notes (para 36) that "most claims relate to sole practitioners and small firms, with only 10% relating to firms with six or more partners." This is cited in support of the argument that a levy across all firms would involve an element of cross-subsidy by large firms for the benefit of small firms which "could be seen as disproportionate, anti-competitive and not targeted" (para 53).

We are concerned about this analysis as a review of the WTW data (exhibits 2.1.1 to 2.1.4) confirms that "the majority of claims were made by practices where the practice type and size are not captured in the data". (narrative to exhibit 2.1.3).

The SRA's reference to only 10% of matters relating to firms with six or more partners, does not take into account the considerable number of claims that cannot be classified. History tells us that large firms can fail and fall into run-off and accordingly while we accept that there are more PSYROC claims against smaller firms, large firms are also at risk.

In addition, some principals in large firms might have previously been involved in a small firm as a principal, and some move to a

smaller firm or establish themselves as a sole practitioner/small firm in a niche area as they transition towards retirement.

Given these factors we consider that a levy across all firms would be a proportionate and fair approach.

The same debate arises with reference to area of practice. The report notes (para 35) that conveyancing claims have accounted for approximately 74% by value and 76% by number since 2000. Wills, trusts and probate claims account for approximately 11% of claims by value and 12% by number for the same period. Again the SRA notes a concern about cross-subsidisation by those firms that do not undertake conveyancing, wills, trust and probate, to those firms that do.

In response we note that while PSYROC claims predominantly fall within these areas of work, there are other practice areas that are the subject of PSYROC claims. No area of work is entirely risk free. Areas of work undertaken within a firm can also change over the years. We do not consider that the imposition of a modest levy across all firms is disproportionate or anti-competitive. In contrast it ensures that all firms are on a level playing field by having the same access to cover in the event of a PSYROC claim.

Impact on succession:

We do not consider the SRA should under-estimate the potential adverse impact that this issue could have on successor practice arrangements. It is our observation that since elective run-off was introduced to the MTCs, there has been an increasing tendency for acquiring firms to insist that prior practices take elective run-off cover. In some scenarios the premium is paid by the successor, in others it is paid by the prior practice, but in either scenario the prior practice has the comfort of knowing that PSYROC will respond at the end of the 6-year run-off period.

It is our concern that the absence of PSYROC will make such a scenario less attractive and could be a barrier to some struggling practices and individuals closing their practice. This is not in the public interest and provides further support for the continuation of PSYROC from a regulatory perspective. The SRA have made some suggestions as to how this concern could be addressed which we comment on in response to Q14 below.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

We have nothing to add to the points made in response to Q1 above.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

The existing requirement to provide 6 years run-off cover is one of the more unattractive aspects of solicitors' PII from the perspective of the open market. In Howden's view, if the SRA were to move to a scenario whereby the market is required to offer cover for more than 6 years, this could compromise the appetite of open market insurers to engage in solicitors' PII at all.

The number of insurers who have left the solicitors' PII market over its 21 year history demonstrates that it is a challenging area. This is further confirmed by the fact that while we are currently seeing increased premiums and the hardest market since SIF continuing over successive renewals, no new insurers consider it sufficiently attractive to provide capacity. In Howden's view, increasing the duration of run-off cover under the MTCs could further compromise the potential for new markets to engage.

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

We have nothing to add to the points made in response to Question 3 above.

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The closure of SIF has now been on the agenda for some years and the open market has not offered a clear solution. We do not consider that this will change.

While some insurers might indicate that they would be prepared to offer cover in some instances, we expect that this would be very limited and restricted in the following ways:

- Cover would only be offered to closed firms with the very best risk profiles
- Firms that have already been closed for some time might have difficulties accessing the information required by underwriters
- Long term policies are unlikely and ongoing renewals would be required
- Cost is likely to be difficult if not prohibitive for retired practitioners
- It is likely that cover would be more restricted than the MTCs.

Given the above issues we do not consider that PSYROC on the open market is a realistic solution.

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

We do not consider there is appetite in the open market to participate in a master policy. Even if there were, the same limitations and restrictions noted in our response to question 5 above would also apply.

The SRA should also be concerned about the longevity of a master policy option. It has previously failed as a solution to solicitors' PII leading to the formation of SIF.

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

We have nothing to add to the points made in response to Q6 above.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

In our view the appropriate option would be to maintain SIF with adjustments to ensure longevity and affordability. This will inevitably involve the need to levy the profession and the most cost effective way to do this is with a standard per firm annual levy and a review of current operational issues to ensure that administration and defence costs are kept to an acceptable level. We do not consider that this presents issues in relation to proportionality or targeting as explained in our response to Q1 above.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

We have nothing to add to the points made in response to Q6 above.

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

We agree with the conclusion reached at paragraph 79 of the consultation that limiting the scope of cover to conveyancing, wills trusts and probate would achieve very little in terms of reducing the overall cost of PSYROC. There would inevitably be additional administrative costs and complexity and uncertainty for both the profession and consumers, for little gain.

Likewise the claims history for PSYROC to date suggests that capping the limit of indemnity below the MTC compulsory limit is

unlikely to achieve any significant savings. Furthermore, we consider this would create an inconsistency between the minimum level of cover under PSYROC and the amount at which the profession can limit its liability. This would be confusing for consumers and as indicated in our response to Question 1 above, we consider that the regulatory requirement preventing solicitors from limiting their liability below £2m or £3m should be matched with a regulatory-based solution to ensure the availability of cover.

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

We do not consider that a targeted approach to PSYROC would be appropriate given:

- the limited savings that would be achieved
- the cost of the added administrative burden
- the mis-match with the MTCs that would be created
- the potential for confusion and uncertainty
- the inconsistency between the regulatory prohibition on limiting liability and a regulatory-based solution that does not ensure the availability of matching cover.

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

We have nothing to add to the points made in response to Q10 and Q11 above.

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes, we do consider that PSYROC should continue to be provided for within the SRA's regulatory arrangements and would propose that SIF continue with funding via a firm-based levy on the profession.

Our views have largely been set out above, but by way of summary, the reasons why we take this view are as follows:

- If there is a regulatory prohibition on solicitors limiting their liability below the minimum MTC cover they are required to hold, regulatory arrangements should likewise provide a mechanism to ensure cover.
- At a levy of £240 per annum per firm, maintaining PSYROC is proportionate to the consumer protection it provides. The majority of claims relate to conveyancing and involve a claimant's most significant personal asset. The protection for consumers involves only a modest cost to the profession
- The absence of PSYROC could impact access to justice if the profession is required to plan for the increased cost of market PSYROC (if available) on closure or ensure that they will be in a position to fund any PSYROC claims that arise.
- The absence of PSYROC will potentially be a barrier to entry to the profession in that the prospect of uninsurable liability post - closure of a practice could be dis-incentive to new start-ups.
- A "per firm" levy is affordable and proportionate. It ensures that the owners of larger practices, who are less likely to use the cover, are not required to make a disproportionate contribution. The majority of the funding will come from sole practices and smaller firms that are more likely to benefit from the cover.
- While most claims arise from conveyancing, wills, trusts and probate, no practice area is immune from claims and £240 per firm per annum is proportionate to ensure protection for consumers of all legal services.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

We do not consider that the 2 actions proposed would adequately mitigate the risks to clients of firms not having PSYROC and we comment on each in turn:

- a) Providing support to firms to help them understand their options when they close and how to attract a successor practice:

There is already an industry of professionals in the market who undertake this work, including independent consultants, accountancy practices, professionals within banks that hold client account funds and specialist PII brokers.

The reality is that for many firms, closure and run-off or succession and elective runoff are the only options. You cannot re-write a claims or disciplinary history and over the last 21 years of the open market, acquiring firms have become acutely aware of the need for caution when succeeding to another practice. A Practice Note or information and advice note from the SRA is not a solution.

It is not possible or appropriate to comment on what changes to the successor practice rules would achieve without any indication in the consultation as to what they would or could propose.

b) Providing information to clients when a firm closes including information on taking insurance cover themselves:

This would need to include past clients for whom the firm might no longer have current contact details. It could be a confusing issue for many clients and cause a great deal of stress and concern. There is also a question of the availability of appropriate insurance products and the ability of consumers to meet such a cost.

24. 15) Do you have information on impacts to inform our assessments?

We have nothing further to add to the points made above.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:573 Data

2. About you

1.
First name(s)

Kate

2.
Last name

Goodings

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Newcastle upon Tyne Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

The Newcastle Law Society (NLS) believes that there is a strong public interest in continuing to provide cover for members of the public in relation to PSYROC.

We consider that the provision of PSYROC falls clearly within the SRA's regulatory function and objectives. In this regard the regulatory objectives under section 1 of the Legal Services Act include the protection and promotion of the public interest and the interest of consumers.

The primary six year period for bringing a claim in relation to professional advice often led to an unfair result for consumers who were unaware something had gone wrong within that period. It was therefore considered that public policy and the protection of consumers required that there should be a secondary limitation period of three years running from when the consumer had

knowledge of the relevant facts subject to a longstop of fifteen years running from the act or omission. It is believed that a discontinuation of PSYROC would undermine the principle of having a secondary limitation period and would leave consumers exposed to long-tail risks.

The public has a reasonable expectation that solicitors have cover against all legitimate claims and that they should have regulatory obligations to do so. Bringing these arrangements to a halt in relation to PSYROC without putting anything in its place would leave a significant gap where claims are possible after six years. It is believed that consumers of legal services will not understand that there will be circumstances where there is no cover.

The fact that these situations will arise infrequently does not mitigate the unfairness experienced by a member of the public caught in this trap. It is believed that this type of situation is damaging to the confidence which the consumers should have that redress is available for negligent advice and therefore would be to the detriment of the rule of law and access to justice.

Its removal would also be an obstacle or disincentive to solicitors setting up small firms. Local law societies such as NLS remain close to their retired members and often hear views expressed as to how, given their time again, they would not be inclined to set up as solicitors in small firms faced with such difficulties as the abolition of PSYROC without an alternative arrangement being in place. Not all consumers are able or inclined for a number of reasons to approach large firms for assistance including a reluctance to use IT or a fear of large organisations or an inability to access firms more remote geographically or reluctance to use firms perceived to be more impersonal. Small firms are an essential part of the mix of advisers available to consumers seeking legal advice and assistance. It is those small firms which are more likely to specialise in providing legal services to ethnic minorities or special interest groups.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

£16 a solicitor or £240 a firm per annum (Willis Towers Watson forecast) seems to be an insignificant cost to provide PSYROC through an adapted form of the SIF and very proportionate to the continuing need to provide protection to consumers in this area. We appreciate as a local law society representing all of our members that not every member will agree that PSYROC should continue at their expense. Nevertheless, we have found few who disagree that PSYROC should continue when the cost per firm is so modest. Firms with a large number of solicitors may prefer the contributions to be calculated on a firm rather than individual basis.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

We accept that amending the MTCs to require participating insurers to provide PSYROC on top of the six year run off cover would be likely to mean less insurers and higher premiums and legal fees and we would not support it. It contrasts starkly with the de minimis cost to firms referred to in 2 above. It would not be in the public interest to amend the MTCs in this way.

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

We do not believe that the open market would provide a solution.

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

We do not believe that provision of a master policy for PSYROC provides a practical solution.

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

We have no further information in relation to alternative models.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

We disagree that the costs of continuing to provide PSYROC would be disproportionate

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

We have no further information

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

We do not support a more targeted provision which inevitably would leave gaps in cover.

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

We do not support a more targeted provision which inevitably would leave gaps in cover.

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

We have no further information

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

NLS considers that PSYROC should continue to be provided from within the SRA's regulatory arrangements via a continuation of SIF. The so called 'Sleep Easy Factor" affects very few solicitors numerically in proportion to the number operating under the umbrella of larger firms without any succession issues. We believe this is primarily an issue of consumer protection and the public interest. We accept that further funding from the profession will be necessary and believe that this is acceptable if it is of the modest nature set out above viz £16 per solicitor or £240 per firm. The affect on legal fees would we believe be either non-existent or insignificant.

We would expect the SRA to be able to find some savings in running costs in operating SIF and further work is needed on this.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

NLS were not convinced by the mitigation actions proposed.

Firms are understandably reluctant to become successor practices and are likely to remain so.

We regard it as very unrealistic to expect anything but a small minority of consumers to take their own steps to protect themselves when notified that a firm is closing. Any insurance solution for consumers is likely to be expensive and fall on those members of the public least able to afford it.

24. 15) Do you have information on impacts to inform our assessments?

We have no further information on impacts save that any actions which make it more difficult for small firms to operate will impact on ethnic minorities and special interest groups served by some small firms.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:574 Data

2. About you

1.
First name(s)

Alan Edward

2.
Last name

Short

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Alan E Short

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

It is incomprehensible as to why the SRA thinks that it is best to close down the SIF and thereby end the only available option for providing PSYROC. The SRA consultation and supporting documents do not lead to this view but to the opposite. PSYROC is part of the SRA's regulatory function and enhances consumer protection. If the SRA closes SIF they will be in breach of the regulatory objectives set out in the Legal Services Act 2007. In the face of the disastrous and predictable consequences and the WTW analysis and their proposed solution it defies all logic as to why the SRA would propose to remove an essential component of public protection. It should also be noted that no assessment has been given as to how women ethnic minorities and the transgender community will be affected by taking away consumer

protection and making it more difficult for such people to set up in practice.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

The SRA bases its arguments in favour of closing SIF on its own idea of what is proportionate. It is asserted that the risks are small and the costs on cover disproportionate. But proportionality is a subjective concept and it is continuation of SIF which would be the proportionate action. It will ensure that the SRA meets the SRA'S regulatory objectives. Every claim is important as is the number of consumers who will potentially lose out. Nor can the the amount of the average claim of £34,600 be simply dismissed as insignificant. A consumer in this position will indicate otherwise in stentorian terms. Also of course and by definition some claims will be higher. Apparently two of the highest recorded claims have been around £400,000. That is not insignificant. Factoring in the number of claims which do not result in settlement indicates that there are 60-90 claims notified each year. Settlement in whatever form closure takes is a worthy objective for the SIF and is in the public interest.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Amending the MTC's to require insurers to provide PSYROC will lead to significant increases in PI premiums, forced firm closures and insurers exiting an already shrinking market.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

The solution is a levy. There is a considerable sum in the SIF pot. And ongoing finance can be simply and cheaply provided with a small annual levy (£16 per individual or flat firm £240). See the detailed and excellent WTW analysis commissioned by the SRA itself.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

There is no open market insurance solution available (as the SRA itself acknowledges) nor is there ever likely to be. As the insurance industry has itself said in answer to SRA consultation they would never be interested in operating a master policy nor being involved in operating a master policy nor in offering bespoke policies to closing firms.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

The unwillingness of the insurance market to provide to provide PSYROC indicates that the retention of the SIF is the appropriate way forward.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

The insurance market has already responded negatively. But a appropriate and cost effective solution is already available in the form of the SIF.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

The retention of SIF is the obvious way forward.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory

arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

The costs of maintaining the existing SIF are not disproportionate. The protection of consumers and their ability to "sleep easy" in the knowledge that they are protected even in a PSYROC situation must not be underestimated. No evidence has been adduced as to why the removal of this is protection for the public good.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Targeted solutions such as a scheme that is restricted to certain sizes of firms or certain types of work, would be complex and costly to administer. In addition such complexity would not assist consumers who would be confused and denied the comprehensive cover currently provided by the SIF.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

As stated above a targeted solution would not work and would deny to consumers the comprehensive cover currently adjourned with the SIF.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

The statutory basis of provision and objective of consumer protection rules against a targeted solution

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through SIF a vehicle which is already set up and delivering. SIF can be financially supported by a very modest levy annual levy on the practicing profession. Continuance is essential to maintain consumer protection and thereby maintain public confidence. It will also promote diversity in the profession and choice for consumers.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Changing the successor practice rules will not help. There are already big problems for small firms trying to find a successor practice exacerbated by insurers restricting successors taking on potential liabilities meaning run-off cover has to be acquired. The answer is to make sure that SIF is on a secure financial footing.

25. 15) Do you have information on impacts to inform our assessments?

The removal of SIF will inevitably restrict on the ability to open practices which will have a disproportionate impact on women, ethnic minorities and the transgender community which will at the same time impact on consumer choice and protection.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:576 Data

2. About you

1.
First name(s)

William

2.
Last name

Davis

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Other

8.
Please specify

Retired Solicitor

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I agree that it would not be viable for you to maintain SIF without the injection of new funds. I would argue that there are clear consumer benefits in continuing, funded by a proportionate levy on the solicitor profession and clear consumer detriment in closing SIF without any realistic alternative means for the provision of PSYROC.

11.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

The Law Society says that the profession is willing to pay a proportionate levy. I am willing to pay a proportionate levy as a retired solicitor.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Altering the MTCs would create more difficulties than it would solve.

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No.

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

It seems likely that there is no solution in the PII market.

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Creating a Master Insurance Policy would create more difficulties than it would solve.

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Alternative models would create more difficulties than they would solve.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No.

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Targeted on-going provision would create more problems than it would solve.

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

N/A

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No.

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes. The issue is fundamental to consumer protection and the objectives of the SRA towards solicitors. The SRA has not given sufficient recognition to the issue of reputation. I anticipate that there will be an increase in claims arising after the end of the

mandatory run off cover. I oppose the closure of SIF.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I do not think you can materially mitigate the risks to clients of closed firms if you close

24. 15) Do you have information on impacts to inform our assessments?

TLS cannot indemnify its members and cannot continue the functions of SIF. A decision to close SIF is not compatible with the SRA's regulatory objectives and is not reasonable or rational. The SRA's own experts estimate the annual levy to be £16 per solicitor or £240 a firm, which is a reasonable price to pay in order to 1. Protect and promote the public interest and 2. Ensure compliance with the SRA's regulatory requirements. It would be wrong for the SRA to remove an important consumer protection when the profession is willing to pay for it.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:580 Data

2. About you

1.
First name(s)

christine

2.
Last name

jackson

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

BPE Solicitors LLP

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I am concerned that any decision by the SRA to close SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts (WTW) who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

I believe the SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

SIF should continue in order to protect consumers of legal services from being unable to gain redress for long-tail claims. The

SRA makes clear that it recognises the problems there will be for consumers trying to pursue claims against solicitors who have retired, disappeared or deceased. Consumers will have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. We do not need to spell out those potential problems there.

To close SIF would also pose a threat to diversity, client choice, and access to justice by creating barriers to setting up small firms, and barriers to firms undertaking what are fundamental and crucial areas of work (such as conveyancing, wills and probate). To close SIF would mean the long-term erosion of a diverse profession and a steady reduction in consumer choice. I would respectfully point out that the SRA is supposed to be improving access to justice, and encouraging an independent, strong, diverse and effective legal profession. (Regulatory objectives c and f.)

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

As set out above, in the absence of PSYROC claimants may have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. This is why I support the Law Society's proposal that a levy on firms to maintain the SIF would be a proportionate response to provide ongoing protection for consumers.

A decision to keep SIF going would be a proportionate and wholly justified course of action. The solution to keeping SIF continuing indefinitely is obvious and straightforward. No other solution is available for the provision of PSYROC.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I agree with the view that to amend the MTCs to require insurers to provide PSYROC would lead to hugely increased and unsustainable PII premiums, forced firm closures, and departures of insurers from the market. The insurance industry is making that very clear to the Law Society.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Apart from what I have already said, no. This question is one for the insurance industry.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The Law Society have been advised that this is not a feasible option and I agree. No insurance would be available. The insurance industry has already confirmed that. Please see the comments above.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I agree with the SRA analysis that this is not a feasible option.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I agree with the Law Society's position that PSYROC should not, and could not, be provided through a master policy. A suitable vehicle (SIF) is already in place. SIF works and is viable into the indefinite future with extra funding by way of a compulsory levy on the profession. There is absolutely no point in trying to reinvent the wheel. In any event is highly unlikely that there will ever be a master policy available in the market, at any cost. I understand that the insurance industry has already said as much to the Law Society

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

See the comments above. Following extensive investigation by the Law Society it appears that an alternative indemnity model is not feasible.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No. This is a question for insurers.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I agree with the SRA analysis that targeted PSYROC would be counterproductive. A potentially small savings in costs would be offset by increased administration and its associated costs, and uncertainty and confusion for affected consumers, and a lower level of protection. This would not be a sensible solution.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle, SIF. No, it should not be targeted for reasons stated above

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See above

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

As stated above, regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle SIF, although I acknowledge that this will require financial support.

The Law Society have suggested, and I agree, that SIF can be financed by a small annual levy imposed on the practising profession with the PC fee. Calculations suggest that this could be an individual levy of approximately £16 per annum or a flat firm levy of approximately £240 per annum. They and I favour a flat firm levy. This is a simple and obvious solution and I understand from the Law Society is a solution suggested by WTW in their actuarial analysis commissioned by the SRA.

I understand from the Law Society that no other insurance solution exists. There is no open market insurance solution available, nor is there ever likely to be. This has been explored at length by The Law Society, and also it seems by the SRA. And I understand that the insurance industry would never be interested in operating a master policy, nor being involved in any "alternative indemnity scheme". I understand that the SRA acknowledges this.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I do not think these proposed mitigations are realistic, nor are they proportionate to the risks to the public and the damage to public confidence if SIF is closed. They will certainly not mitigate the damage that will be caused to public protection, the reputation of the profession, and public confidence in the profession.

I consider that the notion of the SRA "ensuring appropriate information is provided to clients at the time a firm closes" is misguided. It is not credible to insist on a closing firm telling their clients how to sue them if they have been negligent. The same applies to developing guidance to consumers when they have a claim. The mitigation factor is minimal. Added to this will be the additional costs of the SRA setting up and running a department to deal with consumers' queries and concerns.

25. 15) Do you have information on impacts to inform our assessments?

See the comments above.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:591 Data

2. About you

1.
First name(s)

John

2.
Last name

Searles

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

retired

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

My strong representation is that the Solicitors Regulation Authority (SRA) should continue the operation of the Solicitors Indemnity Fund (SIF) in consultation with the Solicitors profession as to how that should be funded for the following reasons.

It appears that there is little appetite in the insurance industry for providing post six year run off cover (PSYROC). Any such cover is likely to be prohibitively expensive. The result is that closure of the SIF would have the practical consequence that clients (consumers) would have less effective redress in the case of claims arising outside the usual limitation period of six years (a significant proportion of total claims) since they may have to resort to litigation against the the principals of closed

firms.. That is likely to be costly and/ or time consuming and/ or uncertain. In addition claims against incorporated practices which have ceased/ become defunct without any assets are likely to be worthless.

The consultation paper has only systematically analysed the option of continuing the SIF without the injection of new funds and has not considered the option of its continuation with new funding arrangements. The SRA's own experts suggest that the Fund could continue on its present basis with a relatively modest levy of £240 per solicitors firm. I understand that evidence may be available that a lesser sum might be sufficient.

Further I believe that the Law Society would support such an arrangement.

Closure of the SIF would benefit no one.

The SRA has statutory obligations (inter alia)

- to promote and protect the interests of consumers
- to encourage an independent strong diverse and effective legal profession.

These objectives would not be served by SIF closure.

Solicitors have provided the funds in the SIF. They should not in effect be penalised by its closure.

Clients will not understand why in effect they have lesser redress available for claims outside the six year limitation period than those within.

No weight should be attached to the argument that retention of the SIF would have the incidental effect of benefitting Solicitors. Removal of the "sleep easy" factor would have a detrimental effect on the profession by deterring Solicitors from setting up in sole practice.

The Law Society cannot provide the appropriate support on its own initiative since they are not able to involve themselves in a regulatory matter outside their remit.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

see above

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

see above

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

see above

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

see above

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

see above

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

see above

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

see above

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

see above

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

see above

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

see above

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

see above

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

see above

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

see above

25. 15) Do you have information on impacts to inform our assessments?

see above

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:598 Data

2. About you

1.
First name(s)

Ryan

2.
Last name

Senior

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Other

8.
Please specify

Insurance Broker

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Whatever indemnity solution is adopted to provide PSYROC, whether through the continuation of SIF or an open-market solution, there will be costs in maintaining the service infrastructure and, where appropriate, purchasing insurance to protect against claims volatility.

It is stated in the consultation notes that SIF's annual management and professional costs "cannot be reduced further irrespective of the on-going volume of claims". We believe this assumption should be challenged.

Solicitors' PI insurance requires high levels of specialist underwriting and claims services to facilitate the insurance product. Most open market insurers have elected to adopt a blend of in-house and outsourced resources to optimise client service levels whilst controlling overheads. Some, however, have adopted a model whereby third parties perform all underwriting (e.g., MGA),

administration and claims functions.

One example of outsourcing that seems particularly relevant to this consultation is third-party claims administration. Although it's not an everyday event, Participating Insurers will periodically put their claims handling outsourcing contracts to tender. Advancements in deploying human and IT resources means that third-party claims administrators can pass enhanced economies of working practices and scale onto their clients.

The provision of PSYROC through SIF is a tried and tested solution with a funding model in place. SIF's running costs should be tested by adopting a cycle of tendering all currently in-house and outsourced services to a commercial bid to ensure that performance levels are maintained and the frictional costs of providing PSYROC minimised.

We believe it's imperative to place public protection first to protect the profession's reputation. Sole practitioner and small firms (which represent 90% of PSYROC claims) are likely to have a client demographic who have lower than average income levels. For them, a loss of £34-36k is significant, probably representing over a year's income. Although the low volume of irrecoverable claims might not be construed as diminishing the reputation the profession without a PSYROC insurance solution, losses sustained by the public would be news fodder for the press, particularly as claims concerning conveyancing and wills, trust and probate are very emotive. One only has to look back to other high profile systemic claims such as Vibration White Finger and asbestosis to gauge the adverse publicity that can be generated in the mainstream media and the reputational damage it causes to the profession as a whole.

Given the recent high levels of conveyancing and wills, trust and probate, which is cause for concern for Participating Insurers, we are not convinced that claims will level off as predicted in the WTW forecasts.

Turning to the human consideration of choosing a life of service as a Solicitor, smaller practices (who will be most affected by the absence of PSYROC) represent a vital component in providing access to legal services for even the most vulnerable in our society. The proposition that no evidence has been found to show that "protection from long-tail negligence claims is a material factor affecting entry to the profession..." might be perceived as cynical. A career providing legal services to the public is not a life sentence. Solicitors should be able to structure their retirement without the threat that all they have worked for is at risk in perpetuity.

Although PSYROC coverage is being framed as an issue that impacts mostly small firms that close their doors for good, there is an important use for PSYROC coverage during mergers and acquisitions. It is common for a successor practice to require the firm being acquired to go into elective run-off, thereby relieving the successor practice of any legacy PI claims. In this scenario, run-off insurance will be purchased from the incumbent PI insurer with PSYROC cover provided by SIF thereafter. What would happen if a claim is presented after the six-year run-off policy ends and there is no PSYROC cover provided by SIF? Will the claim be the responsibility of the successor practice and its current PI insurers under the successor practice rules? Mergers and acquisitions are a desirable, structured alternative to firm closure and provide continuity of service to clients. If the successor practice is unable to ring fence legacy claims from the firm being acquired, the level of mergers and acquisitions, which provides a highly desirable alternative to firm closure, is likely to fall and the prospect of larger numbers of forced or unplanned closures increases. We would be happy to invite representatives of the SRA and SIF to meet with us at Paragon to further discuss our observations and proposals.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Please see 1) above.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

We would expect strong resistance from Participating Insurers to provide PSYROC cover through wider MTCs and anticipate insurers withdrawing from the market if this strategy is adopted by the SRA.

The withdrawal of Participating Insurers from the market would be particularly damaging during the hard insurance market cycle we're currently experiencing. Reduced insurance capacity from a smaller group of Participating Insurers will make PI more difficult to place and insurance costs will rise, especially for those firms that perform significant volumes of conveyancing work. The knock on effect for the public would be restricting the availability of legal services if firms are forced to close through their inability to secure PI insurance.

If the MTCs were amended, this would only apply to firms with live insurance in place. Firms that have already closed will not benefit from retroactive PSYROC cover on newly amended MTCs.

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Please see 3) above.

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Insurers will provide PSYROC cover for firms they currently insure, but only where they assess the firm to have been well run and represent an acceptable risk profile. Firms who placed cover with failed insurers will not have the option to obtain additional PSYROC cover from them and will be forced, regardless of the risk profile they represent, to seek cover in the open market. Even if this were to be available, the cost will be significant as coverage would be on a case-by-case basis rather than have the burden distributed across the profession.

Any insurance placing process will be compromised if the firm cannot effectively make an insurance application through, say, the incapacity of its partner(s).

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

We believe it's unlikely that the insurance market will support a master PSYROC insurance policy. We are not aware of any insurer expressing an appetite to participate in such a scheme.

Risk selection is a fundamental underwriting function; insurers would have to cover firms that wouldn't ordinarily pass their risk selection criteria under a master policy. Although there are precedents in the market where scheme insurers are unable to exercise usual risk acceptance and rejection controls, these are rare and it's unlikely that such a concession would be made for a PSYROC scheme.

Although insurers protect commercially sensitive data, it's no secret that, historically, there have been high levels of premium payment defaults by firms in run-off. Any commitment by the insurance market to provide a master PSYROC insurance scheme is likely to be contingent on premiums being funded by the profession as a whole, thereby returning us to a levy-based model. Aggregated master policy premium levels are likely to be significantly higher than the projected levy to achieve a reasonable expectation of making an underwriting profit after allowances for large losses, reinsurance and administration costs have been factored in.

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

Please see 6) above.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

We do not believe there is a viable alternative model to operate an indemnity fund for on-going PSYROC.

We would reiterate our comments that SIF's running cost might be reduced through third-party outsourcing. There are a number of organisations providing underwriting and claims administration services, so there is plenty of scope for competition.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

Please see 8) above.

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

We do not believe a targeted application of PSYROC cover would provide certainty of cover and could be construed as inequitable.

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Please see 10) above.

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

Please see 10) above.

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

We support the continuation of PSYROC coverage through SIF.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

We have discussed PSYROC coverage through SIF with many of our clients. The overwhelming sentiment expressed is that we should maintain the status quo.

24. 15) Do you have information on impacts to inform our assessments?

No comment.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:626 Data

2. About you

1.
First name(s)

Ben

2.
Last name

Adams

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

BPE Solicitors

9.
Please specify if you are

an in-house solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I am concerned that any decision by the SRA to close SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts (WTW) who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

I believe the SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

SIF should continue in order to protect consumers of legal services from being unable to gain redress for long-tail claims. The SRA makes clear that it recognises the problems there will be for consumers trying to pursue claims against solicitors who have retired, disappeared or deceased. Consumers will have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. We do not need to spell out those potential problems there.

To close SIF would also pose a threat to diversity, client choice, and access to justice by creating barriers to setting up small firms, and barriers to firms undertaking what are fundamental and crucial areas of work (such as conveyancing, wills and probate). To close SIF would mean the long-term erosion of a diverse profession and a steady reduction in consumer choice. I would respectfully point out that the SRA is supposed to be improving access to justice, and encouraging an independent, strong, diverse and effective legal profession. (Regulatory objectives c and f.)

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

As set out above, in the absence of PSYROC claimants may have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. This is why I support the Law Society's proposal that a levy on firms to maintain the SIF would be a proportionate response to provide ongoing protection for consumers.

A decision to keep SIF going would be a proportionate and wholly justified course of action. The solution to keeping SIF continuing indefinitely is obvious and straightforward. No other solution is available for the provision of PSYROC.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I agree with the view that to amend the MTCs to require insurers to provide PSYROC would lead to hugely increased and unsustainable PII premiums, forced firm closures, and departures of insurers from the market. The insurance industry is making that very clear to the Law Society.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Apart from what I have already said, no. This question is one for the insurance industry.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The Law Society have been advised that this is not a feasible option and I agree. No insurance would be available. The insurance industry has already confirmed that. Please see the comments above.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I agree with the SRA analysis that this is not a feasible option.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I agree with the Law Society's position that PSYROC should not, and could not, be provided through a master policy. A suitable vehicle (SIF) is already in place. SIF works and is viable into the indefinite future with extra funding by way of a compulsory levy on the profession. There is absolutely no point in trying to reinvent the wheel. In any event is highly unlikely that there will ever be a master policy available in the market, at any cost. I understand that the insurance industry has already said as much to the

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

See the comments above. Following extensive investigation by the Law Society it appears that an alternative indemnity model is not feasible.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No. This is a question for insurers.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I agree with the SRA analysis that targeted PSYROC would be counterproductive. A potentially small savings in costs would be offset by increased administration and its associated costs, and uncertainty and confusion for affected consumers, and a lower level of protection. This would not be a sensible solution.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle, SIF. No, it should not be targeted for reasons stated above.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See above.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

As stated above, regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle SIF, although I acknowledge that this will require financial support.

The Law Society have suggested, and I agree, that SIF can be financed by a small annual levy imposed on the practising profession with the PC fee. Calculations suggest that this could be an individual levy of approximately £16 per annum or a flat firm levy of approximately £240 per annum. They and I favour a flat firm levy. This is a simple and obvious solution and I understand from the Law Society is a solution suggested by WTW in their actuarial analysis commissioned by the SRA.

I understand from the Law Society that no other insurance solution exists. There is no open market insurance solution available, nor is there ever likely to be. This has been explored at length by The Law Society, and also it seems by the SRA. And I understand that the insurance industry would never be interested in operating a master policy, nor being involved in any "alternative indemnity scheme". I understand that the SRA acknowledges this.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I do not think these proposed mitigations are realistic, nor are they proportionate to the risks to the public and the damage to public confidence if SIF is closed. They will certainly not mitigate the damage that will be caused to public protection, the reputation of the profession, and public confidence in the profession.

I consider that the notion of the SRA "ensuring appropriate information is provided to clients at the time a firm closes" is misguided. It is not credible to insist on a closing firm telling their clients how to sue them if they have been negligent. The same applies to developing guidance to consumers when they have a claim. The mitigation factor is minimal. Added to this will be the additional costs of the SRA setting up and running a department to deal with consumers' queries and concerns.

25. 15) Do you have information on impacts to inform our assessments?

See the comments above.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:628 Data

2. About you

1.
First name(s)

Jonathan

2.
Last name

Pitt

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Kent Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

The SIF is important for the protection of the public disproportionately to the number or size of claims per year. Its absence will give rise to unfairness in every case, and financial prejudice to the vulnerable in some cases. We should all be in the business of protecting the public, and particularly the vulnerable, and an analysis that disregards or dismisses this factor is inadequate. Leaving PSYROC to the insurance market will provide a solution for the clients of some firms, while leaving others, typically clients of smaller or niche firms, exposed - this is an inequality, and so also an unfairness. These incidences of unfairness, maybe small in themselves, go to the heart of the confidence of the public in the providers of its legal services, which in turn harms the rule of law and access to justice.

11.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing

PSYROC through the SIF on an on-going basis?

For the reasons given in our reply to question 1, we do not think that proportionality should be the key factor in determining whether PSYROC should continue to be provided through the SIF on an ongoing basis. Nevertheless, our view is that the figures that have been mentioned to fund the continuation of the scheme, £16 per solicitor or £240 per firm per annum, seem to us a proportionate and manageable cost if it would ensure firstly the protection of the public, secondly the reputation of the profession, and thirdly those members of the profession who would otherwise live in worry of their potential exposure after retiring from the profession.

We wonder whether the consumer would think it reasonable that the regulator removed important protections for them that the profession itself was happy to continue and fund?

It is also relevant to consider that small firms play a significant part in provision of legal services to the public, particularly in rural and remote areas and in less financially rewarding areas of legal practice, and any increase in their vulnerability also goes eventually to a reduction in access to justice on an even basis around the country. This will disproportionately affect female lawyers and those from BAME backgrounds who are more heavily represented in sole practitioner and small firms.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

We consider that amending the MTCs to require the provision of PSYROC on an on-going basis will limit further the number of insurers in the market, which in turn will be inflationary, reduce choice and generally harden an already hard marketplace. Our assessment is that the likely increase in premiums will be far more than the sums we have alluded to in our reply to question 2 and so would be much more likely to be passed on to the customer. Again, in a hard market, smaller firms find it more difficult to negotiate acceptable terms, and they are really quite likely to be prejudicially affected comparative to their larger competitors.

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No. It is simply not in the public interest to do so.

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

For the reasons we have given in our reply to question 3, we do not think that the open market will provide a solution. Such anecdotal evidence as has been cited elsewhere (eg response by Leicestershire Law Society) suggests that a certain number of firms will not in fact be able to get such cover. It therefore seems likely that it will not be possible for retired solicitors to get cover.

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

The Master Policy option has been tried before by the solicitors' profession and it failed. It is not likely to be attractive to insurers. We agree with your analysis that this is not a viable option.

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No. We think it very unlikely, at any rate in the mid to long term.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

We have read the analysis, but it appears that the SRA has not gone into alternative models in any great depth, and it is therefore difficult to critique what is proposed. Given the time that has passed since this became an issue, we suspect that no viable alternative to SIF is going to be found. We agree with the comments of some other Societies (eg Devon & Somerset) that

there would seem to be scope to look again at why the cost to the SRA of running the SIF is so high. We note The Law Society's comment that the SRA appears not to have adequately considered how proportionality, affordability and efficiency could be achieved through reducing the costs associated with providing PSYROC through a form of the SIF - in other words, adjustments to the current arrangements rather than full scale alternatives.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Targeting is not a fair or safe option. All clients should potentially benefit from SIF if the circumstances arise that its protection is needed, not those who have received legal services in specific practice areas only, or those who are advised by firms of a certain size. We would ask the question how consumers would be expected to know if the area they wanted advice on was covered or not: or, if they could be specifically told, would they be expected to understand and feel confidence in the rationale for the distinction.

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

We do not agree that PSYROC should be targeted. It is a matter of access to justice fairness for all consumers of legal services.

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

We believe that PSYROC should continue to be provided for within the existing regulatory arrangements for the following reasons.

- this is an issue that goes to the heart of the SRA's role as a public interest regulator, and it should not be shucked off as a responsibility because it is inconvenient:
- the existing scheme provides the best assurance of consumer protection, the public interest, fairness and access to justice to the public on an equal basis, regardless of size or formation of the firm providing the legal services, the type of service provided, and without exposing the public to impacts caused by the vagaries of the insurance market:
- it avoids the reputational damage to the profession and therefore more widely to the legal justice system and the rule of law, that any of the alternatives put forward would risk:
- it provides a solution that would be far more cost-effective to the profession than any of the alternatives discussed, and therefore avoiding any extra cost of legal services impacting on the client:
- it avoids the unwelcome scenario of practitioners not being able to pass on their practice on the occasion of retirement or ill health to successor firms due to reluctance on liability grounds - thus directly impacting on their clients
- it provides peace of mind to practitioners, who should be able to retire at the end of their careers without the confusion and anxiety that the removal of SIF will inevitably cause. We understand that anecdotal evidence from LawCare suggests that these issues are a significant component of cases referred to them.
- The cost to the profession of continuing the scheme is modest and is broadly supported by the solicitors' profession.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

We do not believe that the mitigating factors proposed are in any way significant to actually mitigate the risks to clients of closed firms not having PSYROC. There would indeed need to be amendment to the Successor Practice Rules, but we doubt if this can be achieved without damage to the protections currently afforded to the public. In any event, the direct impacts on mergers and

acquisitions will significantly outweigh any such possible amendments. As Devon & Somerset Law Society point out, information and support regarding the options is already widely available and firms engaged in merging with or acquiring firms are well informed on these risks - the potential mitigation does not go to the heart of the matter.

We do not consider that clients, or at least less wealthy clients, will necessarily be able to take out insurance when a firm closes, even if the insurance industry is prepared to devise and market such products, and of course there will be further cost to the consumer occasioned by this. We agree with other Law Societies (eg Leicestershire) who have pointed out that consumers may be put off from using smaller firms or from taking legal advice at all, and we can see that this may impact disproportionately on BAME and female solicitors, who are disproportionately represented in small and sole practitioner firms, and therefore their clients.

Finally, if the SRA decides despite the opposition of the profession to cease to support the SIF, it should not do so until the Legal Services legislation has been amended to allow TLS to assume responsibility for PSYROC and raise an annual levy to fund the same.

24. 15) Do you have information on impacts to inform our assessments?

We believe that the best way forward is for the SIF to continue, funded by a levy on the profession based on a flat rate for individuals or firms. There should be a concerted attempt to reduce the cost of operating the SIF, of course, but the cost is not a valid justification for abandoning the SIF.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:633 Data

2. About you

1.

First name(s)

Nottinghamshire Law Society

2.

Last name

6.

I am responding..

on behalf of an organisation

7.

On behalf of what type of organisation?

Law society

8.

Please enter the name of the society

Nottinghamshire Law Society

9.

How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

1. The SRA's position is that it is not its role to protect solicitors. However, SIF was established under section 37 of the Solicitors Act 1974, the provisions of which protect not only consumers, whose interests must of course be the first consideration, but also solicitors and their staff: *Swain v The Law Society* [1983] 1 AC 598 at p.618 B-C. Amendments to section 37 in the LSA 2007 did not affect this. (source: Legal Risk LLP <https://www.legalrisk.co.uk/publications/risk-update-january-2022/>).

2. Whilst there is a supply of funds to meet a clear demand for PSYROC cover, the scheme should continue post 30th September 2022 and be reviewed at regular intervals as and when needs cease ("if it's not broke, why fix it?").

3. There is also the major problem of what happens to any money post 30th September not held back in reserve for claims intimated before the arrangement is terminated, which sum will be substantial.

4. The SRA's draft Equality Impact Assessment includes shortcomings:

4.1 The data collated and analysed is limited to the impact based on:

- solicitors - this should include staff and consumers who come under the SRA's remit
- only a few protected characteristics rather than all and those solicitors coming from lower socio-economic backgrounds
- historic claims - it should consider future potential claims in the light of demographic changes.

4.2 It confirms that certain protected characteristics are impacted and yet goes on to say that the impact is "neutral"; this appears to be a contradiction in terms.

4.3 It states "These are issues we will consider further in the light of responses to the current consultation" - the onus surely is on the SRA to show there is no equality impact; it is not on solicitors, their staff, consumers and other stakeholders to prove there is.

Yes – para 65 "closing the fund and purchasing cover to meet SIF's outstanding liability from a third-party insurer" – this appears to be a case of "cart before the horse" – what – if as seems likely – no commercial insurer has any appetite to quote?

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

We were surprised to read that consumer redress payments (and presumably claim costs) amounted to 58% of the annual costs of SIF and that 42% of its costs went in administration costs and overheads. That seems particularly surprising for an organisation that largely outsources its claims handling to panel solicitors and no longer employs claims staff.

We should have thought that, that economy of scale could be addressed by merging the admin side of SIFL into Chancery Lane. However, a mutual model seems to us to be plainly the most economically efficient way of addressing PSYROC where there is no insurers profit element and no Insurance Premium Tax on contributions.

If, as we surmise, a large amount of the overheads costs seems to have been incurred in paying auditors and/or reinsurance and safeguarding the fund from claims that do not aggregate or are significant in amount then we should have thought that these could be addressed through a cap on claims or the comfort of actuarially calculated levies (such as supports the Compensation Fund).

Given the projected annual cost to the profession of £16 per annum per solicitor or £240 for a firm on a flat fee basis we believe that the arguments in favour of maintaining such protection are overwhelming.

The SRA do not seem to have a grip on admin costs and therefore argue that the cost of keeping SIF is disproportionate to consumer protection. We see that equation the other way around- the small cost justifies the protection. As we say the administrative function could be incorporated within the compensation fund arrangements or Chancery Lane. A clear funding plan through an annual levy will remove the need for the cost of actuarial projections and reinsurance.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

See response to Q.4

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

the MTC's to provide 9 or 12 year PSYROC would be advisable. The added exposure of insurers to claims in these years is on these figures minute and if the insurers were paid the current levels of run off premium (often 3 times a firm's final year premium) insurers would not balk at this extension.

The WTW analysis of the number and value of PSYROC claims supports the view that the addition of a further three or six years

to the currently mandated six-year PSYROC would add little to the cost of premiums. If one reckons the primary layer annual premium levels are £300 million such an extension would add about 0.3% to premiums.

Indeed, if the SRA and insurers were to mandate that all regulated firms obtained refundable security for payment of post-six-year run-off cover in all events (currently our members contacts with brokers inform us that around 50% of such premiums are never paid) this would be an easy and obvious solution. It would also free the SRA from the administration costs of profession funded PSYROC.

The SRA could require as part of its regulatory body approval of registered entities that a bond be taken out and placed with it in order to cover the prospect of default or that a refundable deposit were made to safeguard others against the cost of disorderly closure.

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The overriding consideration here is that insurers are generally accepted to have no appetite for this sort of cover on a practice by practice basis at all let alone on the basis of premium levels which are likely to prove attractive to willing takers.

The same considerations as preferred by the SRA re a Master Policy (Q.6 below and para 71) apply equally here

If that is wrong, good insurance risks will always find a market. Thus, if the SRA should close SIF then no doubt a market for PSYROC would emerge and those retired solicitors who have kept a good archive, have had a good claims record in the first six-years post closure and who can afford it, would find cover.

The problem would remain for the disorderly closures and those who had a bad claims record.

A voluntary option would therefore provide only a patchwork of consumer protection and protection where it was least likely to be called upon ie claims against responsible and solvent retired solicitors.

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

If this is the SRA's chosen route, then a market will evolve. Such a market would differ little from the market in which SIF currently appears to be affecting its own reinsurance so it is hard to see an advantage in this solution.

A master policy for the profession worked pre the formation of SIF in 1987 and there is no reason why it could not provide a solution- but at a cost. As the consultation paper notes payments of premium would incur insurance premium tax and of course the carrier for such a provision would require a profit element which is not present in a mutual fund such as SIF run by TLS or the SRA.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

If this is the SRA's chosen route, then a market will evolve. Such a market would differ little from the market in which SIF currently appears to be affecting its own reinsurance so it is hard to see an advantage in this solution.

A master policy for the profession worked pre the formation of SIF in 1987 and there is no reason why it could not provide a solution- but at a cost. As the consultation paper notes payments of premium would incur insurance premium tax and of course the carrier for such a provision would require a profit element which is not present in a mutual fund such as SIF run by TLS or the SRA.

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

We do not have enough claims data to answer these questions on an informed basis. If the SRA were to publish data for all claims by type and size of firm and premium spend (both for firms in run off and continuing practices) then we may be able to give the SRA an answer to these questions- it would help our members with risk analysis too. Participating Insurers have this data and we call on the SRA to make them disclose it.

However, it seems to us that there may be scope for an imaginative scheme that did not require PSYROC to be maintained to MTC levels e.g. there could be tariff limits, claims could be limited to private individuals or SMEs or work types.

It seems to us also that the SRA could permit greater flexibility to solicitors in their terms and conditions. Currently the SRA greatly restrict the ability of solicitors to do that but if it came out with a view that such limitations were proportionate and reasonable in the context of historic claims then solicitors could exclude such claims contractually.

However, unless the SRA collects and publishes annual premium and claim data it is inviting the profession to guess at questions were the insurance market knows the answers.

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

24. 15) Do you have information on impacts to inform our assessments?

We strongly request that the SRA maintains the Solicitors Indemnity Fund limited and the protection it affords to consumers. We believe that the cost of doing so is a small cost to the profession and one which safeguards and reinforces the trust which consumers put in the profession. We have found not one solicitor nor any firm who balks at the projected annual ongoing costs of doing so.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:635 Data

2. About you

1.
First name(s)

Andrew

2.
Last name

Melling

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

retired

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

No

12.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Yes Retired solicitors like me, and those yet to retire,, who have contributed in their careers, need and deserve the continued protection presently given by the SIF.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

The very large balance in the fund should continue to be kept for its original purpose.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

No.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

No

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

If SRA is unwilling to continue the present arrangements, it should hand control of the scheme back to the Law Society, promoting any change in the law necessary to achieve this.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

No

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

N/a

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes, as set out above.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

No

25. 15) Do you have information on impacts to inform our assessments?

I have assumed the question 'Do you have any views' to be an invitation to express my views, even though not worded in that way. The lack of precision, in a profession where the precise use of words is so important, is disappointing.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:643 Data

2. About you

1.

First name(s)

Mark

2.

Last name

Kelly

6.

I am responding..

in a personal capacity

7.

In what personal capacity?

Member of the public

8.

How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

9.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

The proposal to discontinue PSYROC via SIF seems woefully misguided and I have no doubt that it will lead to significant damage to the SRA's reputation, damage to the profession's reputation, damage to consumer confidence, financial losses to the public, a lack of competition, a lack of innovation, a loss of access to justice and upwards pressure on fees.

Without SIF in place (and it seems plainly clear that there will not be a satisfactory insurance based option available), it will only be a matter of time before a client suffers a significant loss to find that the PSYROC has been discontinued and they are left to attempt to recover their losses via the court.

This will lead to a number of foreseeable consequences:

1. Solicitors will take steps in the years approaching cessation of their practice to structure their finances and assets in such a way that they cannot be lost
2. The client will be left out of pocket (and moreover may incur additional legal fees attempting to recover their losses as, although CFA arrangements do exist for professional negligence cases, they may well not be offered in cases where there is no insurance, SIF or the possibility of recovery. The client is therefore at a loss financially and denied access to justice.
3. This will no doubt attract media coverage, slamming the profession and the SRA for allowing this situation to arise when it is

completely avoidable. A tabloid headline would likely read along the lines of 'Clients lose millions as fat cat lawyers hide their money and SRA abandons the public'.

There are of course other issues. The closure of SIF will undoubtedly lead to fewer firms, increased costs, increased legal fees, a lack of competition, a lack of innovation, a lack of access to justice and more SRA interventions.

1. Should the public become aware of this scenario, they are more likely to choose to instruct a larger firm of solicitors as opposed to a sole practitioner or two/three partner firm (some larger firms may no doubt play on this in advertising campaigns). There are obvious consequences to this in terms of financial hardship for the smaller firms.
2. In the short term, smaller firms may have to cut their legal fees (for practice areas which allow for hourly charging rates of fixed fees) to unsustainable levels to compete with the longer term strength of a larger firm – this in turn has the potential to lead to higher workloads, more negligence claims, further financial hardship, interventions and closures. This would again result in significant damage to the reputation of the profession and also the SRA for enabling this situation.
3. As smaller firms close, this allows firms to charge more, with a lack of competition no longer keeping prices down. The client will therefore now have to pay more.
4. With fewer firms there will be a risk of access to justice.
5. With fewer firms, there is likely to be less innovation to the detriment of clients and the entire profession.
6. Solicitors could also abandon higher risk practice areas, instead concentrating on areas where there is less likelihood of a claim after the six year initial limitation period.
7. In the SRA consultation paper it is already mentioned that one of the causes of SRA interventions, is where solicitors are continuing to practice beyond when they should, due to the cost pressures of closing down. This situation is almost certain to be exacerbated by the close of SIF as solicitors either attempt to build up reserves or decide it is better to continue practicing indefinitely rather than risk an expensive claim. SRA interventions are, of course, expensive, with the cost likely to be borne by the entire profession (small and large firms alike).

The consultation makes reference to firms seeking successor practices. The profession is already well aware of this, however, the reality is somewhat different. With the closure of SIF who would want to take on the liability of a previous practice of which there was no control? Anecdotally, I have already heard of firms having to pay reverse premiums to get a larger practice to take them over. This is not sustainable or in the best interests of clients.

I actually left the legal profession a few years back. In part due to the workload, in part due to the ever-growing personal liability creeping in. I am not the only one to take this stance, and I anticipate that more and more individuals will leave the profession, avoid entering in to the profession and certainly avoid opening their own practice or becoming a member of an existing practice.

Another factor in my decision to leave the profession was to gain experience in management and project management with a view to eventually returning to the profession in a non-practising role and potentially become a member of a small to medium sized firm. With the closure of SIF I would decide against returning to the profession and would have no desire whatsoever to become a member of a practice.

There is talk in the consultation of cross-funding and the concern about doing so. I would point out that all solicitors fund the following through the practicing fees:

1. Regulatory activities (the total costs of the SRA) – this is for the overall benefit and protection of the public and most solicitors have no interaction with the SRA other than paying fees
2. Non-regulatory activities provided by the Law Society which are Permitted Purposes (again very few solicitors are directly affected or involved in this but it benefits the profession as a whole)
3. Levies required to be paid
4. Part of the cost of the Legal Services Board (for the protection of the public)
5. Part of the costs of the Legal Ombudsman (for the benefit of the protection of the public despite most solicitors having no involvement or interaction with LeO)
6. Full cost of the Solicitors Disciplinary Tribunal (again for the protection of the public despite most solicitors having no involvement or interaction with the SDT)
7. Part of the cost of the Office for Professional Body Anti-Money Laundering Supervision (again protection of the public with most solicitors having no involvement or interaction)

There is already cross-funding in the name of protecting the public and ensuring the good standing of the profession. This

should be no different. Let us also not forget that larger practices are not immune from closure and practice areas do change from time to time.

Should the SRA decide to close SIF it will be doing so despite the profession fighting to protect the interests of clients, despite the losses to clients, despite the position of the Law Society, despite the position of insurers and brokers and despite the contents of its own commissioned WTW report.

The SRA is under an obligation to act in a way that meets regulatory objectives of protecting and promoting the interests of consumers, protecting and promoting the public interest, promoting competition in regulated services, improving access to justice and encouraging an independent strong, diverse and effective profession – closure of SIF would be contrary to each and every one of these objectives.

10.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

The WTW report itself suggests that the levy to ensure the ongoing viability of SIF would be £16/year per member or £240/year per firm. This, in the scheme of the costs of running a law firm, is a tiny proportion and one that is unlikely to raise objections.

In fact Solicitors I have discussed this with are all in agreement that this is the best way forward (this includes practitioners at small firms, medium sized firms and even in-house solicitors).

There seems to be a consensus amongst the profession that this is the correct manner in which to proceed. The WTW report concludes that this is the best way to protect the public. It seems only to be only the SRA who are in disagreement – to that end I refer you back to the likely tabloid headline!

There is talk of the cost of the SIF levy being passed on to clients. I find this quite amusing. The SRA has indicated that it is not prepared to intervene in to the sky-rocketing costs of indemnity insurance which are far more likely to have an inflationary effect on legal fees, but feels that firms will pass on the £240/year cost of SIF.

The proportionality argument must not relate only to the financial costs, but must also weigh up the reputational damage the closure of SIF would cause, the loss of access to justice, the loss of competition and the loss of innovation.

There is also reference in the consultation and in some media articles put forward by the SRA that the potential losses to clients are modest. It must be considered that:

1. The average of £34,600 per claim is an average. Some may be significantly higher.
2. What one person considers modest another will consider life-changing. There may be those who consider £34,600 an amount that they can afford to lose – I certainly am not one of them and I do not know of anybody who would not be significantly affected by this.
3. If a client pursues a claim through to court and is successful against a former solicitor who declares bankruptcy not only will they fail to recover an average £34,600 but they will also lose a potentially huge sum in court and legal fees (again CFA agreements may not be available under these circumstances where there is no insurance in place).

11.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

This would risk insurers exiting the market, resulting in a lack of competition, increased costs of insurance and upwards pressure on legal fees and law firm closures/interventions.

It is not feasible. The only way forward is the retention of SIF with a levy.

12.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our

MTCs to require the provision of PSYROC on an on-going basis?

See above

13.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

This does not appear to be an option. The WTW report itself says that this will be undesirable and I am therefore not sure why this is even being consulted on.

Even if it were to become an option (and to my knowledge the stance of the insurance industry is that they want no part of this), this will provide insufficient protection.

Only some firms will qualify, therefore leaving some clients protected and some not. This would be of huge reputational damage to the profession and SRA for allowing this situation to arise.

Some firms may not take up the cover, therefore leaving some clients protected and some not. This would be of huge reputational damage to the profession and SRA for allowing this situation to arise.

If any such policy was to become available it would undoubtedly be on an annual basis meaning premiums subject to change and potentially no offer of cover being made if there had been a claim against the policy previously, therefore leaving some clients protected and some not. This would be of huge reputational damage to the profession and SRA for allowing this situation to arise

14. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

This seems to have already been discounted by the SRA and WTW Report.

The only way forward without abandoning the public and suffering huge reputational damage, loss of competition, loss of innovation and denial of access to justice is the retention of SIF with a levy.

15. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

The only way forward without abandoning the public and suffering huge reputational damage, loss of competition, loss of innovation and denial of access to justice is the retention of SIF with a levy.

16. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

If a significant cost of SIFL is outsourcing, it would seem practical to employ solicitors in-house to deal with matters on a cheaper basis.

Alternatively, invite tenders to conduct the legal work, whilst keeping SIF in place with a levy.

Either way the only practical option is the retention of SIF with a levy.

17. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No. Simply keep SIF subject to a levy.

18. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Targeting would mean some clients are protected whilst others are abandoned. This would be of huge reputational damage to the profession. This could also result in firms abandoning certain areas of law, resulting in a lack of access to justice, a lack of competition and increased fees.

Reducing the amount of compensation payable would also run the risk of leaving some clients unprotected and it has already been stated in the consultation that this would be unlikely to have a material impact.

Targeting also seems counterproductive in that it would increase the costs and administration involved. Instead, adopt a whole industry levy of £240 as per the WTW report. This is the most cost effective way in which to proceed.

The levy will be welcomed by smaller practices and insignificant to larger practices.

As for concerns about cross funding, please see my earlier response regarding the existing cross funding through the practicing fees.

19. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

No. SIF should be available for all. Please see above.

20. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

Please see above.

21. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

The only way forward without abandoning the public and suffering huge reputational damage, loss of competition, loss of innovation and denial of access to justice is the retention of SIF with a levy.

There is no market solution available. If one did exist it would be too unpredictable and lead to chaos, reputational damage, increased legal fees.

Without SIF, the consequences are entirely foreseeable: Clients will be unprotected, the profession will be in disrepute, there will be a lack of competition, lack of access to justice, increased interventions (at significant cost borne by the entire profession), significant media outcry, increased legal fees, damage to mental wellbeing of clients and solicitors alike. All of this would be happening on the SRA's watch despite the protestations of the Law Society, profession, individuals, insurers and even the SRA's own report.

22. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

The risks can only be mitigated by keeping SIF subject to a levy, which the profession seems to be united in agreeing to.

Without SIF subject to a firm levy the SRA is abandoning clients and failing to fulfil its regulatory functions.

23. 15) Do you have information on impacts to inform our assessments?

See above.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:647 Data

2. About you

1.
First name(s)

Katherine

2.
Last name

Manley

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Representative group

8.
Please enter the name of the group

PNLA www.pnla.org.uk

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

The SRA states that the background to SIF arises from the following: 'In September 2000, following a vote of Law Society members, the SIF was placed into run-off following the introduction of an open market insurance model, which required firms to hold professional indemnity insurance (PII) with an insurer operating in the open market. The minimum terms for that insurance have always included a requirement that if a firm ceases without a successor firm, the last recorded insurer for the firm must provide cover for negligence claims made within six years of the firm closing. This is known as 'run-off cover'.'

The SRA has also carried out in May 2014 this consultation: <https://www.sra.org.uk/sra/consultations/consultation-listing/insurers-minimum-financial-strength-rating/> including the following statement 'In the past five years, 15 insurers have exited the market for solicitors' professional indemnity insurance out of a total pool of 37. Of these, 11 were rated and four unrated.'

The consequences to solicitors and their former clients with negligence claims of insurers exiting the market are often tragic.

Coverage disputes are raised which solicitors affected may be unable to find the resources to fund. The Professional Negligence Lawyers Association has over 330 members. Many have experience of considerable difficulties both for solicitors insured and for former clients with claims obtaining payments from such insurers or from either the Solicitors Compensation Fund (whose rules have recently in 2021 tightened up further excluding notable payment of costs for claimants) or the Financial Services Compensation Scheme who cannot be approached directly but in practice only via the appointed insurer's claims handlers - such insurers typically being in liquidation.

It is conceivable that the Law Society members may choose in this background to revive SIF at some point. The open market since 2000 has not been regarded as a success by many solicitors some of whom struggle annually with the amount of the annual insurance premiums (if they can be obtained at all). Reverting to SIF as a mutual is potentially possible whilst the structure still exists. Closing down SIF as the SRA propose would remove this option.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

There are several sources of information used in the LJ Jackson review to analyse professional negligence claims including:

- the number and value of cases issued in the Courts - the High Court does identify professional negligence claims as a type
- Professional Negligence Law reports - PNLR - data on claims against solicitors which have reached trial in the High Court, Court of Appeal and Supreme Court can be analysed and evaluated.

Data from insurers as to the percentage of claims settle during the Pre Action Protocol stage was obtained - around 96% at the time of the LJ Jackson review.

The SRA appear to be relying currently on data from SIF as to the average claim payment. This should be sense checked using for example the above data. Individual solicitors risk a claim arising after their run-off period (normally when they are in retirement) which they cannot pay and without the benefit of defence costs being covered. The majority of solicitors facing that risk with the option of paying a small sum annually to support SIF would choose the latter option. The Law Society should be asked to carry out a profession wide survey to confirm this but the answer is obvious.

Closing SIF affects solicitors in large commercial firms as much as it does those in smaller regional practices because the unexpected claim could come from any aspect of the professional work carried out by their practice. Even a wealthy retired commercial lawyer will be unable to afford to defend a claim which could be for £millions and their family home and all their personal savings and pension could be in jeopardy.

There are high profile examples of audit negligence claims for example against very large firms of accountants giving rise to liability from retired partners. Such claims typically come to light many years after the negligent work was done. A recent example is this case where 'The bulk of the evidence went to the counterfactual situations which AssetCo alleged would have occurred in 2009 and 2010 if GT had conducted competent audits.'

Assetco Plc v Grant Thornton UK LLP [2020] EWCA Civ 1151 (28 August 2020)

URL: <http://www.bailii.org/ew/cases/EWCA/Civ/2020/1151.html>

Similar situation arise all the time in relation to solicitors claims which do not come to light until many years later. The PNLR includes data on many such cases. There are also text books which would provide historic examples including Jackson & Powell, the loose leaf Professional Negligence and Liability and Flenley & Leech each of which include chapter dealing with limitation defences and situations where claims have arisen after the primary 6 year limitation period has expired . A recent example is this case against solicitors: Hellard & Anor v Irwin Mitchell [2013] EWHC 3008 (Ch) (18 October 2013)

URL: <http://www.bailii.org/ew/cases/EWHC/Ch/2013/3008.html> arising from 'The defendant firm of solicitors acted for Mr Shore in a claim against Sedgwick Financial Services Ltd ("SFS") alleging negligent advice in relation to the transfer in 1997 of his benefits under various defined benefit occupational pension schemes'.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Following on from the SRA consultation in May 2014 'In the past five years, 15 insurers have exited the market for solicitors' professional indemnity insurance out of a total pool of 37. Of these, 11 were rated and four unrated.' referred to in our response to question 1), requiring MTCs to require provision for PSYROC should be assessed alongside the true protection afforded in an insurance market where there has already been 15 insurers who have exited the market. More have disappeared since then including notably Alpha Insurance A/S a Danish insurer which held a significant proportion of the solicitors indemnity market

which went into liquidation in May 2018. There is no long term guarantee that all insurers can provide the protection required by the existing MTC let alone an ongoing obligation beyond the 6 year run-off period. SIF as it stands provides protection which can be relied upon and at a time when solicitors need it most - often when they are retired and vulnerable due to old age. The SRA to provide confidence in their decision should provide data based on the participating insurers in the market since 2000 as to how many would be available to provide post 6 year run-off cover. We seem to know already that 15 such insurers out of 37 according to the SRA in May 2014 could not do so.

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Katy Manley has been acting in a claim on behalf of a solicitor who was a sole practitioner insured by Alpha Insurance A/S a Danish insurer which went into liquidation in May 2018. An employee undertook a teeming and lading fraud discovered in March 2014. Every former client has potentially 15 years as a limitation period to bring a claim. This is precisely the type of situation where whether or not the MTCs required provision for post 6 year run-off cover in practice this would be unavailable. Data must be available from the Financial Services Compensation Scheme and the Solicitors Compensation Fund (administered by the SRA) about all the insolvent insurers and the scope they have or had at the relevant time to pay claims after the 6 year run off period has expired. Unless this data is obtained and reviewed within this consultation then no proper and reasoned assessment can be carried out as to the need for SIF to continue or not using this proposed amendment to the MTCs. The open market model with the financial requirements now required by the SRA is still volatile. In order to ensure solicitors can obtain cover in the long term there will always be risks that insurers will become participating insurers for a while and then withdraw for various reasons. It is understood that 2021 was the hardest market for many years for solicitors to obtain insurance cover and premium levels were very high - potentially unaffordably so for many solicitors practices. The SRA will therefore continually have to review the MTCs to ensure there is sufficient affordable cover available and there will be years, potentially in 2022, when insurers will be able to apply pressure for such provisions as are proposed for post 6 year run-off cover or indeed other areas within the existing MTC to be dropped or for less financially secure insurers to be allowed to enter the market. This is the inherent disadvantage of the open market over the SIF model. The Scottish solicitors still use one insurer and it would be possible to compare the experience of their MTCs as against the open market model in England & Wales and in Northern Ireland and Ireland. There have been alarming insurer withdrawals in all these jurisdictions causing solicitors to need to find new insurers often at short notice shortly before renewal which the Scottish lawyers have avoided. Such a comparison study could form the basis of a review of the success or not of the open market model since 2000 and into the future and the potential for SIF to be revived. Closing SIF now could well remove this option.

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Comparing the potentially minimal costs per solicitor to continue to support SIF to a mandatory or voluntary option for additional cover post 6 years should be supported by data to the profession to allow for a reasoned consultation to be carried out. A voluntary option may well increase the premium to a prohibitive level given that not all solicitors will choose to take it out or be in a position to be able to afford to do so. If the entire profession is required to contribute to SIF continuing as it does now then it seems likely that this will inevitably be a better option by spreading the cost amongst all solicitors and provide the maximum protection to them - many of whom will be retired if any such claim does arise - as well as to the former clients as members of the public.

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

The same concerns apply to this proposal depending upon the long term financial security of the insurers who might step forward to cover such master policy as apply to the historic experience of the open market. Whereas there is as things stand control of the financial security of SIF via the SRA and the need for assessment of the financial contributions from the profession annually moving forward to protect its financial viability.

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

We are not aware that there is a suitable master cost-effective master policy available in the market. Even if there was one available now the claims market changes annually and insurers willing to back such a policy one year may not be willing to do so for another year. This inherent problem for the SRA must be compared with the cost of SIF continuing to such an annual problem. It must be possible in this background that continuing with SIF as it is now (and supported in the future) is a far better option for the SRA as well as for the profession and all the former clients who may have negligence claims arising post 6 years run-off.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

It is inherently difficult, if not impossible, for the SRA to regulate solicitors after 6 years after they have closed a practice or left the profession. Should it transpire that a claim arises without compliance no regulatory sanction is likely to improve the financial reality of the situation for the solicitor or the former client concerned. Therefore the LSB and the SRA will foreseeably fail in their primary regulatory objective to protect the profession and those instructing them.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

The best possible model must be SIF which has been providing this function for over 20 years. Surely the proper question should be whether or not there is any information about a better model which is more cost-effective than SIF. If not then the answer is that SIF should continue (albeit with financial support from the profession as required).

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

The Professional Negligence Lawyers Association members cover a wide range of types of claim. There is a search facility to Browse our members for the type of expertise required for claims against solicitors. The broadly will reflect the practices of our members. <https://www.pnla.org.uk/do-you-need-a-lawyer/> There are currently 27 areas of expertise listed each of which has at least one member practicing in that area. Our observation is that these areas of expertise change over time. The PNLA was set up in 2004. The number of members acting in claims against solicitors for each area also varies. There are surges in certain types of claim and new areas come to light. If the SRA intended to target areas using historic data this is inherently flawed as an approach because it does not take account of changes in the claims market. One example could arise for example from the Grenfell Tower Fire and the resultant Government enquiry. It may well turn out that in blocks of flats there should have been a well insured landlord but that was not the case and that conveyancing solicitors have been negligent in their advice to leaseholders on purchase. This type of claim would cause a surge which could not be anticipated and would not appear in historic data.

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

We do not consider that regulatory requirements would be a safe option for the profession for the reasons explained above at paragraph 8). What benefit to the financially affected solicitor and former client would any such regulatory sanctions have - whether targeted or not?

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

We refer to paragraph 10) - any attempt at targeting would be inherently flawed because the types of claims that arise change over time. Historic data would not provide a reliable guide to the type of claims arising over 6 years into the future.

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

We agree that the the SRA should make it a regulatory requirement for every solicitor to contribute to SIF to continue to provide post 6 year run-off cover in an amount as required by the SRA after an assessment annually of the financial resources needed by SIF.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

We agree that the SRA would have to provide transitional insurance cover post 6 year run-off for all practices that have closed expecting that SIF would provide such cover. This would be the only way to mitigate the risks to clients of closed firms. There could even be potential claims from solicitors against the SRA if they were led to believe that SIF would provide post 6 year run off cover only to find that the SRA have decided after this consultation to close it. It is also possible that clients may also be able to bring such claims against the SRA depending upon whether they were aware that the profession did provide such cover and relied upon that in bringing a claim against a closed practice.

24. 15) Do you have information on impacts to inform our assessments?

We refer to our response to paragraph 2). There is considerable data available from various sources for the impact of claims arising against solicitors after 6 years to arise and the financial consequences. Evidence from open market insurers cannot be relied on to the exclusion of the this data which is independent of commercial interests. Some of this data was looked at in the the review by LJ Jackson in 2011/2. More recent data is available from the PNLR and text books to which we have referred. For any credible proposal by the SRA to be considered all such data should be examined and published to the profession before any final decision is made to close SIF.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:659 Data

2. About you

1.
First name(s)

JOHN Merlin Hinton

2.
Last name

Hutchings

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes. I believe my views differ from the SRA. I think allowing the SIF (Solicitors Indemnity Fund) to continue to operate to provide run-off cover after the 6 years mandated by the MTC is an important and essential objective. Both to provide cover to protect consumers and allow lawyers benefitting from the niche cover to get on with their lives.

12.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Yes. I commend the Howden Insurance response to the SRA Consultation (Howden Response). But in my take it leaps out that

1) Buying insurance after 6 years would need to be an annual event 2) the premiums would not be tax deductible 3) The market is unlikely in the expert opinion of Howdens to have an appetite to offer such cover 4) That the patchy take up if possible would not provide a uniform and comforting blanket cover that the problem (Protection of consumers) needs.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Yes. I again commend the Howden Response. The SRA is deluded if it thinks it can force the Insurance Market to provide indefinite cover of the sort provided by SIF. Indeed should the SRA try this I suggest they keep an overlap with SIF as IMHO the market will not accept and cover on MTC terms would be unavailable. Effectively turning a small niche problem into a whole legal service existential problem.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Yes. Look at the small but perfectly formed organisation that is currently SIF. A simple levy of £240 a year on each regulated firm or sole trader would it appears be sufficient to keep the SIF in place.

AS my father explained If it is not broken please do not try and fix it. An old adage but quite apposite in this situation I submit.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Yes. By what swerve of imagination does SRA suggest a voluntary option with a straight face. Every experience I have had of the SRA has had an underlying theme of compulsion coupled with their own vision of what SRA thought was good for me and my business. Whilst one must comply with one's regulator it does not mean I agree or can not see the lack of wisdom of much it proposes.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Yes. I adopt and commend the Howden Response on this subject.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

Yes. I adopt and commend the Howden Response on this element of your consultation.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Yes. I adopt and commend the views of the Law Society as linked to all regulatory arrangements past, present and proposed.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

Yes. I adopt and commend the views of the Law Society as linked to all regulatory arrangements past, present and proposed.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Yes. I adopt and commend the views of the Law Society as linked to all regulatory arrangements past, present and proposed.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

No. I adopt and commend the views of the Law Society as linked to all regulatory arrangements past, present and proposed.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

Personally I do not. I am against the closure of SIF generally. If my opinion prevails we will not need to consider this issue which I see as the SRA swerving its mission to protect consumers.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

I support the continuance of SIF - please do not use any of my answers on this nitty bitty SRA newspeak as detracting from my firmly held belief that SIF must continue.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Mitigation can only be appropriate if SIF does not continue. SIF should continue. I am puzzled that the SRA cannot get its own weight behind this worthy objective. Consultations are to flush out general feelings as well as ideas from specialists that generalist staff regulators have clearly overlooked. HMRC often works with the Chartered Institute of Taxation as well as the Association of Taxation Professionals through consultations and better tax law is the outcome usually after a delay to rethink.

25. 15) Do you have information on impacts to inform our assessments?

Yes. I adopt and commend the views of the Law Society as linked to all consumer impacts past, present and proposed.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:660 Data

2. About you

1.
First name(s)

Jeremy

2.
Last name

Chandler-Smith

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

JCS Solicitors Limited

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

The main thrust of the SRA PSYROC Consultation is that the size and number of claims is disproportionate to the cost of PSYROC. The sole object of PII is to protect the client. Large corporate clients may be able to mitigate or absorb the loss arising from a negligent act (ref para 42 of the SRA PSYROC Consultation), the small money individual who uses affordable legal services offered by sole practitioners or small partnerships cannot (ref para 34 of the SRA PSYROC Consultation). There is an inherent trust placed by such individuals in their adviser. Whilst PII cover may not be in the forefront of their mind when instructing a lawyer, the provision of PII is vital to the standing of the profession. The need for a remedy lasts long after the discharge of the retainer and in some cases, beyond the cessation of practice. Lawyers are entrusted with advising clients and

handling matters that may involve the most significant financial transaction of their life (e.g. purchase of a house) or may have significant financial, practical and emotional outcome (e.g. family litigation). The profession must show not only that they are competent and able to be entrusted with such important matters, but are able to provide a remedy should mistakes be made.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Proportionality should not be the primary or sole consideration. The size of individual claims may be modest, however to the claimant, often an individual of modest means, removal of a remedy may be catastrophic. Whilst the level of consumer protection PSYROC provides may be "very small" (ref para 20 of the SRA PSYROC Consultation) it does provide protection. The size and number of claims may be small, the confidence an individual may have in instructing a solicitor is not.

Further funding from the profession: (ref paras 51-53 of the SRA PSYROC Consultation). It is highly unlikely that the the costs illustrated in the WTW report will be passed onto the client. £240 is less that the annual membership subscription to Resolution. It is a fraction of the cost of ongoing CPD training. To argue that there should be no funding of PII PSYROC because the cost may be passed on to the client by "at least some regulated providers" is nonsensical; to follow the logic, solicitors should avoid costs (such as updating their skills and knowledge) that benefit the client and uphold the standing of the profession.

Cross-subsidisation (ref para 53 of the SRA PSYROC Consultation) - It is not anti competitive to require the profession to fund PII PSYROC. Whilst the majority of claims may arise from private client services, claims may arise form provision of other services; no-one is infallible.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

There is no evidence that qualifying insurers will provide additional cover, as a result there is no indication of the resulting cost to the profession. Changing MTCs is only viable if insurers are willing to quote.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

There is no evidence that qualifying insurers will provide additional cover

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

If it is possible to do so and provide the same PII PSYROC as before, then it should fully and urgently explored and implemented.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

It is very difficult to effectively "target" cover. the argument for doing so is that, as commented above, large corporations have got the financial resources to either absorb the loss and/or obtain cover. at the other end of the spectrum is the individual of modest means where an error by a solicitor may have a significant impact. however, there are some very wealthy private clients and some commercial clients of modest financial means (e.g. small family-run companies). There should be a blanket PII PSYROC for all or the profession.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

Another factor is that many black and asian practitioners find it very difficult to find a position in larger practices. I know of many black and asian solicitors who have found that the only door to practice is to set up their own firm. Targeting PSYROC or removing PSYROC altogether may deter young black and asian individuals from entering the profession. These small firms offer a vital and affordable service to local communities. Such lawyers are professional, conscientious and truly believe in the privilege of being a trusted adviser.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

please see comments above

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Para 95 of the SRA PSYROC Consultation says that the two groups who may be adversely impacted by the closure of the SIF are white male solicitors. Clearly, a profession historically comprised of white, middle-class men (of which I am one) will be impacted most by the ending of PSYROC. However, this is a short-term blinkered view. Entry into the profession was easy for me; the profession should be open to all. My 83 year old neighbour qualified as a solicitor in the 1950's and worked for a city practice. The hurdles to qualification and career progression were shocking. Thankfully, there has been an improvement, but there is still distance to cover. Likewise hurdles faced by black and asian entrants to the profession. Yes, there has been massive progress, but discrimination, whilst maybe not overt, still survives. It is an unavoidable fact that entry into large practices is difficult and many women, black and asian solicitors need the model of the small high street or niche practice as an option. these are the very people who will be deterred from a career in law by the profession turning its back on PSYROC.

25. 15) Do you have information on impacts to inform our assessments?

I was in partnership with one other solicitor. Sadly, my partner turned out to be a rogue. Initially he was disciplined by the SDT and after I dissolved the partnership, continued in sole practice. His practice was intervened by the SRA, he was struck off and made himself bankrupt. The SDT ruling recorded failure to maintain PII, serious breaches of SAR and numerous instances of deplorable service and negligence. Nearly all the clients were private individuals. Many were known to me from the days of the partnership and I sought to assist them as best I could. However, my former partner had disposed of many of his files. These people would have been left without any remedy in the absence of the SIF. In many instances, the negligence had a negative impact on their marriage and family life. PII is there for the client. It must not be expected of the client to provide their own cover. these individuals cannot afford to do so and cannot afford not to have cover - it must be provided by the individual practice and PSYROC by the profession as a whole.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:663 Data

2. About you

1.
First name(s)

Glynis Margaret

2.
Last name

Mackie

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Glynis M Mackie

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

You have not addressed practical alternatives even those suggested by your own analysts

12.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

There is no reason why the SIF could not continue with an injection of funds through an annual levy. That would be a much

more appropriate way of providing consumer protection than forcing firms to each find an individual solution which would be much more expensive and have an upward pressure on legal fees.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

I think that would be more in line with fulfilling your responsibilities to both the consumer and the profession.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

There is absolutely no evidence that cover will be available on the open market. There are no insurers who have indicated that they are interested in such a product so you are leaving consumer protection to chance.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

You already have a fund, it does not need to make a profit for shareholders and it does not need to pay commission. So I see no benefit to the consumer or the profession.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I know very little about the insurance market but I think it unlikely that such a product would be available, if it is that it would be cost effective or that it would improve consumer protection.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

I think that it is aimed at justifying a position that you have already taken without any consideration of the purpose that the funds were provided and the necessity for ongoing consumer protection.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

There is no need for an alternative, you already have a perfectly good fund the cost of increasing the funds with an extra levy is modest. Just because you do not want to run it is not a good reason for closing it.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

They are flawed and limited the only sensible and viable option that gives good consumer protection is the continue the SIF funded with a levy on firms

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

A levy on firms would be targeted because only consumers who purchase legal services from a regulated entity could access PSYROC.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

as above

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Your own experts think that the cost per firm would be about £240, the public expect the SRA to be the organisation that protects their interests.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Yes they are woefully inadequate

25. 15) Do you have information on impacts to inform our assessments?

To ask the profession to pay £240 per firm would be a reasonable price to pay in order to:

- protect and promote the public interest; support the constitutional principle of the rule of law; improve access to justice; protect and promote the interests of consumers of legal services; promote competition in the provision of legal services; encourage an independent, strong, diverse and effective legal profession; promote and maintain adherence to the professional principles; and
- ensure compliance with the regulatory principles that require regulatory activities to be transparent, accountable, proportionate and consistent.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:664 Data

2. About you

1.
First name(s)

Julia

2.
Last name

Saunders

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Derby and District Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Derby and District law Society represents over 250 solicitors both practising and retired who have associations with the City and County of Derby and East Staffordshire.

DDLs members have responded to this consultation. Unanimously those responses are that the protection afforded both to clients and to retired solicitors by SIF's PSYROC should be retained as a fundamental client protection and that it is the duty of the SRA to maintain that protection.

Solicitors are uniquely exposed to long-tail claims where clients often do not realise errors until, for example, a death or a sale of a property which can be many years after a Will was written or a property purchased. Often, in the case of personal injury these claimants are the most vulnerable members of society.

By the same token once a solicitor ceases practice or retires he or she retains no control over future client protection arrangements and many a solicitor who is retired believing his or her firm will exist for years to come as a successor practice or

continuing practice has found themselves powerless to prevent closure or merger and loss of PI cover.

Barristers through the Bar Mutual enjoy this protection, so too should solicitors.

1. The SRA's position is that it is not its role to protect solicitors. However, SIF was established under section 37 of the Solicitors Act 1974, the provisions of which protect not only consumers, whose interests must of course be the first consideration, but also solicitors and their staff: *Swain v The Law Society* [1983] 1 AC 598 at p.618 B-C.

Amendments to section 37 in the LSA 2007 did not affect this. (source: Legal Risk LLP <https://www.legalrisk.co.uk/publications/riskupdate-january-2022/>)

2. Whilst there is a supply of funds to meet a clear demand for PSYROC cover, the scheme should continue post 30th September 2022 and be reviewed at regular intervals as and when needs cease ("if it's not broke, why fix it?").

3. There is also the major problem of what happens to any money post 30th September not held back in reserve for claims intimated before the arrangement is terminated, which sum will be substantial.

4. The SRA's draft Equality Impact Assessment includes shortcomings:

4.1 The data collated and analysed is limited to the impact based on:

- solicitors - this should include staff and consumers who come under the SRA's remit
- only a few protected characteristics rather than all and those solicitors coming from lower socio-economic backgrounds
- historic claims - it should consider future potential claims in the light of demographic changes.

4.2 It confirms that certain protected characteristics are impacted and yet goes on to say that the impact is "neutral"; this appears to be a contradiction in terms.

4.3 It states "These are issues we will consider further in the light of responses to the current consultation" - the onus surely is on the SRA to show there is no equality impact; it is not on solicitors, their staff, consumers and other stakeholders to prove there is.

Yes – para 65 "closing the fund and purchasing cover to meet SIF's outstanding liability from a third-party insurer" – this appears to be a case of "cart before the horse" – what – if as seems likely – no commercial insurer has any

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

We were surprised to read that consumer redress payments (and presumably claim costs) amounted to 58% of the annual costs of SIF and that 42% of its costs went in administration costs and overheads. That seems particularly surprising for an organisation that largely outsources its claims handling to panel solicitors and no longer employs claims staff.

We should have thought that, that economy of scale could be addressed by merging the admin side of SIFL into Chancery Lane. However, a mutual model seems to us to be plainly the most economically efficient way of addressing PSYROC where there is no insurers profit element and no Insurance Premium Tax on contributions.

If, as we surmise, a large amount of the overheads costs seems to have been incurred in paying auditors and/or reinsurance and safeguarding the fund from claims that do not aggregate or are significant in amount then we should have thought that these could be addressed through a cap on claims or the comfort of actuarially calculated levies (such as supports the Compensation Fund).

Given the projected annual cost to the profession of £16 per annum per solicitor or £240 for a firm on a flat fee basis we believe that the arguments in favour of maintaining such protection are overwhelming.

The SRA do not seem to have a grip on admin costs and therefore argue that the cost of keeping SIF is disproportionate to consumer protection. We see that equation the other way around- the small cost justifies the protection. As we say the administrative function could be incorporated within the compensation fund arrangements or Chancery Lane. A clear funding plan through an annual levy will remove the need for the cost of actuarial projections and reinsurance.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

See response to Q.4

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

If the SRA were so minded to look at closure of SIF then we do consider that amendment of the MTC's to provide 9 or 12 year PSYROC would be advisable. The added exposure of insurers to claims in these years is on these figures minute and if the insurers were paid the current levels of run off premium (often 3 times a firm's final year premium) insurers would not balk at this extension.

The WTW analysis of the number and value of PSYROC claims supports the view that the addition of a further three or six years to the currently mandated six-year PSYROC would add little to the cost of premiums. If one reckons the primary layer annual premium levels are £300 million such an extension would add about 0.3% to premiums.

Indeed, if the SRA and insurers were to mandate that all regulated firms obtained refundable security for payment of post-six-year run-off cover in all events (currently our members contacts with brokers inform us that around 50% of such premiums are never paid) this would be an easy and obvious solution. It would also free the SRA from the administration costs of profession funded PSYROC.

The SRA could require as part of its regulatory body approval of registered entities that a bond be taken out and placed with it in order to cover the prospect of default or that a refundable deposit were made to safeguard others against the cost of disorderly closure.

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The overriding consideration here is that insurers are generally accepted to have no appetite for this sort of cover on a practice by practice basis at all let alone on the basis of premium levels which are likely to prove attractive to willing takers.

The same considerations as preferred by the SRA re a Master Policy (Q.6 below and para 71) apply equally here

If that is wrong, good insurance risks will always find a market. Thus, if the SRA should close SIF then no doubt a market for PSYROC would emerge and those retired solicitors who have kept a good archive, have had a good claims record in the first six-years post closure and who can afford it, would find cover.

The problem would remain for the disorderly closures and those who had a bad claims record.

A voluntary option would therefore provide only a patchwork of consumer protection and protection where it was least likely to be called upon ie claims against responsible and solvent retired solicitors.

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

If this is the SRA's chosen route, then a market will evolve. Such a market would differ little from the market in which SIF currently appears to be affecting its own reinsurance so it is hard to see an advantage in this solution.

A master policy for the profession worked pre the formation of SIF in 1987 and there is no reason why it could not provide a solution- but at a cost. As the consultation paper notes payments of premium would incur insurance premium tax and of course the carrier for such a provision would require a profit element which is not present in a mutual fund such as SIF run by TLS or the SRA.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

We have little to add to the SRA's analysis. This points inexorably and clearly to the fact that whether or not the seemingly disproportionate costs of operating SIF can be addressed, the mutual fund operated by SIF remains the best option for profession wide cover the only other suggested alternatives that we can think of would be extending the MTC's, stimulating and establishing a voluntary market or establishing a master policy. The protection for clients is affordable, in the best interests of the consumer, desired by the profession and one where reputational damage would be suffered if even one client were left uncompensated for loss caused by a solicitor.

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

We do not have enough claims data to answer these questions on an informed basis. If the SRA were to publish data for all claims by type and size of firm and premium spend (both for firms in run off and continuing practices) then we may be able to give the SRA an answer to these questions- it would help our members with risk analysis too. Participating Insurers have this data and we call on the SRA to make them disclose it

However, it seems to us that there may be scope for an imaginative scheme that did not require PSYROC to be maintained to MTC levels e.g. there could be tariff limits, claims could be limited to private individuals or SMEs or work types.

It seems to us also that the SRA could permit greater flexibility to solicitors in their terms and conditions. Currently the SRA greatly restrict the ability of solicitors to do that but if it came out with a view that such limitations were proportionate and reasonable in the context of historic claims then solicitors could exclude such claims contractually.

However, unless the SRA collects and publishes annual premium and claim data it is inviting the profession to guess at questions were the insurance market knows the answers.

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

24. 15) Do you have information on impacts to inform our assessments?

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:670 Data

2. About you

1.
First name(s)

Nicholas

2.
Last name

Woolf

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Swan Turton LLP

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes. Please see detailed e-mail sent to postsixyear@sra.org on Saturday 12 February 2022.

12.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Yes. Please see detailed e-mail sent to postsixyear@sra.org on Saturday 12 February 2022.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Yes. In the absence of prior agreement and figures from the insurance industry as to the cost, if they could provide such policies amending the MTC's would be meaningless. My understanding is that the commercial insurance industry will not provide such cover, so such a proposal has no substance. On analysis the only way to provide PSYROC is through a continuation of the SIF with additional funding from the profession, if required.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

To continue PSYROC is to the benefit of the public. To discontinue it will not only interfere with access to Please see detailed e-mail sent to postsixyear@sra.org on Saturday 12 February 2022.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Yes, my understanding is that the insurance industry will not provide such cover.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Please see reply to 5 above.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I do not believe that the insurance industry will provide such a policy. Even if it did the cost is likely to be too high for many Firm's to bear. The SIF already provides a relatively economic model to provide PSYROC.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Yes, the proposals will limit certain claims. This will be unfair to the public and a denial to justice.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

Not specifically other than that I am reliably informed that the insurance industry is unwilling to provide individual policies for PSYROC. On that basis there is no reason for them to provide a master policy. In actuarial terms it is practically impossible to assess the risk and therefore any premium.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Please see reply to 8 above.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

No, please see above.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

Please see reply to 8 above and please see detailed e-mail sent to postsixyear@sra.org on Saturday 12 February 2022.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

As stated above SIF should be continued. It is a model that has worked satisfactorily and economically. Please see detailed e-mail sent to postsixyear@sra.org on Saturday 12 February 2022.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Education of both solicitors as to the risks and to clients. This could be provided in a number of ways some regulatory and other advisory.

25. 15) Do you have information on impacts to inform our assessments?

The general view that I have obtained from speaking to and listening (or reading) to the views members of small firms , sole practitioners is that the SIF should continue.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:673 Data

2. About you

1.
First name(s)

Antonia

2.
Last name

Shield

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

BPE Solicitors LLP

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I am concerned that any decision by the SRA to close SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts (WTW) who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

I believe the SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

SIF should continue in order to protect consumers of legal services from being unable to gain redress for long-tail claims. The

SRA makes clear that it recognises the problems there will be for consumers trying to pursue claims against solicitors who have retired, disappeared or deceased. Consumers will have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. We do not need to spell out those potential problems there.

To close SIF would also pose a threat to diversity, client choice, and access to justice by creating barriers to setting up small firms, and barriers to firms undertaking what are fundamental and crucial areas of work (such as conveyancing, wills and probate). To close SIF would mean the long-term erosion of a diverse profession and a steady reduction in consumer choice. I would respectfully point out that the SRA is supposed to be improving access to justice, and encouraging an independent, strong, diverse and effective legal profession. (Regulatory objectives c and f.)

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

As set out above, in the absence of PSYROC claimants may have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. This is why I support the Law Society's proposal that a levy on firms to maintain the SIF would be a proportionate response to provide ongoing protection for consumers.

A decision to keep SIF going would be a proportionate and wholly justified course of action. The solution to keeping SIF continuing indefinitely is obvious and straightforward. No other solution is available for the provision of PSYROC.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I agree with the view that to amend the MTCs to require insurers to provide PSYROC would lead to hugely increased and unsustainable PII premiums, forced firm closures, and departures of insurers from the market. The insurance industry is making that very clear to the Law Society.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Apart from what I have already said, no. This question is one for the insurance industry.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The Law Society have been advised that this is not a feasible option and I agree. No insurance would be available. The insurance industry has already confirmed that. Please see the comments above.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I agree with the SRA analysis that this is not a feasible option.

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No. This is a question for insurers

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25. 15) Do you have information on impacts to inform our assessments?

See the comments above.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:675 Data

2. About you

1.
First name(s)

Shanade

2.
Last name

Smith

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

BPE Solicitors LLP

9.
Please specify if you are

an in-house solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

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I believe the SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

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25. 15) Do you have information on impacts to inform our assessments?

See the comments above.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:680 Data

2. About you

1.
First name(s)

Anthony

2.
Last name

Rudge

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

BPE Solicitors LLP

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

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POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:681 Data

2. About you

1.
First name(s)

Peter

2.
Last name

Knibbs

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

BPE Solicitors LLP

9.
Please specify if you are

an in-house solicitor

10.
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Please select an option below.

Publish the response with my/our name

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POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:682 Data

2. About you

1.
First name(s)

Steven

2.
Last name

Hudson

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law firm or other legal services provider

8.
Please enter your organisation's SRA ID (if applicable)

9.
Please enter your organisation's name

Gard & Co

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

The preferred option of closure is not only stated but comes through in the way in which the analysis is presented. The selective evidence is written in a way that might draw the reader towards the belief that the SIF should be closed. For this reason the consultation seems prejudged and pointless as the writer appears to not wish there to be an open debate that draws on all objective evidence in a fair and balanced way.

12.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing

PSYROC through the SIF on an on-going basis?

Proportionality is subjective and appears to be narrowly interpreted in favour of the preferred option of closure. There is an over emphasis upon the number and value of current claims (possibly 60-90 claims per annum) and no attempt to maintain that the ongoing cost of maintaining a satisfactory safety net in the public interest would be minuscule and therefore proportionate in ongoing cost terms relative to the removal of the public safety net and the inevitable public outcry when 60 to 90 claimants per annum have no clear potential remedy.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Whilst nothing is forever, the general public have a fantastic safety net in the MTC's and any attempt to open up negotiations for change would be naive and would open the beneficiaries to unforeseen consequences. The benefit to the public of a safety net that protects the public and preserves the opportunity to bring claims during the 6 years following the closure of a law firm whether the premium has been paid or not is part of what makes solicitors insurance business unattractive. It would be naive to think that extending MTC's to include P6YROC would deliver the same benefit for a comparable cost as the likely cost of continuing with the SIF and a modest annual levy. Stepping down this path would be like opening 'a can of worms' which will lead to a reduction in the number of solicitor insurers and a cost disproportionate to the benefit which would be passed onto the consumer..

14.

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The PII MTC's represent an unparalleled insurance from the solicitors profession. As the regulators of the solicitors profession it must surely be the objective to maintain such an excellent insurance in the public interest unless there is an ambition to 'level down'. In which case, my question is why and is this in the interests of the public and consumers or more to do with the ambition of the SRA as an entity rather than as a champion of the people.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

I have been organising my own firm's professional indemnity insurance cover for 31 years and witnessed all of the changes during that time. I am not discontent with the MTC's as they currently stand. The cost of run off cover for those that seek it, is very expensive, can be up to 300% of the final years premium and is often required to facilitate a takeover to avoid successor practice rules. The pursuit of any sort of cover beyond 6 years run off would inevitably be extremely unattractive and almost impossible to price even for an hitherto well managed practice with a great track record. This is why there are so many elderly practitioners locked into continuing to work until the end. To continue to suggest that such an option is remotely possible is simply flying in the face of fact and evidence.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

The arrangement of a Master policy to cover long tail claims for closed firms would be unlikely to be of interest to insurers and would not be likely to be as cost effective and proportionate, in the interests of consumers, than continuing with what the profession currently does topped up by a modest annual levy. If there is any evidence that a master policy could be established at anything close to the costs associated with SIF then this should be disclosed as part of the report on this consultation.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No other than to repeat that any evidence that such a step is possible be presented as part of the report on this consultation?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the

provision of PSYROC on an on-going basis?

Continuing with the current arrangements with a fair and modest levy on solicitors seems to be a proportionate means of protecting the interests and redress of a significant number of potential claimants/unlucky consumers each year.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Keep it simple, cost effective and proportionate and as with 'reinventing the wheel' the principle of unforeseen consequences springs to mind. Should it be necessary to narrow the benefit at later stage then that could be considered.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Not at this stage

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No - "if it ain't broke don't fix it"

The actuarial advice shows that the continuation of SIF on a cost effective basis is possible and would seem to be the most proportionate way of preserving a benefit long enjoyed by consumers. Conversely the removal of such a low cost benefit for anyone let alone an incapacitous and vulnerable potential claimant could be seen as the next big scandal and could lead to the public being educated to avoid sole practitioners and small law firms.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes as it is a cost effective safety net that the solicitors profession can provide for the public benefit. The SRA as the regulators of solicitors should not be 'levelling down' standards but seeking to bring them up and to do away with a cost effective public safety net will not be understood when it is explained that there was a safety net but that the SRA, in opposition to the majority of the profession, simply insisted upon its removal.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

There is no other way of cost effectively doing this and the SRA is opening itself up to an assertion of abuse of power. Providing consumers with insurance to pursue claims even on a no win no fee basis will be of no use if there is no money left to pursue. The idea that the removal of the SIF is in the interests of the public is similar to the idea that the closure of the Compensation Fund would also be a good idea. It is nonsense.

25. 15) Do you have information on impacts to inform our assessments?

Whilst it is true that retiring solicitors do have an 'axe to grind' in relation to this issue, one of many junior solicitors educated by the publicity surrounding the P6YROC debate recently mentioned to me that they would not give any thought to setting up in practice as a sole practitioner or in a small partnership if P6YROC is no longer available. After all why on earth would anyone wish to set up in practice if upon finishing there might be no successor practice to relieve them of long tail risk claims? If this solicitor is representative of his peers it is likely that the closure of SIF will lead to less competition and more and more of the countries brightest gravitating towards the largest firms if they can get in. There is always an unforeseen consequence in most decisions but it would be ironic if the body charged with innovation and promoting greater competition to a conservative profession were to innocently encourage the opposite effect in their determination to get rid of an annoying regulatory responsibility.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:687 Data

2. About you

1.
First name(s)

Santos

2.
Last name

Hau

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

BPE Solicitors LLP

9.
Please specify if you are

a trainee solicitor

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I am concerned that any decision by the SRA to close SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts (WTW) who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

I believe the SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

SIF should continue in order to protect consumers of legal services from being unable to gain redress for long-tail claims. The SRA makes clear that it recognises the problems there will be for consumers trying to pursue claims against solicitors who have retired, disappeared or deceased. Consumers will have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. We do not need to spell out those potential problems there.

To close SIF would also pose a threat to diversity, client choice, and access to justice by creating barriers to setting up small firms, and barriers to firms undertaking what are fundamental and crucial areas of work (such as conveyancing, wills and probate). To close SIF would mean the long-term erosion of a diverse profession and a steady reduction in consumer choice. I would respectfully point out that the SRA is supposed to be improving access to justice, and encouraging an independent, strong, diverse and effective legal profession. (Regulatory objectives c and f.)

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

As set out above, in the absence of PSYROC claimants may have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. This is why I support the Law Society's proposal that a levy on firms to maintain the SIF would be a proportionate response to provide ongoing protection for consumers.

A decision to keep SIF going would be a proportionate and wholly justified course of action. The solution to keeping SIF continuing indefinitely is obvious and straightforward. No other solution is available for the provision of PSYROC.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I agree with the view that to amend the MTCs to require insurers to provide PSYROC would lead to hugely increased and unsustainable PII premiums, forced firm closures, and departures of insurers from the market. The insurance industry is making that very clear to the Law Society.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Apart from what I have already said, no. This question is one for the insurance industry.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The Law Society have been advised that this is not a feasible option and I agree. No insurance would be available. The insurance industry has already confirmed that. Please see the comments above.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I agree with the SRA analysis that this is not a feasible option.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I agree with the Law Society's position that PSYROC should not, and could not, be provided through a master policy. A suitable vehicle (SIF) is already in place. SIF works and is viable into the indefinite future with extra funding by way of a compulsory levy on the profession. There is absolutely no point in trying to reinvent the wheel. In any event is highly unlikely that there will ever be a master policy available in the market, at any cost. I understand that the insurance industry has already said as much to the Law Society.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

See the comments above. Following extensive investigation by the Law Society it appears that an alternative indemnity model is not feasible.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No. This is a question for insurers.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I agree with the SRA analysis that targeted PSYROC would be counterproductive. A potentially small savings in costs would be offset by increased administration and its associated costs, and uncertainty and confusion for affected consumers, and a lower level of protection. This would not be a sensible solution.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle, SIF. No, it should not be targeted for reasons stated above.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See above.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

As stated above, regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle SIF, although I acknowledge that this will require financial support.

The Law Society have suggested, and I agree, that SIF can be financed by a small annual levy imposed on the practising profession with the PC fee. Calculations suggest that this could be an individual levy of approximately £16 per annum or a flat firm levy of approximately £240 per annum. They and I favour a flat firm levy. This is a simple and obvious solution and I understand from the Law Society is a solution suggested by WTW in their actuarial analysis commissioned by the SRA.

I understand from the Law Society that no other insurance solution exists. There is no open market insurance solution available, nor is there ever likely to be. This has been explored at length by The Law Society, and also it seems by the SRA. And I understand that the insurance industry would never be interested in operating a master policy, nor being involved in any "alternative indemnity scheme". I understand that the SRA acknowledges this.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I do not think these proposed mitigations are realistic, nor are they proportionate to the risks to the public and the damage to public confidence if SIF is closed. They will certainly not mitigate the damage that will be caused to public protection, the reputation of the profession, and public confidence in the profession.

I consider that the notion of the SRA "ensuring appropriate information is provided to clients at the time a firm closes" is misguided. It is not credible to insist on a closing firm telling their clients how to sue them if they have been negligent. The same applies to developing guidance to consumers when they have a claim. The mitigation factor is minimal. Added to this will be the additional costs of the SRA setting up and running a department to deal with consumers' queries and concerns.

25. 15) Do you have information on impacts to inform our assessments?

See the comments above.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:688 Data

2. About you

1.
First name(s)

Ally

2.
Last name

Williams

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Other

8.
Please specify

Insurer

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

QBE support the continuation of SIF, funded for by a professional levy which is evidently the most proportionate & equitable solution available.

11.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

In QBE's involvement in several round tables on this matter, the consensus is that a professional levy is the most favourable outcome and at an estimated cost of £240 is equally the most affordable. Insurers would never be able to offer a more equitable solution.

QBE disagree with the SRA's view that a levy paid for by the profession is not proportionate. On the contrary and similar to the

principle of insurance, 'the premiums of the many, pay for the losses of the few'. It is the very nature of a premium pool that the majority pay, yet the minority benefit.

QBE also disagrees with the view that the levy would be offset against the consumer and would impact access to justice. On the contrary, it is the cost of PI premium and / or run-off that would have this negative result.

Alternatively, has consideration been made to the role of the compensation fund? Whilst it is not the current intention of the Compensation fund to ordinarily make payments for incidents of negligence, there is the provision for it to do so where insufficient insurance is in place, could this not be expanded to include PSYROC?

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

This would not be acceptable to QBE as a participating Insurer.

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

The MTC requirement that mandatory six-year run-off should be met irrespective of payment of premium is already a controversial aspect to the current MTCs and one we continue to campaign for change. It contradicts the very principle of contract law. Furthermore, it debilitates Insurers for applying a commensurate premium for the risk. QBE's appetite for run-off cover will continue to be de-minimus whilst the MTCs facilitate the non-payment of premium whilst still expecting claims to be met by Insurers.

The current PI insurance market is already notoriously hard. If PSYROC was extended under the MTCs, it can be assumed that a further appetite restriction would follow and an increase in premiums. This is further exacerbated by the WTW report that claims within SIF are dominated by high-risk areas of conveyancing and wills, trust & probate.

Whilst the consultation only touches upon limitation periods briefly and the long tail nature of this class of business, it is a consideration factor that must not be undervalued. Professional indemnity Insurance already has a significant 'tail' of liability attaching in which historic underwriting years continue to develop. Just as SIF have raised concerns about the challenges surrounding capital requirements or the risk of inadequate IBNR provisions, this concern equally applies to commercial insurers. In the SRA's own words 'Its surplus can be quickly eroded by significant large events which by their nature are hard to forecast'.

Also silent from the consultation paper is the acknowledgment that throughout the twenty-two years of open market PI insurance, there have been examples of participating insurers becoming insolvent. The very idea that an extension of the current MTCs would solve the problem is at best unreliable and at worst negligent. History teaches us that insurance providers do not provide the level of security and certainty that not only solicitors require to sleep easy but the SRA should be seeking to ensure their own regulatory obligations are being met with sufficient consumer protection. Extending the MTCs does not provide this.

Reference to 'affordability' within the consultation paper is directed at the equitable sustainability of SIF but what also needs to be considered is the cost of open market PI premiums and run-off cover. Run-off cover is already a significant financial burden on solicitors (directly correlated with the punitive non-payment of premium condition) and often a barrier to acquisition. This would be compounded if the MTCs were extended beyond their existing scope. Furthermore, QBE agree with solicitors concerns that the closure of SIF causes complications when considering and negotiating succession.

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

In principle, QBE may have limited appetite to extend run-off policies on an annual basis post the six-year run-off cover, but this would be on a very restricted basis (lower limit, non MTC wording / restricted coverage etc.). Furthermore, this product would be the most inequitable solution to solicitors, especially given that the insured will most likely be in a retired position with limited income provision to draw from. This partial 'solution' also completely ignores the need for consumer protection which would only

be provided for on a sporadic basis and wholly reliant on the solvency of the Insurance company.

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

QBE agrees with the SRA that it would be challenging to find an insurance model that would offer a suitable cost-effective product to the market. Furthermore, QBE do not have an appetite to provide cover under a Master Policy for PSYROC.

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

As per Q6, QBE do not believe so.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

QBE are of the opinion that the current operating model of SIF remains the best solution. However, it is clear from the consultation paper that current administration costs impede the affordability of SIF and pressurise existing funds. Therefore, QBE would suggest that a possible solution to reduce costs would be to employ the services of a Third-Party Agent to run SIF on a delegated authority basis.

Furthermore, it is important to highlight that the WTW analysis and more specifically the claim notification count excludes claims where there has been nil payment. Irrespective of quantum, notified claims should also feature in the number of anticipated claim notifications as they still require management and equally, a cost incurred to this.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

Whilst as a commercial Insurer, our answer is no to this question, we do have knowledge and experience of the Irish Special Purpose Fund which has many similarities with SIF. As commented earlier, QBE believe that employing a Third-Party Agent to facilitate SIF would be the best solution.

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

QBE agree that PSYROC should be maintained for the entire profession.

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Yes and No. We do not think it will be possible to try to narrow the scope of cover to specific business activities such as high-risk areas of conveyancing and WTP. However, the definition of 'consumer' should be redefined to narrow scope and preclude corporations and financial institutions from seeking recompense.

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No other than your own research that 'there have been a small number of claims from corporate organisations notably banks.'
Point 34 [page 10]

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes, as per all QBE's comments of this consultation paper, continuing to provide PSYROC should remain an SRA regulatory arrangement. That said, QBE believe that serious consideration should be taken into utilising a Third-Party Agent to facilitate the management of SIF to ensure affordability and efficiencies which in turn promote an equitable solution for the profession.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having

PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

QBE agree with solicitors concerns that the closure of SIF causes complications when considering and negotiating succession. As it currently stands, it is common practice for a successor practice to insist on the predecessor firm to ring fence exposures with an elective run-off policy. For successors who have acquired firms on the premise that run-off liability has been elected and ring fenced with the predecessor's insurer, what would happen if a claim post six year's is notified? This is changing the landscape post agreement and will cause substantial ambiguity.

Anecdotally, QBE believe there is already a retraction in the market for Successor firm's and more firms are finding themselves in PSYROC. This would be further exacerbated by the closure of SIF.

24. 15) Do you have information on impacts to inform our assessments?

No.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:690 Data

2. About you

1.
First name(s)

Nancy

2.
Last name

Battell

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

bpe

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

: I am concerned that any decision by the SRA to close SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts (WTW) who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

I believe the SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

SIF should continue in order to protect consumers of legal services from being unable to gain redress for long-tail claims. The

SRA makes clear that it recognises the problems there will be for consumers trying to pursue claims against solicitors who have retired, disappeared or deceased. Consumers will have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. We do not need to spell out those potential problems there.

To close SIF would also pose a threat to diversity, client choice, and access to justice by creating barriers to setting up small firms, and barriers to firms undertaking what are fundamental and crucial areas of work (such as conveyancing, wills and probate). To close SIF would mean the long-term erosion of a diverse profession and a steady reduction in consumer choice. I would respectfully point out that the SRA is supposed to be improving access to justice, and encouraging an independent, strong, diverse and effective legal profession. (Regulatory objectives c and f.)

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

As set out above, in the absence of PSYROC claimants may have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. This is why I support the Law Society's proposal that a levy on firms to maintain the SIF would be a proportionate response to provide ongoing protection for consumers.

A decision to keep SIF going would be a proportionate and wholly justified course of action. The solution to keeping SIF continuing indefinitely is obvious and straightforward. No other solution is available for the provision of PSYROC

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I agree with the view that to amend the MTCs to require insurers to provide PSYROC would lead to hugely increased and unsustainable PII premiums, forced firm closures, and departures of insurers from the market. The insurance industry is making that very clear to the Law Society

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Apart from what I have already said, no. This question is one for the insurance industry

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The Law Society have been advised that this is not a feasible option and I agree. No insurance would be available. The insurance industry has already confirmed that. Please see the comments above.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I agree with the SRA analysis that this is not a feasible option.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I agree with the Law Society's position that PSYROC should not, and could not, be provided through a master policy. A suitable vehicle (SIF) is already in place. SIF works and is viable into the indefinite future with extra funding by way of a compulsory levy on the profession. There is absolutely no point in trying to reinvent the wheel. In any event is highly unlikely that there will ever be a master policy available in the market, at any cost. I understand that the insurance industry has already said as much to the Law Society

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

See the comments above. Following extensive investigation by the Law Society it appears that an alternative indemnity model is not feasible

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No. This is a question for insurers

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I agree with the SRA analysis that targeted PSYROC would be counterproductive. A potentially small savings in costs would be offset by increased administration and its associated costs, and uncertainty and confusion for affected consumers, and a lower level of protection. This would not be a sensible solution

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle, SIF. No, it should not be targeted for reasons stated above

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See above

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

As stated above, regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle SIF, although I acknowledge that this will require financial support.

The Law Society have suggested, and I agree, that SIF can be financed by a small annual levy imposed on the practising profession with the PC fee. Calculations suggest that this could be an individual levy of approximately £16 per annum or a flat firm levy of approximately £240 per annum. They and I favour a flat firm levy. This is a simple and obvious solution and I understand from the Law Society is a solution suggested by WTW in their actuarial analysis commissioned by the SRA.

I understand from the Law Society that no other insurance solution exists. There is no open market insurance solution available, nor is there ever likely to be. This has been explored at length by The Law Society, and also it seems by the SRA. And I understand that the insurance industry would never be interested in operating a master policy, nor being involved in any "alternative indemnity scheme". I understand that the SRA acknowledges this

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I do not think these proposed mitigations are realistic, nor are they proportionate to the risks to the public and the damage to public confidence if SIF is closed. They will certainly not mitigate the damage that will be caused to public protection, the reputation of the profession, and public confidence in the profession.

I consider that the notion of the SRA "ensuring appropriate information is provided to clients at the time a firm closes" is misguided. It is not credible to insist on a closing firm telling their clients how to sue them if they have been negligent. The same applies to developing guidance to consumers when they have a claim. The mitigation factor is minimal. Added to this will be the additional costs of the SRA setting up and running a department to deal with consumers' queries and concerns

25. 15) Do you have information on impacts to inform our assessments?

See the comments above

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:709 Data

2. About you

1.
First name(s)

JEMMA

2.
Last name

JONES

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law firm or other legal services provider

8.
Please enter your organisation's SRA ID (if applicable)

9.
Please enter your organisation's name

BPE SOLICITORS LLP

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I am concerned that any decision by the SRA to close SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts (WTW) who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

I believe the SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

SIF should continue in order to protect consumers of legal services from being unable to gain redress for long-tail claims. The

SRA makes clear that it recognises the problems there will be for consumers trying to pursue claims against solicitors who have retired, disappeared or deceased. Consumers will have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. We do not need to spell out those potential problems there.

To close SIF would also pose a threat to diversity, client choice, and access to justice by creating barriers to setting up small firms, and barriers to firms undertaking what are fundamental and crucial areas of work (such as conveyancing, wills and probate). To close SIF would mean the long-term erosion of a diverse profession and a steady reduction in consumer choice. I would respectfully point out that the SRA is supposed to be improving access to justice, and encouraging an independent, strong, diverse and effective legal profession. (Regulatory objectives c and f.)

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

As set out above, in the absence of PSYROC claimants may have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. This is why I support the Law Society's proposal that a levy on firms to maintain the SIF would be a proportionate response to provide ongoing protection for consumers.

A decision to keep SIF going would be a proportionate and wholly justified course of action. The solution to keeping SIF continuing indefinitely is obvious and straightforward. No other solution is available for the provision of PSYROC.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I agree with the view that to amend the MTCs to require insurers to provide PSYROC would lead to hugely increased and unsustainable PII premiums, forced firm closures, and departures of insurers from the market. The insurance industry is making that very clear to the Law Society.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Apart from what I have already said, no. This question is one for the insurance industry.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The Law Society have been advised that this is not a feasible option and I agree. No insurance would be available. The insurance industry has already confirmed that. Please see the comments above.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

: I agree with the SRA analysis that this is not a feasible option.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I agree with the Law Society's position that PSYROC should not, and could not, be provided through a master policy. A suitable vehicle (SIF) is already in place. SIF works and is viable into the indefinite future with extra funding by way of a compulsory levy on the profession. There is absolutely no point in trying to reinvent the wheel. In any event is highly unlikely that there will ever be a master policy available in the market, at any cost. I understand that the insurance industry has already said as much to the Law Society.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

See the comments above. Following extensive investigation by the Law Society it appears that an alternative indemnity model is not feasible.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No. This is a question for insurers.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I agree with the SRA analysis that targeted PSYROC would be counterproductive. A potentially small savings in costs would be offset by increased administration and its associated costs, and uncertainty and confusion for affected consumers, and a lower level of protection. This would not be a sensible solution.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle, SIF. No, it should not be targeted for reasons stated above.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

As above.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

As stated above, regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle SIF, although I acknowledge that this will require financial support.

The Law Society have suggested, and I agree, that SIF can be financed by a small annual levy imposed on the practising profession with the PC fee. Calculations suggest that this could be an individual levy of approximately £16 per annum or a flat firm levy of approximately £240 per annum. They and I favour a flat firm levy. This is a simple and obvious solution and I understand from the Law Society is a solution suggested by WTW in their actuarial analysis commissioned by the SRA.

I understand from the Law Society that no other insurance solution exists. There is no open market insurance solution available, nor is there ever likely to be. This has been explored at length by The Law Society, and also it seems by the SRA. And I understand that the insurance industry would never be interested in operating a master policy, nor being involved in any "alternative indemnity scheme". I understand that the SRA acknowledges this.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

: I do not think these proposed mitigations are realistic, nor are they proportionate to the risks to the public and the damage to public confidence if SIF is closed. They will certainly not mitigate the damage that will be caused to public protection, the reputation of the profession, and public confidence in the profession.

I consider that the notion of the SRA "ensuring appropriate information is provided to clients at the time a firm closes" is misguided. It is not credible to insist on a closing firm telling their clients how to sue them if they have been negligent. The same applies to developing guidance to consumers when they have a claim. The mitigation factor is minimal. Added to this will be the additional costs of the SRA setting up and running a department to deal with consumers' queries and concerns.

25. 15) Do you have information on impacts to inform our assessments?

See the comments above.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:716 Data

2. About you

1.
First name(s)

Kevin

2.
Last name

Hart

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

City of London Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Please see response to Question 13.

11.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Please see response to Question 13.

12.
3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

We agree with the SRA's analysis that amending the MTCs would not present a proportionate regulatory intervention. As the SRA has identified, it would likely have a significant negative impact on the availability and cost of insurance for many more firms than it would benefit. The insurance costs burden on firms should be commensurate with the appropriate level of cover they each consider they need having regard to their own circumstances and risk profile, if more than what the MTCs require.

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No.

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

No.

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

No.

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Please see answer to Question 13.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

Please see answer to Question 13.

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Please see answer to Question 13.

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Please see answer to Question 13.

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No.

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Consistent with its statutory duties, the SRA's regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. The SRA should also act in a way compatible with its regulatory objectives, including, amongst other objectives, protecting and promoting the interests of consumers; promoting competition in

the provision of legal services; and encouraging an independent, strong, diverse and effective legal profession.

Notwithstanding that our members are less likely to be at risk of PSYROC claims, we are concerned that the SRA is consulting on an important topic that may have significant implications, in particular for consumers who do suffer losses, even if this group is as small as the SRA has identified. We stress the need for the SRA's decision-making to be rational and evidence-based.

We agree with the view that, if the provision of PSYROC is not proportionate as against the regulatory objectives, then the statutory test for regulatory activity in this area would not be met. However, it is not apparent that the SRA has analysed how such consumers would be affected in terms of their ability in practice to pursue claims. The disadvantaged might include people who were children at the relevant time in circumstances where a legal error has changed the course of their lives, or families whose homes are jeopardised on account of a conveyancing error. The SRA should properly analyse the potential impact on consumers more broadly rather than drawing conclusions apparently based on the number of claims alone. In that regard the SRA should consider the nature of the claims and their significance to the individuals or families involved and any cost analysis should take account of the associated benefit to the profession as a whole of the cover offered by SIF as well as the cost of handling individual matters.

Whereas the SRA's view is that the removal of PSYROC would not have any significant market impact on supply, or on entry to the profession or particular areas of practice, we have had the opportunity to discuss these matters with The Law Society and understand that the Society raises important questions as to whether the SRA's view is sound. Although we are unable to comment from direct experience in this area, the SRA should ensure that it properly considers these questions. Linked with this point, it is not apparent that the SRA has considered how affected practitioners may price in the absence of PSYROC to their fees.

As such, in relation to the critical question of proportionality, there are some important areas where we would ask the SRA to re-evaluate the evidence. In particular, the positions advocated by the SRA and The Law Society on the effect the removal of PSYROC on the provision of certain services are at odds with each other. We would like the supporting evidence to be weighed more fully.

Of course, cost is relevant to the proportionality analysis. Should PSYROC continue on an ongoing basis, Willis Towers Watson has forecast that the cost of any annual levy should be in the region of £16 per solicitor or £240 per firm on a flat fee basis. We agree with the SRA that a per solicitor levy would give rise to issues of unfairness and cross-subsidisation. However, if the benefits to consumers of PSYROC are as The Law Society has identified, then it may be a different question whether a £240 flat fee on a per firm basis going towards an appropriately modernised solution to PSYROC might be capable of being proportionate.

In that regard we would like further attention to be paid to the question of whether the costs incurred by the SIF at present represent what would need to be incurred in relation to a revised, continuing scheme. For example, the costs incurred on insurance, which in 2020 amounted to £800,000 or more than half of the costs of SIF as a whole, must to a degree be the result of SIF operating in run-off mode - with the effect that claims volatility cannot be managed over time as the ratio of sums received and monies paid ebbs and flows.

A flat fee solution as proposed above would need suitable safeguards. For example, the rate of increase in associated costs should not exceed the growth in retail prices; the allocation of costs amongst the profession should be fair; and there should be a continuing obligation to seek to end or replace this revised model at the earliest possible point consistent with the goals of supporting consumers and a strong, diverse and effective legal profession. We also think, with sustainability in mind, that consideration should be given to capping or reducing the sums that can be claimed.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

No.

24. 15) Do you have information on impacts to inform our assessments?

No.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:720 Data

2. About you

1.
First name(s)

Byron

2.
Last name

Jones

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Cardiff and District Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

We are pleased to have this opportunity to respond to the SRA's consultation on Post Six Year Run Off Cover and the Solicitors Indemnity Fund.

We are strongly of the view that PSYROC should continue to be provided through SIF, funded by a modest levy on the profession. We consider that this is in the interests of consumers, in the interests of access to justice and in the interests of the profession. Whilst the SRA as regulator has said that it is not its job to provide benefits to the profession, we are of the view that the existing arrangements provide several important regulatory benefits (protection of consumers, improving access to justice, helping to maintain a strong, diverse and effective profession) in addition to providing protection for retired solicitors. We understand the concerns over the funding of continued PSYROC, but this is achievable with a modest levy on the profession.

We do not see that any of the alternatives set out by the SRA in its consultation paper are viable as we do not think that insurers in the private market will agree to take on PSYROC cover.

The SRA's own view of its regulatory purpose is to protect consumers and support the rule of law and proper administration of justice. The first of those purposes is clearly covered by PSYROC. For the second purpose, it is a fundamental part of supporting the rule of law and proper administration of justice that there is public trust and confidence in the profession, the removal of PSYROC will significantly damage the public trust and confidence in the profession.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

We believe that the modest per annum levy suggested of around £240 per firm or £16 per solicitor is a proportionate cost on the profession. Over a 40 year career a solicitor would pay £640. This seems a relatively small sum to provide both protection for the public and to provide protection for retired solicitors. We also believe that providing protection for solicitors following the closure of their practice has regulatory benefits, through maintaining a strong, diverse profession, whereas the loss of PSYROC will weaken the profession, with possible adverse effects on access to justice if solicitors are more reluctant to set up new practices or close existing practices, particularly in geographical areas where there are already concerns over advice deserts. The suggestion that the cost of any levy will be passed onto clients in any meaningful way seems to be unlikely, given its modest level. Even if it were to be ultimately passed onto clients the cost per client would be negligible and clients would have a significant benefit (in terms of extended insurance) through the PSYROC protection afforded by SIF at minimal cost to each client. If a client was asked if they minded paying £1 extra on a one-off basis on a house purchase to ensure extended professional negligence cover, it is likely they would be happy to do so.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

We think that amending the MTCs to require PSYROC will drive more insurers out of the market and/or push premiums up significantly. Firms will struggle to obtain insurance at an affordable premium even more than in the current market. If firms are then forced out of the market this will affect the health of the legal services market and possibly impact adversely on consumer choice and access to justice. Those firms that stay in the market will almost certainly factor the increased premiums into the fees charged to clients, thereby increasing the cost of legal services. These increased premiums are likely to be much higher than any SIF levy and so the ultimate cost to consumers could be greater. This would be a perverse result, as one of the reasons given for suggested reform is to avoid costs being passed onto consumers.

We do not think this is a viable option therefore and would repeat our view that PSYROC should continue to be provided by SIF, funded by a modest levy.

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No. As per our answer to question 3, we do not think the MTCs should be amended to require PSYROC, due to the likely withdrawal of insurers from the market, the likely increased difficulties for firms in obtaining affordable insurance from the remaining insurers, and the potential for adverse effects for consumers of legal services.

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Our understanding (based on comments from a highly experienced insurance broker) is that PSYROC cover on the open market is not viable. Insurers are already wary of providing six year run off cover. We understand that the margins of insurers are already small and so insurers are unlikely to offer PSYROC if it is not mandatory.

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

We do not see this as a viable option. We cannot see that any insurer would be willing to offer such a policy. The framework is already in place through SIF for PSYROC and we see no need to change.

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No. As per the answer to question 6, we do not think the master policy would be a viable option.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

We agree with the SRA analysis that this option is not viable. To repeat what is said elsewhere in our response, we see no reason to dismantle the existing arrangements and consider that adequate funding for PSYROC via SIF can be achieved with a modest levy.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No.

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

We do not think that PSYROC cover should be restricted to claims based on certain types of practice or claims in respect of firms of a certain size. We think this view is consistent with our view that any levy should be on the whole profession.

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

We consider that any levy be applied to the whole profession. The nature of insurance is to spread risk among a large number of insured, even though it is only need by a small minority. The levy proposed is modest if applied to the whole profession. Were the levy to be applied only to firms and solicitors undertaking certain work (e.g. conveyancing, wills and probate) then the levy per firm or per solicitor would have to be much higher. This cost would most likely be passed on to clients using those services, so has the potential to increase the cost of those services to consumers. In contrast, a levy on the whole profession may be factored into fees charged to clients but if modest may equally be absorbed by firms and solicitors. Even were fees to be increased slightly, some of the cost would be borne by large corporate clients who have greater resources than consumers of conveyancing and wills services.

It is also the case that solicitors may find themselves facing post six year claims no matter what their area of practice. Whilst some forms of work may be more likely to generate claims any solicitor, no matter what they do, has the potential to be the subject of a claim. There have been suggestions that criminal solicitors have lack of claims history. Whilst that is accurate, they are not immune from claims, and they are more likely to work in small firms that are likely to close and fall into the post run-off cover category.

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No. Please see the answer to question 11. We think that a levy should apply to the whole profession.

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes, we consider that PSYROC should continue to be provided for within the SRA's regulatory arrangements. There is a regulatory benefit in retaining the higher level of protection for clients of regulated bodies and persons. We also think there is a regulatory benefit to ensuring a strong and effective legal services sector. Arrangements which provide protection for retired solicitors, whilst providing those solicitors with a benefit, make it more likely that solicitors will take on the burden and risks associated with running a law firm. In contrast, solicitors will be more discouraged from doing so if they know that they will be vulnerable to historic claims many years after they have closed their practices.

We note the need for adequate funding of SIF if it is to continue to provide PSYROC but support a modest levy on the

profession in order to achieve this.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

We think the actions proposed are wholly inadequate. There are existing arrangements to provide genuine financial protection for clients of closed firms through SIF. The provision of information to firms regarding closure and to clients when they access legal services provides next to no protection for either of them. Such protection can only be provided through appropriate insurance arrangements, and as there would appear to be no viable alternative for PSYROC, SIF would appear to be the only option that would provide this protection.

It is also clear that the Law Society is not allowed to take over the indemnity insurance function of SIF, so the Law Society would not be able to provide PSYROC. There is no clarity on how much money would be released from SIF to the Law Society were SIF to cease providing PSYROC, and this sum may be substantially less than could be available within a properly funded SIF run by the SRA.

24. 15) Do you have information on impacts to inform our assessments?

Any removal of PSYROC from SIF is likely to impact more on smaller firms and their clients. Ethnic minority solicitors are disproportionately represented in smaller firms and, in many cases, their clients are from ethnic minority groups. A lack of PSYROC is likely to impact disproportionately on ethnic minority clients and on retired ethnic minority solicitors therefore.

As the largest law society in Wales we are conscious that many firms in Wales are small to medium sized. The smallest firms often operate in the most deprived areas of Wales. A removal of PSYROC is thus likely to impact disproportionately on consumers and retired solicitors in Wales, and in those more deprived areas in particular. A further problem is that if firms leave the market due to lack of PSYROC cover, this could exacerbate advice deserts in Wales and lead to increased problems with access to justice.

We also question the analysis of the SRA in its focus on the gender of the client or the solicitor. Whilst the gender of clients and solicitors is sometimes a relevant factor we doubt whether it is significant in this context. Clients and solicitors often have spouses, civil partners and families which include persons of another gender who would also be adversely affected by the lack of PSYROC protections.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:722 Data

2. About you

1.
First name(s)

Jason

2.
Last name

Pearce

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Solicitor

8.
Please enter the name of your firm/employer

Everett Tomlin Lloyd and Pratt

9.
Please specify if you are

10.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

11.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes. My view is that PSYROC should continue to be provided, in order to protect the public and clients of solicitors generally, should they have cause to bring a claim. The cost of doing so (whether funded by means of a levy on each solicitor or upon each firm of solicitors) is very modest, and the benefit to the public is enormous. Without PSYROC, many clients will be left without recourse when their retired or deceased solicitor, if past the 6-year run-off period, is unable to meet their claim (for example, for negligence), or perhaps cannot be traced at all.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No further information is needed. It is clear from your own analysis that this can be provided at a very reasonable cost by the SIF.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

As you imply, insurers are unlikely to be willing to insure solicitors if such cover is required under the MTCs.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

It is not available on the open market. Insurers do not offer it and do not want to offer it.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

As you imply, it is not possible in practice.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No, there is not likely to be a suitable and cost-effective mast policy available in the market

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Your own analysis does not make it sound promising as an option

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I do not agree with limiting on-going provision of PSYROC. For the protection of all clients, PSYROC should not be limited.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

No, I do not think that it should be 'targeted' (by which you appear to mean limited in scope). This would not provide adequate cover for clients

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes, for the protection of clients of solicitors, it should continue to be provided for within your regulatory arrangements, through the SIF, as this could be done, on your own analysis, through a very small levy on either individual solicitors or on each firm of solicitors.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I do not think that the actions you propose would do any good. Many firms will not be able to find successor practices. Clients will not want to, and should not be expected to, take out their own insurance against potential negligence on the part of their solicitors (if such insurance is available, which in most circumstances I highly doubt).

25. 15) Do you have information on impacts to inform our assessments?

The impacts are clear from your own analysis. You admit that PSYROC claims are currently being paid. Once this ceases, clients will be left without recourse or will have to take negligence claims against individual solicitors who they will have to identify, track down, ascertain whether they have any assets (they may not), and then bring a claim against. It is clear that many clients will be left 'high and dry' in practice, particularly clients of small firms including vulnerable clients.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:736 Data

2. About you

1.
First name(s)

2.
Last name

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Other

8.
Please specify

Insurance Broker

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

11.
2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

12.
3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

13.
4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

24. 15) Do you have information on impacts to inform our assessments?



Response to SRA consultation on PSYROC and SIF from The Association of South Western Law Societies (ASWLS)

This response is submitted on behalf of ASWLS. The members of the association are the following six local law societies located across the south-west region:

- [Monmouthshire Incorporated Law Society](#)
- [Bristol Law Society](#)
- [Gloucestershire & Wiltshire incorporated Law Society \(GWILS\)](#)
- [Devon & Somerset Law Society \(DASLS\)](#)
- [Plymouth Law Society](#)
- [Cornwall Law Society](#)

The ASWLS webpage for more information on the Association can be found at <http://www.aswls.org.uk>

This response is in four parts:

- I. Summary of our position**
- II. Our submissions**
- III. Detailed responses to paragraphs in the SRA consultation paper**
- IV. Replies to the questionnaire**

PART I

Summary of our position

- In order to protect consumers of legal services, and to maintain public confidence, PSYROC (post six year run off cover) should and can be continued indefinitely in its current form through SIF.

- SIF can be financed by a small annual levy imposed on the practising profession with the PC fee. This could be an individual levy of £16 or a flat firm levy of £240. We favour a flat firm levy. This is a simple and obvious solution. It is a solution suggested by WTW in their actuarial analysis. We commend the SRA for commissioning this actuarial report.
- To close SIF would put the SRA in breach of its regulatory objectives and its obligations under The Legal Services Act (2007). If SIF is closed there will be long-reaching and damaging consequences for consumer protection, the reputation of the profession, public confidence, diversity in the profession, and access to legal services.
- A decision by the SRA to close SIF would at best be a perverse, irrational and unreasonable exercise of its discretion. At its worst, some might even consider a decision to close SIF as an abuse of the SRA's power.
- A decision to keep SIF going would be a proportionate and wholly justified course of action. The solution to keeping SIF continuing indefinitely is obvious and straightforward. No other solution is available for the provision of PSYROC.

PART II

Our submissions

Please note that more detail on some of the following submissions can be found in Part III below

1. SIF should continue. PSYROC should and can be continued indefinitely through SIF.

2. Consumer protection. SIF should continue in order to protect consumers of legal services, our clients, from being unable to gain redress for long-tail claims. The SRA makes clear that it recognises the problems there will be for consumers trying to pursue claims against solicitors who have retired, disappeared or died. Consumers will have to pursue claims in the courts, and could well find that any judgement they obtain is worthless because it cannot be satisfied. We do not need to spell out those potential problems. They are obvious. (We do not accept the suggestion that no win no fee agreements could provide any help to affected clients.)

3. A levy is the solution. There is a substantial sum of money in the SIF pot which could last a number of years hence. But we accept that the fund will need regular topping up. We say it can be funded with a small compulsory annual levy on the practising profession, conveniently and efficiently collected by the SRA with the practising certificate fees. This levy solution is suggested by WTW in their actuarial analysis. The levy could be either £16 per solicitor, or a flat firm levy of £240. We favour a flat firm levy. It is a very straightforward and obvious solution. We accept that the amount of the levy might need adjustment from year to year.

4. The regulatory objectives. A decision to close SIF would put the SRA in breach of its obligations under The Legal Services Act (2007). The SRA would be failing to comply with its regulatory objectives set out in Clause 1 of the Act. In particular, it would be in breach of the first regulatory objective which is ***protecting and promoting the public interest***.

A decision by the SRA to close SIF would at best be perverse, and an irrational and unreasonable exercise of its discretion. Putting it at its highest, we say that a decision to close SIF in the face of a readily available solution could be seen as an abuse of power. Because there exists a readily available and obvious solution to the problem, a solution which will be widely welcomed, we can only conclude that the SRA have their own agenda, and will close SIF because SIF is just an inconvenience, and simply because they can.

5. What is proportionate? The SRA bases its arguments in favour of closing SIF on its own idea of what is proportionate. They say that the risks are small and the costs of covering those risks are disproportionate. But proportionality is a subjective concept. We say that to continue SIF is indeed a proportionate course of action, and will ensure that the SRA meets the SRA's regulatory objectives. The SRA Board have chosen, for their own unfathomable reasons, to view the continuation of SIF as disproportionate. We say unfathomable reasons, because a simple, cheap and acceptable solution to a very serious problem is there, available, for all to see. All the SRA has to do is implement a levy.

6. Every claimant is important. The number of consumers who will potentially lose out, according to the WTW analysis, cannot be dismissed as "small". Every single one of them is important. The forecast number of likely claims from 2023 onwards will peak at 45 in 2023 and level off to 31 from 2029.

Moreover, it should be noted that "*the claim notification counts exclude nil claims where there will not be any payments*". Thus it seems that the actual number of claims notified could range from 62 to 90.

Those historical claims with no pay-outs will have been successfully defended, for reasons such as lacking merit to being time-barred. The results would have been disappointing to claimants, but at least they were given closure. They were saved from years of wasted time and money spent on pursuing spurious claims. That in itself is a worthy purpose for SIF, and is in the public interest.

Neither can the amount of the average claim (£34,600) be regarded as insignificant. To an individual claimant, losses of those sorts of amounts can be life-changing. (The SRA acknowledges that two of the highest recorded claims paid out have been as high as £400,000.)

SIF is of course there to pay out to clients who have suffered loss through solicitors' negligence for long-tail work. But in reality it is also underwriting what must be millions of transactions going on every year. Given the vagaries of life in the law, any one of those transactions could cause problems in the long term.

7. The costs are proportionate. The costs of running SIF are not disproportionate to the enormous benefits SIF provides. However, we think there is undoubtedly scope for introducing efficiencies and reducing running costs in the future. The quoted defence costs are probably not out of line with litigation costs generally although again, we think there are economies that could be made in claims management.

8. Damage to the reputation of the profession and public confidence. To close SIF would cause serious and irreparable damage to the reputation of the profession, and of its regulator, and undermine public confidence, all of which would be exacerbated by bad publicity. One of the hallmarks of our profession is the excellent protection we give our clients.

It is worrying and confusing that the SRA as the profession's regulator does not seem to be concerned about that. What will the SRA do when distressed clients are ringing and emailing them to ask for help in making claims? What advice will they be giving to clients who cannot trace their solicitor and cannot get any redress? How will the SRA deal with the headlines in the *Daily Mail* and the outrage expressed by disaffected clients when they contact *Money Box* on Radio 4. The story will be that we have abandoned our clients, and that the SRA has caused it.

9. The cost of a small levy would NOT be passed on to consumers. The SRA's contention that an annual levy of £16 per solicitor or £240 per firm would increase costs to consumers and therefore disadvantage them is frankly absurd. The SRA has not produced any evidence for this assertion. Do the SRA really imagine that a firm would add fractions of pence to the charging rates of their fee-earners? And if a firm rendered 1,000 invoices per annum would they really add a massive 24 pence added to each bill? It would be easier to start ordering cheaper biscuits for the office or, for a healthier workforce, cut out the biscuits altogether.

10. There is nothing wrong with cross-subsidisation. The argument that a levy would cause cross-subsidisation between sizes and of firms and types of work is, on the face of it correct. But the notion that this is somehow unfair or that the profession would object to this is misguided. Indeed, cross-subsidisation already exists. And it is there to protect consumers, the reputation of the profession, and public confidence. The practising certificate fee itself involves cross-subsidisation. For example, much of the PC income is spent on disciplinary matters, which involve a minority of the profession. The Compensation Fund levy in simple terms is another

example of cross-subsidisation from the majority of the profession to the minority that commit fraud.

Cross subsidisation is a good thing and exists widely within the structure of our democracy. Taxpayers pay to support services they might never use, and social security benefits they might never need – but one never knows. Insurance premiums across the board cross-subsidise between those who have claims and those who never have a claim. The point is that nobody knows whether their house might burn down or whether they will have a car accident.

Thus we favour a flat firm levy. We believe that the big firms, whose clients are far less likely to need SIF, will not mind paying what for them is a drop in the ocean. They will know that the reputation of the profession, which we believe is of great importance to them, is maintained. Small firms and sole practitioners who have most to gain by the continuation of SIF will be thankful for a positive outcome which will provide security for their clients and their retirement. They will not feel at all disadvantaged by the payment of a levy of £240 per annum, or thereabouts.

11. Being an outlier is a good thing. Just because some other professions and other providers of legal services do not have PSYROC does not mean that the solicitors profession has to drop its standards of client protection and become like them. Being an "outlier" is a good thing. Excellent client protection is one of the hallmarks of our profession.

The nature and range of work done by solicitors is different from other providers. Limitation legislation in other jurisdictions is variable. And let's compare doctors and dentists who have indefinite cover. (Whether that cover is imposed by regulators or employers is beside the point.) And for the SRA to hold up unregulated will-writers as a shining example is incomprehensible.

12. Threat to diversity, client choice, and access to justice. To close SIF would create barriers to setting up small solicitors' firms, and barriers to solicitors firms undertaking what are fundamental and crucial areas of work. To close SIF would mean the long term erosion of a diverse profession, and a steady reduction in client choice and the ready availability of legal services in the high street where people most need them.

The SRA is supposed to be ***improving access to justice***, and ***encouraging an independent, strong, diverse and effective legal profession***. (Regulatory objectives c and f.)

The SRA say there is no evidence for what we say. Well of course there isn't - not yet anyway. But the prospect would seem to be self-evident. To put it bluntly, if SIF is closed, who in their right mind would want to set up as a sole practitioner or a small firm? There will be a race to the bottom for mergers which, as a retirement option, do not exist.

13. The clients of all sizes of firms can be affected. It is no surprise that the majority of long-tail claims come from sole practitioners and small firms. They are of course the firms most likely to close with no successor practice. This is not a reflection on those small firms. The practising big firms have long tail claims too, but those claims are covered by their insurer. (Statistics on the level of long-tail claims in all sizes of practising firms are not available from the insurance industry. That is simply because it would be a time-consuming and complex exercise for those statistics to be produced.)

Having said that, big firms are not immune from closure, as recent cases have shown. Furthermore, key partners or employees in big firms who were previously working in small firms that went into run off could find themselves at the end of a claim which will bankrupt them or place them, and thus their present firm, in a very awkward position, financially and reputationally. Bottom line, the health of the legal system for the public is closely aligned with the working conditions and concerns of the profession.

14. No other insurance solution exists. There is no open market insurance solution available, nor is there ever likely to be. This has been explored at length by The Law Society, and also it seems by the SRA. And the insurance industry would never be interested in operating a master policy, nor being involved in any "alternative indemnity scheme". The SRA acknowledges this.

15. Targeted solutions won't work. "Targeted solutions" such as a scheme that is restricted to certain sizes of firm or certain types of work, would be far too complicated and costly to administer. And there will inevitably be gaps in cover and confusion for consumers.

16. Successor practice problems. The SRA recognise the current problems faced by small firms in trying to find a successor practice. This is largely driven by the insurers who are understandably not allowing the acquiring firm to take on the small firm's potential liabilities. Thus small firms are forced to take run off cover in order for their businesses to be taken over.

When the successor rules changed some years ago, the new rules were a welcome innovation. But now that we have an increasingly hardening insurance market and the prospect of SIF closing, this changes everything. More and more firms will be closing with no successor practices, with no protection for clients with long-tail claims. In recent months there have been large firms going into forced closure. A change in the successor practice rules is not the cure. The answer lies in making sure that SIF is on a secure financial footing so that it can be maintained indefinitely.

Without SIF there will be sole practitioners and partners in small firms struggling on when they really should be retiring. Mistakes can be made, closures can be forced upon them and, in extremis, bankruptcies and premiums for PII and run-off not paid. This has consequences for their clients and the insurance industry, and will lead to further rises in insurance premiums generally and potentially more claims on

the Compensation Fund. The present situation also causes problems for the larger firms keen to expand and increase their scope of operation.

PART III

1. Detailed responses to paragraphs in the SRA consultation paper of November 2021

Sleeping Easy - Para 14. Yes of course SIF provides security for retired solicitors, but that is simplistic. It provides protections for principals and partners of closed firms, including their employees – all of whom, by the way, could still be working in other firms. It also provides protection for employed solicitors who may wish to set up firms of their own. The term "*sleep easy factor*" is one that seems to have been coined by the SRA, and it is faintly insulting. It demonstrates that the SRA appears to have no understanding of what it's like to be at "the sharp end", which is disappointing. We are well aware however that the protection of solicitors is a representative function and that the SRA can only be concerned with client protection.

Plugging the gap - Para 17. SIF Ltd reports that due to its solvency policy the continuation of PSYROC through SIF is not prudent without any additional funding. The answer to the need for further funding is a levy on the profession, as discussed elsewhere in this response.

Unexpected events - Para 18. Yes, SIF Ltd operates as if it were an insurer, in economic terms. And yes its surplus can be eroded by significant large events which are hard to forecast. This is no different to the issues that PII insurers face in setting premiums. However, the WTW analysis states that their forecast, based on historical data, is that the predicted annual claims will peak at 45 in 2023 and level off to a consistent norm of 31 from 2029 with an average claim value of £34,800. We note that the claims notification counts exclude claims where no payments out will be made. This will undoubtedly be where claims are not pursued, or are successfully weeded out as being without merit or time-barred. Does this mean therefore that we are really looking at the number of claims made being anything from 62 to 90 each year? We make the point here and elsewhere that all claims have to be defended to avoid judgements in default.

The SRA regards the predicted number and value of claims as small. The SRA is concerned about "significant large events", and so they should be, especially in the current climate of firms of all sizes closing with no successor practices able to take them over. And the SRA is well aware of the current problems in that regard. Therefore the SRA should consider it is prudent, for the sake of affected clients, to keep SIF continuing for PSYROC. The SRA cannot have the argument both ways.

"Small" is not small - Para 20. We say that the costs of maintaining PSYROC through SIF are indeed proportionate to the level of predicted claims. We say that

the level of predicted claims cannot be regarded as small especially from the point of view of an affected consumer. And we refer to our comments on Para 18 above, that if the SRA is concerned about unpredicted “significant large events” then it cannot at the same time say that the protection provided is disproportionate.

Upholding the regulatory objectives - Paras 22 and 23. We have no argument of course with the SRA’s obligations to comply with the regulatory objectives set out in the Legal Services Act 2007 (“the Act”). Our argument is with the SRA’s view on the way in which those objectives should be complied with. It is worth setting out the relevant provisions of the Act below. We do so below for other parties who may be reading this response.

We disagree with the way the SRA proposes to exercise its powers in relation to those regulatory objectives. We say the SRA is not taking into account factors that it should be taking into account. The SRA is not exercising its discretion reasonably. Clause 28(2) states that the regulator (the SRA) “*mustso far as is reasonably practicable act in a way which is compatible with the regulatory objectives.*” We say the SRA is not acting in a reasonably practicable way if it decides to discontinue the provision of PSYROC through SIF. The solution is available and convenient, but the SRA is choosing to dismiss this solution for reasons which are not transparent, based on no discernible evidence, and its own idea of what is “proportionate”.

Legal Services Act 2007

1 The regulatory objectives

(1) In this Act a reference to “the regulatory objectives” is a reference to the objectives of—

- (a) protecting and promoting the public interest;
- (b) supporting the constitutional principle of the rule of law;
- (c) improving access to justice;
- (d) protecting and promoting the interests of consumers;
- (e) promoting competition in the provision of services within subsection (2);
- (f) encouraging an independent, strong, diverse and effective legal profession;
- (g) increasing public understanding of the citizen's legal rights and duties;
- (h) promoting and maintaining adherence to the professional principles.

28 Approved regulator's duty to promote the regulatory objectives etc

(1) In discharging its regulatory functions (whether in connection with a reserved legal activity or otherwise) an approved regulator must comply with the requirements of this section.

(2) The approved regulator must, so far as is reasonably practicable, act in a way—

- (a) which is compatible with the regulatory objectives, and
 - (b) which the approved regulator considers most appropriate for the purpose of meeting those objectives.
- (3) The approved regulator must have regard to—
- (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
 - (b) any other principle appearing to it to represent the best regulatory practice.

It's simple - Para 24. The SRA considers that any arrangements should deliver simplicity and certainty. That is exactly what SIF does deliver. And with a straightforward financial adjustment, as discussed further on, SIF is affordable and efficient in providing client protection.

The Law Society cannot help - Para 29. We are entirely cognisant of the fact that the wellbeing and protection of solicitors cannot be of concern to the SRA. This is the role of The Law Society as the representative body. But as will be discussed further, The Law Society is extremely limited in what it can do remedy the damage caused by the closure of SIF. And we are all well aware that The Law Society has no regulatory power and cannot provide an indemnity scheme, as indemnity is a regulatory matter.

The claims with no pay-outs - Para 31. We note that the forecast number of likely claims from 2023 onwards will peak at 45 in 2023 and level off to 31 from 2029. However we also note that "*the claim notification counts exclude nil claims where there will not be any payments*". Thus the actual number of claims notified could range from 62 to 90.

Those historical claims with no pay-outs were successfully defended, no doubt for reasons such as lacking merit or being time-barred. The results would have been disappointing to claimants, but at least they were given closure. They were saved from years of wasted time and money spent on pursuing spurious claims. That in itself is a worthy purpose for SIF, and is in the public interest.

Proportionality - Para 32. We believe the level of the costs of claims is proportionate, and the relative proportion of costs to pay-outs to claimants is probably not much different to litigation costs generally, or costs experienced by PII insurers. But we also believe there is room for reducing running costs and increasing efficiencies within SIF in the future. We are not going into any detail on that particular point, because we say the present level of costs is proportionate.

No surprise about small firms - Para 36. Yes the majority of claims dealt with by SIF relate to firms with under six partners, including sole practitioners. But that is wholly to be expected because the small firms are the most likely to close without a

successor practice. That situation is changing with bigger firms closing as well. Firms in practice have long-tail claims but those of course are covered by their PII insurers.

Rocky road for consumers - Para 43. We entirely agree that without SIF consumers will have a rocky road trying to first make a claim and secondly, obtain redress. We are glad to note that the SRA at least recognises the problems.

No insurance options available - Paras 44 and 45. There is absolutely no possibility of PSYROC being available in the insurance market. Insurers have made that clear. Furthermore, our understanding that is that the Prudential rules prohibit insurers from offering cover to commence some years ahead of when the cover would be due to start. To begin with the insurer may not even be in the market by then. In any event no insurer would engage in that as a business model if it wanted to stay solvent. Not even firms "with an existing relationship" with their insurer would be able to get PSYROC.

No successor practices - Para 47. The current position is that smaller firms are finding it nigh impossible to find a successor practice. The insurers of acquiring firms are insisting that the smaller firm go into run-off for the whole or part of their business. When the successor practice rules changed to allow firms to take voluntary run off cover when they were acquired by a successor practice, this worked well for small firms and helped them find successor practices. But with the threat of SIF closing, and the significant hardening of the insurance market, the position has changed. This is not due to the successor practice rules, but the insurers understandably protecting their businesses, and the acquiring firms fearing unsustainable increases in their PII premiums.

The barriers to small firms closing with no successor practice are not perceived, but real. If SIF closes we agree that there are likely to be partners/principals of small firms carrying on longer than they should to try to put off the inevitable.

Para 49. Already dealt with above.

SIF is there to deal with these claims - Para 50. We say that the particular issues in dealing with claims made to SIF are to be expected. That is what SIF is meant to deal with. Claims remaining open for a long period of time is no different to claims in the open market. And the fact that claims might lie dormant for a while before files can finally be closed, is pretty standard stuff and should not be a cause for concern.

A levy is no problem; we'll just buy cheaper biscuits for the office - Para 52. We accept that there would need to be additional funding for the long-term security of PSYROC through SIF. The WTW analysis and forecast of additional funding needed specifically relates to keeping SIF going - not any other means of providing PSYROC (as this paragraph seems to suggest). WTW would surely have difficulty with any other kind of forecast.

The SRA suggests that a levy of £16 per practising solicitor or a flat £240 per firm would be passed on to consumers. But it's pocket money. The idea that this is unaffordable and would be passed on to consumers is an absurd proposition. The SRA has no evidence for this. No firm in their right mind would even consider passing that cost to their clients. The suggestion is ludicrous, bearing in mind other substantial overheads such as PII, PC fees, staff, rent, mortgages, utilities etc. It is ridiculous to think that say a £240 firm levy would be added to say an average of 1,000 invoices per annum. This works out at 24 pence per invoice. Would firms really pass on the cost of an individual levy by adding fractions of pence to the charging rates of their fee-earners?

Cross-subsidisation is fair, and targeting won't work - Para 53. It is correct that a levy imposed on a universal basis would in theory mean cross-subsidisation in terms of firm size and work type. But we entirely disagree that this is a bad thing. It is not disproportionate, nor anti-competitive, and it is actually more efficient for PSYROC ***not*** to be targeted.

The practising certificate fee itself involves cross-subsidisation. For example, much of the PC income is spent on disciplinary matters, which involve a minority of the profession. The Compensation Fund levy in simple terms is another example of cross-subsidisation from the majority of the profession to the minority that commit fraud.

But the point is that the profession as a whole has an interest in maintaining the PC fee and the Compensation Fund because (a) clients should be protected and (b) the reputation of solicitors as a profession that protects its clients from loss and harm has to be maintained and (c) in order to maintain public confidence in our profession and in the rule of law.

The SRA's apparent assertion that being concerned about the reputational damage to the profession is a bad thing is not only insulting but very worrying. The SRA should try that one out on doctors. The GMC and the BMA would not take that view.

We absolutely agree, however, that applying a levy on a risk basis would indeed be extremely complex and well-nigh impossible to administer, and lead to cost increases and consequent increases in the PC fee.

Proportionality is a subjective concept - Para 54. The main thrust of the SRA argument is based on what they consider to be proportionate. As we have stated above, the number of consumers who will potentially lose out cannot be regarded as "small". Nor can the amount of the average claim be regarded as insignificant. Proportionality is a subjective concept, and the SRA have conveniently chosen for their own unfathomable reasons to view the continuation of SIF as disproportionate. That view is objectively unreasonable.

It's good to be an outlier - Para 55. The SRA contends that being an "outlier" as a profession in terms of client protection is a bad thing, and that we as a profession should lower ourselves to the lowest common denominator. We strongly disagree. For a start, the kind of work done is different, limitation legislation in other jurisdictions

is variable. And compare doctors and dentists who have indefinite cover. (Whether that cover is imposed by regulators or employers is beside the point.) And to hold up unregulated will-writers as a shining example is absolutely ludicrous.

Being an “outlier” is a good thing. Excellent client protection is what puts solicitors head and shoulders above other providers of legal services who provide a limited range of services at that.

The High Street will disappear - Para 56. The SRA claim there will be no impact on the provision of areas of work subject to long-tail claims (conveyancing, wills, trusts, probate etc). But they have missed the point. The long-term impact will be that many smaller and high street firms will stop doing that kind of work and client choice will be reduced.

Diversity and choice will disappear - Para 57. It is not surprising that the SRA have not found evidence of effects on the setting up of small firms or uptake of particular areas of work. It is far too early. We say that if SIF closes the predictable result will be a gradual erosion of small and high street firms willing to take on areas of work vulnerable to long-tail claims. And because this work is a mainstay for many small and high street firms, it will mean fewer small and high street firms in the legal landscape. This will reduce diversity and have a detrimental effect on client choice and availability of fundamental legal services. All of this are predictions of course, but predictions based on a common sense view of consequences, and the provisions of the Limitation Act.

We disagree that the continuation of PSYROC through SIF will lead to an increase in the cost of regulation. How? Closure of SIF will probably have that effect, including increasing claims to the Compensation Fund, many of which might be rejected, but all the same have to be dealt with.

Foregone conclusion? - Para 59. The SRA declare their preferred option which is to close SIF. Doubt could be cast on this as being an open and objective consultation because the SRA has already clearly made up its mind. We worry that proper regard might not be paid to responses which are opposed to the SRA’s proposed course of action. We are fully aware that a previous decision was made to close SIF, and that we are now in “extra time”. But we say that the original decision was wholly wrong, and any confirmation of that decision is equally wholly wrong – especially given the changed market conditions and what we know now.

Costs are proportionate - Para 60. We say that the costs of running SIF are proportionate in the light of the volume and value of claims. And within those costs are costs of successfully defending unmeritorious claims. (We don’t appear to be given those as a separate costs element.) The quoted defence costs for the average case appear to be in line with costs in litigation, and defence costs incurred by PII insurers. There is possibly room for a reduction in administrative costs in the future, but all the same, we say that present costs are proportionate.

Investment income - Para 61. We note the figures for running costs and the costs of re-insurance. What does not seem to be taken account of is the offsetting effect of a substantial amount of annual investment income.

A levy to the rescue - Para 62. We fail to understand this point which rather begs the question. If SIFL say that without a new funding stream they would require an expensive actuarial review every one or two years, then the problem is solved by a funding stream of a small annual levy on the profession – as suggested in the WTW analysis. By the way, many of us had already looked at the SIFL accounts and the number of practising solicitors and the number of firms and made that same calculation on the back of an envelope. It is heartening to have that backed up by experts.

Costs are proportionate- Para 63. See our comments above. We regard the fixed management and running costs as proportionate (but with room for greater efficiencies and reductions in costs in the future). We agree that a levy on the profession would indeed mitigate the risks of unexpected very large claims and could allow for a reduction in re-insurance costs.

MTC amendments are not the cure - Paras 66 and 67. We agree with the view that to amend the MTCs to require insurers to provide PSYROC would lead to huge increases in PII premiums, forced firm closures, and insurers exiting the market.

A Master Policy a non-starter - Paras 69 and 70. We agree that a master insurance policy is not a feasible option. It's basically a non-starter. And we recall that a master policy was tried and failed before SIF was set up in September 1987.

An alternative indemnity fund is no answer - Paras 72, 73, 74 and 75. We agree that an alternative indemnity fund is not a feasible, nor a sensible option – and again a non-starter. The solution to PSYROC already exists in the form of SIF, and there is no reason to change that.

Targeting would be counter-productive - Paras 76, 77, 78 and 79. We agree with the SRA analysis that targeted PSYROC would be counterproductive. A potentially small savings in costs would be offset by increased administration and its associated costs, and uncertainty and confusion for affected consumers, and a lower level of protection. This would not be a sensible solution.

Caps are pointless - Para 80. We agree that capping the maximum pay-out per claim would achieve nothing since the data shows that historically claims have been well below the current limit.

Conclusions are wrong - Para 81. This paragraph summarises the SRA's conclusion. As can be seen from our arguments above we disagree entirely with the conclusion they have reached.

Continuing SIF is proportionate - Para 82. We disagree that a continuation of SIF would be a disproportionate course of action. We agree that a “targeted” scheme would not work for reasons previously stated.

Detriment to diversity and choice awaits - Para 83. The SRA would be hard put to find evidence of supply shortages in areas of work subject to long-tail claims. There is no evidence because those effects are long-term, not presently seen whilst SIF is still in place. But as we have already said, the main effects of closing SIF are entirely predictable: diversity in the profession will be negatively impacted, as fewer and fewer sole practitioners and small firms set up, and the availability of services in the high streets all over England and Wales will significantly diminish – to the detriment of consumers’ choice and access.

Consumers just want the job done - Para 84. We disagree with the SRA’s conclusion on market impacts. Whilst we agree that costs are a major factor in consumer choice, this is because the average consumer does not consciously consider the possibility of things going wrong – not until they find out maybe years later that things have gone wrong. It’s simply not on their radar. They just want the job done and assume it will be done properly.

We should be leaders not followers - Para 85. As we have indicated above, achieving consistency with other regulators is not a desirable approach. Consistency for consistency’s sake is not an outcome that should be sought. The solicitors profession should be market and regulatory leaders – not followers.

For the SRA to make “clear decisions now” to close SIF and put an end to PSYROC will indeed bring a kind of certainty, a very bad kind of certainty. The consequences will soon start to bite. A decision to keep SIF going as it is will also bring certainty – and end the current misery.

Mitigation is not realistic - Para 87. The suggestions made for possible mitigating actions are simply not realistic, nor proportionate to the risks to the public and the damage to public confidence if SIF is closed.

The suggestion that the SRA and/or TLS could provide “*support to firms to help them understand their options when they close and how to attract a successor practice*” is faintly patronising, and a bit like offering a band aid and an aspirin to fix a broken leg.

Successor practice rule changes are not the answer - Para 87 The SRA has already noted the problems for firms in finding successor practices. This is largely being driven by the insurance industry. The SRA changed the successor practice rules some years ago to make it easier for firms to close. At the time, this was welcomed as a very helpful innovation, because the closing firm could go into run off and have the advantages of another firm taking over client files, possibly staff, and all the worry and upheaval. For the acquiring firm wanting to expand, this gave the advantage of taking on another firm but without the potential liabilities. Indeed small firms were actively encouraged to take this route to closure. Retiring principals/partners and their employees thought that they and their clients would be protected by SIF.

Little did anybody imagine then that SIF might close and leave solicitors and their clients in the lurch. Messing around with the successor practice rules is hardly likely to improve the worsening situation for firms seeking successor practices. It is difficult to imagine changes which would go any way to solving the problem.

Guidance for clients will make things worse – Para 87 The notion of the SRA "ensuring appropriate information is provided to clients at the time a firm closes" is appalling. Is the SRA truly suggesting making it compulsory for retiring solicitors to tell their clients, past and present, how to sue them if they have been negligent? This is simply not credible. And the same applies to developing guidance to consumers when they have a claim. The mitigation factor is minimal. Added to this will be the additional costs of the SRA setting up a whole department to deal with consumers' queries and concerns.

No point in looking at possible next steps now - Paras 88, 89, 90, 91 92 and 93. If SIF is closed then the matter of what happens with the fund will of course have to be dealt with at that stage. But there is little room for that discussion in this consultation, although it is probably useful to give the information now in order to answer any questions there may be on the point.

In any event, the answer lies primarily in the ***Memorandum of Association of Solicitors Indemnity Fund Limited dated 22 June 1987*** which can be searched at Companies House. The relevant part of ***Article 6*** states:

"If upon the winding up or dissolution of the company there remains.....any property whatsoever, the same.....shall be given or transferred to The Law Society for the benefit of the solicitors' profession as a whole in such manner as The Law Society shall decide. "

But if SIF is closed, there will be a considerable reduction in the fund to be handed over after the requirement for further reserves, staff redundancies and winding up costs are taken into account.

Impact assessment - Paras 94 and 95 and Annex 5. As for the impact assessments, we refer to our submissions and comments above. However we would add a couple of comments here:

a) the SRA argues that being an LLP gives firms protection against long-tail claims after closure. While the entity has the benefit of limited liability, there remains the risk of a claim against an individual (principal or employee) based on negligence.

b) We have not elsewhere seen suggestions by stakeholders that the closure of SIF would impact on the number of entrants to the solicitors profession. Nevertheless we do not discount that possibility by any means. It could certainly impact on the number of solicitors wanting to practise in the areas of work that generate long-tail claims. Our main concern is the impact on qualified solicitors wanting to set up as small firms.

It is predictable that the fear of forced closure or retirement in an era where there is no PSYROC will be a barrier.

PART IV

Replies to the questionnaire

Q1: Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

A: We have examined the SRA's analysis above in our submissions and comments.

Q2: Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

A: See our submissions and comments above. We say the SRA's view of what is proportionate is wrong.

Q3: Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

A: See our comments above. Basically amending the MTCs would lead to hugely increased and unsustainable PII premiums and departures of insurers from the market. The insurance industry are making that very clear.

Q4: Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

A: Apart from what we have already said, no. This question is one for the insurance industry.

Q5: Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

A: This is not a feasible option. No insurance would be available. The insurance industry has already confirmed that. See our submissions and comments above.

Q6: Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

A: We agree with the SRA analysis that this is not a feasible option.

Q7: Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

A: PSYROC should not, and could not be provided through a master policy. A suitable vehicle, SIF, is already in place. SIF works and is viable into the indefinite future with extra funding by way of a compulsory levy on the profession. There is absolutely no point in trying to reinvent the wheel. In any event is highly unlikely that there will ever be a master policy available in the market, at any cost. The insurance industry have said as much.

Q8: Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an ongoing basis?

A: See our comments above. An alternative indemnity model is not feasible.

Q9: Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the

potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

A: No. This is a question for insurers.

Q10: Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

A: See our submissions and comments above. Targeted PSYROC would be far too complex and costly to administer and create uncertainty and confusion for consumers.

Q11: If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

A: Regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle, SIF. No, it should not be targeted for reasons stated above and in our submissions and comments.

Q12: Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

A: See above.

Q13: Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

A: As stated above, regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle SIF, financially supported by an annual levy on the practising profession. Reasons are stated above and in our submissions and comments.

Q14: Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

A: See our submissions and comments above. We do not think these proposed mitigations are helpful or effective. They will certainly not mitigate the damage that will be caused to public protection, the reputation of the profession, and public confidence in the profession.

Q15: Do you have information on impacts to inform our assessments?

A: See our submissions and comments above.

6th February 2022

The author of this response is:

Janis Purdy, SRA No 115220, Hon Secretary and Treasurer of ASWLS.

Our submissions are the culmination of gathering views and examining the issues during the course of numerous discussions in meetings and in email exchanges with member societies over the course of the last two years.

This response is approved by the six local society members of ASWLS:

- Monmouthshire Incorporated Law Society
- Bristol Law Society
- Gloucestershire & Wiltshire incorporated Law Society (GWILS)
- Devon & Somerset Law Society (DASLS)
- Plymouth Law Society
- Cornwall Law Society

ASWLS GIVES CONSENT FOR, AND REQUESTS, THE PUBLICATION OF THIS RESPONSE.

END OF RESPONSE

Black Solicitors Network (BSN) response to SRA consultation on Post Six Year Run-Off Cover (PSYROC) and the Solicitors Indemnity Fund (SIF)

The Black Solicitors' Network (BSN) was formed in 1995 to promote the interests of Black solicitors, for support and sharing information, to participate in consultations, initiated by the Law Society and other Government bodies, in relation to matters which affect Black solicitors. BSN is a non-profit body and aims to be the primary voice of Black solicitors in England and Wales. According to recent SRA data, the proportion of Black, Asian and minority ethnic lawyers working in law firms is 17% (2% Black, UK working population is 3% Black). In one partner firms, 35% of partners are from a Black, Asian and minority ethnic background. 1% of partners in the largest firms are Black, 3% in 2 to 5 partner firms and 7% sole principal. A high number of sole practitioners prefer not to disclose their ethnicity.

BSN will not rehearse the history of the SIF and PSYROC as this is set out in the consultation paper and limit comment to those questions to those considered relevant or particularly pertinent to our members. BSN has a number of corporate members. This response is not to be taken to represent their views.

Q1: Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

We agree that the focus of any analysis must stem from the Legal Services Act 2007, in particular, that of protecting and promoting the interests of consumers and protecting and promoting the public interest. We consider that any proposal that entirely removes PSYROC and makes it more difficult for small general practise firms and solicitors to survive and thrive, a disproportionately high number of which are Black Asian and minority ethnic lawyers in 1 to 5 partner firms, risks undermining the promotion of competition in regulated services and improving access to justice but also undermines the requirement to encourage an independent strong, diverse and effective profession. Whilst accepting that the SRA carries out regulatory functions for the wider benefits of the public and considers private benefits derived by individual solicitors and law firms from regulation to be incidental, we do not agree that factually this is a correct analysis. They are co-dependant issues that must be carefully balanced. England & Wales takes pride in having a strong, independent, legal profession. The focus of the regulator should also be to ensure this is preserved.

The practice of law in all areas carries risk. The analysis minimises or overlooks the fact that closing SIF would lead to the loss of protection for the 15% of consumers whose claims do not relate to conveyancing, wills and probate. Statistically, this is not a low number. Wills, trusts and probate only account for 11% of claims by value. Consequently, we see no rationale for a targeted fund.

Q2: Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis

The reference to a “sleep easy” factor is a disservice particularly for our constituency. Many Black and minority owned firms, operate as general High Street practices. They often provide access to legal services to often excluded diverse sections in society.

Many offer a pastoral service to those seeking access to legal services and the knowledge that there is continuing cover in the event of a claim, years after they have closed, is highly relevant to the consideration of whether to open a firm in these communities. This is borne out by the disproportionately high number of Black sole practitioners, many of whom carry out non contentious work.

The majority of claims emanate from conveyancing, wills and probate. At the time of the decision to allow solicitors to seek cover from the open market, most Black and minority owned firms were general practices carrying out such work as well as personal injury. There was discrimination in the insurance market of which the SRA is aware. Many were unable to obtain cover and fell into the Assigned Risks Pool (ARP). The analysis does not make any reference to these solicitors.

The analysis is that most claims relate to sole practitioners and small firms, with only 10% relating to firms with six or more partners. We consider this misleading as often clients of larger firms have other means of redress rather than the long and laborious process of going through the regulator. The clients of smaller firms, often least aware of the standards to be expected, are the very consumers that need the most protection and least likely to be able to pursue any form of redress, especially through the courts.

We note that a large part of the consideration and analysis relates to the costs of administering SIF. There should be further consideration of streamlining the process and reducing the time taken to decide whether or not to admit a claim. We cannot see why it should take four years to make a decision on a claim likely to be less than £50,000 in value. The perceived costs of running PSYROC can be mitigated and should not outweigh the consumer and public interest.

BSN takes part in the SRA virtual reference group and indicated our view that PSYROC should continue through the SIF. The only consideration was whether this arrangement could be undertaken by TLS as part of their representative offer. This appears not be possible because of the restriction of the Legal Services Act and therefore our view is that PSYROC should continue as part of the SRA regulatory arrangement.

Comparison with other professions is false. Whilst other professions may not mandate post six years cover this fails to take into account the particular role of solicitors, the range and breadth of legal practice and in particular access to justice and the rule of law. The SRA should be looking at raising standards as well as being mindful of the Act's requirement of encouraging an independent strong, diverse and effective profession. Removing protections will not improve access to justice and is a potential barrier to the profession remaining strong, diverse and effective.

Q3: Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Q4: Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Q5: Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

For the reasons stated in the consultation, this is unlikely to be attractive to insurers and leave even more solicitors exposed and consumers without protection. The profession and consumers need certainty. There is already a scheme in place which should be improved on and preserved.

Q6: Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Q7: Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

We do not consider a return to a master policy as a viable option. We cannot see how it would be attractive to insurers. The potential cost, if cover could be found, would be disproportionately high. The burden would again be borne by the firms least likely to be responsible for a claim, the very reason for moving from a master policy in the first place.

Q8: Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Q9: Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

We would be very concerned if operation of an indemnity fund was outsourced to a third party. Any third party handler would be motivated by profit rather than protection of the consumer. There is also risk they decide that the undertaking is not sufficiently cost effective, does not make sufficient profit and therefore cease the operation, again leaving the consumer unprotected. There would be no regulatory oversight and the third party would be able to change the nature and types of claims that they handle. If the SRA retains oversight and control the costs are likely to outweigh the benefit. As previously stated, we consider that the process under which SIF currently operates should be reappraised and made more cost effective.

Q10: Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Q11: If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Q12: Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

For the reasons already stated, we consider that targeted ongoing provision is not an ideal option however preferable to full withdrawal of provision. The areas to be targeted would be Conveyancing, Wills, and Probate. We consider that cover for 15 years after closure of the firm, save conveyancing purchases, should be adequate.

Q13: Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other?)

See answer to question 2 above.

BSN strongly opposes any proposal that leads to closure of SIF. We would support a profession wide individual and /or firm levy. The indicative amount of the levy is minimal and we consider it would be disproportionate to close SIF when there is a viable route available that allows protection to continue.

We also wish to comment on the Equality Impact Assessment. This found that the members of the profession most likely to be impacted by closure are white, middle-aged men. This does not take into account the changing demographic of the profession. The SRA's recently released annual diversity statistics show that the number of Black and mixed/multiple ethnicity solicitors continues to grow with a continued disproportionately high number practising as sole practitioner or small firms. Those firms face disadvantage which is exacerbated by disproportionate regulation. This is something the SRA must continue to take steps to address.

**For and behalf of Black Solicitors network
14 February 2022**

RESPONSE TO SRA CONSULTATION ON SIF AND PYSROC
FIONA SWANN, RETIRED SOLICITOR SRA NO: 947439

1 INTRODUCTION

It should be noted that although I have attempted to direct my comments to the individual questions, the topic is wide ranging and there is considerable crossover between the questions and, therefore, my responses. My response should be read as a whole, the answers not being limited to any particular question. References to SIF include references to any new body providing PYSROC.

2 QUESTION 1

The Legal Services Act (LSA) governs the regulation of solicitors. It sets out certain regulatory objectives. One is the protection and promotion of the interests of consumers and another is protecting and promoting the public interest. The LSA specifically separates the two whereas this consultation document treats the two as one to the detriment of the consumer protection objective. The SRA states that it is consulting on its “regulatory position in relation to the future of PYSROC”. Although the consultation document makes reference to the detrimental effect on some solicitors of the SRA's preferred option it does not acknowledge the size of this and dismisses, without evidence, the impact of this on the regulatory objectives in the round. Of equal if not greater importance is that the SRA seems to regard the protection of a small subset of consumers as being irrelevant in its greater scheme. A total cessation of PYSROC will lead to serious harm to a small but still significant subset of consumers. This is discriminatory and disproportionate when compared with the substantial PII protections afforded to all other consumers. For the sake of brevity I am using the term “consumer” to mean a “legal services consumer” and the term “client” is used in the same way.

The requirement to contribute to SIF ended over 20 years ago. Thus, assuming a career span of 40 years, approximately 50% of currently practising solicitors have never contributed to SIF and those who did have reached or are approaching retirement. Thus the SRA's proposal to use the substantial funds remaining in SIF (apart from those required for continuing liabilities) for the benefit of solicitors who did not contribute is also disproportionate and inequitable. SIF was set up by solicitors for solicitors and their clients at a time when the profession was regulated by the Law Society (TLS). Regulation was subsequently passed to the LSB and SRA. Given that the SRA is clearly not concerned about the plight of those consumers who will be left without practical redress, all arrangements relating to their protection be taken from the SRA. TLS does not have the power to run an indemnity scheme therefore I believe that the LSB should, with the assistance of TLS, set up an independent body (answerable to it) to run the future provision of PYSROC. There should be no costs implication of this because the SRA, having no further involvement, will be able to transfer that part of its budget to the new body.

The SRA repeatedly likens SIF to an insurance company but SIF was never set up as such and the SRA's own experts Willis Towers Watson (WTW) have concluded that the capitalisation and solvency rules that apply to insurance companies need not apply to SIF. Given that no insurance company would or could operate for more than 20 years without an income from premiums the SRA's attempt to combine the two concepts is wrong. Further WTW have clearly stated that, in their opinion, SIF can continue to provide protection if it is funded by a modest levy on the profession. That levy would be even more modest had WTW taken into account the income of the fund which, they say, amounts to £1m to £2m pa.

I cannot agree with the SRA's view that a continuation of SIF would provide only a small amount of

consumer protection. First, WTW estimate that in respect only of firms that close prior to 2022, the loss to the public in compensation for negligence and costs will be £12.4m. This is a huge amount to expect the public to pay and it is contrary to the regulatory objective of protecting consumer interest. Secondly, the SRA equates benefit to claims ie consumers do not benefit if they do not make a claim. How then does the SRA justify requiring solicitors to have PII at huge cost (see below) when the majority of clients do not make a claim on it?

The SRA states that the average claim including costs is c£34,000. This is a life changing amount for most consumers. Undoubtedly within that average figure are much higher claims and I am astonished that the SRA is not concerned about a consumer who discovers negligence by their conveyancing solicitor which leaves them in trapped negative equity facing paying a mortgage for years on a property they may never be able to sell. Leaving consumers facing the uncertainties of pursuing a retired solicitor both probably with limited funds is also contrary to the regulatory objectives when taking into account that that consumer will have been assured that the solicitor was insured via the client care letter at the time the service was rendered and will have paid for that as part of their bill. Such consumers will be left feeling confused and betrayed by their solicitor and by the regulator. They will be left facing ruin potentially and will (I am sure) go to the media with their (justified) complaints. When the media discovers that the SRA dispensed with cover despite their being over £22m available there will be a huge storm eg consumers denied protection whilst solicitors benefit. Does the SRA really want to make a public apology in a few years' time, saying that lessons have been learned? The public is tired of hearing that.

Annex 3 of the consultation documents is not an accurate summary of the legislative provisions eg it omits reference to “protecting” the interests of consumers. The SRA states that it is their role to “deliver an appropriate level of consumer protection rather than one that guarantees no risk to consumers”. It is accepted that a no risk guarantee would be prohibitively expensive but the SRA's preferred outcome delivers **zero** protection to certain consumers, passing all the risks and costs of pursuing claims against retired (possibly deceased) solicitors to them. Many will feel unable to pursue a claim and thus will be denied access to justice in its most basic form. Even if a consumer had the financial and other resources to pursue such a claim there is no guarantee that even a justified claim would be fully compensated, if at all. This is not an appropriate level of consumer protection. Contrast this with the position under SIF. The consumer does not need to face any of these difficulties, a claim is submitted and, if successful, full payment plus costs is made.

With regard to the SRA's claim that it would be disproportionately expensive to continue providing PYSROC I comment as follows.

WTW states that SIF (or similar scheme) can be continued with funding of £240 per firm or £16 per solicitor per year. I carried out a small informal survey of the PII costs of retired and still practising solicitors. At the upper end, in 2021 one sole practitioner paid £15,000 and a 5 partner firm (no other solicitor fee earners) paid £40,250 equating to £8,050 per solicitor. These figures bear no relation to WTW's proposed levy. Thus the SRA's argument that such a levy would have a disproportionate effect on the cost of legal services is wrong.

The SRA insists that solicitors have PII, irrespective of the costs and it is fully aware of those costs and the LSB is investigating this. The SRA ignores the fact that, according to their interpretation of consumer benefit, very few consumers benefit from that insurance but they still pay for it. To the premium must be added the heavy administration costs of PII renewal which form part of a solicitors overheads. Given that the proposed levy is so small I suspect that most firms will absorb it within general overheads, regarding it as analogous to petty cash requirements, paling into insignificance when compared to PII costs, the practising certificate fee or compensation fund contribution. It is noted that, against this backdrop, the SRA has produced no evidence that a

levy would have a disproportionate effect on the cost of legal services with consequent lack of access to justice. Whereas the lack of access to justice arising from their preferred option is undeniable.

I also take issue with the SRA's use of what it calls "the principles" (see further below). The term proportionate has been used solely in the context of costs. However, it relates also to how a policy affects different groups of consumers. The SRA claims that its preferred policy option will result in a reduction in legal costs (without saying how much) but the cost to other consumers is the loss of protection amounting on average to £34,000 per consumer. This cannot be considered proportionate. It should also be noted that the current consumers who would benefit (allegedly) from lower costs may also find themselves the victims of this policy if their solicitors firm closes.

The SRA claims that saving current consumers the costs associated with PYSROC (without any evidence as to such savings) will increase access to justice. The SRA's claim that withdrawing PYSROC will not impact on the number of firms willing to undertake "risky" work is banal. I have no doubt that there will be some withdrawal from such sectors once there have been a few high profile cases leading to bankrupt solicitors. It is also likely that the number of firms providing conveyancing services will reduce once lenders become aware of the problems and limit their panel membership as they will regard sole practitioners and small firms as a poor long term risk. This will reduce competition and access to legal services and push up legal costs.

The SRA has failed to consider the impact that the withdrawal of PYSROC will have on the regulatory objective to promote the professional principles which include maintaining proper standards of work and acting in the best interests of clients. They are clearly aware of the problems associated with firms being unable to close because of the absence of PYSROC but they dismiss them, seemingly unaware that solicitors continuing to practice when they should be retired will lead to a breach of this objective.

The SRA refers to BAME solicitors being disproportionately found in small firms who may also be less likely to absorb the costs of any new levy. They make this statement without commenting on the obvious fact that any firm which cannot afford £240 is not financially viable and is therefore at risk of eg sudden closure and is a potential danger to clients. Also, there is no reference to the proposed individual levy, presumably because no effect can be claimed in this context. There is a lack of joined up thinking throughout this consultation.

It is accepted that the SRA has no duty, per se, to solicitors, protection and representation of solicitors falling to TLS. However, as the SRA well knows TLS has no power to operate in the area of indemnity for solicitors. This is a regulatory matter and exclusively the SRA's terrain. Accordingly to appear to charge TLS with this role is simply to kick the problem into the long grass.

It is difficult to see how the WTW report "informs" the SRA's analysis. The report makes quite clear the huge losses that will be suffered by consumers on an ongoing and increasing basis. It also says that this loss can be avoided by a small levy. The SRA dismisses the loss as small eg by referring to the "limited protection afforded by SIF" but exaggerates the impact of the levy. I am surprised that a public interest regulator should so grossly misrepresent the position.

At the profession's expense the SRA engaged WTW and formed the Virtual Reference Group. I have dealt with the WTW report. The VRG majority view was that PYSROC should be maintained yet the SRA dismisses this and it seems likely that the SRA will have the same scant regard to consultation responses which agree with the VRG. The SRA is asked what percentage of large firm respondents said that PYSROC should continue only for certain segments.

The SRA's lack of concern regarding the extreme difficulties former clients will experience in bringing claims is very concerning. These people are consumers and the LSA imposes a duty to protect their interests. Even relying on a limited interpretation of proportionality the SRA has failed to prove that the costs of providing that protection outweigh the benefits. Apart from the evidence contained in the WTW report (which the SRA largely ignores) everything that the SRA has put forward in support of its preferred option is speculative, their arguments are hedged about with words like “may” and “potentially” so as to avoid claiming any certainty for the “evidence” which, they say, supports their views. Given the severe impact on consumers that will be caused by SIF's closure one would have expected the SRA to produce robust evidence, not speculation. The SRA seems to have decided that the statutory objective to protect the interests of consumers is subsidiary to the principles (ie proportionality, access to justice, competition, targeting etc) by which its actions should be governed. This is not a correct interpretation of the LSA.

To raise open market cover is to waste everyone's time. It is not available in any form. Even if individual policies were available not all retired solicitors would be able/willing to buy it and such a solution would merely increase the lottery that PYSROC would become. Open market insurance in this area should be confined to the dustbin of history.

As noted above, the SRA refers to “perceived barriers” to exiting the profession which it admits cause consumer protection issues but the SRA's preferred option (without any solid evidence to support it) is to add yet another barrier.

Whilst the SRA stresses that long tail claims are expensive to manage it ignores the fact that long tail claims, by their very nature, can arise and confront a solicitor long after they have ceased to have anything to do with a firm that has closed or to practice in that type of work. However, they remain vulnerable and need protection just as much as their former clients. This deals with the SRA's concerns about cross-subsidisation – all solicitors benefit from knowing they have protection in case of need. In the case of PYSROC, solicitors are fortunate in that they have an historic fund with £22m net assets. It should be noted that the SRA has no objection to honest firms cross-subsidising the dishonest via the Compensation Fund contribution.

As for a levy being anti competitive, I firmly believe that an absence of PYSROC will lead to a reduction in the long term of firms undertaking risky work (possible exacerbated by lender action) with the effects stated above.

It is accepted that many other legal services providers do not have the same (currently) excellent levels of PYSROC. This is, however, no justification for bringing the level of protection provided by solicitors to their level. The profession is in the fortunate position of having a substantial fund already that can continue to be utilised for the purposes for which it was intended at tiny cost. The net effect of the SRA's preferred option is to take £22m away from client protection and use it for the benefit of the profession (including the huge City firms) whilst consumers suffer real and possibly life changing financial hardship.

Regarding paragraphs 56/7, the absence of evidence of eg supply shortages is not evidence that the SRA's preferred option will not cause such shortages. I have already pointed out the very real possibility that the absence of PYSROC could reduce the number of firms in certain areas. It may well deter some from setting up their own firms. In addition, there is no evidence that the running costs of SIF are having a serious effect on its balances. Indeed, SIF's accounts show that there was more in the Fund in 2020 than in 2010. Given that WTW did not take the income into account when calculating their levy it is likely that such a levy will be even lower than their estimates, thus further reducing what little strength there is in the SRA's arguments.

In summary, both the public and the profession benefit from the existence of SIF. The SRA has not provided evidence to show that its continuance would have the detrimental effect claimed by them. A continuation of SIF is in accordance with the LSA, its discontinuance is contrary to the Act.

QUESTION 2

See above.

QUESTION 3

As stated above, open market PYSROC in any form is a non-starter. The SRA seems to accept the market's conclusion that the provision of PYSROC is too risky for them to underwrite yet at the same time claims that the damage caused by its absence will be low. This is completely contradictory and illogical.

QUESTION 4

See above.

QUESTION 5

See above.

QUESTION 6

See above plus any open market solution involves profits to insurance companies thus increasing costs. SIF is non-profit making.

QUESTION 7

See above.

QUESTION 8

The current SIF model works. To attempt to replace it with an alternative is unnecessary and wasteful. This is contrary to the SRA's stated need to be efficient in its use of the profession's money. Further, such expense can only reduce the funds available for public protection.

QUESTION 9

See above.

QUESTION 10

Any such proposal increases complexity, does not reduce costs and has discrimination implications.

QUESTION 11

No, see above.

QUESTION 12

No, as above.

QUESTION 13

I fail to understand why the SRA considers that the protection of former consumers does/should not form part of its regulatory arrangements yet it does regard the protection of current consumers as its responsibility, regardless of the cost which is ultimately passed on to consumers. The LSA clearly states that former users of legal services are legal services consumers and does not make any distinction between the two. The SRA's preferred option is discriminatory and unjust.

The current PYSROC arrangements are working, the alternatives put forward by the SRA are unworkable in the main and expensive whilst not providing any better consumer protection. The regulatory objectives demand that former consumers are given the same protections as those whose firms have not or will not, in the future, close. The principles referred to by the SRA are matters which they have to take into account when regulating the profession so as to meet the objectives, they are not objectives in themselves. To compound that, the SRA has applied a very limited interpretation of the proportionality principle and even with that limitation have not proved that a modest levy to provide SIF with an income stream would have any disproportionate effect.

The SRA states, in effect, that protection against negligence is not a matter of concern to consumers. Clearly, consumers have not had to concern themselves about it because they have been fully covered by PII and SIF. This will change leading to the detrimental effects described above. Passing the whole of the risk of PYSROC to consumers is detracting from, not improving, access to justice.

QUESTION 14

First, these actions would be unnecessary if there is a continuation of SIF. The SRA has not put forward any proposed methods to reduce the risk of claims arising during the limitation period. The SRA has accepted that it is almost impossible to find a successor practice. Why then is this suggestion even made? Providing information to clients on closure is closing the stable door after the horse has bolted. What are they expected/can they do to protect themselves? Why should they buy insurance (assuming that it is even available and affordable) for a second time? What support does the SRA propose to give and how much will that cost the profession? These actions achieve nothing but to alarm consumers who can do nothing about it.

The fact that other providers of legal services do not have long term cover should not carry a lot of weight as solicitors are by far the largest provider of legal services to the public and the absence of SIF cover will have a consequently much bigger impact on the public.

As to the Impacts, the SRA has provided no evidence that the costs of continuing PYSROC would be passed on nor that they would have a material detrimental impact on consumers if they were. The SRA has ignored the substantial income from the Fund's assets which would reduce the amount of any levy potentially passed on.

The detailed impact assessment ignores the bigger picture. As stated above, consumers (especially residential conveyancing clients) will be left facing potential ruin whilst the profession benefits from a windfall and no ongoing costs. The affected consumers will be left pursuing a potentially untraceable retired solicitor who may, in any event have limited assets, incurring substantial costs along the way with no guarantee that they will even recover those costs. I do not understand how

any public interest regulator can consider that such a huge impact can be ignored because it affects only, what they claim is, a small number of consumers.

The SRA is concerned about the potential cost of an individual levy to the top (by number of solicitors) firms whose fee income is in the millions, such cost being between £8,250 and £20,500 per firm) but are not concerned about the impact on an individual consumer of an average loss of over £30,000. The concern is expressed in terms of the cost to consumers but these firms have many, many clients so the cost per client will be even less than with smaller firms. It would appear that the SRA has been unduly influenced by the views of these large firms.

Retired solicitors and their families are also members of the public and, as such, their interests are part of the regulatory objectives. There is no meaningful justice when a retired solicitor possibly in poor health (even dementia) is faced with a claim that they do not have the resources to defend. The spouse of such a solicitor faces the very real risk of losing the family home if the claim leads to bankruptcy. A continuation of PYSROC avoids all of these problems for consumers, solicitors and their families.

According to a UK Gov website in 2016/18 63% of people owned their home. Most of them will have used a solicitor. Most members of the public use a solicitor at some point in their lives. Far fewer use barristers, surveyors, accountants or financial advisers. Thus the lack of long term cover from these professions does not have the same public impact as solicitors not having such cover. Medical professionals deal with large numbers of the public and rightly have long term cover. Given how much the of the public use solicitors we should provide the same protection.

The SRA's mitigation proposals are not realistic. TLS cannot provide an indemnity function, there is at most extremely limited market cover, many solicitors have already contributed to a mutual scheme ie SIF so there is no justification for them being required to pay a second time. The SRA says that these mitigation measures may be undertaken by those still in practice and they are happy for these costs to be passed on because, they say, not all solicitors will do this and so clients can choose the level of cover they want. It is unrealistic to expect consumers to think this way. Solicitors know that consumers often look for the cheapest option without thinking through the implications. It is, therefore, the regulator's job to ensure that clients are not unduly exposed to risk as a result. Those former clients who will be affected by SIF's closure have no choice in the matter and gain no benefit therefore this mitigation measure looks to the future rather than addressing the problems caused by the SRA's preferred option. Limited liability is a red herring. If there is PII or PYSROC (as appropriate), given that a limited liability firm can not reduce its liability below the cover provided, the potential insolvency of such a firm is irrelevant.

The SRA refers to practitioners not having “taken successful steps as outlined above”. This is to seek to put the blame for the coming storm on retired solicitors without acknowledging that these measures are and were unrealistic. Many retired solicitors have strenuously sought market cover for several years without any success whatsoever even for those with perfect claims records. In addition, there was no clear guidance given at the time of closure that an exposure to long tail claims would ever be an issue.

As to the Equality Impact assessment, the SRA says that mainly white older males will be impacted by their preferred option but then mysteriously concludes that the impact would be “broadly neutral”.

In relation to the Impact on Consumers, the SRA states that its preferred option requires no additional funding and no additional costs to consumers. This is quite simply wrong. Former clients are consumers within the Act and the cost to some of them is in excess of £30,000. Further,

if the SRA is correct in saying that continuing PYSROC would cost current consumers extra, the preferred option means that former consumers will effectively be subsidising current ones. This is discriminatory.

The SRA refers to creating a comparable level of protection with other regulatory regimes by withdrawing a protection that already exists as something to be proud of.

In relation to the section Paying for PYSROC. The SRA fails to mention that retired solicitors who lose the protection of SIF (for which they paid) are effectively cross subsidising the remainder of the profession including the multinational firms. The SRA has provided no evidence that a de minimis levy would have any effect on costs to consumers, or cross subsidisation between parts of the profession engaging in different types of work.

It is accepted that the SRA does not exist for the benefit of the profession. At the same time a public interest regulator should not act to the detriment of the profession it regulates without incontrovertible evidence that such action substantially benefits consumers and the public.

The SRA's preferred option will damage trust in the profession leading to the detrimental impacts set out above all of which is unnecessary in the light of the substantial funds that are available already.

QUESTION 15

I belong to a large group of solicitors who are impacted by this proposal, a large section of which are women.

CONCLUDING THOUGHTS

The SRA refers in various places to its duty to be transparent and says that certainty (ie ending PYSROC) provides that. That decision, if it is made, is transparent but transparency does not render a bad decision good. Further, this consultation relies heavily on the SRA's opinion rather than evidence. A decision based on a biased consultation is open to challenge and creates the very uncertainty the SRA says it does not want.

I am not familiar with trust law but it would appear that the history of SIF, in particular the decisions made many years ago about how unused funds should be applied, has been superseded by events and that, there being a continuing public and professional need for indemnity, equitable trust principles apply and the Fund's assets should be used solely for that purpose.

SIF has substantial funds, a very modest levy will keep it viable with no demonstrable adverse impact on consumers or the profession. In contrast, the SRA's preferred option will lead to a disaster for individual members of the public and a media storm which will damage, perhaps irreparably, the SRA, the LSB and the profession. PYSROC should continue via SIF but not in the control of the SRA who have shown that they are not to be trusted to act in the public or consumer interest in this area.

I consent to this response being published.

FIONA SWANN
11 FEBRUARY 2022

Malcolm Abel

Dear Sir

My below reply to the above consultation in essence asserts, with respect, that the proposal to get rid of SIF is misconceived because it is in fact contrary to your obligations and additionally warns you that a trust has arisen in respect of the SIF monies, even if originally the funds were not imprinted with being a trust. Accordingly, if you persist, following the consultation, in your stated wish to see the back of the SIF then it behoves you to make application to the courts for rulings before you take any step to wipe out the SIF or to apply its funds other than as they have been used for the last 20 years.

I became a solicitor in 1969. Until 2013 I was self-employed for almost the whole of that 44 year period. On cessation of my then firm in Oct 2013 we paid 6 years run-off and were led to believe by virtue of statements made by the SRA that insurance would be available for any claims after Oct 2019. Such availability turns out to be erroneous. Nevertheless there was always the SIF, to which I had contributed, as a fall-back. You will therefore appreciate why I personally feel very let down by the present situation. However, the personal position of older or retired solicitors is apparently not your concern or of any interest at all to you (witness your glib, if not disparaging, references to the 'sleep-easy' factor - and I think that your use of such phraseology in context is disgraceful). Accordingly, whilst reserving my position on what I have just said, I would remind you of :-

1. your statutory duties, which I believe you have interpreted far too narrowly, possibly for administrative convenience; and
2. Trust law. You are not exempt from the latter but it seems to me you do think so.

If, despite the representations which you receive on or before 15/2/22, you are not prepared to change your collective mind you will see from the following I regard it appropriate at the very least you make applications to the court regarding the issues raised below by me and by all the other representors so you should not simply go ahead with closure precipitately.

I have seen a number of the responses, including the detailed rebuttals from the Law Society, the SPG, Howdens and individuals such as Janis Purdy. All of these demonstrate that to act in such a way that the SIF can continue is not in breach of your statutory duties and in fact is not only consistent with them but totally complies with them. It is not clear to me whether, as a body set up by statute, you have ever taken independent outside opinion from counsel as to whether the continuance of the SIF (such as in the form suggested by the above representors, ie a future annual levy tacked onto practising certificates) is in direct breach of your duty. If you have that opinion I invite you to release it and the instructions leading to that opinion. I would add even if you have such an opinion I hazard a guess that it is not so clear cut that it is absolutely unnecessary to apply to the court for it to opine. To close the SIF would not only be potentially detrimental to people in my position (whom you are adamant are not within your purview) but also members of the public generally for reasons which manifestly do not require further elaboration by me.

Further I found it astonishing that you have stated (in your own words) the continuation of the SIF is 'incompatible with our regulatory objectives' [sic]. If you are truly convinced that is so then the existence and continuation of the SIF from the date of your inception must have been unlawful. That alone is so serious (if you still remain of that view after consideration of all the representations) it surely demands that you make application forthwith to the court to regulate your own position, (which would invite responses from interested persons such as

the government legal officers, consumer bodies, and solicitors, practising and retired). Have you had a legal opinion as to this aspect? If so why is this not widely-known?

There is now approximately £30M in the SIF, but possibly 'only' £22M net after all contingencies, I understand. I appreciate that if for some reason the SIF were suddenly to cease then its constitution does say ultimately what would happen to its funds (but arguably a scheme that would allow the SIF to continue in some form and having the same function as now would be permissible). Fundamentally, however, for the last 20 years plus the SIF's funds have become a public benefit being the fall-back in case of uninsured losses to compensate members of the public. That has constituted a trust for public benefit, which moreover is in accordance with the expectations of the contributors to the Fund such as me.

If you now were to give the SIF the kiss of death, claiming there is no alternative (but I say there is), it is my view that is both against the interests of the public, including consumers of course, and a breach of trust. Even if you disagree are you so confident that you are not prepared to seek rulings of the court so that a full airing in a public forum, can be given to the issues? If you are that confident then, with respect, I have to say the SRA and its members who are of that view are foolhardy.

In summary I cannot understand why you are so gung-ho in going forward with the closure of the SIF, which has apparently been your position for several years ie since it has become apparent that eventually the current monies will dwindle or begin to run out. In fact I suggest if you were to proceed then to go ahead with abrupt closure is an abdication of your responsibilities rather than consistent with them. You should not be destructive but constructive. I urge you to recognise the useful role to all that the SIF has fulfilled for the last 20 years or so and seek to ensure its continuance, rather than dissipate the funds and further cause a breach of trust. The means of continuance are readily at hand by virtue of the report you yourselves have commissioned; further the Law Society on behalf of the solicitors profession is in favour of continuity.

QUESTION 2 - Proportionality

It is indeed proportionate to provide PSYROC through SIF. It is one of the hallmarks of our profession, that we ensure that our clients are properly protected, so that in those cases when they have been let down by their solicitor (even many years previously), the profession as a whole will do its best to reverse the damage.

According to the WTW report, there are around 31 claims each year which are paid out at any average of £34,600 each. The costs of administering the SIF are indeed proportionate to these figures. The involvement of SIF in these claims, ensures 2 good results : (1) That the claimants who are entitled to be recompensed do in fact receive the money that is due to them; and (2) That they receive what is rightfully due, but not an amount which is excessive or unmerited.

Questions may be raised about whether the cost of administering the SIF could be reduced. Although the costs are currently proportionate, there is still scope for looking at what reductions could be made, once a decision has been made to keep SIF in existence with an annual top-up (see below).

Paragraph 55 of the Consultation says that SIF's PSYROC "appears to be a consumer protection outlier". This is indeed so. It is something we should be proud of, and indeed we are. We must therefore preserve its continued existence. Not even the Licensed Conveyancers, nor the Bar, nor Chartered Surveyors nor Chartered Accountants have it. (The so-called "Will Writers" are completely unregulated and are allowed to prepare wills with no indemnity cover at all for their clients or their beneficiaries. This is nothing short of disgraceful, given that negligence in their work can have enormous financial repercussions for the beneficiaries, or those who ought to have been beneficiaries but were negligently excluded or simply forgotten about. Paragraph 55 itself recognizes that probate is one of the areas that gives rise to long-tail claims. The SRA would do well to warn the general public of the dangers of their going to these unregulated and unindemnified non-professionals instead of to solicitors.)

There is nothing wrong in our being an "outlier", it is something to commend us, and to close SIF down would be against the public interest, and therefore wrong.

QUESTION 5 – Open market

There is NO potential for PSYROC on the open market, either now or in the future.

Representatives of the insurance industry have said so repeatedly in various meetings with individual solicitors and with groups. There is (put bluntly) no appetite in the insurance industry for it. It surprises me that the SRA seem unaware of their position.

QUESTIONS 13 and 14 and the position of the SRA -

Yes, I do consider that PSYROC should continue to be provided for within the SRA's regulatory arrangements. This is necessary to ensure that the public can be compensated for negligence which may have arisen many years previously (e.g. when the 19-year old adult was a baby whose birth was handled negligently and whose action in negligence against the hospital was settled for an undervalue, on negligent advice given by the solicitors).

The SRA should consider its own position very carefully, and I suspect it has not done so thus far. If SIF is closed down, there could be enormous bad publicity for it when ex-clients find themselves unable to obtain recompense for work performed negligently by their ex-solicitor. e.g. :-

The following in bold print : “The Judge said that Mr. Smith was entitled to recover £35,000 (as well as his legal costs in fighting the case) because his original solicitor had been negligent, and even went on to say that the original solicitor had behaved abominably, but despite this Mr. Smith can’t get his hands on the money or any of it. His original solicitor’s office has closed down and the solicitor can’t be found. He has run away !! possibly to the Far East, no-one really knows. In the old days, solicitors had an insurance fund called SIF but the SRA (who are there supposedly to look after people like Mr. Smith) decided in their “wisdom” to close the fund down. Goodness knows why. How could they possibly have done that? And who decided to allow them to do it? What a stupid thing to do. And what has happened to the money in the SIF bank account, you may ask? Well, get this - the SRA handed it over to The Law Society so they could use it for the benefit of the solicitors profession. Talk about solicitors being a closed-shop! It’s nothing short of scandalous. We, in this newspaper, call it a simple case of FRAUD. That money was supposed to be used to protect and compensate people like Mr. Smith and all the SRA have done is steal Mr. Smith’s money and give it to the solicitors so they can spend it on themselves. We have spoken to Mr. Smith and told him that he should go to the police and get them to tell the Fraud Squad to prosecute the SRA. Watch this space – heads are going to roll !”

Whilst the above might be an exaggeration of the legal position (eg. The situation may not fit the definition of “fraud”, the SRA organization itself might not be vulnerable to a police prosecution, etc. etc.), nevertheless this does not prevent the media publishing highly damaging exaggerated material about the SRA.

When The Law Society was split into 2 sections, thus giving rise to the SRA, it was so that the SRA could focus on protecting the public. Indeed, this is now one of the regulatory objectives of the SRA. One way of achieving this objective is to keep the SIF in place, so that PSYROC continues and the public can be compensated when their solicitor has let them down. To fail to keep it in place, to close the SIF down, will be a failure by the SRA to comply with its regulatory objective.

The mechanism for providing PSYROC should continue to be SIF. There is no market insurance solution (see my answer to Question 5). The infrastructure of SIF is already in place, and this is the most cost-efficient way of providing the cover. To set up anything new will require a whole new infrastructure, new regulations, new licenses to be obtained, etc., and the cost of this would be enormous, eating up funds that were paid by the profession for providing indemnity to the public.

I refer again to the proportionality point mentioned about, Question 2. The costs of running SIF topped up by the annual compulsory levy are indeed proportionate to protect an average of 31 clients per year for their claims averaging around £34,000 each (figures calculated by WTW). The claim of each and every one of these clients is important to them.

Thus, the SIF should continue in place, its future existence funded by a compulsory annual levy on the profession.

It would not cost much per solicitor or per firm to keep it viable. This has been recommended in the WTW actuarial report commissioned by the SRA. WTW mention either a £16 per solicitor, or a flat £240 per annum per firm. I approve of either solution, but prefer the £240 fee per firm. This would be easier for the SRA to collect (i.e. a smaller number of payers, as opposed to the large number of solicitors applying for a Practising Certificate).

Either solution provides stability to SIF at small cost to the profession. If the £240 per firm option is chosen, then it is not going to impact upon the cost to the client of providing the legal services, because the cost of £240 would be spread across all the invoices generated by the firm during the year. The cost per client would therefore probably be less than £1 for a small firm, or pennies in the case of a larger firm generating say 1,000 invoices p.a.

From: Vivien Caroline Stern, SRA No. 123692

Response to SRA consultation on PSYROC and SIF

To: postsixyear@sra.org.uk

From: Dr John Adrian Longstaffe PhD BVetMed MRCVS MBACP

Dated: 11th February 2022

I am a retired veterinary surgeon. For most of my career I lectured in veterinary pathology to veterinary students. I then led a project on computer aided learning for veterinary and medical students. In more recent years I have been working as a counsellor and psychotherapist. I live in Bristol.

I have learned from a friend of mine who is a solicitor that the Solicitors Regulation Authority is presently consulting with solicitors and the general public on the future of the Solicitors Indemnity Fund.

Having looked further into this, I am both alarmed and somewhat mystified to discover that the SRA thinks it's a good idea to close down SIF.

I have always had confidence that if anything went wrong with the work solicitors have done for me, then I would be covered for their negligence by their professional indemnity insurance.

I have consulted solicitors, in particular a couple of local firms, for help on a number of matters such as the purchase of my home, my Lasting Power of Attorney, and my Will.

It has been explained to me that if a solicitors' firm closes, and no other firm has taken them over as a successor, then they have six years of PII run off cover. If clients have negligence claims after that then, as things stand, the client can make a claim to SIF.

Now I realise that the SRA is planning to shut down SIF at the end of September 2022. So that means that if either of the firms I have consulted closes with no successor practice, I might end up suffering loss if they have been negligent. Apparently I would have to find my solicitors, if they can be found at all, and sue them personally for negligence. That sounds as though I would have to spend a lot of time and money which I do not have, and probably end up getting nowhere.

And what happens if there are mistakes in my Will? Would my intended beneficiaries have to sue the solicitors? I know that they would not be able to.

A closure of SIF will have knock on effects for clients everywhere in England and Wales. Apparently the SRA can only be concerned about the public, not the solicitors they regulate. The SRA refer to SIF as the "sleep easy" factor for solicitors. Why are they not worrying about the "sleep easy" factor for their clients, and indeed the public at large?

According to the figures produced by the SRA, an average of 31-43 people could be affected every year. And the average claim is around £34,600. And that's just an average, so claims could be lower, but also much higher.

How can the SRA think that so many people with claims of that order are not worth bothering about? It's a disgrace, and it must reflect badly on the reputation of the SRA.

Losses of that order can have devastating effects on people's lives, and their mental and physical health. One only has to think of the suffering caused by online and telephone fraud. At least in the case of fraud there is a fighting chance of back-up from the banks and credit card companies. If SIF closes there will be no back-up whatsoever.

Solicitors could be required by the SRA to pay very small sums each year to keep SIF going indefinitely. But the SRA do not want to make them pay. The SRA are saying that these small sums would be passed onto consumers, and consumers would suffer. This has to be nonsense. Apparently the amounts involved are insignificant – either £16 per individual solicitor or £240 per firm.

Why on earth would solicitors add those tiny sums to the fees they charge their clients? Don't they have overheads which are far, far higher? £16 is the price of four cups of coffee. £240 for a firm is probably the same as an order of printing paper, or a small lunch for a few of the staff. The sums are a drop in the ocean to them, as they would be for most businesses. My understanding is that solicitors would be more than willing to pay those paltry sums to keep SIF going, and the SRA will not let them pay. It is incomprehensible.

No client or member of the public ever knows when they might need SIF. In a civilised society, we look after the weak and vulnerable. That is the social contract in this country. We pay taxes so that there are social security benefits and hospitals – even though as individuals we might not need them. We pay insurance just in case our house burns down, or we have a car accident – both of which events may never happen to us. It's no different with SIF.

Keeping SIF going will of course benefit retired solicitors because they cannot then be sued personally. In my view that is a good thing – even though I realise the SRA are not concerned about the protection of solicitors. They can only be concerned about the public. But in a way those two concerns should go hand in hand.

The SRA should be making sure the solicitors' profession maintains its excellent reputation. I am sure that reputation is very important to solicitors, as it is to every professional. I want the public to have confidence that their animals will be properly looked after by vets. How is the public going to have confidence in solicitors if they find out they are no longer protected against financial loss if their solicitor has been negligent? Why isn't the SRA worried about that? And why isn't the SRA worried about their own reputation as a regulator.

Summary. The consequences of closing down SIF will be disastrous. The SRA should not be closing down such a crucial element of protection for the public,

especially when there is a very easy way to keep it going. I feel quite sure that solicitors would be extremely happy to pay such a meagre sum each year to keep SIF going. The amounts involved of either £16 per year for each solicitor, or £240 for each firm, are insignificant when you consider the huge benefits which will be maintained. Surely it must be an obligation of the SRA to collect those sums from the solicitors' profession and keep the public protected.

Dr John Adrian Longstaffe

10th February 2022

Response to SRA consultation on PSYROC and SIF

To: postsixyear@sra.org.uk

From: Dr Tom Frewin

Dated: 9th February 2022

I am a retired GP and I live in Bristol. I was a hospital physician for about 10 years, and then became a GP for about 33 years before closing my practice and retiring.

A friend of mine who is a solicitor has drawn my attention to the SRA consultation on the Solicitors Indemnity Fund. I understand that the SRA is inviting members of the public to give their views on this issue.

I am horrified to learn that the SRA thinks it's a good idea to close down SIF.

I have been to a small firm of solicitors local to me for a number of matters over the years, including my house purchase, my Will, and my Lasting Power of Attorney. I have always been happy with the quality of their work and the service they provide. I always assumed that if anything went wrong in the future, and there had been negligence on the part of my solicitors, that I would be covered by their insurance. That was what I was told in those long letters they sent to me each time I asked them to act for me.

Now it seems that if my solicitors' firm closes, and no other firm has taken them over, I could, after their six years of run off cover is finished, end up being unable to recover any losses I might incur from their negligence. I would have to find my solicitors wherever they might have gone, and sue them personally. I do not have the resources to do that, let alone the time or the energy to start chasing. What is more, even if I could find them, the solicitors might be impecunious. And if I have died and there are mistakes in my Will, my beneficiaries, whom I had tried to provide for, would suffer.

This will affect clients everywhere. I understand that the average loss incurred by claimants historically is £34,600. I am quite sure that many people could not afford to sustain such losses. This could be a colossal amount for many people and would have a major impact on their lives. I am shocked that the SRA consider that amount to be insignificant. And an average of 31– 43 people affected a year is a lot. Nobody ever knows when they are going to be one of them. That is what insurance is meant to do – protect against events which might seem to be very unlikely, but life-changing if you are the one who is hurt.

I also understand that solicitors are more than willing to pay a very small sum each year to keep SIF going. I think that £16 per solicitor, or £240 per firm are paltry amounts, and easily affordable. I have to pay far more than that for increases to my gas bill.

Apparently the SRA think that solicitors are going to pass on these paltry sums on to their clients. That is absurd. Why would they? And why would they even need to?

Of course it's obvious that keeping SIF going will benefit solicitors because they cannot then be sued personally. So far as I am concerned that is a good thing. The SRA are apparently not concerned about the protection of solicitors – only the public. But surely the SRA should be making sure the solicitors' profession maintains its excellent reputation so that the public can have confidence that their solicitors will protect them from loss? It is certainly the case that all doctors and the GMC are concerned about the reputation of the medical profession so that members of the public can have confidence in the healthcare they receive.

I understand that it's the small firms which are most at risk of closing because it's so difficult to find another practice to take them over.

So I would think that this is going to stifle growth in the solicitors' profession. The young ones will not want to set up as sole practitioners or in small partnerships. They would be mad to do so, knowing the risks lying in wait for them. The small firms that are close by, and easily accessible, will be no more. And we should not forget that from acorns grow tall oak trees. No small firms means stopping the growth of bigger ones.

As a doctor, I understand and appreciate the importance of professional indemnity insurance. I have indefinite run off cover. I have taken that for granted. It is absolutely necessary for doctors, given that we can be sued decades later for our mistakes. I am happy knowing that the patients who were in my care for over 40 years, each one of whom was important to me, are protected. Surely it's the same for solicitors.

I feel strongly that the SRA should not be taking the disastrous step of closing down SIF, especially when there is a very easy way to keep it going. I am sure that solicitors would be more than happy to pay what is a really meagre sum each year for that purpose. £16 per year for each solicitor or £240 for each firm is nothing. I fail to understand why the SRA would not collect those sums from the profession and keep the public protected.

The SRA are apparently talking about the "sleep easy" factor for solicitors and saying this is none of their concern. That's a shame. But perhaps they would do well to start considering the "sleep easy" factor for their clients.

Dr Tom Frewin

9th February 2022

Please note: I understand that I need to give consent for publication of my response. I hereby consent, and request that my response be published.

Response to the SRA's Consultation on the Future of SIF and Post Six Year Run-Off Cover (PSYROC)

This is a personal response from Elizabeth Ruth Stevens, SRA no. 105907

1. I oppose the closure of SIF and the termination of PSYROC for the reasons set out by the Council of the Law Society in its statement of 2nd October 2021.
2. The majority view of the Virtual Reference Group set up by the SRA was also that PSYROC should be maintained for the whole of the profession (para.41, About This Consultation).
3. It is clear from the consultation documents that there is currently no realistic alternative to continuing PSYROC other than continuing SIF with additional funding.
4. The advice the SRA have had from Willis Towers Watson is that the additional funding required would be in the region of £240 p.a. per firm (para.52). I consider this an affordable price to pay for continuing a valuable element of public protection.
5. The SRA have indicated recently that they intend to look in to the issue of access to justice. I believe that removing PSYROC would make it more difficult for members of the public to obtain redress for legitimate claims against firms who have closed more than six years before a claim is made.

Replies to Consultation Questions

Q. 1. I accept that SIF cannot continue to provide PSYROC indefinitely in its present form but consider that the way forward is for it to receive additional funding by way of a levy on the profession to enable it to do so. This will both protect the consumer and the reputation of the profession.

Q.2. The SRA's own consultation document shows that an affordable levy of £240p.a. per firm would be sufficient for SIF to continue to provide public protection and protection for the profession's reputation. I consider this proportionate. In addition, although the number of claims on the fund has been relatively low, each claim is obviously important to the claimant.

Q.3. This is unlikely to be feasible as premiums would be unaffordable for many firms and some insurers would withdraw from the market.

Q.4. Please see Q.3. above.

Q.5. I understand that no such cover is currently available.

Q.6. I understand that no insurer is currently prepared to offer such a policy.

Q.7. Please see Q.6. above. In any event such a policy is unnecessary as additional funding for SIF as already mentioned would provide PSYROC.

Q.8. As previously discussed, there appears to be no alternative model available.

Q.9. If there were an alternative model the SRA would need to ensure that it offers adequate public protection in the same way that it regulates existing PII policies and sets MTCs for them, but this is hypothetical as no alternative model appears to be currently available.

Q.10. I believe targeting would be difficult to administer and diminish consumer protection.

Q.11. As stated above, I do consider that there should be regulatory arrangements for on-going PSYROC through SIF and that this should not be targeted.

Q.12 Only that provided in your consultation documents.

Q.13 I consider that PSYROC should continue to be provided for within the SRA's regulatory arrangements through SIF, funded by an annual levy on the profession, for the following reasons:-

- a) to maintain consumer protection;
- b) to maintain the reputation of the solicitors' profession;
- c) to encourage the orderly closure of firms wishing to close or merge, who are increasingly unable to find successor practices;
- d) the only option to provide PSYROC is a funded SIF.

Q.14. These are somewhat vague. I cannot see that it is going to encourage orderly closures or mergers (or respect for the profession) if the first thing to be done following closure or merger is to write to former clients suggesting they take out insurance!

Q.15. No, although I consider that the impact on consumer protection should be the main concern.

E. Ruth Stevens SRA No. 105907

11th February 2022

I consent to the publication of all or part of this response.

RESPONSE TO SRA CONSULTATION ON PSYROC AND SIF

Janis Purdy, Solicitor, SRA No 115220

It is incomprehensible to me why the SRA thinks it is best to close down SIF and so end the only available option for providing PSYROC. I have carefully read the SRA's consultation and the supporting documents and there is nothing in there to persuade me that SIF should be shut down. Quite the opposite.

PSYROC should be continued. It is unquestionably part of the SRA's regulatory function to do so. PSYROC can and should be continued indefinitely in its current form, through SIF.

If the SRA close SIF they will be in breach of the regulatory objectives and obligations as set out in The Legal Services Act (2007). The SRA do not think so. They base their whole argument on "proportionality". The SRA's view of what is proportionate is certainly not mine. And I don't believe it would be the view of the public if they knew about this and understood it.

The real SRA agenda is not at all transparent. In the face of the disastrous and predictable consequences, and the WTW analysis and their suggested solution, it defies all understanding as to why the SRA would choose to remove such an essential brick in the wall of client protection. Such a move would be a perverse, irrational and unreasonable exercise of its discretion. It could even be said to be an abuse of the SRA's power. What I mean is that the SRA could be said to be closing SIF just because it can. Perhaps so far as the SRA is concerned, SIF is just an inconvenience. With all due respect, I fail to understand the SRA Board's rationale or decision-making.

So SIF should be kept going indefinitely. Here is why:

1. The regulatory objectives. The first regulatory objective under Clause 1 of The Legal Services Act (2007) is *protecting and promoting the public interest*. That is a legal obligation of the SRA.

The SRA seems to recognise the problems there will be for consumers if SIF is closed. Affected clients will be trying to pursue claims against solicitors who have retired, disappeared or died. Consumers will have to pursue claims in the courts, and could well find that any judgement they obtain is worthless because it cannot be satisfied. To any lawyer, the problems are obvious and there is no need to go on about them here. So how is the closure of SIF protecting the public interest?

If SIF is closed there will be long-reaching and damaging consequences for consumer protection.

2. The solution is a levy. There is a considerable sum in the SIF pot. But of course it will need to be topped up. That can easily be done. SIF can be financed simply and cheaply into the indefinite future with a small annual levy imposed on the practising profession with the PC fee. This could be an individual levy of £16 or a flat firm levy of £240. This levy is suggested in the very detailed and excellent WTW analysis commissioned by the SRA.

The solution is a “no brainer”. (For reasons explained below, I believe a flat firm levy is preferable.) The levy might require a bit of adjusting up or down every year or so to take account of levels of claims and costs against investment income. But that’s not too difficult. The Compensation Fund contribution and the PC fee are adjusted every year. The accounting expertise is on hand.

3. What is proportionate? The SRA bases its arguments in favour of closing SIF on its own idea of what is proportionate. They say that the risks are small and the costs of covering those risks are disproportionate. But proportionality is a subjective concept. It is the continuation of SIF which would be a proportionate course of action. This will ensure that the SRA meets the SRA’s regulatory objectives.

Every single claimant is important. Every loss is important, especially the losses of individuals who cannot afford to lose out. The number of consumers who will potentially lose out, according to the WTW analysis, cannot be regarded as “small”. Nor can the amount of the average claim (£34,600) be dismissed as insignificant. Try telling that to somebody who suddenly finds themselves £34,600 less well off. And that figure is only an average. Claims go higher. I see that two of the highest recorded claims paid out have been as high as £400,000. The fact that the SRA regards these kinds of losses as insignificant and not worth protecting against is an indication of how far removed they are from real life.

The reality is that SIF is not just underwriting long-tail claims actually made by consumers. It is also potentially underwriting what must be millions of transactions going on every year. Any one of those transactions could cause problems in the long term.

Let’s take a closer look at the numbers. The WTW forecast of the number of likely claims from 2023 onwards will peak at 45 in 2023 and level off to 31 from 2029. What surprises me is the statement that “*the claim notification counts exclude nil claims where there will not be any payments*”. Nil payment claims are apparently 50% of claims notified. So that means the actual number of claims notified could range from 62 to 90.

Thus historical claims with no pay-outs have been successfully defended, probably because they were lacking merit, time-barred, or not pursued. Of course the outcomes would have been disappointing to claimants, but at least these people were given closure. They were saved from years of wasted time and money spent on pursuing spurious claims. That in itself is a worthy purpose for SIF, and is in the public interest.

4. Does the SRA care about damage to the reputation of the profession and its regulator, and public confidence? To close SIF would cause serious and irreparable damage to the reputation of the profession, and the reputation of its regulator the SRA, and so undermine public confidence. One of the hallmarks of our profession is the excellent protection we give our clients. It is worrying and confusing that the SRA, as the profession’s regulator, does not seem to be too concerned about that.

The SRA seem to be saying that being concerned about reputational damage to the profession is a bad thing. The SRA should try that one out on doctors. The GMC and the BMA would not take that view.

What will the SRA do when distressed clients are ringing and emailing them to ask for help in making claims? What advice will they be giving to clients who cannot trace their solicitor and cannot get any redress? Are they going to set up a special department at huge cost to deal with this? Will their advice to distressed clients really be – “*well, just see a solicitor and get a no win no fee agreement*”?

It's easy to imagine the bad publicity. How will the SRA deal with the headlines in the *Daily Mail*? I hope their press department is ready. In all the mainstream media including the *Times*, the *Telegraph*, the *Guardian*, the *Financial Times* and even *Which* magazine, and the *New York Times* the story will be that solicitors have left their clients to rot because the SRA won't let solicitors pay the price of four cups of coffee to save them. And social media will have a field day. There will be outrage expressed by unhappy clients when they contact consumer groups and *Money Box* on BBC Radio Four. Perhaps we will feature on *Panorama*. Solicitors have abandoned their clients, they will say, and the SRA have caused it.

5. Why on earth would the cost of a very small levy be passed on to consumers? The SRA has not produced any evidence that a small annual levy of £16 per solicitor or £240 per firm would be passed on to clients and so increase the cost of legal services. That contention is frankly absurd. Does the SRA really think that a firm would add fractions of pence to the charging rates of their fee-earners? And if a firm rendered 1,000 invoices per annum would they really add a massive 24 pence added to each bill?

When you consider the outgoings of a solicitors firm – PII, staff costs, PC fees, accountancy fees, rent, mortgage, advertising, utilities - it would be easier to tell the staff that they will have to bring in their own biscuits. The costs of a partners' meeting to work out how to make the clients pay would cost far more than the levy.

6. The costs are proportionate. The SRA say that the costs of running SIF outweigh the benefits. Again this is the SRA's own concept of what is proportionate. I am sure there is scope for looking into running costs and reducing those costs in the future. But the costs are proportionate considering the enormous benefits SIF provides. And the quoted defence costs do not seem to be much out of step with litigation costs generally.

The running costs could have had an overhaul long ago, with savings made, but I suppose the SRA's determination thus far to close SIF has scotched this.

7. What's wrong with cross-subsidisation? Yes, a levy would mean cross-subsidisation between sizes of firms and types of work. But the idea that this is somehow unfair, or that the profession would object to this, is misguided. We already have cross-subsidisation in the form of the PC fee and the Compensation Fund. The vast majority of the profession abide by and respect our professional rules. But we solicitors acknowledge that cross-subsidisation is there to protect consumers, the reputation of the profession, and public confidence.

One only has to consider cross-subsidisation more broadly to understand that it is an essential part of a civilised society. Thus, taxpayers pay to support services they might never use, and social security benefits they might never need – but one never knows. And for

example, house and car insurance premiums across the board cross-subsidise between those who have claims and those who never have a claim.

8. A flat firm levy is preferable. Although either an individual levy of £16 or a flat firm levy of £240 is a very cheap solution for solicitors, a flat firm levy would probably be fairer. I believe that the big firms, who are far less likely to need SIF (for themselves and their clients) will have no objection to paying what for them is a drop in the ocean. They will be keen to preserve the reputation of the profession which reflects on their own reputations. Small firms and sole practitioners, who inevitably have most to gain by the continuation of SIF, will be thankful for a positive outcome and will not feel disadvantaged by the payment £240 per annum. They will see it as a very small price to pay.

There is nothing wrong or unfair in making the payment of a levy a condition of being able to practise either as an individual solicitor, or as a firm of solicitors. The same principle applies to the PC fee and the Compensation Fund contribution.

A flat firm levy has the advantage of being simpler and easier for the SRA to administer and collect.

9. Why drop our standards of client protection simply to be like others? Just because some other professions and other providers of legal services do not have PSYROC does not mean that the solicitors profession has to drop its standards of client protection and become like them. The SRA call us “outliers” as though that is a bad thing. But being an “outlier” is a good thing. It is one of the hallmarks of our profession that we provide excellent protection for our clients.

In any event comparisons are not helpful. For a start, the kind of work done by other legal service providers and other professions is different. Limitation legislation in other jurisdictions is variable. We would be better to compare ourselves to doctors and dentists who have indefinite cover. And to hold up unregulated will-writers as a shining example is absolutely ludicrous and insulting.

10. Less choice for consumers. To put it bluntly, if SIF is closed, who in their right mind would want to set up as a sole practitioner or a small firm? That means less choice for consumers.

The SRA is supposed to be *improving access to justice*, and *encouraging an independent, strong, diverse and effective legal profession*. These are the regulatory objectives c and f. The shutdown of SIF would put the SRA in breach of those regulatory objectives.

The closure of SIF would be a major disincentive to solicitors wanting to set up their own small firms. They will think twice about undertaking what are fundamental and crucial areas of work. To close SIF would mean the long term erosion of a diverse profession, and a steady reduction in client choice and the ready availability of legal services in the high street. Most people need legal services where they live – not in a city miles away.

The SRA say there is no evidence for there being less choice for consumers. Well, no, they won't find it, at least not yet. But the prospect is entirely predictable.

11. There is no alternative to SIF. There is no open market insurance solution available, nor is there ever likely to be. The Law Society has been exploring this possibility for some time. The SRA have also been asking representatives of the insurance industry. The answer from the insurance industry has been loud and clear. They would never be interested in operating a master policy, nor being involved in any "alternative indemnity scheme", nor offering bespoke policies to closing firms or firms post their run-off. The SRA acknowledges this.

SIF works, and is viable into the indefinite future with extra funding by way of a compulsory levy on the profession. There is absolutely no point in trying to reinvent the wheel.

12. Targeted solutions won't work. "Targeted solutions" such as a scheme that is restricted to certain sizes of firm or certain types of work, would be far too complicated and costly to administer. And there will inevitably be gaps in cover and confusion for consumers.

13. Changing the successor practice rules will not help. There are big problems for small firms trying to find a successor practice. This is being driven by the insurers who are understandably not permitting the acquiring firm to take on the small firm's potential liabilities. Thus small firms are forced to take run off cover in order for their businesses to be taken over. The SRA recognise these problems.

When the successor rules changed some years ago, the new rules were a welcome innovation. But now we have the prospect of SIF closing, this changes everything. More and more firms will be closing without a successor practice, with no protection for clients with long-tail claims. In recent months there have been large firms going into forced closure. A change in the successor practice rules is not the cure. The answer lies in making sure that SIF is on a secure financial footing so that it can be maintained indefinitely.

It is a concern that without SIF there will be sole practitioners and partners in small firms putting off closure, struggling on when they really should be retiring. Mistakes can be made, closures can be forced upon them and, in extremis, bankruptcies and premiums for PII and run-off not paid. This has consequences for their clients and the insurance industry, and will lead to further rises in insurance premiums generally and potentially more claims on the Compensation Fund. The present situation also causes problems for the larger firms keen to expand and increase their scope of operation.

14. MTC amendments will make things worse. Amending the MTCs to require insurers to provide PSYROC would lead to huge increases in PII premiums, forced firm closures, and insurers exiting an already shrinking market.

15. The clients of all sizes of firms can be affected. The majority of long-tail claims come from sole practitioners and small firms. This is no surprise, and no reflection on them. They are of course the firms most likely to close with no successor practice. The practising big firms have long tail claims too, but of course those claims are covered by their insurer.

Having said that, big firms are not immune from closure, as recent cases have shown. Further, key partners or employees in big firms who were previously working in small firms that went into run off could find themselves at the end of a claim which will bankrupt them or place them, and their present firm, in a very awkward position, financially and reputationally.

16. The Law Society cannot help. The wellbeing and protection of solicitors cannot be of concern to the SRA. This is the role of The Law Society as the representative body. But the SRA know that The Law Society is extremely limited in what it can do, if anything, to remedy the damage that will be caused by the closure of SIF.

The Law Society has no regulatory power and cannot provide an indemnity scheme, as indemnity is a regulatory matter. Voluntary hardship funds and the like will not be viable or effective. The Law Society has already looked into this and quite rightly dismissed the idea.

17. Mitigation suggestions are not realistic. The suggestions made for possible mitigating actions are simply not realistic, nor proportionate to the risks to the public and the damage to public confidence if SIF is closed.

The suggestion that the SRA and/or TLS could provide *“support to firms to help them understand their options when they close and how to attract a successor practice”* is rather patronising. If I had a broken leg I would not think much of being offered a band aid and an aspirin as a cure. In any event, that kind of advice and support is already available and easily accessible.

18. Finally, in answer to Question 13 of the SRA’s online questionnaire: In a nutshell, regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through SIF, a vehicle which is already set up and delivering. SIF can be financially supported by a very modest annual levy on the practising profession. The continuation of SIF is essential to maintain consumer protection, to preserve the reputation of the solicitors profession and its regulator, to maintain public confidence, to promote diversity in the profession and choice for consumers. No alternative vehicle for PSYROC exists, nor is ever likely to exist. My detailed reasons for this conclusion are stated above.

7th February 2022

**Janis Purdy
Solicitor, SRA No 115220**

.....**END OF RESPONSE**.....

NOTE: I consent to the publication of my response above and request that it be published.

SUPPLEMENTARY POINTS

to

RESPONSE TO SRA CONSULTATION ON PSYROC AND SIF

Janis Purdy, Solicitor, SRA No 115220

I refer to my response dated and submitted 7th February 2022.

I have some further information to submit, specifically on the view of the larger firms on the issue of SIF, and their view of a payment of a compulsory levy to support the fund in order to keep SIF in place indefinitely.

I am a co-opted member of Bristol Law Society Council. The Executive of Bristol Law Society have reported to me on a meeting they had recently. The Society have already submitted a response to the consultation, but as time is short, they would like me to send the following information to you in the form of a supplementary response to my own.

- 1. The Executive of Bristol Law Society had a virtual meeting on 10th February 2022 with managing partners of member firms. Managing Partners/Senior Partners from three of the Top 50 Firms (which are headquartered in Bristol) attended and verbally indicated that they would be supportive of a flat firm levy in the region of £240 in order to keep SIF going.**
- 2. This is a measure which they felt was reasonable and affordable to firms of all sizes. Furthermore, they expressed the view that a flat firm levy was more appropriate than an individual levy, given that the ultimate benefit sits for the most part with the small to medium firms and their clients.**
- 3. They also thought that from the viewpoint of firms (and indeed from the SRA's viewpoint) a single firm levy would be administratively much easier and more efficient to both pay and collect.**

I have copied this supplementary response to the Executive of Bristol Law Society.

11th February 2022

***Janis Purdy
Solicitor, SRA No 115220***

RESPONSE TO SRA CONSULTATION ON PSYROC AND SIF

Daniel John Murphy

Solicitor, SRA No. 127069.

I do not understand the thinking of the SRA if it really believes it is in the best interests of the consumer to close down SIF, and so stop customer access to a very particular aspect of customer redress; redress which is only ever going to be available through the SIF providing PSYROC. Having carefully read the SRA's consultation and supporting documents, I can see no valid reason why the SIF should be closed, but good practical reasons why it should continue.

PSYROC should continue and be supported in that by the SRA. It can and should be continued indefinitely, in its current form, and by means of SIF.

I believe the SRA's view about its duty and obligations in this area is incorrect, and that it does have a duty to meet its regulatory objectives and obligations under the Legal Services Act (2007); and that it is incorrectly basing its view on a misinterpretation of what is properly and commonly meant by "proportionality".

The consequences for the consumer of closing SIF are clear and predictable, and serious and in some cases disastrous. The SRA's own expert assessment and analysis, by WTW, is not at all supportive of the SRA's proposed "solution", and indeed supports retention of SIF. It is far from clear why the SRA is ignoring their own expert advice, and are determined to remove an inexpensive means of providing consumer protection, and also a further level of consumer and public confidence in the profession. There appears to be neither logic, economic sense, nor even common sense in closing SIF. I believe SIF should be retained indefinitely.

1. The regulatory objectives. The prime legal regulatory duty and objective of the SRA per Clause 1 of the Legal Services Act (2007) is to protect and promote the public interest.

The SRA is clearly aware that if SIF is closed, there will continue to be clients who are or will be affected. Those clients will be seeking to pursue claims against solicitors who have retired, and who cannot be located or traced, or are deceased. Those clients, consumers, will have to pursue claims in the courts, and may well find that any judgement they obtain is worthless because it cannot be met.

Lawyers are very well aware of the existence of such situations, even if some members of the public may not be, and lawyers also know the value to the public of knowing that the legal profession can and does provide protection to its customers.

Lawyers know that those clients can get that protection through SIF, so enhancing the public perception of the profession. Whatever the agenda of the SRA it is clear the closure of SIF is a blow against protecting the public interest, and the public perception of the profession.

It is also very clear that the closure of SIF will produce damaging consequences for consumer protection and public confidence in the profession.

2. The solution: a levy. The SIF has many millions of pounds in assets., though it would need to be topped up over time. That can easily be achieved by a small annual levy imposed on the practising profession with the PC fee. This could be by an individual levy of £16 or a flat firm levy of £240. That is suggested in the very detailed and thorough WTW analysis commissioned by the SRA.

That solution has been described by many, including in the insurance industry, as a “no brainer” – a view I completely agree with.

It is an inconsequential sum to pay compared with typical annual professional insurance indemnity fees for even the smallest firms, never mind other running costs. I believe a flat firm levy is preferable. The levy could if required be adjusted annually. The Compensation Fund contribution and the PC fee are adjusted every year. It is not difficult to do.

3. The question of what is proportionate? The SRA has based its argument in favour of closing SIF on its own view of what is proportionate: that the risks are small and the costs of covering those risks are “disproportionate.” Proportionality is of course a subjective concept. It is my view that in all the circumstances the continuation of SIF would be a proportionate course of action, and would ensure that the SRA meets the SRA’s regulatory objectives.

If SIF closes, a significant number of consumers will lose out, according to the WTW analysis, and it cannot be regarded as “small” in number or in losses. The amount of the *average* claim (£34,600) cannot be dismissed as insignificant. Two of the highest recorded claims paid out have been £400,000 or so. It is neither realistic nor reasonable for the SRA to consider such losses as not significant from a consumer perspective.

SIF underwrites long-tail claims made by consumers, but it also acts as a “guarantor” of millions of transactions every year, any one of which could prove problematic in the future.

The WTW forecast of the number of likely claims from 2023 on to peak at 45 in 2029, levelling off to 31 from 2029. It states: “*the claim notification counts exclude nil claims where there will not be any payments*”. If nil payment claims are 50% of claims notified, then the actual number of claims notified could be 62 to 90.

So historical claims, with no pay-out, were successfully defended. Whatever the outcomes, consumers had the opportunity to have their claims considered, and, importantly, brought to a conclusion; the alternative being years of wasted time and money. Patently this process using SIF is something the SRA should be seen to be supporting, as being clearly in the public interest, not least because the cost is a “no brainer” especially in the current hardest of hard insurance markets.

4. Damage to the reputations of the profession, its regulator, and to public confidence? It is self-evident that closing SIF would cause serious and irreparable damage to the reputations of the profession, of its regulator the SRA, and would also undermine public confidence.

One of the things that makes the solicitor’s profession stand out, and for the right reason, and dispels myth, is the excellent protection solicitors give to their clients.

That should be important to the SRA too. The SRA seems to be suggesting any concern about reputational damage to the profession should be ignored, or that it is not relevant, when it is fundamental to public confidence. Surely everything the SRA does is intended to instil or improve public confidence in the profession?

If this is not done, and SIF is closed, the SRA will need to prepare to deal with the many very upset consumers, who will perceive that the SRA prevented solicitors from continuing to use SIF with all its very clear benefits to the consumer - and because the SRA thought the price per firm of a couple of cups of coffee was too much for solicitors to pay! There will be justified outrage in the media.

5. Why should the cost of a *tiny* levy be passed on to consumers? The SRA has not produced any evidence that a *tiny* annual levy of £16 per solicitor, or £240 per firm, would be passed on to clients,

and so increase the cost of legal services. That contention is frankly absurd on its face. It is so absurd it hardly justifies a response.

Does the SRA really think that a firm would add pence to the charging rates of their fee-earners? It would cost firms far more in partner and firm time and resources to add pence – yes, pence, to each bill.

For a 1,000 invoices per year, it would be around 24 pennies! I cannot believe the SRA spent any time thinking about this, because if it had the idea would never have been put forward!

6. The costs are proportionate. The SRA says that the costs of running SIF outweigh the benefits. This is the SRA's own idea of what is "proportionate". Clearly, the running costs of SIF should be looked at – and should have been looked at critically long before now. But even without the benefit of such a cost review, the cost of continuing SIF is proportionate considering the enormous benefits SIF provides to consumers directly, and to the reputation of the profession and of the SRA.

7. Cross-subsidisation: It is not apparent why cross-subsidisation is a concern to the SRA. This occurs everywhere in commercial businesses, and in all areas of government.

Some income or fee streams are charged at discounted rates and others at premium rates to cover overall expenditure or to achieve acceptable profits or other outcomes, such as marketing aims.

Taxpayers pay to support services which they might never use, and to pay for social security benefits which they might never need. House and car insurance premiums cross-subsidise between those who make claims and those who will never make a claim.

The SRA seem to regard it as a philosophical or "political" concern. It is not a matter of politics, though some social media platforms seem to have come up with a theory of their own that somehow it is an "evil" policy, without explaining what that means, or why. A levy would mean cross-subsidisation between different sized firms and different types of work.

It is neither "wicked" nor "unfair". We already have cross-subsidisation in the form of the PC fee and the Compensation Fund. Solicitors accept that cross-subsidisation is there to protect consumers, the reputation of the profession, and public confidence.

8. A flat firm levy is preferable. Either an individual levy of £16 or a flat firm levy of £240 is an incredibly cheap solution, especially in the current hard insurance market.

A flat firm levy would probably be better for big firms, who are far less likely to need SIF but will have no objection to paying what for them is a tiny drop in the ocean. They will be keen to preserve the reputation of the profession overall, which bears on their own reputations. Small firms and sole practitioners will see it as an incredibly small price to pay.

There is nothing wrong or unfair in setting payment of a levy as a condition of being able to practise, either as an individual solicitor, or as a firm of solicitors. This is what is done with the PC fee and the Compensation Fund contribution. A flat firm levy for everyone has the advantage of being simple and easy to administer and collect.

9. Why should solicitors drop their standards of client protection, simply to be like "others" who have lower standards? This is a concern in that I find it surprising that the SRA is seriously suggesting that the profession it regulates should be obliged by its regulator to lower its standards of consumer protection.

It is also really insulting to the legal profession that the SRA holds up unregulated will writers as a body which solicitors should seek to emulate in terms of consumer protection!

This is yet another SRA idea in this consultation that I find hard to credit, as something our Regulator thought through. It seems like a throw away comment, which on reflection ought not to have made its way into the consultation process!

Comparisons are not always helpful, especially if they are the wrong comparators. It should be immediately obvious that different professionals do different work, and within professions, as happens with solicitors.

Limitation legislation in other jurisdictions differs and comparisons are difficult to make. If you need to make a comparison, in terms of consequences, losses, risk and liability in the area of professional advice and skills, then I suggest the appropriate comparison is more likely to be with doctors and dentists, who have indefinite cover.

10. Choice for consumers. If SIF is closed, who would want to set up as a sole practitioner or as a small firm? Closure of SIF will inevitably lead to fewer sole practitioners and small firms – perhaps that is an aim of the SRA? That reduction in choice of practitioner and firms, and also in the areas of work that any solicitors would feel they wished to undertake, would result in much less choice for consumers.

The SRA is mandated to seek to work on: “improving access to justice”, (and) “encouraging an independent, strong, diverse and effective legal profession.” (the regulatory objectives c and f.) The closure of SIF surely places the SRA in breach of all of those regulatory objectives.

11. An alternative to SIF. The insurance industry has made it abundantly and publicly clear that there is no open market insurance solution available, nor is there ever likely to be one.

The Law Society has been exploring this aspect for years, without any success, or any prospect of success.

The SRA has also been asking representatives of the insurance industry. The answer from them all is they would never be interested in operating any sort of master policy, nor any sort of “alternative indemnity scheme”, nor is there any interest in providing so-called bespoke policies to closing firms, or for firms post their run-off.

The SRA has accepted the response of the insurance industry, so it is not apparent why the SRA persists in flying this particular kite.

SIF works well. It is viable into the indefinite future with some extra funding, by way of a compulsory levy on the profession. There is nothing to be achieved by trying to invent and run a completely new model, even if that were possible, when the SIF is there and working well.

12. “Targeted solutions”. “Targeted solutions,” such as a scheme that is restricted to certain sizes of firm or certain types of work, would be far too complicated and costly to administer.

It is impracticable, and because of the complexity would cost far more to run than SIF. Such a scheme would also have gaps in cover, and the whole idea would add a layer of complexity and confusion for both consumers and the profession, and substantial additional cost, such that law firms probably would have no choice but to pass on..

13. Changing the successor practice rules. Sole practitioners and small firms struggle to find successor practices; and that is compounded by the insurers, who are understandably not permitting acquiring firms to take on small firm’s potential liabilities.

One insurance broker described the current insurance market to me as the hardest he has seen in 30 years. This situation is not going to ease for years to come, if at all.

So small firms are forced to take run off cover in order for their businesses to be taken over. The SRA recognises these problems exist and that they will continue. Changes to these rules are not likely to assist; and have the potential to cause more harm because they will make insurers leave the market at a time when the pool of insurers is shrinking.

The threatened closure of SIF makes this insurance situation much worse. More and more firms are going to close without a successor practice, and with no protection for clients with long-tail claims.

Recently, several large firms have been forced to close. It is not just an issue for sole practitioners and small firms and their clients. A change in the successor practice rules is not going to solve the problem. The practical solution is to ensure that SIF continues, on a secure financial footing and can be maintained indefinitely.

Without SIF, sole practitioners and partners in small firms will have no choice but to put off closure, and struggle on when they really should be retiring.

This can only lead to increased insurance risks, increased insurance premiums, and the possibility of insolvencies, increased calls on the Compensation Fund, increased regulatory fees, and ultimately consumers without redress. The present situation also causes problems for the larger firms with constraints on their expansion plans.

14. MTC amendments. Amending the MTCs to require insurers to provide PSYROC would lead to a huge increase in PII premiums.

That would force more firms into early closure, and lead more insurers to exit the market, with adverse consequences for the profession and for the public.

15. The clients of firms of all sizes will be affected by closure of SIF. The majority of long-tail claims relate to sole practitioners and small firms, which is not surprising given the work they have done historically, and many continue to do; and these are exactly the sort of firms that are most likely to close with no successor practice.

Big firms have long-tail claims too, but those claims are covered by their insurers, and they do have problems with closure too, as recent cases have shown. Key partners or employees in big firms, who were previously working in small firms which then went into run off could also find themselves at the end of a claim, which could bankrupt them, and at least cause damage to reputation.

16. The Law Society. The Law Society is in no position to offer any practical solution, and it is a diversion from the real issue to start focussing on “maybe” solutions to the loss of SIF that are simply not there.

The Law Society itself has made that clear, and it is a concern the SRA persists in suggesting, vaguely, that some sort of “member benefit” arrangement could be looked at by the Law Society. I believe the Law Society has looked at it and dismissed the idea. It is not helpful if the SRA, knowing it is a non-runner, keeps flying this kite too. We should focus on the real issue and deal with it in a practical and sensible way, by ensuring SIF continues.

17. Mitigation. Various suggestions have been made to try to find a way to “mitigate” the closure of SIF. Simply put, this is at best wishful thinking. There is no effective, practical way to mitigate the loss of SIF; nor is there any conceivable “replacement” scheme that would not be vastly more expensive than continuing, and funding, SIF.

Chasing such approaches would further damage public confidence, when it became apparent such mitigation could not be delivered – no doubt some time after SIF had closed!

There is a suggestion that the SRA, or a combination of the SRA and the Law Society, could somehow provide a scheme to offer firms affected by the loss of SIF “support” ... “to help them understand their options when they close and how to attract a successor practice.” It is difficult to credit this as a serious suggestion.

Solicitors have been living with these issues for some years, and with the hardening insurance market of the last few years, so with respect to both the SRA and the Law Society, solicitors do have a much better understanding of the whole situation, and of the implications for them.

Besides, going to seek advice from the SRA on the mess that would follow closing the SIF, which had been closed by the SRA, arguably after ignoring all the evidence to keep it open, would not be the first thought of a solicitor finding him or herself in that situation.

Closure of the SIF would not be a decision of the Law Society, so it is unlikely to be able to provide any support after the event.

18. In answer to Question 13 of the SRA’s online questionnaire: My reasons for the following conclusions are set out above.

Regulatory arrangements for the provision of PSYROC should continue, and through SIF, an existing and effective means of delivery.

SIF can be financially supported by means of an inconsequential annual levy on the practising profession.

SIF should continue, as it is an essential provider of a key service, and its existence provides very important and required consumer protection.

In doing so it directly benefits consumers, while greatly assisting in the preservation and maintenance of the reputation of the solicitors’ profession, and the reputation of its regulator, and in doing that in maintaining public confidence.

Its existence also assists in the maintenance of the range of solicitors’ practises, and of the wide range of work they can undertake, so promoting diversity in the profession, and choice for consumers.

There is no alternative vehicle for PSYROC but SIF; nor will any such alternative be created.

Daniel John Murphy

**Solicitor
SRA No.: 127069.**

14 February 2022.

.....**END OF RESPONSE**.....

NOTE: I consent to the publication of my response above.

SRA consultation on post six year run-off cover and the Solicitors Indemnity Fund: The Law Society response

Preface

People go to solicitors for support and advice in relation to the most important events in their lives – for example the death or injury of a loved one, family breakdown, purchase of a house, loss of housing, estate planning. Those events can be fraught with stress and anxiety, and carry a high level of consequential risk for members of the public. This is why people choose to rely upon a solicitor at such times. Solicitors are highly qualified and regulated, they must meet standards of competence that are set by an independent regulator and are expected to always have their clients' best interests as their guiding principle. Consumers can feel confident relying upon them for advice in the knowledge that things rarely go wrong. But in these circumstances, when things do go wrong, the impact can be devastating and life-changing. It is imperative that those affected are protected and able to secure accessible and cost-effective redress.

This fundamental premise of the relationship between clients and their solicitors underpins the establishment of the Solicitors Regulation Authority (SRA) as a public interest regulator with a statutory duty to promote the regulatory objectives under Section 1 of the Legal Services Act. Those objectives include the protection and promotion of the public interest and the interests of consumers; supporting the constitutional principle of the rule of law; and improving access to justice.

In publishing this consultation, the SRA clearly advances a preferred option that ongoing protection of consumers by the Solicitors Indemnity Fund (SIF) through post six-year run-off cover (PSYROC) should not continue as a regulatory arrangement. This would have the effect of immediately *and retrospectively* ending long-term protection for consumers exposed to long-tail risks.

In our view, it is perverse for a public interest regulator to remove vital protections that consumers had an assumption they could rely on when they purchased legal services, and to do so retrospectively, particularly in circumstances where the loss of these protections will have a significant and potentially life-changing impact on those affected. It will shake the confidence of the wider public and remove the ability of consumers to choose to seek professional advice from a provider offering higher levels of protection.

The SRA's 'preferred option' does not identify or offer any viable alternative to provide equivalent protection, or any corresponding benefit for consumers (or the public) that would justify the removal of this protection. While its consultation purports to address the question of maintaining protection through the SIF 'chiefly in terms of proportionality in light of ongoing costs', it gives no evidence that removal of this protection would lead to any meaningful reduction in the cost of legal services for consumers or that the cost of maintaining the SIF would inflate the cost of legal services. Indeed, the analysis undertaken by the SRA's own actuarial and insurance experts demonstrates that there is a viable long-term model for the continuation of PSYROC through the SIF subject to a very modest levy (estimated at £16 per annum per solicitor or £240 per firm) from the profession. In short, the SRA's preferred option alters the current regulatory arrangements and has only downsides for the regulatory objectives. Continuation of PSYROC through regulatory arrangements supports and advances the regulatory objectives.

The SRA's approach and analysis is inconsistent with its statutory duties to promote the regulatory objectives and to have regard to the principles under which regulatory actions and decisions should be transparent, accountable, proportionate and consistent. On considered assessment of these duties and taking into account all relevant factors, the Society believes that the preferred option must be to continue the provision of public and consumer protection delivered by the SIF supported by the introduction of an affordable levy on the profession (which we believe should be levied on firms rather than individual solicitors).

Consultation Response

1. Executive Summary

1. The SRA has signalled its desire to end the current arrangements by which consumers exposed to long-term risks relating to legal transactions such as conveyancing, wills, trusts and childhood personal injury are protected. This proposal removes important safeguards allowing them to assert their rights established by parliament and maintained by the courts under the Limitation Act 1980.
2. This is a consultation in which consumer protections must be the driving consideration. In recognition of the detriment that consumers could otherwise experience, the Limitation Act ensures that consumers can bring claims against solicitors for varying and potentially long periods of time after the date when services were delivered and beyond the working life of the solicitor involved. The law recognises that in certain cases claims come to light late and Parliament reformed the law in the knowledge that the law of negligence continues to develop. It is vital that those rights are practical and effective, not theoretical and illusory. PSYROC as a regulatory arrangement, delivered through the SIF, provides that protection in support of the law. PSYROC is necessary because solicitors' professional indemnity insurance has been provided on a "claims made" basis, which brings benefits to consumers with claims, but it does mean that if no insurer is on cover when a claim is received, there will be no insurance response, leaving consumers exposed.
3. The SRA has failed to demonstrate that:
 - i. the current arrangements are at odds with its regulatory objectives and the regulatory principles;
 - ii. by altering the current arrangements it could not better or more appropriately serve its regulatory objectives and the regulatory principles, by maintaining the SIF through a levy on the profession;
 - iii. its regulatory objectives and the regulatory principles would be met by a decision to terminate the protection given by the SIF where no alternative arrangements exist to protect against consumer detriment; and
 - iv. the risk and detriment resulting from a removal of this protection would be proportionately and justifiably balanced by consumer benefits.
4. The Society considers that the SRA's regulatory objectives and the regulatory principles – in particular the protection and promotion of consumer interest which lies at the heart of PSYROC protection – would be better served through a continuation of the SIF, funded through a levy on law firms. We reach this conclusion supported by the SRA's own independent expert advice. Based on the SRA's analysis of options under its own decision-making framework, it should adopt this course of action which is supported by the profession that it regulates and by the consumers it exists to protect.

2. Background

Long-tail liability and the need for PSYROC

5. The Limitation Act 1980 establishes statutory rights of protection that consumers have a legitimate expectation to exercise. It is this legal framework, not the SIF, which creates the potential for long-tail liability.
6. There is a general extension applying to negligence claims under section 14A of the Limitation Act. It provides a special time limit for negligence claims (other than those for personal injuries) where facts relevant to a cause of action are not known at date of accrual. Time can run for six years from the date of knowledge. That is subject to the long stop cut off point of fifteen years from the date of the alleged negligence, even if the cause of action has not by then accrued (section 14B Limitation Act).¹
7. There are other causes of action to which longer limitation periods apply. Some examples of claims with extended liability periods that might be relevant to solicitors' professional indemnity insurance are set out below, and they include circumstances where public trust and confidence in the rule of law could be seriously damaged (such as debilitating injuries and some instances of fraud), which is why the ongoing provision of PSYROC is so important for consumers:
 - for claims on the estate of a deceased person (whether under a will or intestacy), time runs from the date on which the right to receive the share of the estate arose;
 - claims under a deed for or a breach of covenant can be brought for up to 12 years;
 - claims where a cause of action accrues at a time when the claimant is under a disability, may be made up to of six years from the date the disability ended or the claimant dies (whichever is the earlier), even though the prescribed limitation period for that type of action may by then have expired. If the claim is for the recovery of land or money charged on land, the claim may be brought up to thirty years for the date the right of action accrued;
 - in claims for fraud, the deliberate concealment by the defendant of any fact relevant to the claim (e.g. a breach of duty), or relief from the consequences of a mistake, time runs from the date of the discovery by the claimant of the fraud, concealment or mistake, or from the date on which the claimant could, with reasonable diligence, have discovered it. The section 14B longstop is disapplied for these claims.
8. This means that it is possible for some claims be pursued after the six year limit and for others to arise outside the fifteen year long stop. Such cases may be rare, but they still require insurance. Indeed, insurance may be more important for such long-tail claims because seeking recompense through other means (such as through litigation) is considerably more costly and difficult after a long delay for example, through the need to identify the relevant law firm and the costs associated with litigating a claim.
9. The SRA suggests that only a few people rely on the SIF, and that it can therefore be removed without causing serious detriment to consumers. But this is not a small problem. Analysis published by the SRA suggests that 11% of post-closure claims

¹ Claims for negligence or breach of duty for damages for personal injuries or death are subject to a shorter limitation of three years either from the date of accrual or date of knowledge of the cause of action, if later.

arise more than six years after a firm has ceased to operate (and therefore after their mandatory run-off cover has expired), so there are potentially large numbers of consumers that may be affected, especially in practice areas with a high risk of long-tail claims and in areas that would have a significant detrimental impact on the consumer.

10. We are also acutely aware that there may be a rise in the number of consumers needing to rely on the SIF, just as the SRA proposes to take this protection away. We would argue that analysis based on past trends does not take into account a spike in legal activities, such as conveyancing and wills and probate work during the pandemic, which are prone to long-tail claims and could produce a rise in claims similar to the one seen after the global financial crisis, late in the first decade of the 21st century. Nor can it properly account for how future claims might develop.
11. The Society believes that where solicitors' clients or their beneficiaries have valid claims, provision should be made to ensure they are appropriately compensated. To be effective and to help ensure access to justice, the route to claiming such compensation should minimise costs and should wherever possible avoid litigation through the courts, because any such hurdles could create insurmountable barriers for consumers with legitimate claims. This includes barriers associated particularly with long-tail claims, where it can be very challenging to track down the relevant law firm and relevant evidence to support the claim. Such challenges are the reason support for these types of claim is common, as we have seen in relation to employer liability claims in the form of the Employers Liability Tracing Office (ELTO) and Diffuse Mesothelioma Payment Scheme (DMPS).
12. The provision of accessible routes to compensation in the event that things go wrong is a key component of regulating a profession whose work covers areas with high levels of risk that can impact in unpredictable ways on the lives and livelihoods of members of the public.
13. There are features of the market for legal services which mean that regulation plays an especially important role in protecting consumer interests. It is widely recognised by regulators that legal services are credence goods, characterised by information asymmetry and an imbalance of knowledge and expertise between the provider and the consumer. This information asymmetry limits the effective exercise of consumer choice and necessitates external regulation and management of consumer risk. In requiring legal service providers to purchase professional indemnity insurance, regulators effectively mitigate the worst problems caused by information asymmetry (among other things). Consumer protections are one of the important factors setting solicitors apart from other providers of legal services and providing consumers with enhanced choice.
14. Where insurance is written on a 'claims made' basis the existence of run-off is vital. Whether the claim occurs one year, six years or 16 years after a firm ceases to exist is of no relevance to the consumer who might wish to make a claim.
15. The withdrawal of the protection for consumer claims provided by the SIF would be a fundamental change of approach and fly in the face of the rationale for claims made insurance protection. All services delivered by solicitors since 1987, have been provided on the basis that clients were protected whenever a claim might arise. That position was preserved after the shift to commercially provided professional indemnity insurance in 2000. If such a change were made, it would retrospectively

impact upon all services delivered since 1987 (save for those firms that closed prior to September 2000), where a future claim might materialise where there is no solicitor or firm practising against whom to bring that claim.

16. The SRA's expert report offers some insight into the likely scale of this problem. In relation to the roughly 9,000 firms that closed between 1 October 2000 to 30 September 2021, the report notes:²

If SIF is closed to new claims notifications from 30 September 2022, then in respect of ceased practices up to that date, we project that 359 non-zero claims at a total claim cost of £12.4m would not be covered.

History of the Society's engagement with the SIF

17. With this in mind, the Law Society founded the SIF in 1987 to provide compulsory professional indemnity insurance to all solicitor practices in England and Wales. But mounting costs led to a vote in which the profession decided to close the SIF, and it ceased to operate as the provider of primary layer cover in 2000.
18. At that time, the profession voted to close the SIF based on the open market being able to provide more cost-effective professional indemnity insurance. It was not a rejection of the principle of mutuality (which the profession retains in relation to the Compensation Fund).
19. However, it is clear that the open market will not supply widely accessible PSYROC at a reasonable price. It is evident that there is market failure in this regard. As such, maintaining the SIF solely for the purpose of providing PSYROC would not contradict the profession's decision to move to the open market for primary professional indemnity insurance cover during professional practice and the mandatory run-off period. Even if the SIF were retained, firms would still continue to purchase their mandatory professional indemnity insurance and six year run-off cover from the open market, as they do currently. The SIF would provide PSYROC only.

SRA's decision-making framework

20. The SRA's decision-making framework rightly reflects its duty under the Legal Services Act to act so far as is reasonably practicable in a way that is compatible with, and is most appropriate to meet, the regulatory objectives, which include protecting and promoting the public interest and the interests of consumers, and to have regard to the regulatory principles.
21. From this decision-making framework, the centrality of consumer protection to the consideration of the future of PSYROC should be clear:
 - i. Protecting and promoting the interests of consumers is a regulatory objective and in, the context of this consultation, it must be the primary consideration for determining the future of the SIF and PSYROC in any form. Account must also be taken of the regulatory objectives to protect and promote the public interest and to improve access to justice, both of which are best addressed by retaining a high standard of consumer protection.

² <https://www.sra.org.uk/globalassets/documents/sra/consultations/annex-4---psyroc--analysis-of-options.pdf?version=4ad49f>

- ii. In determining the future of PSYROC, the central consideration must be how to best protect the public interest – and the interests of consumers – in consumers’ ability to recover losses suffered during the long-tail liability periods that are provided under the Limitation Act.

22. While we agree with the substance of the SRA’s decision-making framework, we have concerns about how it was applied in practice. A proper application of the decision-making framework should have involved consideration of a range of different and alternative ways to proceed against the framework, with particular emphasis on consumers’ interests (including the benefits under the current arrangement that would be lost), and an objective assessment of which option best advances the regulatory objectives and reflects the regulatory principles.

Timeframe for implementation

23. If the SRA’s preferred option is implemented following its consultation, the provision of PSYROC through the SIF will no longer exist by the end of September 2022. We are concerned that this decision taken in isolation makes no allowance with sufficient time for the SRA to take the consequential steps that would follow that preferred decision such as to:

- i. make any necessary statutory application to the LSB for approval of any alteration of the SRA’s regulatory arrangements; and
- ii. sufficient time to consider and make appropriate decisions under the Indemnity Rules relating to the future use of the SIF surplus.

24. It is said in the consultation that if the SRA decides after the consultation that the SIF should close and that there is no case for ongoing PSYROC in its regulatory arrangements, it would *then* propose to consider and consult as appropriate on any new regulatory arrangements *at that time*. However, this ignores the real risk that the SIF may become closed to claims from the end of September 2022 without the necessary approvals and/or without any alternative or transitional surplus arrangements in place.

25. The Society believes that it is inappropriate and inadequate for the SRA, acting as an accountable and responsible regulator and making decisions affecting the public interest, to seek to consult on its preferred option in isolation. Adequate and reasonable planning requires that it should simultaneously and holistically also consult on the consequential implications of that option, including the regulatory surplus arrangements. And it should realistically consider the timescales for obtaining approvals and undertaking further decision-making processes under its Rules before any proposed changes become effective. However, it has given no indication of how it would achieve this within the very limited time available until September 2022.

The Law Society’s approach to the consultation

26. Given this background, the three main limbs to the Society’s response to this consultation will consider whether, in reaching its conclusion that the preferred option is that there should be no regulatory arrangements for the ongoing provision of PSYROC, the SRA has satisfactorily:

- i. applied its own decision-making framework to the question of whether PSYROC should continue to be provided as a regulatory arrangement through the SIF, based on its analysis of advancement of the regulatory objectives and compliance with the regulatory principles;

- ii. considered the potential to promote and protect the regulatory objectives and to meet the regulatory principles through adjustments to the current arrangements by which protection is provided by the SIF, for example, through the introduction of a proportionate levy on the profession; or exploring ways of reducing the costs associated with providing PSYROC through an adapted form of the SIF; and
 - iii. demonstrated that, on balance after taking into account all the relevant factors and considerations, the regulatory objectives and regulatory principles would most appropriately be served by a removal of the indemnification protection currently provided by the SIF.
27. This response sets out the profession's view that, having conducted this analysis, the appropriate and only feasible way forward that would adequately meet the regulatory objectives and regulatory principles is a continuation of the SIF funded through a proportionate levy on firms.

3. Responses to questions

28. A number of the consultation questions overlap (and not in sequential order) to such an extent that it is not easy to answer them discretely from one another. For that reason, we have grouped Q1, Q2, Q13, Q14 and Q15, providing a single response which deals with the relevant issues in a way which is more comprehensive and comprehensible.

Q1: Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Q2: Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Q13: Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Q14: Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Q15: Do you have information on impacts to inform our assessments?

29. In dealing with these questions collectively, we provide an overarching critique of the SRA's application of its decision-making framework, including its assessment of proportionality and the future regulatory status of PSYROC.

30. Our primary view is that the SRA should have conducted an objective analysis of whether and how each of the following three options would advance their regulatory objectives and comply with the regulatory principles:

Option 1: Continuation of current regulatory arrangements

Option 2: Continuation of current regulatory arrangements with adaptations (e.g. a levy)

Option 3: Termination of current regulatory arrangements

31. Only when adequate analysis of all three options has been carried out against the decision-making framework can a preferred option properly be identified, based on that analysis. Instead, a subjective and unbalanced, or imbalanced, analysis has been produced, under which the SRA has systematically analysed only Option 1 against the decision-making framework, and in a way that favours its preferred outcome. This approach appears to be designed to produce a reverse-engineered outcome rather than an open, balanced and objective assessment. The Society considers that such a limited and pre-determinative approach is inappropriate and inadequate, particularly for purposes of a public consultation on matters of significant public and consumer interest.

32. Below, the Society sets out its analysis of the factors and options which the SRA *should have* engaged with in a full, open and balanced application and assessment of its decision-making framework.

Option 1: Continuation of current regulatory arrangements

33. The Society does not consider that the SRA has adequately applied its own decision-making framework to the question of whether PSYROC should continue to be provided as a regulatory arrangement through the SIF. This opinion is formed primarily in response to the SRA's unduly restrictive approach to the issues of consumer protection and proportionality.

Consumer protection

34. Consumer protection is the regulatory objective that should be the driving regulatory consideration. However, the SRA has taken an unnecessarily narrow approach to considering consumers' need for protection, considering solely the number and value of claims. This fails to take account of the extent of, and nature of the consumer need for protection, and the SRA therefore does not have regard to this need in its analysis of proportionality.

35. Given the centrality of consumer protection to the question presented in this consultation, it is right to consider the issue in a broader way, taking into account:

- the types of claims (aside from just their value or number), the severity of the likely impact on consumers' lives and the non-pecuniary losses they suffer;
- the *relative* monetary value of claims for the individuals concerned;
- the level of consumer detriment experienced by virtue of a minority of significantly larger claims;
- the number of transactions carried out by solicitors that could potentially lead to a long-tail claim;
- the importance of maintaining consumer and public confidence in strong protections that can be relied upon when engaging the services of a solicitor;
- the factors which influence consumer decisions to obtain legal services from a solicitor (i.e. reputation, experience, urgency, locality, legitimate assumption of protection); and
- the need for consumers to have a wide range of small and large providers from which to choose, including those offering high levels of protection in relation to high-risk matters (as to which see competition below).

Type of claim

36. The types of legal work that most commonly result in long-term liability claims are conveyancing, wills and trusts, child personal injury, and matrimonial property.³

37. Even where the monetary value of such claims might be small, the broader impact on individual consumers' lives will be significant, because things like homes, inheritance, health, and family are among the most important aspects of a person's life.

38. This point is supported by Frank Maher – a specialist in the law relating to professional regulation and professional indemnity insurance – who notes that the

³ <https://www.sra.org.uk/globalassets/documents/sra/consultations/annex-4---psyroc--analysis-of-options.pdf?version=4ad49f>

SRA's expert report does not include any case studies, but that in his experience of defending claims:⁴

[I]t is reasonable to assume that they will include people with serious medical conditions following undervalue settlement of claims, and other cases involving hardship. Left unprotected, these are the stuff of tabloid headlines.

39. The SRA itself says that:⁵

[T]here have been 6 personal injury claims in relation to firms that have closed since 2000. It is possible that one or more may relate to a minor and has impacted on their care.

40. In such circumstances, compensation allows consumers to recover from harm that has been caused to the most important aspects of their lives. Therefore, it is not the amount of compensation that is primarily relevant when assessing the extent of consumer need for protection, but rather the difference it makes in reality to the lives of those who are affected.

41. By focusing narrowly on monetary value of claims, the SRA fails to account for the non-pecuniary losses and harm experienced by prospective claimants, including the suffering of anxiety and mental distress.

Relative monetary value of claims

42. While non-pecuniary losses are disregarded by the SRA's analysis, the SRA also underplays the monetary value of losses to consumers. It describes the amounts paid to consumers as "modest", when its own experts have forecast an average £34,600 payment per claim (including defence costs).

43. According to the most recent figures from the Office for National Statistics, the median annual pay for full-time employees in the United Kingdom in 2021 was £31,285.⁶ It is difficult to see how a sum greater than the average yearly wage can be described as "modest" (even when the defence costs are taken into account).

The level of consumer detriment experienced by virtue of a minority of significantly larger claims

44. In discounting the potential losses to consumers if the relative certainty of SIF protections were removed, the SRA also overlooks the fact that average values do not reflect a minority of significantly larger claims, and that the inability to recover such amounts could lead to serious consumer detriment, particularly in instances of child personal injury.

⁴ <https://www.legalrisk.co.uk/publications/risk-update-january-2022/>

⁵ <https://www.sra.org.uk/globalassets/documents/sra/consultations/annex-3---framework-table.pdf?version=4ad64a>

⁶

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2021>

The number of transactions that could potentially lead to a long-tail claim, and the likely spike in this regard

45. The SRA asserts that few customers benefit from the SIF at the moment, and highlights the actuarial estimate of 31 successful claims per year in the future.⁷
46. While the number of claimants may be relatively small in comparison to the number of consumers who engage the services of a solicitor every year, a proper measure of proportionality should take into consideration the number of transactions that could potentially lead to long-tail liability claims made against the SIF. For instance, there were over a million residential conveyancing transactions in the UK last year, the great majority of which were in England and Wales, with two firms involved in most of these.⁸ Any one of these could eventually lead to a claim against a closed firm.
47. Furthermore, analysis based on past trends does not take into account any spike in legal activities such as conveyancing and wills and probate work during the pandemic, which are prone to long-tail claims and could produce a rise in claims similar to the one seen after the global financial crisis. Nor can it properly account for how future claims might develop.

Factors influencing consumer decision-making

48. Consumers select legal service providers on grounds other than just price. Indeed, it is not even the most important factor influencing their considerations. A report from 2020, commissioned by the SRA, states:⁹

80% of individual consumers and SME consumers agree experience/reputation is more important than price. These findings are consistent with recent research studies from the LSCP, SRA, and IRN Research which have all found that although price is important as a choice criteria, it is not the most important factor: reputation and experience of the advisor is top of the list. It is not price or experience that drives choice, rather it is price with experience, suggesting potential clients make an assessment of value for money, i.e. price compared with quality and service as well as other factors including personal recommendation, quality, service and location.

49. MoneySavingExpert, the UK's largest consumer website, with more than 16 million users a month, draws particular attention to the added value of the long-term protections provided by solicitors in their advice to consumers about selecting a legal service provider to draft a will, noting that "using a solicitor means you have more protection if something does go wrong – which may not become apparent until decades later and after you are dead",¹⁰ before going on to detail some of the protections available to consumers who opt to use the services of a regulated profession. So, even if individual consumers are not aware of the benefits of using solicitors at the outset, they may be directed towards the profession by trusted

⁷ <https://www.sra.org.uk/globalassets/documents/sra/consultations/annex-4---psyroc--analysis-of-options.pdf?version=4ad49f>

⁸ <https://www.gov.uk/government/statistics/monthly-property-transactions-completed-in-the-uk-with-value-40000-or-above/uk-monthly-property-transactions-commentary>

⁹ https://www.sra.org.uk/globalassets/documents/sra/research/year-one-evaluation-of-transparency-rules_research-report.pdf?version=4a91a4

¹⁰ <https://www.moneysavingexpert.com/family/free-cheap-wills/>

voices, acting in the consumer interest, who do appreciate the value of long-term protections.

50. Given what we know of the nature of consumers' priorities in selecting a provider of legal services and the advice from respected and influential consumer bodies, it is reasonable to assume that some well-informed and risk-averse consumers make such decisions with an eye to the level and duration of consumer protection offered by different service providers. Even for less well-informed consumers, such decisions are made based on the commonly held belief that professionals such as solicitors offer high levels of consumer protection. Such considerations would be more likely to motivate consumers purchasing higher-risk services, such those in relation which long-tail claims may arise.

Consumer need for providers offering greater protection

51. There are aspects of everyday life that rely upon concepts fundamental to the rule of law, such as contract, tort, deeds, good faith, and fiduciary duty. It follows that there are some legal issues where the long-tail risks are so significant that the public interest dictates there should be service providers with insurance arrangements that would provide an adequate and appropriate response, to ensure a satisfactory resolution to any claim. Continuation of the SIF would mean that there are providers of legal services in the market offering appropriate and necessary levels of protection for advisory or transactional services on matters of such significance.

Proportionality

52. The SRA has placed a great deal of emphasis on the proportionality of continuing to deliver the SIF. However, in our view it has failed to take into account many highly relevant factors in determining the appropriate balance between the need for consumer protection on the one hand and the cost of providing that protection on the other.
53. The SRA's analysis of proportionality weighs up the number and value of claims on the one hand, as signifying the extent of the need for consumer protection, against the cost of providing this protection on the other, as representing the relevant countervailing factors.
54. But the SRA ought to regard proportionality as a concept that balances the cost of protection against consumer detriment. Seen from this perspective, a small problem affecting a large number of consumers can justify relatively high costs of protection, but so too can a large problem affecting only a small number of consumers.
55. One side of the proportionality equation requires an accurate assessment of the need for consumer protection, a proper accounting of which would take into account the range of issues, summarised in para 35 above.
56. The other part of the proportionality analysis requires an assessment of the cost of providing that consumer protection. In considering whether the cost of providing PSYROC through the SIF is justified by the extent and importance of the need for consumer protection, the SRA has dismissed or not addressed the following factors:
 - All forms of protection come at a cost, and even more so the protection of long-tail liabilities. That being the case, the proportionality of the cost of providing PSYROC through the SIF should be judged relative to the reasonable cost of

delivering this type of protection. Once the consumer need for protection is accepted, insurance is the most cost-effective (and proportionate) method of protecting consumers from unforeseen risks.

- As a lump sum, the cost of providing PSYROC through the SIF has historically for a number of reasons no longer subsisting been considerable. But even when that cost is broken down per consumer of legal services giving rise to a risk of long-tail claims, or per firm that has an interest in upholding consumer protection and the reputation of the profession, the proportionality assessment clearly points in the opposite direction.

57. When weighing the costs element of the proportionality balance it is relevant to point to the possibly misleading effects of some of the assumptions made in the expert analysis of the current SIFL costs. The administration costs and running cost are historical, but going forward it would be possible for claims management to be retendered, with small claims handled separately. The requirement for maintaining reserves would also be fundamentally altered if the SIF were run as an open fund, rather than as a closed fund.

Issues relating to the other regulatory objectives

Access to justice

58. In its analysis, the SRA does not recognise or consider how access to justice is served through a continuation of regulatory arrangements for PSYROC, i.e. by providing consumers with a mechanism through which they can enforce their rights with certainty.
59. The profession has significant concerns about how access to justice will be upheld and about the risk of unjust consequences that could arise if claimants are left to pursue these claims personally in the courts.
60. The SRA has not given regard to the role that the SIF plays in promoting access to justice for consumers of legal services, by providing an accessible way of asserting their rights under the Limitation Act.

Competition

61. The SRA suggests that competition is undermined by a continuation of the SIF because it provides a higher level of protection than other regulated providers of legal services. However, this:
- proposes a levelling-down in consumer protection to secure competition, which is problematic where the protection, as we have argued above, is necessary in the market for legal services;
 - introduces inconsistency and uncertainty compared to the other areas in which higher levels of protection are required by the solicitor profession (e.g. professional indemnity insurance);
 - fails to acknowledge the additional choice that is afforded by this protection for consumers to differentiate between solicitors and other providers of legal services; and
 - fails to acknowledge the adverse impact on competition where some solicitors are more affected than others.

62. The SRA's consultation document suggests that competition is based primarily on price, but – as previously noted – their own research found that price is not the major determining factor for consumers using legal services.¹¹ Rather it is a combination of level of service, quality, recommendation, location and other factors, as well as price. This is confirmed by research undertaken by the Legal Services Consumer Panel (LSCP) indicating that reputation is the most important factor when choosing a provider.¹²
63. In our response to the SRA's 2018 consultation on possible changes to the requirements for solicitors' professional indemnity insurance, we raised an important point which is relevant again in this context. At that time, we said:¹³

The Law Society believes that competition should not be at the cost of quality, and has consistently argued that other providers of legal services should operate to the same high standards as solicitors. However, if the SRA's concern here is 'promoting competition in the provision of legal services', then they cannot overlook the possibility that informed consumers may want to choose between legal service providers that compete not just on price, but on a range of factors, including their level of regulation[.] The SRA is [advocating the removal of] the option for consumers who would like to access a wide range of legal services that are also well-regulated and highly-insured.

64. Given the various factors influencing consumer decision-making that have been identified in the SRA and LSCP research, it would not be unreasonable to extend this argument to the issue of PSYROC, as there are likely to be consumers who – if they were informed of the issues – would prefer the option of purchasing legal services with assurance that insurance protections will remain in place even if the firm providing those services has long since closed. Furthermore, it would be fair to assume that a majority of people seeking legal assistance would welcome the presence of such ongoing protections if they could be provided at little or no additional cost to the individual consumer.
65. Continuation of PSYROC through the SIF would allow consumers to choose to procure legal services from a provider offering accessible protection in relation to long-tail claims, for high-risk transactions which have the potential to have a huge impact on their life.
66. The SRA has not sufficiently considered the benefits that a continuation of PSYROC through the SIF would bring for consumer choice.
67. Finally, solicitors are prohibited from limiting their liability below the £2 or £3 million threshold of their firms' minimum indemnity limit. This sets solicitors apart from other legal professions and makes it impossible to introduce the level playing field that would be necessary for true competition across the sector.

¹¹ https://www.sra.org.uk/globalassets/documents/sra/research/year-one-evaluation-of-transparency-rules_research-report.pdf?version=4a91a4

¹² https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2021/07/lscp-choosing-2_47794890-1.png

¹³ <https://www.sra.org.uk/globalassets/documents/sra/consultations/pii-consultation-responses.pdf?version=48cbac>

Strong, diverse and effective profession

68. The SRA's analysis considers this only through the lens of diversity within the profession and does not consider the importance of protecting the reputation of the profession, maintaining public trust in the profession and preserving the value of using a professional solicitor with continued PSYROC protection as a regulatory arrangement.
69. This point is supported by Lord Justice Bingham in his judgment in the case of *Bolton v Law Society*, in which he emphasised the importance as a matter of public policy that:¹⁴

A profession's most valuable asset is its collective reputation and the confidence which that inspires.

70. Those instances where normal time limits are extended under the Limitation Act 1980 relate to the very circumstances where damage to public trust and confidence in the rule of law would be most severe if there were no redress for the consumers affected e.g. concealment of facts or fraud. The SRA has failed to consider the importance of SIF's continuation to the reputation and trust in the profession in this context.

Public interest

71. The SRA's analysis does not consider whether the public interest would be best served by the clarity and certainty offered through a continuation of the current arrangements. This empowers consumers to bring claims against closed firms with a reasonable expectation of recovering their losses if the claim succeeds and support access to justice by having a central body that can help process their claim, and where successful, pay out the claim. It is the high levels of protection associated with using a solicitor, such as the provision of PSYROC through the SIF, that give rise to trust in the profession and corresponding trust in the justice system.

Issues relating to the regulatory principles

Transparency

72. The SRA does not consider how the principle of transparency might best be served through a continuation of the current arrangements, which offer consumers the best certainty and clarity in terms of available protection and the ability to assert rights created by the Limitation Act.
73. Indeed, if clarity for consumers is the objective, then maintaining the SIF, and the consumer protections it offers, is the only feasible response.

¹⁴ *Bolton v The Law Society* [1993] EWCA Civ 32

Consistency

74. Regarding consistency, the SRA states:¹⁵

We are not consistent with the regulatory approach to consumer[s] taken by other regulators, particularly those in same market and serving same potential pool of consumers.

We have not identified any legal regulators with mandatory PSYROC.

75. The SRA's analysis suggests that consistency is undermined by a continuation of the SIF due to a misplaced focus on equivalence between the services offered by different legal professions, which it then construes as a reason for levelling down. This undermines consumer protection and fails to consider the question of consistency with other areas in which solicitors maintain higher levels of consumer protection (e.g. professional indemnity insurance).
76. Given that the SRA is the regulator for solicitors and not for other providers of legal services, it is appropriate that the consistency the SRA seeks to maintain should apply across the standards and protections applicable to the solicitor profession, rather than between the profession and other providers.
77. If it took this approach it would have a vision for the solicitor profession that recognises high standards offering high levels of public protection. It should then take a consistent approach in advancing this vision in the different aspects of the standards, protections and enforcement regime applicable to the profession. To take a different approach based on consistency with other types of provider would be misjudged, misinterpreting this regulatory principle, and undermining consumer choice and competition.
78. Were it thought appropriate for the SRA to seek to achieve consistency between different types of provider of legal services, the removal of necessary consumer protections is not the appropriate way of doing so. The consistency advocated by the SRA is a form of "negative consistency"; it removes a consumer protection to bring solicitors 'in line' with other professions whose consumers are less well protected but where the inherent risks may not be comparable.
79. As noted in our 2018 consultation response, the Law Society has previously argued that other providers of legal services should operate to the same high standards as solicitors. This would be an example of "positive consistency", levelling-up other legal professions to offer the same protections to their consumers.
80. While the SRA does not have the ability to compel such changes from other frontline legal regulators, if the SRA were to strip consumers of their existing protections, the regulator would be directly contradicting one of its most crucial responsibilities: To protect and promote the interests of consumers of legal services.

¹⁵ <https://www.sra.org.uk/globalassets/documents/sra/consultations/pii-consultation-responses.pdf?version=48cbac>

81. The Professional Standards Authorities' report on regulatory consistency makes a substantial point about differing regulatory standards between similar professions, noting:¹⁶

[B]ringing regulation 'into line' does not necessarily mean making things the same: it may mean providing the absent justification of the differences that exist[.] The important thing from this perspective is that differences have not arisen by accident, but that they are clearly justified.

82. Furthermore, the absence of a requirement for PSYROC for firms regulated by the Council for Licensed Conveyancers might be explained by the fact that such firms have only been purchasing insurance on the open market since 2016. Before that, any claims that might have required PSYROC would have been covered by those firms' old master policy.

83. Our view is that the better protections provided by solicitors, relative to other legal service providers, are justified by reference to multiple factors, including:

- the types, range, and value of work carried out by solicitors;
- the reasonable expectation of consumers that strong, enduring protections in relation to work provided by a solicitor will be in place;
- the SRA prohibition on solicitors limiting liability below their minimum indemnity limit;
- the wider range of reserved legal activities that solicitors are authorised to provide;
- the direct relationship between solicitors and consumers; and
- the ability of informed consumers to make purchasing decisions that factor in risk, based in part on the availability of better insurance protections.

84. Regulatory requirements on solicitors mean that they may be at greater risk from long-tail claims than other providers of legal services. Frank Maher observed that "the SRA has created an onerous liability regime for solicitors".¹⁷

- *restricting their ability to limit liability below the compulsory per claim insurance limit (£2/3m), when that limit may not be available to them anyway, for example because of aggregation (and SIF provides only £1m); [and]*
- *through published guidance – 'We would therefore not expect to see caps put on liability to clients as a matter of routine' – compare the guidance from the RICS, which promotes the use of liability caps among firms, saying '[indemnity limits and liability caps] are not really related, and there is no legal or regulatory reason why a liability cap needs to be anywhere near as high as the insurance policy limit'[.]*

85. The imposition of a regulatory prohibition on solicitors limiting their liability is exceptional, but it recognises the information asymmetry in legal services, and the profession accepts it because it recognises the public interest in the provision of strong consumer protections. However, we believe that it creates a correlative obligation on the regulator to seek to preserve the ongoing availability of arrangements for consumer redress, such as PII and PSYROC, as a regulatory requirement.

¹⁶ https://www.professionalstandards.org.uk/docs/default-source/publications/research-paper/does-consistency-between-regulators-matter.pdf?sfvrsn=fbcc4920_4

¹⁷ <https://www.legalrisk.co.uk/publications/risk-update-january-2022/>

86. Having made the profession uniquely vulnerable to such claims, and having established for consumers an expectation that a certain level of compensation will be available, there is a particular responsibility on the SRA to ensure that it is.
87. This a point which the SRA understands. In their application in 2012 the SRA explained the rationale for insurance including run-off and the protection provided by SIF in the following terms, "It is rightly pointed out that the 'claims made' basis of insurance marks out the scheme for solicitors for professional work done by solicitors". They said:¹⁸

*Professional indemnity policies are written on a "claims made" basis rather than a "losses occurring" basis. This means that responsibility for paying a claim lies with the insurer at the time the claim arises, or circumstances which may give rise to a claim are notified, rather than with the insurer that was on cover when the alleged negligent act took place. **This is a very important distinction between professional indemnity insurance and many forms of insurance. So long as there was a single compulsory scheme with one insurer, as with SIF, this distinction was relatively unimportant. Under the current market based scheme it is crucial** (emphasis added).*

Efficiency

88. The SRA's analysis focuses on the challenges of administering a scheme relating to long-tail claims. This does not, however, acknowledge that it is *not* the SIF that drives claims but the statutory protections in the Limitation Act and that consumer claims are a result of their legal rights under the Act rather than a product of the SIF. The SRA does not consider the fact that all protection costs money, including the protection of long-tail liability. Nor has the SRA sufficiently examined potential ways to reduce the costs involved.
89. Indeed, provision of PSYROC through the SIF must be more efficient than provision on the open market in terms of costs, for at least two reasons. Firstly, it removes the need for payments to brokers, and secondly it avoids the frictional costs of insurance premium tax, which – as the SRA's expert report notes – would increase the costs of any commercial premiums by a further 12%.¹⁹
90. Finally, the SRA's analysis fails to acknowledge that the provision of consumer protection and access to justice is more efficiently provided through the administration of a central fund like the SIF than it would be if claimants were required to first identify and locate the defendant, and then navigate their way to litigate claims through the court system.

Option 2: Alternative ways to deliver PSYROC as a regulatory arrangement

91. The SRA's analysis does not give satisfactory consideration to how its regulatory objectives could be better achieved, and how the regulatory principles could be better be supported, through alternative approaches to delivering PSYROC as a regulatory arrangement. As the regulator, it is responsible for indemnification arrangements

¹⁸ [https://legalservicesboard.org.uk/what_we_do/regulation/pdf/Application_to_LSB_-_Client_protection_changes_April_2013_\(Draft\).pdf](https://legalservicesboard.org.uk/what_we_do/regulation/pdf/Application_to_LSB_-_Client_protection_changes_April_2013_(Draft).pdf)

¹⁹ <https://www.sra.org.uk/globalassets/documents/sra/consultations/annex-4---psyroc--analysis-of-options.pdf?version=4ad49f>

relating to the profession, and those arrangements are defined as arrangements for the purpose of ensuring the indemnification of those who are or were regulated persons against losses arising from claims in relation to civil liability incurred by them or their employees.²⁰

92. The SRA identifies but rejects a range of alternative ways to provide PSYROC as a regulatory arrangement. The Society agrees with its analysis of the extent to which most of the alternatives identified would not be viable (e.g. insurance through the open market; a master policy; alternative models of operating an indemnity fund; or more targeted on-going PSYROC).
93. However, the Society does not believe that the SRA has adequately considered the statutory regulatory objective to support and promote the regulatory objectives and regulatory principles through adjustments to the current arrangements as identified by its expert report.
94. It has not adequately considered and costed potential ways through which the costs of providing PSYROC through a form of SIF could be reduced, and consequently, how the regulatory principles of proportionality, affordability and efficiency could be better served in this way. The SRA has not adequately considered the following approaches for lowering the costs of the SIF from current levels, by reducing:
 - administrative claims handling costs; or
 - the capital reserving requirements, which may currently be higher than necessary because the Fund is facing closure with no future premiums.
95. Moreover, it has not appropriately considered how the regulatory objectives and regulatory principles would be better supported through a continuation of the SIF supported by a proportionate levy on the profession.

Application of the regulatory objectives and principles to the option of continuing to provide PSYROC, supported by a levy from the profession

96. The SRA has not systematically or consistently applied its decision-framework to the option of continuing to deliver PSYROC as a regulatory arrangement through a levy from the profession. Below sets out an outline of what the analysis would have shown, had it done so.

Proportionality

97. As discussed above, the assessment of proportionality involves a balance between the extent to which the provision of PSYROC through an alteration to the regulatory arrangements would advance the regulatory objectives and meet the regulatory principles (particularly the regulatory objective related to the protection and promotion of consumers' interests) and the cost of doing so.
98. In applying its decision-making framework to this option, the SRA should assess the extent of the need for consumer protection. In doing so, and in addition to considering the number and value of claims, it should take into account the relevant considerations we have set out at para 35 above.

²⁰ Section 21 Legal Services Act 2007

99. The advantages for access to justice, the public interest, competition and a strong profession that we have outlined above in relation to continuing the existing regulatory arrangements all apply equally to the alternative regulatory arrangement of continuing PSYROC supported through a levy.
100. In considering the cost of delivering this protection on a like-for-like basis, the SRA's experts suggest that the cost of a levy would likely be £16 per solicitor or £240 per firm. For reasons we have set out below, the profession's preferred option is that the levy should apply to firms.
101. Table 1 looks at the value of a £240 levy relative to the total yearly turnover of firms, and breaks this down by size (as determined by number of partners). It demonstrates that such a levy would represent a mere fraction of one per cent of the turnover of a typical firm – around 0.044% or 4.4p for every £100 of turnover. The effect could be slightly higher for sole practitioners – around 0.175%, or 17.5p for every £100 – but that is still a trivial cost in relation to other business expenses. For larger firms with 11-25 partners, £240 would represent just 0.005%, or 0.5p for every £100. The Law Society PII Survey 2017/18 from which these figures are drawn,²¹ did not include larger firms (with more than 25 partners), but the effects would be even smaller for firms with larger turnovers.

Table 1. £240 as a percentage of turnover of solicitors' firms

	Mean turnover of solicitors' firms in 2017-18 (£)	£240 as a percentage of turnover (%)
Firm Size		
Sole practitioners	137,380.95	0.175
2-4 partners	565,900.00	0.042
5-10 partners	2,275,885.71	0.011
11-25 partners	4,966,266.67	0.005
<i>All firms</i>	<i>546,265.31</i>	<i>0.044</i>

102. These figures clearly represent a proportionate cost per firm of protecting consumer and public interest, advancing access to justice, and promoting competition and a strong profession.
103. Furthermore, the cost burden of providing these protections is to be borne by the profession not the consumer. Therefore, the profession's willingness to pay a levy (given the strong consumer protections it will help deliver) should be taken into account in assessing whether the cost is proportionate.
104. The SRA suggests that there is division within the solicitor profession about willingness to support a levy, but no evidence is provided in the consultation to demonstrate that firms would oppose paying a proportionate levy in recognition of a shared interest across the profession in ensuring consumer protection and upholding the reputation of the profession. Our engagement with the wider profession suggests that it considers that a levy of £240 per firm is a proportionate cost to advance the regulatory objectives in the ways we have described.

²¹ <https://prdsitecore93.azureedge.net/-/media/files/topics/professional-indemnity-insurance/pii-surveys/pii-renewal-2017-18-indemnity-year-full-report-v2.pdf?rev=48530b77c5444c379ae28fe13c9a36ce&hash=9B4A0DC9D7376728E06276F7E83B34A6>

105. In order for such a scheme to work, the levy would have to be made compulsory. The continuation of the SIF depends on an injection of a certain amount of funding. Our extensive engagement with the profession suggests that the costs are acceptable to all sections, so long as everyone is contributing to keeping costs down. If an uncertain, varying and/or small segment of the profession paid, the cost of the levy for each firm would have to be increased, undermining the extent to which it would be proportionate and spread fairly across the profession.
106. In this context, it is clear that this is an insignificant and proportionate cost to:
- secure consumer protection and promote the regulatory objectives including the improvement of access to justice, protecting and promoting the public interest, and encouraging an independent, strong, diverse and effective profession; and
 - ensure compliance with the regulatory principles that require regulatory activities to be transparent, accountable, proportionate and consistent.
107. A £16 per solicitor levy would not be proportionate, because it would impose substantially greater costs on the largest firms, and consumers purchasing legal services from them are far less likely to have need of PSYROC. This might be regarded by some as a cross subsidy of the sort that the SRA has raised concerns about. It would also make demands on parts of the profession who provide services to consumers who would not be eligible to claim from the SIF, such as in-house lawyers and freelance solicitors. On this basis, we would oppose the imposition of a per solicitor levy. In contrast, a £240 levy per firm would achieve proportionality by placing the heaviest burden on those most likely to engage in work giving rise to a long-tail claim.

Access to Justice

108. The SRA expresses a concern that “at least some of any additional cost is likely to eventually be passed on to consumers (potentially more quickly by less well capitalised firms)”, implying that this would undermine the regulatory objective related to access to justice.²² However, it provides no evidence to support this assertion, and we are confident that a levy of around £240 per firm would have little to no effect on the prices consumers pay for solicitors’ services.
109. The imposition of new regulations, even those that entail additional costs to the regulated individual or entity, does not necessarily translate into additional costs for consumers. Minor additional costs to service providers are just one element to be taken into consideration when firms are setting their consumer prices.
110. The SRA will be aware that when it brings in new regulations, even those with cost implications, it does not necessarily result in an impact on the price of legal services. For instance, the Year One Evaluation of the SRA’s Transparency Rules found:²³

There is no clear evidence suggesting law firms operating in practice areas covered by the price and service information elements of the Rules have

²² <https://www.sra.org.uk/globalassets/documents/sra/consultations/annex-3---framework-table.pdf?version=4ad64a>

²³ https://www.sra.org.uk/globalassets/documents/sra/research/year-one-evaluation-of-transparency-rules_research-report.pdf?version=4a91a4

increased or decreased their prices compared with law firms offering services not covered by the Rules.

111. An annual levy of £240 per firm would not have any substantive impact on the cost of legal services for consumers, if any at all. To help illustrate this point, the following example considers the hypothetical impact of the levy on consumer pricing for firms of different sizes; it is not included as an example of how solicitors would actually adjust consumer pricing, but it is a reasonable theoretical model.²⁴

112. In table 2, the prices of a sample selection of legal services have been adjusted to show what would happen if firms of different sizes passed on the full cost of a £240 levy to their clients. This is accomplished by increasing the mean prices of an array of common legal services, as identified by the LSB by the percentages set out in table 1, a measure which should – if they applied similar price increases to all of their services – have the effect of negating the cost of the £240 charge for the firms.

Table 2. Increased prices of sample legal services if the full cost of a £240 levy were passed on to consumers²⁵

	Mean price of legal services in 2017 (£)	Sole practitioners: increased price (£)	2-4 partners: increased price (£)	5-10 partners: increased price (£)	11-25 partners: increased price (£)	All firms: increased price (£)	Mean price increase (£)
Conveyancing							
A sale of a freehold property	650.00	651.14	650.27	650.07	650.03	650.29	0.29
A sale of a leasehold property	738.00	739.29	738.31	738.08	738.04	738.32	0.32
A purchase of a freehold property	705.00	706.23	705.30	705.08	705.04	705.31	0.31
A purchase of a leasehold property	803.00	804.41	803.34	803.09	803.04	803.35	0.35
A sale and purchase of freehold properties	1,278.00	1,280.24	1,278.54	1,278.14	1,278.06	1,278.56	0.56
Family							
An uncontested divorce requiring a full legal service	721.00	722.26	721.30	721.08	721.04	721.32	0.32
An uncontested divorce – responding to a petition for divorce	459.00	459.80	459.19	459.05	459.02	459.20	0.20
An uncontested divorce requiring arrangements for dependent children	1,045.00	1,046.83	1,045.44	1,045.11	1,045.05	1,045.46	0.46
A more complex divorce requiring mediation and advisory services	1,803.00	1,806.16	1,803.76	1,803.20	1,803.09	1,803.79	0.79

²⁴ The figures are drawn from two, roughly contemporaneous sources. One is the Law Society’s PII Survey 2017-18, and the other is the Legal Services Board’s research into the pricing of a selection of common legal services, which included a number of services with serious long-tail risks, such as conveyancing work, complex divorces involving disputes over assets, and complex wills.

²⁵ The figures in table 2 are calculated by increasing the values in the “Mean price of legal services in 2017” column by the corresponding values in the “£240 as a percentage of turnover” column in table 1.

A more complex divorce involving disagreement over assets	2,911.00	2,916.09	2,912.22	2,911.32	2,911.15	2,912.28	1.28
Wills, trusts and probate							
An individual standard will	195.00	195.34	195.08	195.02	195.01	195.09	0.09
A complex will	237.00	237.41	237.10	237.03	237.01	237.10	0.10
A lasting power of attorney	363.00	363.64	363.15	363.04	363.02	363.16	0.16
Assistance for obtaining grant of probate	891.00	892.56	891.37	891.10	891.04	891.39	0.39
Estate administration	2,028.00	2,031.55	2,028.85	2,028.22	2,028.10	2,028.89	0.89

113. The end column demonstrates the mean price increases for all firms that would offset the cost of a £240 levy. Almost all of these are in the mere tens of pence. While we do not accept that the levy is likely to have this effect, our analysis suggests that, even if the cost of a levy were passed on in full, the impact would be so small that consumers are highly unlikely to consider or even notice it.

114. Furthermore, even if the largest price increase in table 2 is taken as an example, it is so small that it would be highly unlikely to dissuade anyone from purchasing the legal service in question. It is highly improbable in the extreme that someone who would be willing to pay a sole practitioner £2,028 for estate administration would decide against purchasing the service if the cost rose to £2,031.55, particularly in the knowledge and with the assurance that they are also purchasing protection against any long-tail liability that may arise.

115. Given that the solicitor profession has around 156,000 practising members, who delivered services worth £26.7 billion in England and Wales in the 2018-19 financial year, (including on £9.4 billion from services applicable to individuals),²⁶ the evidence clearly demonstrates that a levy of £240 would have no negative impact on the cost of legal services or access to justice.

116. Further, as explained above, PSYROC promotes access to justice by allowing consumers to assert their rights under the Limitation Act.

Competition

117. The SRA expresses misgivings that:²⁷

Cross subsidies that could potentially have a negative impact on competition would be created by any uniform charging structure where solicitors and firms who are unlikely to benefit from the additional protection will contribute in the same way as those that do.

118. No evidence has been provided to demonstrate that this kind of low-level “cross-subsidisation” poses any serious threat to competition. The SRA Compensation Fund is funded by a similar flat contribution from all recognised

²⁶ This includes categories of legal work such as children; consumer; criminal discrimination civil liberties human rights; family matrimonial; immigration; mental health; probate estate administration; property residential; social welfare; wills trusts tax planning; bankruptcy insolvency; debt collection; employment; landlord tenant; and personal injury.

²⁷ <https://www.sra.org.uk/globalassets/documents/sra/consultations/pii-consultation-responses.pdf?version=48cbac>

bodies, authorised bodies, and individual solicitors (and even draws in Registered European Lawyers and Registered Foreign Lawyers).

119. The concern is stated rather more starkly in the internal position paper presented to the SRA Board in advance of the consultation:²⁸

If funding was to be levied on a universal basis, there would be significant cross-subsidisation particularly from large firms to small firms and from firms that do not undertake conveyancing, or will, trusts and probate work for individual consumers to those that do. While firms may choose to pay for a scheme which benefits other members of the profession – or which enhances in their view the reputation of the profession – to mandate this can be seen as disproportionate, anti-competitive and not targeted. Alternatively, levying on a risk basis could see a significant cost burden for small firms working in certain practice areas, or those reaching retirement.

120. Contributions to the Compensation Fund are a mandatory levy on the entire profession to protect consumers from a dishonest minority. Levying funds in the same way to protect the small minority of consumers whose claims are made in the post six year run-off period should not “be seen as disproportionate, anti-competitive and not targeted” but rather as consistent with the SRA’s existing practices.
121. The firm contributions currently made to the Compensation Fund are far larger than the contributions that the SRA’s experts suggest would be needed to maintain the SIF. Yet the Compensation Fund contributions have been levied for years without any obvious signs of a negative impact on competition.

Transparency

122. In relation to transparency for consumers, the SRA asserts that:²⁹

SIFL has said that for it to carry on an incremental or transitional basis without a new funding stream would require an actuarial affordability review every 1 – 2 years at a significant cost.

Transparency favours any transitional arrangements having a clear and understandable cut off. This is as opposed to developing on the basis that it should continue until the residual funds are exhausted.

123. We agree that “transparency will be best served by providing clarity over the cover that will be available into the future, in steady state, at the earliest opportunity” and that “this favours no further incremental extensions to PSYROC”. However, transparency would best be ensured by affirming that the SIF will remain in place as an ongoing arrangement, rather than as a ‘transitional’ measure, funded by an annual levy on solicitor firms.
124. The introduction of a levy would also address the problems raised by the SRA about operating the SIF on an incremental or transitional basis, as it would provide a steady source of funding that would allow the SIF to continue to operate on an

²⁸ <https://www.sra.org.uk/globalassets/documents/sra/board-meetings/2021/sra-board-item---sif.pdf?version=4ae324>

²⁹ <https://www.sra.org.uk/globalassets/documents/sra/consultations/pii-consultation-responses.pdf?version=48cbac>

ongoing basis. Moreover, it would remove the need for rolling actuarial reviews, as new the funding model would alter the underlying costs.

Consistent

125. As discussed above, we consider that continuation of PSYROC as a regulatory arrangement, supported by a levy, would be consistent with other high-level protections on which consumers can rely when procuring services from the solicitor profession in recognition of the high levels of potential risk, the asymmetry of the market, and the assumption consumers make that they will be so protected.

Targeted

126. The SRA's analysis suggests that a targeted approach to a levy would see it being applied only to those firms practising in areas most likely to give rise to long-tail claims, but then argues that the administration costs of such a scheme would be too complex, burdensome and disproportionate. Even if a targeted approach were practical (which it is not), the Society disagrees that it would be necessary when there is a shared commitment across the profession to maintaining consumer protection and the reputation of the profession. It considers that a consistent, flat levy per firm is the most targeted, proportionate and efficient approach consistent with the regulatory principles.
127. A per solicitor charge would have a disproportionate effect on large firms, because they employ more solicitors, and the SRA's expert analysis suggests that their clients are less likely than those of smaller firms to make claims from the SIF. Moreover, smaller firms typically have smaller turnover than larger firms, which means a flat £240 levy will represent a proportionate contribution from smaller firms relative to turnover.
128. PSYROC is an insurance product which is only available to SRA-regulated entities (i.e. traditional sole practices, partnerships and Alternative Business Structures) after their mandatory run-off period has ended. But a levy on all individual solicitors would also include in-house solicitors, freelance solicitors and other members of the profession who do not work for clients who are potentially eligible to claim from the SIF, and it could be regarded as poorly targeted (disproportionate and anticompetitive) to impose a levy for PSYROC upon them.
129. Therefore if, as we recommend, the SRA were to apply a flat levy of £240 per firm to support the continuation of PSYROC through the SIF, this would ensure a proportionate and targeted approach to regulation without the need for a complex system of administration.

Option 3: Termination of Regulatory Arrangements

130. The SRA's analysis has not adequately demonstrated that a termination of the SIF, without any other regulatory arrangement for the provision of PSYROC, would be the most appropriate option for the purpose of meeting the regulatory objectives and having regard to the regulatory principles. Yet in our view, the SRA cannot properly assess the proportionality of a proposal without adequately assessing the alternatives to that proposal and their implications for consumer protection and the regulatory objectives more widely.

131. Indeed the SRA notes that, with regard to the current operations of the SIF, they “do not have data on the number of cases where the solicitor is not able to be found, is deceased or cannot meet the liability”.³⁰ This is a significant admission, because it means it is not possible for the regulator to make sound predictions about the numbers of former clients or their beneficiaries who could go without redress in the event of the closure of the SIF, even if they have a strong claim.
132. Given the extent of consumer *detriment* that would be caused by withdrawing the SIF protections without a widely available alternative source of PSYROC, the SRA as a public interest regulator tasked with protecting consumer interest is required to demonstrate a correspondingly high *benefit* to other regulatory objectives to justify their removal. It has failed to do so.
133. For example, despite raising concerns about an increase in the cost of legal services that it argues would result from a continuation of the SIF supported by a profession-wide levy, the SRA does not demonstrate how any of its suggested alternatives would lead to a *reduction* of the cost of legal services.
134. The SRA sets out its assessment of alternative mechanisms through which consumers could be protected and access to justice could be secured in the absence of PSYROC, including making a claim through the courts. However, most of these alternatives are unrealistic, meaning that they would do nothing to advance the regulatory objectives and meet the regulatory principles. To require litigation in the courts would undermine both, as it would likely lead to higher costs (resulting in a barrier to access to justice) and poorer outcomes for consumers seeking redress for long-tail claims.
135. The SRA has not systematically or consistently applied its decision-framework to the option of terminating the delivery of PSYROC as a regulatory arrangement. We set out an outline of what the analysis would have shown, had it done so.

Public and consumers’ assumption that protections are in place

136. The SRA, a public interest regulator charged with protecting and promoting consumer interests, is proposing to strip consumers of a protection retrospectively. There is an inherent and fundamental unfairness in the withdrawal of protection from a group of consumers who purchased services under a reasonably held belief of comprehensive protection, without having been informed that such protections could at some stage be removed.
137. When consumers specifically seek the specialist services from a regulated solicitor, they may do so on the reasonable assumption that additional safeguards exist in the form of regulatory oversight, long term indemnification (in case anything goes wrong), and a compensation fund (to protect against uninsurable risks).
138. Such consumers may further expect that, for a heavily regulated profession, such protections would remain available. To undermine such reasonable expectations would also undermine public confidence in the profession, with potential damaging consequences for public confidence in the broader justice system.

³⁰ <https://www.sra.org.uk/globalassets/documents/sra/consultations/annex-3---framework-table.pdf?version=4ad64a>

139. The SRA recognises these basic assumptions, having published a report which notes consumers' "spontaneous expectations that all providers of legal services would be regulated in some way, providing consumers with a degree of protection".³¹
140. The public expectation that appropriate safeguards are in place is implicit in research conducted for the SRA, which asked consumers for their thoughts about regulation in the legal sector:³²

On consideration, there was a general assumption and expectation that the legal services industry would nevertheless be regulated in some way. Participants thought that a regulatory body would be authoritative and irrefutable, and that it would regulate all providers of legal services.

Competition

141. Not only would the SRA's preferred option remove from consumers the ability to access a provider who offers protection in relation to long-tail liability; a removal of the protection given by the SIF could also create barriers to entry and innovation by discouraging some members of the profession from providing services at greater risk of long-tail liability or deterring some solicitors from setting up their own firms, due to the risk of uninsurable long-tail liability after their mandatory run-off cover has expired.
142. Any such chilling effect could limit the career choices for solicitors entering or hoping to advance in the profession. It would also restrict market competition, thus in turn limiting the choices available to consumers.
143. The ruling in *Merrett v Babb* meant that a professional (which in that case was a surveyor) could be sued personally for work alleged to be negligently carried out for his or her employer if the employer's PII was no longer available, or the employer had become insolvent.³³
144. The implications for employed solicitors or consultants in firms where professional indemnity insurance or run off cover were no longer available after the firm has closed or become insolvent would be an obvious cause for concern after the closure of SIF. Such concerns could have negative implications for both employees and employers, affecting competition in the jobs market for solicitors. These impacts may be felt more keenly by those from certain backgrounds than others and may have indirectly discriminatory impacts.

Access to Justice

145. In large parts of England and Wales, the unwillingness or inability of smaller firms to provide a full range of legal services because of concerns over long-tail liabilities, could have serious implications for those consumers who would prefer to use a local solicitor. Many such areas are serviced by sole practitioners or 2-partner

³¹ <https://www.sra.org.uk/globalassets/documents/consumer-reports/consumer-research-2010-purchase-attitudes-final.pdf?version=49668a>

³² <https://www.sra.org.uk/globalassets/documents/consumer-reports/consumer-research-2010-purchase-attitudes-final.pdf?version=49668a>

³³ *Merrett v Babb* [2001] EWCA Civ 214

firms, with aging principals, who already face difficulties planning succession, which the removal of the SIF will only worsen.

146. In some places, such as the Welsh valley and rural areas, inadequate public transport and telecommunications infrastructure could make it difficult for some would-be consumers to access certain types of riskier legal services at all, making this more than a question of competition, but of access to justice as well. Especially in rural areas, elderly and disabled consumers are likely to feel the worst effects of any such developments.

Consumer protection and access to justice implications of pursuing litigation through the courts

147. In the absence of the regulatory provision of PSYROC, the SRA suggests only partial remedies, including consumer litigation through the courts using claims management companies. In this regard, the SRA concedes:³⁴

*Without PSYROC the main remaining option for consumers would be to litigate through the courts. **This would provide redress for some but is a more costly and less accessible process with less certainty of result** (emphasis added).*

148. We would agree with this assessment and in *Appendix B* we have set out three scenarios comparing the likely experiences of consumers seeking redress from a firm that is still in operation, from a closed firm under the current scheme where PSYROC is provided through the SIF, and from a closed firm in a future where there is no SIF and no regulatory provision for PSYROC.

149. A firm's legal structure may pose significant barriers to a consumer making a successful claim. One of the benefits of PSYROC provision through the SIF is that valid claims are settled regardless of the closed firm's business structure. This means that there are equitable outcomes for clients of traditional solicitor firms (sole practices and partnerships) and alternative business structures alike.

150. The regulator's apparent acceptance that the removal of SIF protections will lead to a concomitant increase in the proportion of consumers with valid long-tail claims who will be legally barred from pursuing the principals of incorporated law firms in their personal capacity, and therefore be unlikely to gain compensation for their legitimate losses, is not in keeping with their core role as a public interest regulator. The SRA notes the likely effect of changes in the way that firms are structured:

There has been a shift towards business models that limit the personal liability of its directors. This will likely reduce the number of recoverable claims over time. For example, the number of incorporated companies has more than doubled in the past decade now make up over half of all regulated legal practitioners, compared to a little over one in five (22%) in 2011.

151. Solicitors will indeed have to consider how to manage their liability risk if the SIF does not exist and insurance on the open market is not available, and the removal of the SIF has the potential to increase the trend of solicitors operating

³⁴ <https://www.sra.org.uk/globalassets/documents/sra/consultations/annex-3---framework-table.pdf?version=4ad64a>

through limited liability companies. But this may result in perverse outcomes for consumer protection and undermine the strength and reputation of the profession.

152. The complexity of pursuing a claim through the courts in itself creates a hurdle to be overcome in accessing justice and means that consumers who have been harmed are likely to incur legal costs to guide them through the process, and in the absence of the SIF there will be potentially unrecoverable costs in locating tortfeasors.
153. The SRA acknowledges the existence of claims management companies, or other legal “entrepreneurs”, that could step into the area of pursuing long-tail claims against the former principals or employees of closed solicitor practices. However, we consider that this too is likely to result in worse outcomes for consumers and undermine access to justice for two reasons:
154. First, it is not possible for a claimant to recover a success fee or after the event premium from an unsuccessful defendant (or their insurer). Therefore, the success fee and premium would have to be funded out of any damages recovered. This would reduce the amount of compensation secured by the consumer who experienced the harm.
155. Second, under the current arrangements, there is little or no incentive for former clients or their beneficiaries to pursue marginal, speculative or complex claims. But if claims management companies were to operate in this space, they could act speculatively. Such a development could adversely affect consumers, for example by deterring solicitors from providing some services and by increasing the cost of commercial PSYROC alternatives and in turn the cost of legal services.

Potential impact on the Compensation Fund

156. The SRA recognises that a removal of the SIF, without alternatives, could exacerbate the problem of solicitors who feel compelled to continue working past the point at which they should have ceased to practice:

There may be a risk of delayed retirement if solicitors are concerned about personal liability on long-tail claims. This may lead to increased risk of disorderly closure and resultant poor outcomes for consumers and SRA administrative costs (funded by the profession). We are aware that this is a concern over the cost of six year run-off cover.

157. In the event that there is an increase in disorderly closures as a consequence of the removal of the SIF, it could lead to an increased demand on the SRA Compensation Fund. This in turn could lead to an increase in the contributions that individual solicitors and firms will be required to pay.
158. If the SRA is concerned that the cost of a levy to fund the ongoing operation of the SIF might be passed on to consumers, then they should also be concerned about the prospect of additional disorderly closures leading to an increase in the demands on the Compensation Fund and the cost of contributions to it.
159. If a relatively stable and predictable cost for ongoing provision of PSYROC through the SIF can avoid incurring an unpredictable cost of additional demands on

the Compensation Fund, then it would certainly be preferable for consumers who would otherwise be negatively affected, and it is likely to be more cost-effective.

Consumer Protection and Access to Justice implications of Successor Practices

160. Considering the prospect of the removal of PSYROC through the SIF, the SRA speculates that firms may be supported to find successor practices when they close. Even under the current arrangements, firms are cautious about becoming successor practices. Insurance brokers and underwriters have indicated that mergers almost always increase the cost of professional indemnity insurance for the successor practice. Any claims relating to the work of the predecessor practice could further complicate insurance renewals to such an extent that a successor practice is unable to secure a renewal quote, potentially forcing it to close.

161. Such risks are a real and sufficient disincentive for many firms today. According to brokers, most ostensible “successor practices” already demand that “merging” practices go into run-off to avoid any drag on the ongoing cost of professional indemnity insurance.

162. For these reasons, successor practices are not a realistic part of the solution to the problems posed by the removal of the SIF and offer far weaker protection of access to justice and consumer protection than a continuation of PSYROC as a regulatory arrangement. To the contrary, closing the SIF could aggravate the already considerable problems facing firms that are seeking orderly closure through a merger, thereby leaving more consumers without protection or access to justice.

Consumer Protection, Access to Justice and Competition Implications of information remedies

163. While the Society supports efforts to improve consumer decision-making in general, information remedies are not an adequate alternative to the real monetary protections provided by PSYROC.

164. This point is addressed by the Legal Services Consumer Panel (LSCP) in their paper on "The development of information remedies in the legal services". In that paper, the LSCP sets out "Criteria for success", which included nine elements that ought to be taken into account when considering whether or not information remedies are an appropriate response to a given problem.³⁵ These assume that such measures will be implemented by regulators, and some of the criteria would require the exercise of regulatory powers that are not available to the Law Society, as a representative body, such as “Prescriptive disclosure” or “Compliance monitoring”. Notably, the first criterion for success is an “Appropriateness test”, with the LSCP warning:

Regulators should consider whether information remedies are appropriate. This should take into consideration the level of risk and the ability of consumers to adequately comprehend the significance of the information.

165. PSYROC is an issue uniquely ill-suited to solutions involving the provision of further recondite information, and anything other than the most perfunctory efforts in

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https://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/20170322_Information_Remedies.pdf

this regard are likely to fall foul of the “Information overload” criteria identified by the LSCP.

166. The Limitation Act gives consumers the right to compensation for long-tail claims. In the absence of PSYROC as a regulatory arrangement (or through the commercial market), consumers will be largely unable to enforce this right given the real and significant barriers to pursuing such compensation through the courts. Information remedies might inform them of this risk but will do nothing to secure access to justice for them or to compensate the harm they have experienced.
167. Given that the removal of PSYROC as a regulatory arrangement effectively removes from the market the option to choose providers offering high levels of protection, information remedies will not facilitate the making of an informed choice by consumers to protect themselves.
168. One possible mitigation that the SRA suggests in its consultation document, is that clients could be advised to purchase their own insurance, which would provide ongoing cover for high-value services at risk of long-tail claims. But this is not an additional cost that many clients would willingly take on at the time they purchase such services (especially if there is no likelihood of the firm’s imminent cessation), and it would be impractical and unreasonable to expect that as part of an orderly closure firms would track down all clients who had purchases such services and notify them that they should consider purchasing their own long-term insurance policies.
169. There is a further problem, which is that the absence of need for such insurance products means that none have been developed, and it is unclear whether or not insurers would be willing to offer them at a price that would make them a realistic alternative to the ongoing provision of PSYROC. In any case, it would be a clear transfer of risk from the profession to consumers, and one that would entail costs to the consumer far in excess of a fraction of a per firm levy. If the cost implications for consumers of a levy on firms to fund the continuation of the SIF is unacceptable to the SRA, then this proposal cannot be taken seriously.

Transfer of funds

170. The SRA suggests that if the SIF is closed, it could transfer the residual SIF funds to the Society, but it notes:³⁶

Given the terms of the Legal Services Act 2007 and the Legal Services Board[']s Internal Governance Rules, TLS cannot introduce a “regulatory arrangement” that would provide like for like indemnity to that currently provided by SIF. However, we believe that notwithstanding that restriction, there is room for discussion about the options that might be available to TLS to support its members and to help provide the ‘sleep easy’ factor for retired solicitors.

171. We do not believe that this is a viable option without any explanation of how it could be achieved within the current legislative framework and rules that that require independence of and separation between the exercise of representative and regulatory functions.

³⁶ <https://www.sra.org.uk/globalassets/documents/sra/consultations/sif---consultation.pdf?version=4ad40a>

172. Beyond the mitigations previously discussed, other possible applications for the residual funds are not addressed in the SRA's consultation document. However, the internal position paper submitted to the SRA Board for consideration in October 2021 suggests that options 'might include' the possibility of the Law Society establishing:³⁷
- a hardship fund for solicitors facing personal liability; or
 - a discretionary fund for consumers.
173. Apart from legislative and regulatory constraints on the ability of the Law Society to make alternative indemnification arrangements as a representative body, the Society does not consider either of these options to be adequate. They would not provide like-for-like consumer protection or ensure access to justice and would not deliver on the regulatory objectives.
174. Indeed, maintaining the SIF would serve both purposes, and – supported by an annual levy from firms – it would be a long-term solution unlike a hardship fund or discretionary fund that would not be directly accessible for consumers and would have to close when the residual funds are depleted.
175. In the absence of any regulatory arrangement for the provision of PSYROC, the SRA does not offer any realistic proposal for use of the residual SIF funds to provide an alternative form of consumer protection and access to justice.
176. Before concluding with a recommendation to its Board that a consultation should be held on potential options "weighted towards" not providing for on-going PSYROC through the SIF or through another mechanism, the SRA position paper goes on to state:³⁸
- We remain on hand to assist the TLS consider its options. If it wishes to develop a discretionary fund, then we would be open to discussing how we might assist. However, in light of our charitable purpose and regulatory objectives this scheme would have to be focussed on consumer protection and, we would suggest, be accessed by consumers seeking a grant of compensation where it has not been possible to litigate against the responsible solicitor or where litigation although successful has failed to secure redress.*
177. Again, this position ignores the legal framework that governs the exercise of (and requires separation between) regulatory and representative functions. It also ignores that a 'discretionary' fund is not an adequate, suitable or comparable alternative to the form or extent of consumer protection provided by the SIF.
178. Finally, the suggestion that the Fund could be returned to the Law Society ignores the SRA's responsibility under its Indemnity Rules to first determine whether it is no longer necessary or appropriate for the Fund (or any part of it) to continue to be held and administered or whether it is reasonably practicable for the Fund to be applied for the purpose of providing indemnity in another way.

³⁷ <https://www.sra.org.uk/globalassets/documents/sra/board-meetings/2021/sra-board-item---sif.pdf?version=4ae324>

³⁸ <https://www.sra.org.uk/globalassets/documents/sra/board-meetings/2021/sra-board-item---sif.pdf?version=4ae324>

Summary

179. Closing the SIF, and removing PSYROC as a regulatory requirement, would not advance the SRA's regulatory objectives or principles, but it would entail numerous, easily foreseeable difficulties for consumers, undermining the regulatory objectives. By contrast, retaining the SIF has considerable benefits for the regulatory objectives, and would best serve the public interest. Given the willingness of the profession to fund the SIF on an ongoing basis, through a compulsory levy, it would seem perverse to proceed with the closure.
180. The profession firmly believes that the preferred option for a public interest regulator with proper regard to the regulatory objectives and principles must be for the SIF to continue with proportionate funding from the profession based on a levy contribution made by firms, coupled with longer-term efforts to reduce the cost of operating the Fund.
181. This option would meet the regulatory objectives by securing continued consumer protection, protecting and promoting the wider public interest, supporting and improving access to justice, promoting consumer choice, maintaining an independent, strong, diverse and effective profession, and ensuring that the reputation of the profession is protected. It also supports the regulatory principles in relation to transparency (to consumers and to the profession), targeting, accountability, proportionality and consistency.

Responses to other consultation questions

Q3: Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Q4: Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

182. We agree that changing the MTCs to require participating insurers to provide PSYROC “would likely have a significant negative impact on the availability and cost of insurance for many more firms than it would benefit, and subsequently on consumers in terms of availability and cost of services”.
183. In our engagement with brokers and underwriters, this suggestion was viewed with significant concern. It is not a realistic or practical solution to the problem of PSYROC.
184. As the consultation document notes, the likely consequences of such a reform would be hugely damaging by driving participating insurers from the market and making it increasingly difficult and expensive for firms to purchase professional indemnity insurance. This in turn could precipitate closures of firms, with cascading negative consequences for consumers, the Compensation Fund, the market for legal services, public confidence in the profession, and the broader public interest.

Q5: Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

185. The SRA's apparent lack of concern about the restricted availability of alternative commercial options for PSYROC is both worrying and disappointing. As their analysis states:³⁹

Law firms and solicitors may seek to get PSYROC on the open market. We have heard from insurers and brokers that there may be some firms and lawyers that would be able to get this insurance. This will not be universal and is more likely to be available for those with an existing relationship with an insurer as they are still open or are with the six-year run off period and have an acceptable risk profile.

No insurer has told us that they have yet developed policies for PSYROC and we do not know likely conditions or cost.

186. The Society's separate consultation with the insurance industry confirms that it is precisely the absence of widely accessible, reasonably priced, commercially available supplementary run-off cover that demonstrates the need for a continuation of the SIF (supported by a levy from firms).

187. Howden, one of the largest and most experienced brokers of solicitors' professional indemnity insurance, makes this observation in their consultation response, which is a fair summary of the views from the insurance industry on this issue:⁴⁰

While some insurers might indicate that they would be prepared to offer cover in some instances, we expect that this would be very limited and restricted in the following ways:

- Cover would only be offered to closed firms with the very best risk profiles*
- Firms that have already been closed for some time might have difficulties accessing the information required by underwriters*
- Long term policies are unlikely and ongoing renewals would be required*
- Cost is likely to be difficult if not prohibitive for retired practitioners*
- It is likely that cover would be more restricted than the MTCs.*

Given the above issues we do not consider that PSYROC on the open market is a realistic solution.

188. In its consultation document, the SRA states:⁴¹

[I]t is clear that there will be a small number of consumers that will likely not receive redress if there was no PSYROC in the future, but who would receive redress under the current arrangements with the SIF providing PSYROC.

189. Our concern is that most, if not all, consumers who would receive redress under the current scheme would be left without recourse to PSYROC if the SRA

³⁹ <https://www.sra.org.uk/globalassets/documents/sra/consultations/annex-3---framework-table.pdf?version=4ad64a>

⁴⁰ [https://f.datasrv.com/fr1/522/15138/PSYROC Consultation Response Howden \(Final\).pdf](https://f.datasrv.com/fr1/522/15138/PSYROC%20Consultation%20Response%20Howden%20(Final).pdf)

⁴¹ <https://www.sra.org.uk/globalassets/documents/sra/consultations/sif---consultation.pdf?version=4ad40a>

removed the SIF protections. Those consumers would be forced to rely on the former principals of closed firms to make alternative protection arrangements that are not realistically available or affordable.

190. Even before the current hard market, most brokers were sceptical about the feasibility of arranging PSYROC on a commercial basis. There was a remote possibility that annual (or even triennial) extensions to the mandatory six year run-off period might be arranged, or that long-term indemnity insurance policies may be available for some firms on a case-by-case basis (and at a considerable price). However, there was a definite shift in sentiment following a Lloyds market review in 2018, which revealed serious concerns about the profitability of solicitors' professional indemnity insurance for underwriters. More recent engagement with brokers confirms a clear consensus that in current conditions, when capacity is limited and underwriters are eschewing novel risks, there is no realistic prospect of widely available, affordable PSYROC on the open market.

191. Our engagement suggests that although it may still be possible for a handful of firms who have paid their initial run-off premium, retained relevant records, and have low risk profiles and excellent claims records to secure individually, on a year-by-year basis, some kind of PSYROC, the overwhelming majority would be unable to do so.

192. Risk-averse underwriters would be especially reticent to provide PSYROC to firms who provided the types of services most likely to give rise to long-tail claims, either quoting unaffordable premiums or refusing to quote at all. This has led one broker to summarise the situation: "No firm that actually needs post six year run-off cover will be able to buy it."

193. It is also worth considering that if insurers would only be willing to offer broader access to PSYROC products during a soft market, this cannot be regarded as a reliable form of consumer protection. Likewise, if its provision is dependent on a good claims record, it is improbable that it will be possible to secure further cover once a claim has been made. That would mean that any subsequent claims are effectively uninsurable.

194. From our engagement with underwriters, the Society is aware of one PSYROC policy offered to a firm with a good risk profile and claims history and incepted in January 2022. The premium was £2,500. While we cannot generalise from this one instance, and nor indeed do we know the circumstances in which the cover for one year came to be written, it does at least provide some indication of the level of cost that might confront the former principals of closed firms if they seek to find a replacement for SIF on the open market. The fact that the premium is more than ten times the £240 levy proposed by the SRA's experts suggests that any commercial alternatives that may be available would have serious implications for consumer pricing.

195. If the SRA is concerned that a £240 per annum levy for firms could drive up consumer prices, then it follows logically that it should also be concerned about the much greater effect it would have if firms needed to build into their price structure the collection of sufficient money to finance payments of several thousands of pounds per year, for an indefinite period after the firm's closure. A flat £240 annual payment is a cost that firms can budget in a way that will minimise or eliminate any consumer

impact. But the uncertain price of future premiums for extending indemnity cover beyond six year run-off cover is not.

Q6: Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Q7: Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

196. We agree with the concerns about a master insurance policy that were summarised by the SRA in its consultation document:⁴²

WTW report that it would likely be “challenging to interest market insurers in this risk.” This is because the small number and value of claims, inherent expense of dealing with long-tail claims and the potential volatility given volumes involved, means this is unlikely to be an attractive offering for the insurance sector. This also suggests that any offer that we are able to secure would come at a high cost in terms of premium. Furthermore, WTW has indicated that use of an insurer to provide coverage may result in insurance premium tax charges, currently at 12%.

197. A master insurance policy would be a far inferior alternative to the ongoing provision of PSYROC through the SIF, and the annual cost would be significantly more than £240 per firm.

198. It is also unlikely that there would be a suitable and cost-effective master policy available in the market. Our engagement with brokers suggests that other professions who currently arrange their mandatory professional indemnity insurance through such schemes are considering moves to the open market in order to lower costs.

Q8: Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Q9: Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

199. The Society supports the view that any alternative funding model will need to maintain a prudent approach to solvency and note that the SRA’s expert report makes several constructive suggestions which could be adopted to maintain PSYROC on an on-going basis.

200. It is not clear from the consultation information why the SRA have determined that any alternative model would be ‘unlikely to be cost effective’ and how they have measured this against the regulatory objectives.

201. The SRA accepts that the open market is unlikely to provide PSYROC that would be widely accessible and provided to solicitors at a reasonable price. If a firm

⁴² <https://www.sra.org.uk/globalassets/documents/sra/consultations/sif---consultation.pdf?version=4ad40a>

were to purchase any additional cover, it would likely cost well in excess of an annual levy of £240 and potentially have a greater impact on the cost of legal services. Provision of PSYROC through a regulatory fund is considerably more cost effective than no cover (where claimants would need to take forward claims themselves) or open market cover. The expert report contains alternative models that require further analysis by the SRA in order to properly assess their viability.

Q10: Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Q11: If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Q12: Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

202. If there were an effective and affordable targeted solution to this problem, we would fully support this approach. Unfortunately, there is not. The only realistic option to ensure ongoing consumer protection is to retain PSYROC for the profession at large, delivered through the SIF.

203. PSYROC is a form of insurance, and insurance works by pooling together the resources of a large number of insured parties with similar risks to ensure that the small number who experience losses are protected in the event. If a response is too tightly targeted, on only a small group of those most at risk of claims, the risks would be too great for underwriters to contemplate, and it would be impossible to insure.

204. However, the SRA is aware of the difficulties facing a targeted response, as it notes that “in terms of ongoing costs, simplicity and certainty may [...] favour against targeted models”.⁴³

⁴³ <https://www.sra.org.uk/globalassets/documents/sra/consultations/annex-3---framework-table.pdf?version=4ad64a>

Appendix A: How the Closure of the SIF Would Affect Different Groups of Consumers

Group	Description	Current Circumstances	Future Prospects
A	Consumers that purchased legal services from firms that closed on or before 31 August 2000	These consumers are currently covered by SIF and will continue to receive cover because the firms closed before the profession moved to purchasing insurance on the open market.	When SIF is closed, risks relating to this group will be covered to provide ongoing protection.
B	Consumers that purchased legal services from firms that closed between 1 September 2000 and 30 September 2016	These consumers are currently in SIF, or will be in SIF, by 30 September 2022.	This is the group that faces the greatest immediate difficulties because of SIF's closure. For some time now, we have been actively pursuing market alternatives for this group. Currently available options are extremely limited and most of these consumers are likely to be left without insurance protection if SIF closes as scheduled.
C	Consumers that purchased legal services from firms that have closed since 1 October 2016	These consumers will never enter SIF if it closes to new claims after 30 September 2022, because the firm from which they purchased legal services will still be in their six year mandatory run-off period.	Unless alternative arrangements are made, these consumers will be left without protection once their legal service provider's run-off cover expires.
D	Consumers that purchased legal services from firms that are currently in operation	These consumers will never enter SIF if it closes to new claims after 30 September 2022.	If the firm from which they purchased legal services closes, then unless alternative arrangements are made, they will be left without protection once the firm's run-off cover expires. They may be at greater risk of having legitimate claims legally barred if the principals of the firm from which they purchased legal services take precautionary measures reduce their long-term exposure.

Appendix B: The Consumer Experience of Making a Claim

This appendix provides an indicative illustration of the experience of consumers or their beneficiaries if they make a claim for negligence under three different scenarios:

Scenario 1: A standard professional indemnity insurance claim against a firm which is still in operation

Scenario 2: A long-tail claim from the SIF, under the current rules

Scenario 3: A long-tail claim against a practice which has been closed for more than six years, in the absence of the SIF or any alternative PSYROC arrangements

Please note, every case will have different circumstances and they may not follow all steps set out in the examples. The example provided for scenario 3 has the most variables, and is the most speculative, as it is describing the possible consumer journey if the SIF were no longer in place.

Scenario 1: A Standard Professional Indemnity Insurance Claim Against a Firm Which is Still in Operation

The specifics of such claims will vary, but most proceed on a reasonably straightforward basis.

1. A claim is intimated to the active firm.
2. The firm reports it to its current professional indemnity insurance provider, regardless of when the incident occurred.
3. Many firms have a small claims discretionary authority from their insurers based on maximum possible loss (MPL) or their own reserve. So, if for example, the authority extended to any claim with an MPL of less than £25,000, the report would be made to the insurer, but by means of a small claims bordereau sent in and reviewed on a regular basis.
4. If the claim is likely to exceed the MPL or the firm's reserve, the claim is referred to the insurer or its claims handlers.
5. If it is a "small claim", the firm can decide to settle it, if appropriate.
6. If it is a small claim but a without merit, the firm can invoke the defence costs provisions of the MTC and the insurer will decide how to proceed.
7. If it is not a small claim, the insurer will take charge, but usually with the input of the insured firm.
8. A disputed claim, regardless of size, enters the litigation process and resolution may be delayed accordingly.

However, a claimant should know at a relatively early stage what the prospects of the claim are likely to be, and the time and cost attributed to reaching this stage are relatively modest.

Scenario 2: A Claim from the SIF, Under the Current Rules

Under the current arrangements, where PSYROC is provided through the SIF, claims can be notified by consumers or (former) solicitors.

1. A claim form is submitted to the SIF via post or e-mail.

2. It is assessed to establish if the claim is valid, e.g. the firm has closed and cover is now provided by the SIF. (The SRA validates this information through their Insurer Disclosure team).
3. The claim is reviewed, either in-house or referred to a panel firm, subject to a conflicts check, (the claimant is provided with panel details, if appropriate).
4. The SIF adds appropriate reserves to resolve the claim.
5. The panel firm or the SIF provide regular updates to claimants, usually every three months.
6. Successful claims result in a payment from the SIF.

As noted elsewhere, long-tail claims can take some time to resolve, but in the SIF process there are routine updates, and claimants should know at a relatively early stage whether or not they have a realistic prospect of recovery.

Scenario 3: A Long-Tail Claim Against a Practice Which Has Been Closed for More Than Six Years, in the Absence of the SIF or Any Alternative PSYROC Arrangements

It is not possible to describe a typical consumer experience of seeking compensation against a long-closed firm where there is no PSYROC in place. However, laid out below are the steps a potential claimant would likely have to go through in order to progress a claim, if the protections of SIF were removed. It raises some of the problems that a consumer might encounter, but by no means does it represent a worst case scenario.

1. A would-be claimant would have to identify when their cause of action arose – usually, but not always, the date of the incident.
2. Then, identify who was acting for them and whether or not the firm was incorporated, in which case the former principals are probably insulated from any claims, or if it was a traditional firm with principals who could still be liable for claims.
3. Assuming the latter, they would then need to find the current whereabouts of at least one of those principals, still living. (The SRA might be able to help with this, but they do not maintain up-to-date contact information for retired solicitors, and there may be GDPR concerns about sharing contact information).
4. They may need to employ a service to track down any surviving principals, which would involve costs.
5. Having located at least one solvent, living principal, the would-be claimant would then have to intimate a claim.
6. This would require them to engage with the identified principal(s). (If there were no living principals, the claimant could attempt to make a claim against an unsettled estate).
7. The would-be claimant would have to request their file from the principal.
8. The availability of the client file could depend on numerous factors from the willingness of the former principal to cooperate, to the firm's policy on retention of client records (which may not be a matter over which the former principal had control at the relevant juncture).
9. If the file no longer exists, the principal may not even be able to comment on whether the closed firm ever acted for the claimant.
10. The claimant informs the target partner that they are jointly and severally liable, and must therefore provide restitution.
11. The target partner may deny the claim, or seek to join other former partners, for indemnification.
12. The court process winds on, and it may be that eventually a final hearing is allocated some two years hence (perhaps five years after proceedings were commenced, and maybe seven years after claimant first realised that they wanted redress).

13. Even if the claims is eventually successful, it may prove difficult for the claimant to recover their losses. For instance, the partner might have a substantial dwelling, but it could transpire that it was in the sole name of their spouse, and the partner is otherwise insolvent.
14. After considerable time and expense, the would-be claimant could be left without compensation, and with no realistic hope of recovery.



Policy Department
Solicitors Regulation Authority
The Cube, 199 Wharfside Street
Birmingham B1 1RN

Sent by email only to postsixyear@sra.org.uk

15 February 2022

Dear Sir/Madam,

The Legal Services Consumer panel (Panel) welcomes the opportunity to respond to the Solicitors Regulation Authority's (SRA) consultation on its post six-year run-off cover (PSYROC) and the Solicitors Indemnity Fund (SIF).

The Panel strongly disagrees with the SRA's preferred option which is to discontinue PSYROC without putting in place any alternative consumer protection.

We commend the SRA for gathering some pertinent information and data which give commentators a better insight into the factors that must be balanced. However, the Panel finds the analysis of the data wanting and beneath the standards we would expect from a modern regulator.

The SRA has not given due regard to the statutory objectives of promoting and protecting the interests of consumers, the public or access to justice. Where these are mentioned, the analysis is staggeringly subjective and distorted to support the SRA's preferred position. Equally perturbing is the prominence throughout the consultation document on the costs of maintaining PSYROC, without a fair and balanced analysis of the benefits or even the hardship that would ensue if this protection were removed. This is perhaps the aspect of the consultation that the Panel finds most objectionable; the lack of empathy or understanding that behind every 'low value' claim, irrespective of the numbers, are real human stories of financial loss directly attributable to a solicitor's negligence. There seems to have been no research or effective engagement with consumers to establish their views on the importance of the current levels of protection and the proposal to dispense with it. Where is the analysis that the £16 year cost per solicitor (or £240 per firm) would make any material impact on solicitors' fees, and what clients would feel about this?

We also note that little is mentioned in the consultation document about the asymmetry of information in legal services, and that this imbalance of information puts consumers at such a disadvantage to necessitate a higher level of consumer protection.

The SRA purports to remove PSYROC on the strength of a decision that was made over twenty years ago, at a time when the decision makers assumed that the open market would fill the void through the insurance route. This has not happened and is unlikely to happen. Consideration must now be given to the environment under which the SRA wants to enforce a decision made twenty years ago in a very different context. We are still in a pandemic that may lead to more claims in the future, and the cladding crisis in housing may also lead to more claims. None of this is referenced in relation to the number of claims currently observed.

There is at least one viable option going forward, which is to allow PSYROC to continue within the SRA's regulatory arrangement. By your own calculations this option will require only a small annual levy on firms (£240) or on individual solicitors (£16), which the Law Society has said that solicitors are willing to pay. We are not satisfied with the reasons the SRA give for rejecting this option.

Reflection on the consultation questions

Questions 1 and 2

Do you have any view on our analysis in relation to continuing to provide PSYROC through the SIF on an ongoing basis? Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an ongoing basis?

The SRA's analysis disregards consumer protection

The Panel does not agree with the SRA's analysis. In our view, the SRA has not given due consideration to the consequences of removing PSYROC for consumers, the public and the profession.

From the Panel's standpoint, the crux of the matter is that there is currently protection against the long-tail negligence of a solicitor. This protection means that consumers have recourse to redress should anything go wrong years after they have procured the service of a solicitor eg when they discover an error with the deeds of sale of a property. This is not a gold-plated protection. It merely recognises that in some circumstances, consumers are not in a position to discover the mistake until years have elapsed, given the nature of legal services and the limited information available to consumers of legal services.

The data provided by the SRA highlights that conveyancing is the main area of law where consumers make a claim, followed by wills and probate. We note that these are also areas of law where practitioners' negligence may not be discovered until many years after the procurement of the service. And perhaps more importantly, many years after the current six year run-off cover, which the SRA is implying is adequate. Indeed, the SRA's data shows that around 11% of post-closure claims arise more than six years after a firm has ceased to operate.

We agree that it is appropriate that a regulator should consider the feasibility, proportionality and sustainability of financial matters or responsibilities. However, it is the Panel's strong contention that where these obligations exist to protect consumers, the evidence and or rationale for removal of existing protection must meet a high threshold, or offer corresponding benefits to those affected and the wider public. The SRA's proposals do not meet this threshold in our view.

The SRA has downplayed the consumer protection element of PSYROC and amplified the 'sleep easy' protection it offers Solicitors. We do not consider it problematic that PSYROC exists to protect both consumers and solicitors.

The SRA dismisses claims from consumers as being small and low value without respectfully considering the impact of loss on consumers, both financially and emotionally. Many individuals who own properties often have significant life savings tied into their property. Regardless of how small these numbers may seem to the SRA, the impact is likely to be significant. To remove this protection, retrospectively and without any corresponding benefit, is a position the Panel cannot support.

The Panel disagrees with the SRA's analysis of regulatory cost and access to justice

The SRA asserts that:

“future funding of PSYROC will increase the cost of regulation and is likely to increase cost for consumers and therefore, potentially, barriers to accessing legal services”

We do not agree with this analysis on the strength of the SRA's own submitted evidence. The SRA shows that a levy per firm for PSYROC will cost £240 per annum and provides no evidence that this would lead to a material rise in cost for consumers. We are far from convinced that such a trivial sum would be passed on to consumers. And it is certainly not at the level that would create or exacerbate access to justice. On the other hand, we are convinced that, if asked, solicitors would be content to pay such modest sums to enable this protection to continue, as this will continue to bolster the profession's reputation, preserve the value of using a solicitor and maintain public trust.

We agree with commentators who say that it will be much more costly for solicitors to organise their own financial affairs post the six-year run-off cover, by either finding insurance on the open market, or by establishing a safety pot for such claims. Indeed, this is what is likely to lead to significant costs being passed on to consumers and discourage providers from entering areas that are more susceptible to claims post the six-year run-off.

The Panel does not agree with the comparison being made with other regulators

The Panel does not agree that PSYROC should be dispensed with on the grounds that it does not exist amongst other legal services regulators eg the Council of Licensed Conveyancers or CILEx Regulation. On the contrary, on the strength of the

evidence presented by the SRA, there is an argument that PSYROC should be applied across the sector, in Conveyancing, Wills and Probate, given that 11% of claims are brought after six years of run-off cover. The argument to lower the bar because others do not offer similar protection is not one we can support.

It should also be noted that consumers may choose to procure the services of a solicitor precisely because of the higher protection that is offered. Consumers may be willing to pay a higher price for solicitors in the knowledge that should anything go wrong there will be redress. It can also be argued that removing this protection, even if it comes at a fractionally higher cost to consumers, is tantamount to removing consumers' choice, namely the ability to choose the provider that offers the most appropriate protection or risk they are willing to take. Moreover, as noted above, the consultation document does not demonstrate the link between the annual cost of providing protection with the impact (if any) on fees, nor does it balance cost against benefits. There is plenty of evidence showing that consumers do not choose based on price alone, but also on quality of advice, service and protection. This consultation is silent on the consumer voice because the SRA has not engaged with them, while purporting to remove protection that affects them.

Question 3 and 4

Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

We agree with the SRA's analysis here. We agree that given the hardening of the insurance market and the number of insurers who have exited the market, it is highly unlikely that anything more than six-year run-off cover will be attractive to insurers.

Question 5

Do you have any further information on the potential for PSYROC cover on the open market as a voluntary option?

The Panel does not have any further information on the potential for insurers to provide PSYROC on the open market, though it appears that it is unlikely to happen given that options haven't materialised over the years. Moreover, the Panel is not in favour of any option that would be optional or voluntary for providers.

Question 6 and 7

Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an ongoing basis?

Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

Our response to question 5 applies to this question. We simply do not think that the market will meet the need under consideration in this manner.

Question 8 and 9

Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an ongoing basis?

Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? Do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

The Panel's preferred option is to maintain SIF for the whole market. We are therefore in support of a levy on the profession to cover this cost. The Panel is also of the view that the current administrative cost to manage the fund seems excessive and would urge the SRA to conduct an independent review with the aim of reducing the cost along the lines discussed in the consultation document eg transferring the management of the fund and claims to a larger organisation.

Question 10 and 11

Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC

If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted. If so on what basis.

The Panel is convinced by the analysis and argument made in the consultation document that limiting the scope of PSYROC will achieve very little by way of costings and it would build added uncertainty and complexity into the process.

We consider that PSYROC should continue for the whole market but with a review designed to reduce the administrative cost.

Question 12

Do you have any information relevant to our consideration of whether any arrangements for ongoing PSYROC should be targeted.

The Panel has no additional information relevant to the SRA's consideration of whether any arrangements for ongoing PSYROC should be targeted.

Question 13

Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so Please give your reasons as to why and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

The Panel is of the strong view that PSYROC should continue under the SRA's regulatory arrangement. We believe the option of a small levy on firms or individuals is a feasible and appropriate way to fund the cost.

Our answers to question 1 and 2 above explain why we disagree with the SRA's analysis and its preferred option. To reiterate, we believe that the levy on firms or individual solicitors for the consumer protection offered is proportionate and reasonable. We believe that access to justice and fair competition is enhanced with PSYROC as explained above. We believe the cost of regulation passed on to consumers will be higher if solicitors have to make their own arrangements. Although much has been said about the areas of law with higher claims eg conveyancing, wills and probate, we note that this is a sector wide protection and no area of law is immune from claims.

Question 14

Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there other steps that we should consider?

The Panel is not convinced that providing information to clients when a firm closes, including information on taking out insurance, is realistic or reasonable. This suggestion assumes that firms will have the current contact details of all past clients. It also assumes that insurance would be available for consumers, and that they would know precisely what that insurance should cover. Moreover, it fails to acknowledge that this comes at an extra cost to consumers.

Please contact Lola Bello, Consumer Panel Manager, (Lola.bello@legalservicesconsumerpanel.org.uk) with any questions pertaining to this response.

Yours sincerely,



Sarah Chambers
Chair
Legal Services Consumer Panel

Sole Practitioners Groups response to SRA consultation on the closure of the Solicitors Indemnity Fund

Introduction

This response is submitted by the Solicitors Sole Practitioners Group (“the Group” or “SPG”) to the SRA Consultation on the proposed closure of the Solicitors Indemnity Fund. The Group was formed in approximately 1993. The Group has a Constitution the objects of which are as follows;

“(a) (i) To represent, support and develop the interests of sole practitioners within the Law Society and externally.

(ii) To provide a medium whereby the views of sole practitioners can be brought before all organisations involved in the provision, control, purchase, and acquisition of, and interest in, legal services and legislation relating to legal services.

(iii) To enable those organisations referred to in sub-clause (a)(ii) hereof to consult the Group upon matters of relevant professional, public and consumer interest.

(iv) To encourage the formation, continuation and development of local sole practitioners Groups.

(v) To provide support including courses, conferences, advice, publications and any other relevant activity to enhance the ability of sole practitioners to operate successfully and within the regulatory framework to which they are subject.

(vi) To submit nominations for sole practitioners to represent sole practitioners on the Council of the Law Society or any of its Boards or Committees and any of the organisations referred to in sub-clause (a)(ii) hereof.

(b) The Group shall have the power to do all such lawful things as it considers fit for the attainment of such objects or for the furtherance of its interests.”

The Group was formed before the creation of the Solicitors Regulation Authority and accordingly the Authority, as opposed to the Law Society, is not referred to in the constitution of the Group.

However, this response falls within subclauses a) (ii) and (iii) of the constitution.

The Group consists of approximately 4500 sole practitioners in private practice. The Group does not at this stage cover freelance practitioners.

Membership of the Group is automatic to any solicitor in private practice and who does not object to the receipt of circulars and other information.

It provides information to its members through its website, email circulation and Solo, its house magazine.

The Group is entitled to have two sole practitioners as Council members of the Law Society, one of whom is currently Vice President.

The Group's position in relation to the Solicitors Indemnity Fund, the subject of the consultation, is significant in relation to solicitors in general. Solicitors who will be most directly affected by the loss of indemnity proposed in the consultation will be those who are in run-off. The majority of those will be sole practitioners who are not able to find a successor practice on closure.

However, Willis Towers Watson's report indicates that only 37% of the claims on the Fund emanate from sole practice and the concern of solicitors in relation to the cover provided by the Fund will extend to all those in post six year run-off.

Although membership of the Group will cease if a member ceases to practice, the Group has an important concern for the well-being of retired sole practitioners and indeed any retired practitioners.

In addition its constitution provides that the Group may be consulted upon matters of relevant professional public and consumer interest. The impact of the cessation of the Solicitors Indemnity Fund on the public and consumers is significant.

It is therefore clearly established that the Group has one of the most significant interests of all those providing responses to the consultation as it represents the majority of individual solicitors and their clients affected by the proposed closure.

The format of the response

Due to the importance of this response and the amount of detail in the consultation documents, the response covers a significant amount of material and reflects a research into the assumptions upon which the consultation relies in stating its preference for closure of the Fund.

The SRA has made it clear that whilst it has specific questions those are for guidance only and it is open to any party to respond in any way that will best

convey that response. Because of the importance of this matter to the SPG this response is wide-ranging. It covers the following material.

1. This general statement as to the SPG general position.
2. Appendix 1: a detailed analysis of the consultation paper and the relevant portions of its annexes interleaved with comments by the Group in relation to particular statements made in the consultation
3. Appendix 2: the result of research of members of the public in relation to matters affecting consumers as stated in the consultation, conducted because it seems that the SRA carried out no or no sufficient research into those issues.
4. Appendix 3: setting out a report and commentary on the financial aspects of the Willis Towers Watson report insofar as those matters impact on the charges that may have to be levied in the event of the continuance of the Fund.
5. Appendix 4: setting out an analysis of responses to a questionnaire of members of the group as to their wishes in connection with the Fund and their willingness or otherwise support a levy for its continuance

In drafting this report the author has had access to various other responses to the consultation including;

1. That of the Law Society

2. That of Lockton's as brokers
3. That of Howden's as brokers
4. Numerous other individual responses

all the arguments of which are supported by this Group and enlarged on in this response.

The position of the SPG in summary

The SPG have considered all the options in the consultation. For the various reasons given in the consultation, the only two options would appear to be those of closure of the Fund or the retention of the Fund on the basis of such support as may found be needed for its continuance.

The SPG strongly argues for the retention of the Fund on the basis of such support as may be found be needed for its continuance. The SPG contends that on any objective, as opposed to subjective or political, approach to the issue, there is no argument that can be validly made for the closure of the Fund.

The arguments currently made by the SRA in support of the proposed closure appear to be:

1. That the cost of the Fund is disproportionate to its benefit
2. That cost of its maintenance will be passed on to clients, whose cost of legal services will be increased, and they will therefore be deterred from obtaining legal advice

3. That the accepted loss of protection to the consumer is proportionate in relation to the benefits of closing the Fund
4. That any private benefits derived by individual solicitors and law firms are not to be given any weight on the basis that they are not part of the objects of the SRA, which are to protect and promote the interests of consumers, protecting and promoting the public interest, promoting competition regulators services, improving access to justice and encouraging an independent strong, diverse and effective profession.
5. That the SRA are constrained by law in acting outside their public interest regulatory remit and the objects set out in the SRA articles of association; or (constrained in acting) for the purpose of supporting or protecting members of the profession
6. That protection of the profession is more appropriate for the representative body which may wish to consider whether there are any steps it should take to support its members

Dealing with those points the response of the SPG is as follows;

1. The Fund is in existence. There is no similar fund in existence for any other similar body. The solicitors profession should not be penalised for having in existence a fund which previous solicitors have paid for. In an annex to this response evidence is provided that the Fund can be administered for a lesser figure than its forecast by the Willis Towers Watson report.

Even if the figure of £16 per head or £240 per firm is found to be accurate, all the evidence from solicitors indicates that the profession will be prepared to pay that sum in whatever proportion the SRA, after consultation with the profession should deem appropriate. To close the Fund will dissipate a significant sum of money without any future benefit apart from the run-off of existing claims, whereas a modest sum, if found to be necessary, will keep the Fund going into the foreseeable future, either permanently or pending reassessment in the (not at present very likely) event of some change in the insurance market.

2. The second reason of potential deterrence to the provision of legal services has to be described, with respect, as a facile argument. It seems that no research has been made by the SRA into this argument and it is believed that no other organisation is carrying out any such research and so the SPG has commissioned its own market research from reputable legal researchers: see the relevant appendix.

This reason is wholly unsustainable and should be disregarded in any objective consideration of the issues.

3. The third argument, as to the minimum detriment to consumers against the benefits of the Fund is unsound, firstly on the basis that there are no significant benefits to closing the Fund and secondly that the detriment to consumers will be considerable.

This is evidenced by the research in Appendix 3 and by the obvious fact that potentially 31 members of the public per year will be at risk of not recovering in respect of claims of an average of £34,500.

This is potentially 9% of total run-off claims, which is a significant percentage. The public will simply not understand the reason why their claims have the benefit of indemnity within six years of closure and no indemnity from after six years of closure. The reputation of the profession and the SRA will suffer when claims come to be dealt with on that basis.

4. The fourth argument, that any decision of the SRA should not take into account any incidental benefit for solicitors, is contested by the SPG. The SPG supports the arguments advanced by the Law Society and makes the following additional observations.

The statutory obligation of the SRA is to encourage an independent strong, diverse and effective profession. That profession is currently strong and diverse because of the ability of solicitors to act as sole practitioners and in ways that may lead to their firms going into run-off on closure, including those firms of diverse members of the profession. It is obvious that over time as the implication of lack of insurance from post six years from closure becomes clear to members of the profession as an established fact, there will be a wish to avoid practices where it may not be possible to close with a successor practice.

The provision of legal services through sole practice and small practices will therefore diminish and it is those practices which are best suited to providing legal services at an economic price. Accordingly, the lack of support for an independent strong, diverse and effective profession will directly, and deleteriously, impact on the other regulatory objectives set out in paragraph 22 of the Consultation.

5. As to point number 5, quite apart from that argument, there is the additional point that the removal of the “private benefits which may be derived by individual solicitors and law firms” from the Fund paid for by individual solicitors and law firms, will, as accepted in the consultation remove the “sleep easy” factor which allows solicitors to retire in the knowledge that they will be covered for claims against relating to work done long before they gave up practice.

There can be little argument that concern over unlimited liability well into retirement will be more than just a “sleep easy” factor and may in fact be a “sleep at all” factor which may impact on the service that existing solicitors may be able to provide to clients with that knowledge of future risk not covered by insurance. The Group therefore argue that the “sleep easy” factor as described by the consultation is a factor which impacts upon the other statutory requirements of the SRA.

6. As to item 6, clearly in paragraph 29 the consultation relies to a certain extent on the fact that the representative body, the Law Society may provide the appropriate support. It is apparent from investigations by the Law Society that they cannot do so without involving themselves in a regulatory matter which is not in compliance with the law.

That clearly being a matter that was not known or taken into account by the SRA in its original consultation paper, cannot be an argument in favour of closure of the Fund and again diminishes the closure arguments even further.

Conclusion

The SPG therefore represents in the strongest possible terms that given the two options available, the only proper decision for the SRA is to continue the operation of the fund, and to continue dialogue with the solicitors profession as to how that continuation should be funded in the future, for the benefit of clients and solicitors.

If the SRA continue with its preferred option of closure it would appear that that will be against the weight of all the representations made in response to this consultation and the SRA and others should therefore consider the legal reasonableness of a decision by the SRA in continuing with its preferred option of closure.

Clive Sutton

Honorary Sec Sole Practitioners Group

Appendix 1

Sole Practitioners Groups commentary on the SRA consultation on the closure of the Solicitors Indemnity Fund

Following the arguments put on behalf the SPG this document is a more in-depth analysis of the consultation and where appropriate its appendices and comments on individual portions of the text.

It also answers the actual questions put in the consultation both in the body the document and the end of the document.

The consultation has been transcribed verbatim, unless otherwise indicated. Portions commented on are largely underlined.

SPG comments are largely in italics.

Text of Consultation

Post six year run-off cover and the Solicitors Indemnity Fund:

Consultation November 2021

Background to consultation

1. The Solicitors Regulation Authority (SRA) is the regulator of solicitors and law firms in England and Wales.
2. We work to protect members of the public and support the rule of law and the administration of justice. We do this by overseeing all education and training requirements necessary to practise as a solicitor, licensing individuals and firms to practise, setting the standards of the profession and regulating and enforcing compliance against these standards.
3. We are the largest regulator of legal services in England and Wales, covering around 90% of the regulated market. We oversee some 212,000 solicitors and around 10,000 law firms.
4. The Law Society of England and Wales (TLS) established the SIF in 1987 under section 37 of the Solicitors Act 1974, for the purpose of providing compulsory professional indemnity cover to all solicitor practices in England and Wales.
5. In September 2000, following a vote of Law Society members, the SIF was placed into run-off following the introduction of an open market insurance model, which required firms to hold professional indemnity insurance (PII) with

an insurer operating in the open market. The minimum terms for that insurance have always included a requirement that if a firm ceases without a successor firm, the last recorded insurer for the firm must provide cover for negligence claims made within six years of the firm closing. This is known as 'run-off cover'.

6. The SIF is made up of funds formerly contributed by the profession.

SPG comment:.. This is a point which is frequently made that solicitors reaching retirement or having retired and requiring run-off cover are those who are most likely to have been paying contributions to the fund prior to 2000 and should therefore continue to have the benefit of this fund.

It is administered by a separate company, wholly owned by TLS, Solicitors Indemnity Fund Ltd (SIFL).

7. Following being placed in run-off, the SIF has remained liable for:

- Claims made during the period a firm was covered by the SIF (1 September 1987 to 31 August 2000).
- Claims made after 31 August 2000 by law firms that ceased without a successor practice on or before 31 August 2000.

8. The above run-off cover is not time-limited and is not affected by this consultation. Irrespective of the outcome of the consultation, this cover will continue to be provided, whether by the SIF or by transferring the SIF's outstanding liabilities to another party, such as a third party insurer. This would be funded using the SIF's residual funds.

9. SIF also provides run-off cover to firms that ceased on or after 1 September 2000 once their six-year run-off cover has expired. This is known as supplementary run-off cover or post six-year run-off cover (PSYROC). This

arrangement was put in place by TLS to run from 1 September 2007 (the point until which firms would be covered by their own mandatory six-year run-off cover) to claims notified before 30 September 2017. The cost of this cover is met out of the SIF surplus.

SPG comment: During the course of the run-off of the original solicitors indemnity fund there was found to be substantial supplemental funds which had been paid by the profession and which were not needed for the run-off. Part of this was used for the Law Society's internal purposes and a significant part of the remainder, in the region of £30 million, used for post six year run-off cover for what was then anticipated be for a limited period of 10 years until 2017. The initial extensions were obtained on the basis that the fund was well reserved and that there was no insurance industry solution to post six year run-off

It is on the basis of this background that solicitors and their clients can benefit from the potential for lifetime insurance cover which the SRA now intend to discard in favour of the unresearched and nebulous possibility that some clients may be put off obtaining legal services because of the potential cost of continuing the scheme

10. TLS's indemnification arrangements (along with its other regulatory functions) were subsequently delegated to us following our establishment in 2006. The operation of the SIF is currently governed by the SRA Indemnity Rules 2012. The SRA's PSYROC provision

SPG comment: This is where the problem starts in that the original scheme was set up by a body which was responsible both for the protection of clients and solicitors, and due to the statutory provisions of the Legal Services

Act is now being operated by an organisation which states throughout this consultation that it is only concerned with the protection of clients

11. We set the minimum terms and conditions (MTCs) for professional indemnity insurance that regulated solicitor firms in England and Wales must buy on the open market and which participating insurers must provide. As noted above, this includes the requirement for firms closing without a successor practice to purchase six years run-off cover. The MTCs further require that the firm's last insurer provides this level of run-off cover even if the firm does not pay the premium.

SPG comment: It is that last sentence that causes so much difficulty with the insurance industry in relation to the cost of run-off cover in that many firms go into run-off without being able to afford the significant – up to 3.5 times final premium – for run-off and for which the last insurer has liability but without any potential recovery of premium

12. Historical analysis indicates that approximately 90% of run-off claims are made within a six year period. Six years is the usual limitation period within which professional negligence claims must be made in the courts, although this may be extended beyond six years in certain circumstances. There is a further long-stop limitation period of fifteen years, that may also be extended against a narrower set of criteria.

13. Further information on SRA MTCs and other supplementary information, including regarding limitation periods, is at Annex 1.

[Extract below]

Part A – Limitation Periods

1. The most common type of claims a solicitor will face is for professional negligence, i.e. the breach of the duty in tort to exercise reasonable skill and care, or breach of contract, i.e. the breach of the retainer between client and solicitor. The primary limitation period for a claimant who has suffered a financial loss to bring a claim within is six years, from the occurrence of damage in professional negligence, or from the date of breach in contract. Accordingly, where a firm closes, most claims against a solicitor will fall within the standard run-off cover for six years.

2. However, there are certain circumstances which can impact when the limitation period starts running.
 - i. Knowledge - In some cases a claimant will not know they have suffered damage until sometime after the fact. In these cases the claimant has three years to make the claim from the earliest date on which the claimant had both the knowledge required for bringing a claim for damages in respect of the relevant damage and a right to bring such a claim. An example of this will be in cases of a negligently drafted will, which are often not discovered until the date that the testator died. Therefore, the period within which a beneficiary may bring a claim will usually run from the date of the deceased's death.
 - ii. Damage - In the case of professional negligence, the limitation period of six years does not start running until the damage has been sustained. The question of when damage occurred is a question of fact and can be a complicated issue, but in many cases will not be concurrent with the act or omission which caused the damage.

3. There is also a final 'long-stop' date of 15 years, with certain exceptions that might overcome limitation e.g. "deliberate concealment, dishonesty, claims involving Mental Health Act patients, claims involving minors and certain aspects of wills,

trust and probate matters where the commencement of time for determining limitation may be different” (SIFL).

SRA Minimum Terms and Conditions - Coverage

4. For those who are required to maintain insurance in accordance with the Indemnity Insurance Rules Minimum Terms and Conditions, said insurance will provide (broadly) the following coverage:

- indemnification against civil liability (in most cases professional negligence) to the extent that it arises from private legal practice in connection with the insured firm’s practice. This indemnification will be on the following basis:
 - o minimum level of compulsory cover of £2,000,000 or £3,000,000 (depending on business structure) each and every claim

When arranging an insurance policy, firms and insurers may agree any level of excess on a claim settled under the policy. The insurer is liable for the value of the excess to the client if the firm does not pay or the policy covers all the legal and professional services offered by the insured firm, even where the firm may have not declared it provides a specific type of legal work on a proposal form

the insurer must provide cover on a strict liability basis for claims which include losses of money arising out of any breach of the SRA Accounts Rules

insurers must provide unlimited cover for any legal costs and expenses incurred while defending a claim

in addition, when a firm closes, insurers must provide the firm with an unlimited six1year run-off policy, even when the premium is not paid.

14. The purpose of PSYROC through the SIF is to provide cover for claims over and above the six year run-off period that is covered through the open market. Run-off cover (and PSYROC in particular) serves two principal purposes:

- it provides continuity of client financial protection (which is principally a regulatory function)
- it provides security for retired solicitors (sometimes referred to as the 'sleep easy' factor, which is principally a representative function).

SPG comment: Accordingly, as stated frequently throughout this consultation the SRA are only concerned with the client financial protection which they describe as principally a regulatory function which falls within their statutory remit

15. The SIF (and PSYROC) fulfil a different function to that of our Compensation Fund, which compensates consumers for losses caused by ethical failures such as dishonesty. The Compensation Fund does not ordinarily make payments for incidents of negligence. There is though provision for it to do so, when the claim relates to a solicitor or firm that has not taken out the insurance required by our MTCs. More information on the role of our Compensation Fund can be found in the supplementary information at Annex 1. **[Extract below]**

– Compensation Fund – Overview

5. The Compensation Fund is a discretionary fund that we maintain to compensate consumers who lose money due to the dishonesty or failure to account of solicitors (including RELs and

RFLs) or firms causing hardship. The Compensation Fund applies to all firms we authorise and regulate.

6. Our rules set out the circumstances where we will replace money lost by people because of the dishonesty or incompetence of an individual or law firm that we regulate.

7. The rules provide that only certain applicants are eligible for a grant, essentially private individuals and businesses, charities or trusts with turnover or assets of less than £2m.

8. The scope of possible payments from the Fund is wide, and eligible claims are not limited to losses incurred by only the client of a firm. It can also be used for other purposes, such as:

- paying grants for litigation costs people have incurred in trying to recover losses from other sources for example the firm itself
- providing access to financial redress where a firm fails to have a valid policy of indemnity insurance in place (which otherwise would have paid the claim).

11. There is no automatic right to a payment. In exercising our discretion, we consider a range of factors, including whether the:

- loss can be made good by some other means
- activities, omissions or behaviour of the applicant has contributed to the loss being claimed from the Fund
- loss results from the combined activities of more than one party (for example a solicitor conspires with a surveyor to conduct mortgage fraud)

16. We have extended the provision of PSYROC on three occasions. The first time was in 2012 when we agreed a three-year extension to cover claims notified before 30 September 2020. Our Board agreed a further a one-year extension in June 2020 and again in June 2021, extending the provision of PSYROC through the SIF until 30 September 2022.

17. Each time our Board has considered extending the provision of PSYROC through the SIF, it has carefully considered the affordability of doing so. It is important to note that based on actuarial advice that it has received, SIFL has informed us that it does not consider that the provision of PSYROC through the SIF for a further period is prudent, bearing in mind SIF Limited's solvency policy, and without any additional funding.

18. In its note explaining its accounts at Annex 2, SIFL say that "based on actuarial projections and advice, the SIFL Board... have concluded that a further extension would not be prudent". SIFL go on to explain that "SIF is not an insurer but in economic terms it operates as if it were and SIFL's directors assess its solvency on the same principles as would apply under modern insurance regulation. Its surplus can be quickly eroded by significant large events which by their nature are hard to forecast". Its approach is to use an external actuarial assessment looking at the number and value of claims that are likely to be made. It assesses a range of possible outcomes, with associated confidence levels, and the consequential requirements around prudential capital reserves.

19. These previous decisions focussed on the continuing provision of PSYROC through the SIF – an arrangement put in place some years before the existence of the SRA and now in runoff. However, these discussions raised the wider principled issue for us now, which is linked to but not dependent on our decision regarding the SIF: namely, whether our regulatory arrangements should include PSYROC. That issue has engaged us in core questions surrounding the primary purpose of PSYROC, our public interest role as a regulator, and the proportionality of establishing or maintaining a regulatory scheme to deliver PSYROC in light of the consumer protection it provides.

SPG comment: The above paragraphs show the political background to this matter.

The fund is not a creature of the SRA.

It does not fit with their regulatory duties towards clients

It has been extended three times; lastly in spite of the SRA's opposition

The company which currently runs it is cautious about the viability of continuing to do so in spite of the fact that its reserves have not diminished significantly

Accordingly the SRA now insist that is disproportionate to continue the fund in spite of the benefit it has provided over the period of its existence

20. Accordingly, in the document below we have addressed the question of whether to maintain PSYROC through the SIF, chiefly in terms of proportionality, in light of its ongoing costs. We have also sought to explore alternative methods and models of providing PSYROC to consider whether a more proportionate option might be viable. In gathering detailed evidence in advance of the consultation, including independent expert analysis of historical claims data, it has become clear that the level of consumer protection that PSYROC would deliver going forward will be very small. Therefore we have come to the initial view that any alternative PSYROC model is likely to be disproportionate for us to deliver, through a regulatory scheme. You will see from the document below the reason for that view, and the questions we have posed to enable us to have the benefit of a wide range of views and any further relevant information before reaching a decision on the matter.

SPG comment: The result of the observations in this consultation and its supporting reports and appendices is that there is no alternative method or model than a continuance of the Fund supported as necessary by the profession, which the SPG believes the profession will support. The proportionality argument of the SRA is insignificant in the light of the overall figures involved set against the potential reputational damage to the standard of the solicitors profession and the well-being of those who have provided those legal services to the benefit of consumers.

Given the existence of the existing Fund, the balance between the arguments is so disparate that the arguments for cessation, put forward by the SRA are political rather than practical and therefore not justified in the exercise of their remit and discretion

Our Approach

Our decision making framework

21. We have established a framework for developing our options for consultation. This centres around the provisions of the Legal Services Act 2007 (the Act) and our purpose as a public interest regulator.

22. The Act provides that we must, so far as is reasonably practicable, act in a way that is compatible with, and is most appropriate to meet, the regulatory objectives set out in the Act. These include the objectives of protecting and promoting the interests of consumers, protecting and promoting the public interest, promoting competition in regulated services, improving access to justice and encouraging an independent strong, diverse and effective profession.

SPG comment: All the objectives are accepted, and none are achievable without encouraging an effective profession. A profession which has the opportunity to continue the advantage of an existing Fund but has that protection removed for reasons which are so modest in the context of the protection which is given, is less likely to be an effective profession which protects and promotes the interests of consumers, the public interest and access to justice

23. The Act also provides that we must have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted, as well as any other principle that we consider represents best regulatory practice.

24. In our assessment of the future of PSYROC we have also considered the public interest in good administration of our regulatory functions and appropriate use of resources. To that end, we consider that any arrangements should deliver simplicity and certainty, as well as being affordable and efficient.

25. Our role is therefore to balance the regulatory objectives and the relevant principles. In this way we seek to operate a regulatory system that delivers the best possible outcomes in the public interest, and an appropriate level of consumer protection; rather than one that guarantees no risk for consumers. The table at Annex 3 sets out analysis of the key considerations and evidence in relation to the future of PSYROC against the objectives and principles above.

SPG comment: The table of Annex 3 should be read in full but the Annex is considered in this comment insofar as it relates to the regulatory objective of strong diverse and effective profession quoted from the Annex and commented on as follows

“As set out in the access to justice column we have not found any evidence that the availability of redress for long tail claims impacts on the practice areas solicitors choose to work in”

This is because up to now most solicitors believe that they are appropriately covered by insurance whatever work they do and for the remainder of their careers and retirement

“Analysis of SIF claims data against all closed firms does not obviously indicate any group with protected characteristics is disproportionately benefitted from PSYROC compared to the general solicitor population.”

Probably agreed although the Black Asian minority community work disproportionately in small practices which may not be able to merge into a successor practice

“When compared to open firms, male and white partners are overrepresented within SIF claims”

Insofar as this is relevant it is due to the fact that practices with other gender and colour have not yet reached the point of receiving post six year run-off claims

“We know from our own data that BAME partners are disproportionately found in small firms who, may also be less able to absorb costs of any additional new levy, especially if it is targeted at the risk based areas without cross-subsidisation.”

This is a profession wide issue and the SPG argue in this consultation against any cross subsidisation

“It would be logical to presume that older lawyers are more likely to be impacted by loss. This is not obviously borne out by analysis of SIF claims data”

This emphasises that this a profession wide problem rather than only age-related

“Solutions which help to prevent disorderly closures will contribute towards a strong, effective profession.”

No one is going to be encouraged to retire and bring forward the point at which their minimum terms and conditions insurance cover will expire. Perhaps better to work on until your six years minimum terms equates to your life expectancy. Is that what the SRA wish to achieve?

26. As a public interest regulator, we exercise our regulatory functions for the wider benefit of the public, and any private benefits derived by individual solicitors and law firms from our regulation are incidental.

SPG comment: But are private detriments which detract from an effective profession, also incidental or should they be within the SRA’s decision-making process?

27. We are constrained by law from acting outside our public interest regulatory remit and the objects set out in our Articles of Association; or for the purpose of supporting or protecting members of the profession.

28. TLS is the representative body for solicitors in England and Wales and as such the professional interests of solicitors are served by TLS. The Act requires our functions to be independent of TLS and we are required under the Legal Services Board's Internal Governance Rules to enhance the separation between representative and regulatory functions.

SPG comment: Then the three bodies should work together to resolve this in the interests of all interested parties rather than just the consumers supported by the SRA. At the moment the perception is confrontation and buck passing rather than cooperation to resolve a problem which is eminently capable of solution with a basic fund of £30 million, which no doubt any of the other regulators would welcome.

29. We appreciate that the potential removal of PSYROC is of great concern for some solicitors. This would remove the 'sleep easy' factor which allows solicitors to retire in the knowledge that they will be covered for claims against them relating to work done long before they gave up practice. However, we consider that this is a more appropriate matter for the representative body, which may wish to consider whether there are any steps it should take to support its members.

SPG comment: No doubt it would do if it was not constrained by the argument that such support, even a hardship fund, is a regulatory function which it is unable to carry out

It is for us to decide whether there is a regulatory rationale for ongoing provision of PSYROC in light of the consumer protection it brings.

SPG comment: Yes but on the basis of a reasonable and rational analysis based on a presentation and consideration of the true facts, which the SPG are not satisfied have been set out in this consultation background.

Otherwise the consultation and its decision will be flawed and open to challenge.

Evidence and engagement

30. In August 2021, following the decision in June 2021 to extend PSYROC through the SIF until September 2022, we appointed Willis Towers Watson (WTW), actuaries and insurance experts familiar with the SIF, to analyse claims patterns and assess impacts on consumers and on solicitors/firms of terminating PSYROC. We also sought WTW's views on the viability of, and cost considerations in relation to, different options set out in this paper. Their independent report, produced in November 2021, is at Annex 4 and informs our analysis throughout this paper.

SPG comment: whilst on the face of it this appears to be a well written and well researched report on which there is only room to comment on some individual issues. However subsequent expert analysis displayed in Appendix 2 to this response shows that there are are significant questions

31. The WTW analysis shows that the expected annual emergence of notified PSYROC claims are small in number and value. WTW forecasts that the average number of PSYROC claims likely to be notified each year from 2023 onwards will peak at 45 in 2023 and eventually level off to a consistent norm of 31 from 2029 based on the recent history of cessations and expected claims. The claim notification counts exclude nil claims where there will not be any payments.

32. The corresponding estimated costs of the notifications in 2023 are £1.7m (45 claims notified at an average cost of £36,800 each) which reduces to around £1.1m by 2029 (31 claims at an average cost of £34,800 each). Looking over a ten year period from 2023 the average claim cost is forecast to be £34,600. The value of claims incorporates both costs related to defending a claim and money that is paid to third parties as settlements. WTW analysis shows that historically consumer redress payments make up approximately

58% of total costs. The remaining 42% is made up of defence costs paid from the SIF that are included in the forecast values in paragraphs 31 and 32 and also the SIFs administration and claims handling costs, which are not included in those forecast values.

33. The average costs of notified claims vary by year in part due to inflation and the historical exposures from prior ceased practices from 2001 onwards. The underlying assumption used by WTW is inflation at 3% per annum. This means looking over a 20 year period from 2023 the average claim cost is forecast to be £49,700 and looking over a 30 year period from 2023, £66,900. This also means that the overall level of exposure increases over time.

34. SIFL's management report, as set out in the WTW report, that most claimants are individual members of the public; although there have been a small number of claims from corporate organisations, notably banks.

35. WTW report that claims are concentrated in the practice areas of conveyancing and wills, trusts and probate. Conveyancing has accounted for approximately 74% by value and 76% by number since 2000, when the SIF went into run-off and solicitors in England and Wales moved to buying their primary insurance on the open market in accordance with our MTCs. Wills, trusts and probate accounts for approximately 11% of claims by value and 12% by number for the same period. This compares to approximately 64% by value and 59% by number for conveyancing across all SIF years, including before it went into run-off. Wills, trusts and probate account for approximately 10% by value and 9% by number across all SIF years.

36. Most claims relate to sole practitioners and small firms, with only 10% relating to firms with six or more partners.

SPG comment: The report states that the percentage of claims relating to sole practitioners is 37% of the total claims

37. Further information can be found in the WTW report at Annex 4.

38. Since the extension, we have also continued to engage with SIFL regarding the affordability of ongoing PSYROC provision; and, as stated above, SIFL has provided a detailed explanation of its published accounts at Annex 2 which should help readers understand its financial position.

39. In addition, we have engaged with a wide range of stakeholders to gather views and inform our options leading up to this consultation. This has included establishing a virtual reference group (VRG) which includes 29 delegates. This VRG has representatives from TLS, local law societies and groups representing different segments of the profession. It also has representatives from a range of insurance interests, both representative groups and providers, as well as the Legal Services Consumer Panel.

40. We captured the views of the VRG in a short survey and we sent the same survey to a number of larger firms to ensure that their views were captured.

41. The majority view of the VRG was that PSYROC should be maintained for the whole profession, with a minority saying that it is only needed for specific segments of the profession, for example smaller firms or those that work in areas of law with long tails such as conveyancing and wills. Some respondents to the survey of larger firms suggested that PSYROC should not continue or should only continue for certain segments.

42. The most frequently cited reasons for PSYROC continuing related to the protection of solicitors, closely followed by consumer protection. The reputation of the profession was also raised as a reason for continuing PSYROC, in discussions with some stakeholders.

SPG comment: The SRA have the views of stakeholders described in paragraph 39 which is set out in paragraphs 41 and 42 and this consultation argues against those views. The writer, as a member of the PRG, has no recollection of a discussion, or conclusion, as to

whether the impact of the any costs of continuing the fund would have any effect on access to justice

Options

Overarching considerations

43. Without PSYROC, affected consumers would still have the option of seeking redress through the courts. Some will be able to get redress. There are professionals that specialise in making claims against solicitors with no win, no fee funding arrangements. However, this is a more complex, less accessible and more costly route. There is also less guarantee of receiving the redress awarded. The consumer's losses may never be recovered (for example where the solicitor cannot be found or is bankrupt) and if they are, then the burden of paying will fall more heavily on retired sole practitioners and partners within small practices (with potentially fewer resources to call upon).

44. Law firms and solicitors may seek to obtain PSYROC on the open market. Discussions with the insurance sector and feedback from the insurer representatives within the VRG indicates that there may be some firms and lawyers that would be able to obtain cover. However, this is unlikely to be universal and is more likely to be available to those with an existing relationship with an insurer as the firm is still open or is within the six-year run off period provided for within our MTCs, provided they have paid their premiums. We have also heard that availability would likely be subject to the prospective insured presenting an acceptable risk profile to the prospective insurer.

45. It should also be noted that no insurer has told us that they have yet developed policies for PSYROC for those solicitors and firms that may, in theory, be able to obtain open market cover. Neither do we have an accurate picture of what conditions might be put on potential policies, nor what the premium cost might be. The picture that we are seeing is that while PSYROC on the open market may be an option for some solicitors and firms going forward, coverage is likely to be limited.

46. Considering the above points, it is clear that there will be a small number of consumers that will likely not receive redress if there was no PSYROC in the future, but who would receive redress under the current arrangements with the SIF providing PSYROC.

47. In addition to the potential direct impact on a number of consumers, we have also been told about concerns that the termination of PSYROC through the SIF affected the acquisition of a firm: the solicitors looking to close were concerned about their personal liability for new claims (the insurers of the buying firm required that certain parts of the business went into run-off rather than forming part of the successor practice). We know from our interventions that one cause of disorderly closure (which presents consumer protection issues) is solicitors carrying on solely because of perceived barriers to them exiting when they want to.

48. However, there are some fundamental and interconnected considerations relevant to whether there is a regulatory case for on-going PSYROC.

49. First, as highlighted above, there are very few consumers that benefit from PSYROC each year now and the amounts paid to consumers are modest: with WTW forecasting the number of claims per year to be 31 on a normalised basis and the average amount paid per claim (including defence costs) being £34,600 (looking at the average over 10 years from 2023). Consumer redress payments have historically made up approximately 58% of total costs. As set out in paragraph 61 below, under the current SIF operating model the running costs for each claim could be in the region of £48,400. 50. The process of dealing with PSYROC is therefore expensive and resource intensive because of factors inherent in handling long tail claims, such as the absence of records, the need to locate the relevant solicitors and issues with establishing liability and limitation periods. This also means that claims remain open for a long period of time. The risks around these claims are uncertain, for the same reasons impacting on the capital reserves required and/or insurers' appetite to take this on.

51. As we set out below, there are options for reducing the scope of cover provided: this would reduce costs and mean that the funds held by SIFL could last longer without further funding. However, this would provide only a small reduction and be achieved by reducing the consumer protection provided, would still have an unfavourable administration cost per claim ratio and greater segmentation would increase complexity, which would likely drive up administration costs.

52. Should PSYROC continue on an ongoing basis, by whatever means, this would require further funding from the profession; whether this be by way of levy collected from the profession or an insurance premium charged direct to the profession. WTW has forecast the cost of any annual levy should be in the region of £16 per solicitor or £240 per firm on a flat fee basis. This additional cost would likely be passed on to consumers by at least some regulated providers. Therefore, any obligation that would benefit a very small number of consumers may have a negative impact on a larger number of consumers.

SPG comment: This figure of £16 per solicitor or £240 per firm, however it is eventually allocated amongst the profession is based on an overall annual requirement said to be in the region of £2.4 million to support the fund. The excess over the administration claims costs of £1.5 million referred to in paragraph 61 below appears to be a result of excessive caution in insurance reserve requirements and taking the fund forward so any eventualities are covered. In this regard the WTW report appears to make the following points

The figures make no allowance for income from the £30 million which is shown as having been an average of £1 million-£2 million per annum over the last 10 years. This reduces the £2.4 million to say £1.4 million. As stated later this is clearly quoted in the WTW report but that point does not appear to

be reflected in the consultation paper. This is now borne out by the forensic accountancy analysis of Honeycomb in

The fund has been potentially overprotected in its expenditure of £1.5 million by a reinsurance premium currently of £800,000 to cover against any significant claims.

On the face of it with an average income based on interest and capital gains of say £1.5 million the fund will balance as it has done for the last 10 years. However the profession accepts there may need to be a call on the profession to ensure that the fund remain solvent but spread over the profession it can only be pocket money each year set against the practising certificate and the compensation fund levy. Again now supported by the Honeycomb report

53. If funding was to be set on a flat, universal basis, there would be significant cross subsidisation particularly from large firms to small firms and from firms that do not undertake conveyancing, or will, trusts and probate work to those that do. While firms may choose to pay for a scheme which benefits other members of the profession - or which enhances, in their view, the reputation of the profession - to mandate this across the board through regulatory arrangements could be seen as disproportionate, anti-competitive and not targeted. Alternatively, applying a levy or premium on a risk basis would be more complex to administer and could see a significant cost burden for small firms working in certain practice areas, or those reaching retirement.

54. Therefore, our initial analysis is that regulatory arrangements to provide for PSYROC are unlikely to be a proportionate or an appropriately targeted intervention given the small number of consumers that would likely benefit each year and the level of consumer redress provided.

SPG comment: *It is noted that this is an initial analysis and hopefully if the SRA take into account representations made by other interested parties, which if they follow the current representations will almost unanimously be against the SRA's initial analysis, then the SRA will be prepared to consider that the continuance of the existing fund is in fact proportionate to the interests of service to the consumer and the benefit of the profession who serve the consumer.*

55. It should also be noted that the current position, whereby PSYROC is provided through the SIF, appears to be a consumer protection outlier compared to other legal and professional services regulators in England and Wales. This is particularly relevant given that the main long-tail claims areas (conveyancing and probate) are also regulated by organisations that do not provide PSYROC or require those they regulate to have PSYROC (such as the Council of Licensed Conveyancers, Institute of Chartered Accountants of England and Wales, CILEX Regulation). And will-writing can be carried out by unregulated providers without any insurance requirements. A comparison with the arrangements of other regulators can be found within the Regulatory Impact Assessment at Annex 5.

SPG comment: *The table shows that chartered legal executives, barristers, chartered surveyors, chartered accountants and independent financial advisers have no existing Post six year run-off cover. Medical doctors and dentists have indefinite cover via member indemnity schemes*

56. We do not consider that there will be significant market impacts on supply if we do not provide on-going PSYROC. There is evidence that the main long-tail claim areas (conveyancing, wills, trusts and probate) are relatively competitive and without significant supply shortages, especially compared to

areas of publicly funded work. (Recent TLS research has highlighted areas of significant supply shortage in the areas including community care, education, housing, immigration and asylum, and welfare.)

57. Further, we have not found evidence that shows that protection from long-tail negligence claims is a material factor affecting entry to the profession or particular areas of practice. Research also indicates that cost is a more significant driver of whether a consumer will purchase a legal service than the provision of legal redress. Whereas future funding of PSYROC will increase the cost of regulation and is likely to increase costs for consumers and therefore, potentially, barriers to accessing legal services. Therefore, overall we do not consider that any future decision not to provide on-going PSYROC will have significant market impacts, including in relation to access to justice.

58. We consider a number of models for the provision of PSYROC below.

Continuation of PSYROC through SIF

59. Our preferred option is that we do not continue the provision of on-going PSYROC through the SIF.

60. Our view is that the running costs of SIFL compared to the volume and value of claims (as highlighted in the section above) cannot be considered proportionate or efficient. SIFL itself has reached this conclusion, referencing its annual management and professional services costs, which are generally in the region of £700,000 per annum, and which cannot be reduced further irrespective of the on going volume of claims. In 2020 they also spent another £800,000 on their own insurance costs, to protect against the risk of unexpectedly volatile claims. SIFL obtained insurance protection for both the three year extension from 2017, and the one year extension from 2020, and have indicated that prudence may require a similar policy for any further extension. Further details about SIFL's accounts, including its operating costs, are set out in Annex 2.

The balance sheet for the accounts to the 31 October 2020 showed total investments of £30,808,000 as against the figure of £31,547,004 the previous year. After taking into account reserves for indemnity provisions the net figures were £22,483,000 for 2020 as against £23,531,000 for 2019. These figures are reported on in more detail by Honeycomb

61. Therefore, SIFL's ongoing management costs and insurance costs (assuming these are required) are likely to amount to around £1,500,000 a year. As set out in the section above, WTW projects there would likely be around 31 new PSYROC claims per annum going forward, which result in a payment from the SIF, on a "normalised" basis at an average of £34,600 per claim (looking at the average over a 10 year period from 2023). This suggests that running costs for each claim would be in the region of £48,400. With running costs meaning management costs, professional costs and insurance costs but excluding defence costs paid from the SIF. So over time it will cost more to run each claim that results in a payment than each claim is likely to pay out.

62. Further, certainty favours deciding the long term position now, rather than managing this through incremental extensions. SIFL has said that for it to carry on without a new funding stream it would require an actuarial affordability review every one to two years, which comes at significant cost.

63. If new financing streams were introduced, by levying the profession, to provide for on-going PSYROC through the SIF, it is likely that this could mitigate the risks of the impact of unexpectedly volatile claims to some extent. In turn this may potentially allow for a less comprehensive insurance policy, reducing the overall operating costs of the SIF. However, with fixed management and professional services costs in the region of £700,000 per annum, the cost to claim ratio would remain disproportionately high.

64. Further this would give rise to the impacts identified above from ongoing funding of PSYROC by contributions from the profession.

65. Should PSYROC provision through the SIF be terminated, so that it is closed to new claims, we would consider carefully at that time how best to make provision to meet the SIF's existing liabilities. These comprise PSYROC claims if they have been notified to the SIF by that date, and cover for historical claims relating to firms that closed before September 2000 as highlighted at paragraph 8 above. We would propose to explore with SIFL the most cost effective options for covering historic liabilities. This will include the option of closing the fund and purchasing cover to meet the SIF's outstanding liability from a third party insurer. The costs relating to putting in place the new arrangement and purchasing the relevant insurance cover would be funded from the SIF. Any new regulatory arrangements to govern the way in which those liabilities will be met, as well as proposals for the release of the residual funds held by the SIF, fall to be considered and decided at a later date, once the decisions in relation to PSYROC have been reached following this consultation. We would propose to consult on any new regulatory arrangements at that time.

Q1: Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

SPG Reply: Yes. On the basis set out in the various comments in this response the initial analysis of the SRA is flawed if it is based on the existing arguments of proportionality of cost to benefit.

There is no tangible argument as to the costs of the Fund prejudicing access to justice.

There is however tangible argument as to the effect of the loss of the fund prejudicing a significant proportion of clients and a significant proportion of solicitors.

This is now been evidenced by professional research produced in Appendix 2

Q2: Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

SPG reply: Yes. Having made the comments set out above and in respect of the impact assessments below, the SPG having canvassed its executive committee and its members strongly argues that in the interests of the public and the profession, insofar as the profession benefits the public rather than itself, the balance of interest is in favour of a continuation of the Fund under some form of appropriate control and administered in the most efficient way.

There is a fund. It is functioning. Its closure would dissipate the underlying reserves.

From the point of view of the SRA's obligations to the public as opposed to the profession, it is now clear that there is so much disquiet amongst the profession as to the closure of the Fund that the effect of that disquiet will have an underlying effect on the provision of legal services if only resulting from disquiet over a decision to close the Fund. It cannot be right for the SRA to override the significant views of the profession.

It further cannot be right that the SRA overrides the profession's views by the speculative suggestion that the costs of running the fund will have an effect on solicitors costs which will reduce access to justice. To say that an annual figure of up to £16 per annum solicitor which cannot be described as more than

pocket money, would have a substantive effect on the provision of legal services, cannot be an argument with any foundation. This is now supported by independent research.

However, what can be said is that the practical effect of leaving a small proportion of the public and a small proportion of solicitors to litigate amongst themselves over valid post six year run-off claims, will be detrimental to the profession and accordingly its standing in the provision of legal services, even if on a strict accountancy basis it would not have been proportional to set up the existing Fund for this purpose.

The existing Fund is a historical benefit paid for by solicitors, many of whom would have been in practice when the original funds were accumulated pre-2000 and where solicitors should be entitled to the benefit of that Fund to continue to provide indemnity to the public from the end of the minimum terms run-off for any further residual claims.

Insurance through the open market

66. We have highlighted in paragraphs 44 and 45 above the position to date in relation to the availability of PSYROC on the open market. In our VRG discussions, representatives from the insurance sector expressed concern that we might consider amending our MTCs to require participating insurers to provide PSYROC on top of the six-year run off cover that is currently provided for. We have heard that the risk to reward ratio is such that this may result in a combination of insurers leaving the solicitor PII market, fewer solicitors able to find insurance under our MTCs and increased premiums across the board.

67. Our initial view is that we do not consider that amending our MTCs to require the provision of PSYROC should be a preferred option, on the basis that this would not present a proportionate regulatory intervention given the limited number of consumers that would likely benefit, and levels of consumer protection it would deliver. It would likely have a significant negative impact on the availability and cost of insurance for many more firms than it would benefit, and subsequently on consumers in terms of availability and cost of services.

Q3: Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

SPG reply: It is agreed that amending the minimum terms and conditions of the master policy in the face of the opposition by the insurers to cause more inflation in premiums which would have a negative effect on the costs of the provision of legal services which in view of the amount of those increases, as opposed to the amount of any contribution to the existing fund, would have to be passed on to clients

Q4: Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis

SPG reply: No

Q5: Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

SPG Reply: [to await information from insurance industry]

A master insurance policy

68. Another potential option might be to establish a partner insurer to provide on going PSYROC cover through a master policy.

69. WTW report that it would likely be “challenging to interest market insurers in this risk.” This is because the small number and value of claims, inherent expense of dealing with long-tail claims and the potential volatility given volumes involved, means this is unlikely to be an attractive offering for the insurance sector. This also suggests that any offer that we are able to secure would come at a high cost in terms of premium. Furthermore, WTW has indicated that use of an insurer to provide coverage may result in insurance premium tax charges, currently at 12%.

70. Therefore, our initial analysis is that it will be challenging to find an insurance model that could offer a suitable cost-effective and proportionate offering for the small number of consumers that are likely to benefit each year.

Q6: Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

SPG reply: ***It is agreed that this model would be at a high cost in terms of premium and unless a reasonable financial proposal is put forward it is not worth taking for further stage. In any event it will require potential amendments as to its control in relation to the current limitations on the provision of indemnity***

Q7: Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

SPG reply: ***The advice so far received is that there is unlikely to be a suitable and cost-effective master policy available in the market***

An alternative indemnity fund

71. We have begun exploring whether there may be alternative models of operating an indemnity fund for ongoing PSYROC on a more cost effective model than SIFL. For good reason, not least because its sole purpose is to administer the SIF with a small volume of complex claims, SIFL operates with a skeleton staff, outsourcing much of its claims related work to professional experts. If we partnered with a larger organisation who have the relevant staff expertise to undertake most of the claim assessment, claim handling and legal work in house, this may reduce the per claim administration cost.

72. WTW has also indicated that alternative models may be able to adopt a less prudent capital reserving model than SIFL, especially if they are an on-going concern with a larger pool of resources, incoming funds and broader options for support in the event of a shortfall. WTW has included alternative options, including analysis of an alternative funding approach that would run down the current SIF surplus over time. (This would still require additional funding from a levy to pay for the following year's claims - but with no funds held for outstanding claims, leading to an accumulation of large unfunded claims liabilities. And this analysis doesn't take into account administrative and management costs which can be considerable.)

73. We are keenly aware of our obligations to act in the public interest; in corporate governance terms, to ensure sound financial management and controls as custodians of the profession's funds; as well as to act in a way that is most appropriate to meet the consumer protection objectives of the scheme. We do not consider that these duties can be met by adopting a model that leaves significant unfunded liabilities or which delivers false economies. As set out in paragraph 50 above, the process of dealing with PSYROC is inherently expensive to run. SIFL has told us that it is not unusual for the claim life cycle for these types of claims to run to four to five years. There is also volatility in the risk because the small number and average value of claims means that a single large claim, or a small number of large claims, could have a significant impact on overall liability. Therefore, any funding model will need to

maintain a prudent approach to solvency and reserving, accepting that risk appetites may vary to some degree.

74. Our initial analysis indicates that although there may be alternative models that may be cheaper than the SIF in terms of overall cost as well as alternative funding options, regulatory arrangements for ongoing PSYROC through an alternative model are inherently unlikely to be cost effective, proportionate or efficient when considering the volume and value of claims.

75. Furthermore, even with cheaper models or alternative funding models, further funding will be required from the profession. As we have already explained, we consider that this presents issues around proportionality and targeting.

Q8: Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

SPG reply:

It is the SPG's position on behalf of its sole practitioner members and on behalf of small firms generally that it is in the interests of the public as well as in the interests of solicitors that post six year run-off cover should continue into the foreseeable future if only to leave no position where a member of the public is disadvantaged by not being able to make a claim against a fund as opposed to an individual.

Given the SRA's concerns about the cost effectiveness of the operation of the current fund it must be right that an alternative method of operation of a fund is considered. However, the basis of that fund must be the resources in the existing Fund without the run-off of the existing fund or the creation of a separate fund with the

remaining assets. This would duplicate administration charges and not be cost-effective.

Clearly the SRA in giving advance notice of its preference in relation to the closure of the fund have a clear policy not to operate this fund and therefore the operation of the fund on a new basis may avoid the SRA being placed in a position of carrying out a function which they believe is not within their sphere of duties to the public as opposed to solicitors.

There should be a fund which is operated with control on behalf of the public, and on behalf of solicitors, without whose cooperation and encouragement, the public cannot continue to be protected.

Q9: Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

SPG reply

The initial replies from other insurance industry respondents appears to indicate that there is no such alternative model

Targeted PSYROC

76. A variation on the above option would be to consider regulatory arrangements for more targeted on-going PSYROC cover, limiting eligibility as compared to the existing SIF arrangements. This may mean for example that PSYROC provision could be open only to claims from particular practice areas or for firms of a particular size, where there is the highest density of claims.

There could be further targeting around length of time since the events giving rise to the claims or, for example, by limiting PSYROC to claims made within 15 years of firms closing.

77. To provide an illustrative example, conveyancing and wills, trusts and probate together account for 85% of the value of all claims and 88% of the number of all claims in SIF's open market years (post 2000). Applying this pattern to WTW's forecast of the total annual value for all "normalised" claims would see total annual claims costs of £974,100, which is a reduction of £171,900 compared to all claims. Using the totals from 2029, the first year that claims normalise at the steady forecast rate of 31 a year.

78. The benefit of a more targeted approach, thereby reducing the scope of cover, would be that the residual SIF funds could last longer and any future levy of the profession would potentially be lower, whilst making sure that features where risks are most concentrated are captured.

79. However, this would only deliver a comparatively small reduction in the call on the fund, with even fewer consumers being protected. Further, this would provide additional complexity and the cost of administration may be considered disproportionate given the small benefits that would be realised. This targeting would not improve transparency, simplicity or certainty for consumers or solicitors.

80. We could also consider capping the maximum pay-out per claim below the current £2 - £3 million level. This would potentially improve the affordability of PSYROC by reducing the need to reserve against the risk of unexpected high value claims disrupting the standard claims profile. However, the concentration of historic claims has been of low value so this would unlikely have a material impact on the value of claims paid.

Q10: Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

SPG reply:

The benefits and drawbacks of targeted post six year run-off cover have been discussed on various occasions and at the meeting of the Virtual Reference Group. The consensus was that to distinguish between types of solicitors and classes of business and limitations on indemnity would overcomplicate the matter and lead to issues which would not have the effect of reducing the total expenditure of the fund

Q11: If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

SPG reply:

Not applicable as above

Q12: Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

SPG reply

No. As above

No regulatory arrangements for on-going PSYROC through another mechanism

81. In summary, on balance, as we have set out above and in Annex 3, our initial analysis is that regulatory arrangements for ongoing PSYROC are in consumer protection terms, unlikely to be proportionate given the small number of consumers that would likely benefit each year and the low value of consumer restitution. This is particularly the case given the inherently high costs of handling long tail claims and need for ongoing funding, which is likely to result in cross subsidies across parts of the profession and risks negatively impacting on competition with other providers of services in the relevant areas of law.

82. Whilst a blanket indemnity scheme would provide certainty in terms of coverage for solicitors and claimants, as stated above this is likely to be disproportionate given the limited consumer protection it would deliver. Our initial view is that this would equally be the case for any targeted scheme. Further, any attempt to make PSYROC a more targeted intervention will likely result in greater complexity and therefore cost per claim, and will reduce the transparency and certainty of the regime for solicitors and claimants.

83. We do not consider that the absence of on-going PSYROC will have a significant impact on the availability of legal services, such that this would present a material risk to our objectives to improve access to justice or encourage a strong, diverse and effective profession. We have not found evidence that suggests that the practice areas represented in the majority of long tail claims are existing areas of significant supply shortage. Nor that the availability of cover for long-tail claims is a material factor impacting entry to the profession or the practice areas solicitors choose to work in.

84. In relation to market impacts on the demand side, research suggests that cost is likely to be a greater factor impacting whether people access legal services than whether financial redress is available if something goes wrong. We consider therefore that the greater risk to access to justice is the potential for an increase in the cost of services as a result of the additional cost to the profession of ongoing PSYROC, than the lack of available redress for long-tail claims, particularly given their low frequency and value.

85. Our preferred approach would be consistent with other regulators of legal services, and we think that making clear decisions now will bring uncertainty to an end and provide a transparent way forward.

86. We accept that not everyone will agree with our initial view on the preferred direction of travel, and that this is a matter in which strong views are held. We want to understand the range of opinions and are therefore inviting comments on the options in the round.

Q13: Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

SPG reply: The view of the vast majority of the Sole Practitioner Group members is that post six year run-off cover should continue under the most cost efficient regime using the existing funds of S I F Ltd which were provided by many of those members who will have retired or will shortly be retiring.

The vast majority of SPG members will also be prepared to pay the potential annual cost of £16 or whatever other proportionate division of the total requirement is decided on, but hopefully significantly less than is estimated by the consultation.

However whatever the cost the members agree that they would wish to pay this amount or any similar contribution on an annual basis during their working careers to enable the continuance of the fund which provides that clients with indemnity to the full extent of any limitation period and which has the added effect of enabling solicitors to serve their clients with the knowledge and peace of mind and that in retirement they will not be faced with any significant claims resulting from their previous work for which they will be uninsured.

Other mitigating actions

87. We consider that there are other steps that we could take, collaborating with TLS, in its representative function, to partially mitigate the risks to clients

of closed firms not having PSYROC. These may be a more proportionate response than providing or requiring PSYROC with the associated costs to the profession. For example:

- Providing support to firms to help them understand their options when they close and how to attract a successor practice. This may include networking and advice on issues to consider, including the effect of our Successor Practice rules. We can also consider reviewing those rules to make sure they do not present any unnecessary barriers. These actions may mitigate the risk that a firm wishing to close, cannot find a successor practice, and will go into run-off (without PSYROC). Or that, because of fear of personal liability for long-tail claims, firms will not close at the appropriate time, risking disorderly closure later.
- Ensuring that appropriate information is provided to clients at the time that a firm closes so that the client is in a position to take pro-active steps, for example taking out insurance themselves. We can also develop guidance to support a consumer at the point that they discover they may have a negligence claim in relation to a closed firm by explaining the process to them and the support that a professional may be able to provide.

Q14: Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

SPG reply:

Firstly SPG note that the SRA consultation question is to “mitigate the risk to clients”. The SRA should appreciate that the best way to mitigate the risk to clients is to mitigate the risk to solicitors so that they can serve their clients with greater confidence and peace of

mind of not having to face unnecessary risks in their retirement.

The suggestions above are very much a case of shutting the stable door after the horse has bolted and effectively emphasise the problems which are going to be caused to clients.

An important feature which arises from the consultation and its appendices is the distinction made by the SRA of the liability of firms with limited liability as against firms with unlimited liability.

The SRA might make it a condition of the client care letter to clients that clients should be advised that firms with limited liability will potentially not have any liability after dissolution of the company. A feature of the fund could be to allow clients to be protected even in the event of claims against limited liability entities which have been dissolved on cessation of business.

Use of Residual Funds should the Board decide to close SIF post consultation

88. Without prejudging the outcome of the consultation, we consider that it is of benefit to raise within this consultation considerations around the use of any residual funds should a) we decide that the SIF should not provide on-going PSYROC and b) that the SIF should no longer be held, managed and administered to meet its historical liabilities (for example, should these be met instead through a master policy solution).

89. Rule 21 of the Indemnity Rules 2012 provides that in these circumstances ‘the funds should be used either (i) for the purpose of providing indemnity in any other way permitted by section 37(2) of the Solicitors Act (SA); or (ii) otherwise for the overall benefit of the solicitors' profession in such manner as [the Society] may decide’.

90. If therefore we decide, post-consultation, that the SIF should close, and we also decide that there is no case for ongoing PSYROC in our regulatory arrangements, our initial view is that the surplus funds would fall to be returned to TLS to be applied for the overall benefit of the profession. As stated above at paragraph 65, we would propose to consider and consult as appropriate on any new regulatory arrangements at that time.

91. Given the terms of the Legal Services Act 2007 and the Legal Services Boards Internal Governance Rules, TLS cannot introduce a “regulatory arrangement” that would provide like for like indemnity to that currently provided by SIF. However, we believe that notwithstanding that restriction, there is room for discussion about the options that might be available to TLS to support its members and to help provide the ‘sleep easy’ factor for retired solicitors.

92. We remain on hand to assist the TLS in considering its options. We are open to discussing how we might be able to support the TLS in delivering any option, where this aligns with our regulatory objectives and is focussed on consumer protection.

93. It should be noted that, as described at paragraphs 8 and 65 above, the liabilities of the SIF at the time of its closure would remain to be met from its residual funds. This includes liability for claims made relating to firms that ceased without a successor practice on or before 31 August 2000 as well as liability for PSYROC claims notified by the cut-off date set out in the Rules (currently 30 September 2022). This will therefore impact on the amount returned to TLS. And therefore the longer that PSYROC is provided, the fewer the funds that will be available

SPG comment: *It should be noted that the accounts for 2019 and 2020 show that the net fund has reduced by only £500,000 in the last year according to the last 2020 accounts. This is further elaborated on in the Honeycomb report*

Impacts

94. Annexed to this paper are an equality impact assessment and regulatory impact assessment. We would welcome views on these assessments and any further information and evidence about the impacts of our preferred option or any of the other options presented.

SPG comment: *We produce the draft regulatory impact assessment below*

SIF consultation - draft Regulatory Impact Assessment

Introduction

The SRA is consulting on options for any future regulatory arrangements for firms we regulate to have access to ‘post six-year run off cover’ (PSYROC), to meet claims from past clients of firms which have been closed for more than six years and have no successor practice. This draft Regulatory Impact Assessment sets out our initial analysis of the impact of the options, and we are inviting feedback on it as part of the consultation. We are also publishing a draft Equality Impact Assessment as part of our consultation.

Our current preferred option, based on our initial analysis and subject to consultation, is that we do not continue the provision of ongoing PSYROC, either through the Solicitors Indemnity Fund (SIF) or another vehicle. This is because we think a regulatory arrangement for ongoing PSYROC would be disproportionate and incompatible with our

regulatory objectives, given the very limited consumer protection that PSYROC provides and the costs that an ongoing arrangement would involve.

SPG comment: The SPG just do not accept the premise in the last sentence and especially now having obtained the consumer report and the forensic accountants report

If we adopt this approach, the provision of PSYROC through the SIF will come to an end for new claims after 30 September 2022 as currently provided for in the SRA Indemnity Rules. This draft Impact Assessment sets out our current view of the likely regulatory impact of our preferred consultation option and of two comparator options discussed in our consultation paper –

- a new regulatory arrangement for ongoing PSYROC through another vehicle in respect of all firms we regulate that close without a successor (comparator option 1)
- a new regulatory arrangement for partial ongoing PSYROC – there are several possible forms this could take, but this Impact Assessment considers a PSYROC arrangement that only covers the legal services that carry most risk of claims for negligence more than six years after a firm’s closure, such as conveyancing, wills, trusts and probate work (comparator option 2).

SPG comments: The SPG have already taken the view that to divide liability for legal services will be disproportionate and will not create any benefit and at the same time will lead to disputes

The Impact Assessment discusses how any continuing PSYROC provision under these comparator options could be funded, and the impact of any new funding requirements.

Assessing the impact of the options for change – which will affect only a small sub-set of the consumers of legal services and the firms we regulate – is not straightforward, and in some cases the data we have found to inform our Impact Assessments is of limited help. As part of the current consultation we are asking stakeholders to provide evidence and feedback to inform our assessment. The responses we receive will inform the final Regulatory Impact Assessment and our Board’s decision on the way forward.

2 Summary of impacts

Section 1 Impact on all consumers of legal services

Our preferred option of discontinuing PSYROC would not impose any future costs relating to PSYROC. It would therefore avoid any ultimate related increase in the cost of legal services to consumers, and any related impact on access to justice.

A new regulatory arrangement for ongoing PSYROC for all firms that close without a successor would impose future costs estimated up to £2.4m a year. These costs may ultimately be passed on to consumers of legal services in the form of higher fees.

SPG comment: “may ultimately be passed on”– alternatively “may not ultimately be passed on” and in any event in the light of the replies to the consumer research would not result in any lack of access to justice.

If ongoing PSYROC is limited to particular areas of legal work, consumers or legal firms, the cost to the firms involved is likely to be materially

higher than the costs of a general requirement funded by all firms, and again these costs may be passed to consumers. This has the potential to reduce access to justice if some consumers are less able to afford to use the affected services.

SPG comment: Not applicable as generally considered that Option 2 is not practicable.

Section 2: Impact on consumers with a potential claim

The current PSYROC arrangement through the SIF is relatively narrow in scope and covers a very small number of claims each year, mainly in relation to conveyancing, wills, trusts and probate work. Other SIF claims relate to personal injury, litigation, commercial work and possibly to other types of work including criminal law, immigration, bankruptcy and insolvency, and mental health. In the absence of PSYROC consumers with a potential claim would have to find other routes to redress, such as professional negligence litigation against the former staff of the firm. Our preferred option of discontinuing PSYROC would mean that at least some consumers who may otherwise have been able to establish a claim to SIF would in future be unable to obtain any redress. The resulting level of consumer protection would be broadly similar to the requirements of other legal regulators in England and Wales, and higher than the requirements of non-legal and non-healthcare regulators.

SPG comment: Why should the clients be subject to a lottery as to which clients may be able to obtain any redress or not dependent on the solvency of the defendant.

Why should not solicitors aspire to the protection for their clients that the medical profession give to their patients? Solicitors are in the fortunate position to be provide this as

a result of the historic SIF fund currently administered by the SRA

The option of limited PSYROC would mean that a smaller number of consumers would be unable to obtain redress than under our preferred option. The option of ongoing PSYROC for all firms that close without a successor would maintain the current level of consumer protection.

SPG comment: So it should, in the interests of consumer protection and the benefits to the legal profession

Section 3: Impact on solicitors and SRA-authorized legal firms

Any regulatory arrangement for ongoing PSYROC will have some negative financial impact on the legal firms that fund it, whether directly if they choose to absorb the costs of funding the cover, or indirectly if increasing the cost of legal services deters some consumers from accessing those services. If PSYROC covers all firms, those firms that do not offer the types of legal services that give rise to PSYROC claims would effectively subsidise those that do.

SPG comment: The question of cross subsidy would be a matter for fairness or unfairness among solicitors, and bearing in mind that the SRA's expressed duty is not to benefit solicitors that would appear to be a matter for solicitors and their representative body

PSYROC provides 'sleep easy' reassurance for solicitors who have worked in a firm which has closed with no successor. Our preferred option would remove this reassurance, while any ongoing PSYROC arrangements would retain it for the services covered by the new arrangements. Making no future regulatory arrangement for PSYROC

would place solicitors in a similar position to other regulated professionals in England and Wales, including other 3 legal professionals.

SPG comment: Does the SRA have a political agenda to reduce the protection given by solicitors to that of others providing legal services? If so why?

As mitigation, alternative forms of reassurance for solicitors may include other forms of protection, or (where a firm has not yet closed) finding a successor business or adopting a legal structure that limits liability.

SPG comment: In the current insurance climate it is less likely that successor practices will be found and that in the cases of mergers and takeovers, it will be a condition that firms previous liabilities are “run off” which includes post six year run-off. Whereas in the past many firms have been able to find successor practices, that is going to be unlikely in the future which will increase the number of practices in run-off. This appears to be borne out by the insurance industry responses to the consultation.

It would also be open to the Law Society as the representative body to consider other steps that could provide reassurance by assisting solicitors who face a successful claim, as professional bodies do in some other sectors and jurisdictions. The number of solicitors who would face a claim for negligence if PSYROC is removed is very small in the overall context of the profession, but any claim will have a significant impact on the individual in terms of costs and stress. Where the claim is successful, the individual will face potentially significant financial loss. Analysis of PSYROC claims made to SIF indicates that there are likely to be an average of 31 claims notified each year on a “normalised” basis, that will

result in a payment (including where the payment is only for defence costs) on a normalised basis. Looking over a ten year period from 2023 the average claim cost is forecast to be £34,600 but the value of individual SIF claims can be much higher.

SPG comment: The impact assessment clearly sets out the detriment which will be significant. The claims will increase because of the number of firms in run-off under the previous comment. Whilst the SRA have no concern about an average loss to retired solicitors of £34,600, they should have some concern about the potential loss to a client of an average claim of £34,600, when the profession is standing up ready willing and able to cover this protection and the only argument the SRA has against it is the nebulous possibility of an increase in cost arising out of the contribution of £16 a year if demanded

Section 4: Impact on the wider public interest

Some stakeholders have suggested the removal of PSYROC could affect the number of solicitors carrying out certain types of work, such as conveyancing, wills, trusts and probate, and could even affect the number of people entering the profession. In principle there is a risk that this could cause detriment to consumers. However, professionals authorised by other legal regulators already practise without PSYROC protection in the areas of law that give rise to most PSYROC claims.

SPG comment: Those professionals authorised by other legal regulators do not have a fund in existence which would provide the appropriate cover if continued.

We have concluded that in all the circumstances there is no evidence suggesting a significant risk that changes to PSYROC arrangements for solicitors would affect consumers' ability to access legal services in the relevant fields.

SPG comment: This is broadly agreed as being the present position, because of the public's lack of concern over indemnity until the requirement arises. However, when the requirement arises and the indemnity is not there, there could be a significant public reaction and reflection on the profession as a whole. No research has been made by the SRA on this point and the IRN research obtained by the SPG shows that this statement is not valid.

or that it would affect the willingness of individuals to enter the profession.

SPG comment: It has not so far affected the willingness of individuals to enter the profession because it has not been a matter of concern on the basis of representations made by the professional regulators that cover would continue. Significant publicity will be given to this issue which will mean that solicitors been proven professionals will consider carefully whether they wish to enter into a profession, or section of the profession, which may leave them exposed to uninsured risk in their retirement.

The survey of solicitors indicates that they would not be so willing to enter into sole practice.

Section 1: Impact on all consumers of legal services

The PSYROC provided by SIF is currently funded by historic contributions from legal services providers, but this is not considered to be sustainable. Any future PSYROC arrangement under comparator option 1 or 2 would therefore need additional funding.

Analysis of SIF claims activity by Willis Towers Watson (WTW) indicates that the ongoing annual cost of comparator option 1, a regulatory arrangement for indefinite PSYROC for all firms with the same scope as the current SIF cover, would be up to £2.4m including administration and claims handling costs, which can be significant for claims of this kind.

SPG comment: This figure is significantly disputed by the SPG. The Willis Towers Watson analysis is a very fair analysis of the costings when read with the SIF Ltd accounts. WTW “Notes and Limitations” section on page 47 of the report states as follows

“In the subsequent financial illustrations, we have made a number of simplifications which include:

- We have made no allowance for the benefits of investment income.***

- In illustrating levy costings overhead administrative costs are fully loaded into levy or premium charges. In practice there is considerable scope for discretion in how this is applied ranging from a marginal cost basis under which no overhead cost is loaded.***

▪ The costings are based on the assumption that any replacement funding arrangement takes over the run-off of SIF's unpaid claims and that the future claim liabilities not covered by SIF are managed in conjunction with these. In the event of a separation, there will likely be additional costs due to some loss of economies of scale."

In respect of investment income, they state at page 45

"No allowance for investment returns on the portfolio. Although this is naturally volatile and is dependent on the asset mix selected, historically SIF has achieved favourable returns in the order of £1 million – £2 million in recent years"

Even if a conservative capital and income return on the total £33 million reserves is made, £1 million would be a 3% return which would be reasonable and reduce the figure of £2.4 million to £1.4 million which would reduce the individual contribution to £10 if required.

The fact that the use of the headline figure of £2.4 million which Willis Towers Watson clearly states does not take into account investment income is a worrying feature of this consultation with the effect that it is skewed towards the clearly expressed preferred option of the SRA.

This argument has now been developed by the production of the Honeycomb report

If this cost were funded by a levy on all practitioners or firms, WTW estimate that the annual cost on a flat fee would be around £16 per practitioner per year or around £240 for a firm. On a per solicitor charging model, the largest SRA-authorized firms would pay annual levies of around £20,500 unless levies are capped in some way.

SPG comment: Clearly the figure of £20,500 is intended to upset the senior partners of large London firms and to achieve that figure the firm must have solicitor membership of 1281.25 individuals. The SPG would agree that if the large firms disagree with this figure it may need to be adjusted amongst the profession to those who are more likely to require run-off cover.

However, over time many of these costs may ultimately be passed on to consumers of legal services in the form of higher fees for legal services.

SPG comment: As above. On the other hand, they may not be passed on.

We must therefore ensure that the regulatory requirements and provisions we impose are proportionate and do not create unjustified additional costs to users of legal services. Such costs have the potential to reduce access to justice if some consumers are less able to afford to use the affected services.

SPG comment: Whose access to justice is going to be affected by the affordability of fees increased by £10-

£16 per person per annum or even £240 per annum. This would appear to be an argument put forward without any justification or research for the purposes of supporting the preferred option conclusion of the SRA and is now dealt with in the IRN survey

Comparator option 2 – some form of partial PSYROC limited to particular areas of legal work, consumers, or legal firms – could be funded by a levy on all SRA-regulated practitioners and/or firms, or a levy only on those who carry out the types of work covered by the PSYROC, such as conveyancing (see section 2 below).

If limited PSYROC is funded by a sub-section of practitioners or firms, then the cost to those providers is likely to be materially higher than the cost of option 1, because a smaller base of participants will be contributing to a fund that is intended to cover a substantial proportion of the claims currently covered by the SIF. This may in turn result ultimately in a more significant increase in the cost of the affected types of legal services, and a greater impact on access to justice for users of those services, than under comparator option 1.

Our preferred option would not impose any future costs relating to PSYROC. It would therefore avoid any ultimate related increase in the cost of legal services to consumers, and any related impact on access to justice.

SPG comment: The paragraph above is replicated in its existing form: “Our preferred option” is in bold in case anyone scanning the document quickly missed it!

Section 2: Impact on consumers with a potential claim

Which consumers will be affected?

All consumers of legal services provided by SRA-authorized firms benefit from our minimum requirements and provisions for consumer protection, including requirements to put indemnity insurance cover in place and give consumers information about protection. These are summarised in the supporting papers for this consultation, along with research evidence about how consumers use and value the requirements and provisions.

In comparison the PSYROC currently provided by SIF is relatively narrow in scope and covers a very small number of claims each year. It only provides compensation to consumers of legal services in circumstances where both of the following conditions apply:

- they have suffered loss due to negligence or other failings in a provider's legal services
- the provider closed more than six years ago, without a successor firm taking over responsibility for its past work.

In certain circumstances the insurance may exclude loss caused by certain fundamental ethical failures, such as dishonesty and fraud, by a person or firm we regulate. Claims in respect of such losses may fall within the remit of our Compensation Fund, which will continue in its current form whatever the outcome of the current consultation.

WTW forecasts that the average number of PSYROC claims likely to be notified each year from 2023 onwards will peak at 45 in 2023 and eventually level off to a consistent norm of 31 from 2029. The claim notification counts exclude nil claims where there will not be any payments. It should be noted that under the current PSYROC arrangements, around 50% of the claims made to SIF do not result in a payment. This is often because there is a lack of evidence to prove a valid claim long after the events complained of and the closure of the firm, or the exhaustion of limitation periods. The value of claims

incorporates both costs related to defending a claim and money that is paid to third parties as settlements. WTW analysis shows that historically consumer redress payments make up approximately 58% of total costs. The remaining 42% is made up of defence costs paid from the SIF and also the SIF's administration and claims handling costs.

Looking over a ten year period from 2023, WTW estimate the average value of a successful claim as around £34,600. This figure includes defence costs and settlement payments. However, some individual claims will have a considerably higher value. The value of SIF claims paid between 2001 and 2016 is set out in WTW's report ('number of claims by claim amount'). Of the 282 claims paid, 230 cost less than £44,000 but two cost over £400,000.

The average costs of notified claims vary by year in part due to inflation and the historical exposures from prior ceased practices from 2001 onwards. The underlying assumption used by WTW is inflation at 3% per annum. This means looking over a 20 year period from 2023 the average claim cost is forecast to be £39,000 and looking over a 30 year period from 2023, £45,300. This also means that the overall level of exposure increases over time.

What types of legal work are most likely to be affected?

WTW analysis of the number and value of PSYROC claims paid by SIF shows that valid claims have historically been largely concentrated in a few areas of legal work including conveyancing and wills, trusts and probate, which together account for 85% of the value of all claims related to claims since 2000, when the SIF went into run-off. This reflects the 'long tail' risks involved in these types of work, where negligence or other problems may only come to light long after the original transaction – for instance when a property is re-sold, or a deceased person's estate is distributed.

Personal injury, litigation and commercial work account for the remainder of SIF PSYROC claims, along with a significant 'other' category. We do not have further information about the areas of legal work that gave rise to claims in this 'other' category because of limitations in historic SIF data. However, WTW analysis of the areas in which firms involved in SIF claims practised indicates that some of these claims may have been related to work in criminal law, immigration, bankruptcy and insolvency, and mental health. Although these areas of work only generate a relatively small proportion of SIF claims, problems in relation to such work may of course have a significant impact on the consumers involved.

Which consumers use the legal services most affected?

Analysis of the demographics and experience of consumers who use relevant legal services, including residential property services such as conveyancing, and probate and estate administration, indicates that:

- the prevalence of legal problems relating to property, construction and planning decreases with age, from 39% among people aged 18-29 to 16% of those aged 65 or more
- people with higher education levels are more likely to experience property, construction and planning and conveyancing/residential problems
- adults aged 65 or more are most likely to have legal issues related to wills, trusts and probate, with 33% reporting this compared with 8% of those aged 18-29 over the last four years.

We discuss the potential equalities impact of changes to PSYROC in relation to consumers in the Equality Impact Assessment for this consultation.

What alternatives will these consumers have if PSYROC is withdrawn?

Comparator option 1 would mean no change in the current position; consumers who have used legal services provided by an SRA-authorized firm which has been closed for more than six years and has no successor business would still be able to bring claims for negligence under PSYROC.

Both comparator option 2 and our preferred option would mean that at least some of the very small number of consumers who would otherwise have been able to claim under PSYROC would have to find another route to redress, such as professional negligence litigation against the former staff of the firm.

SPG comment: What legal executive employee is going to wish to work for a firm knowing that there will be no postfix run-off which may leave that employee liable without any indemnity

The overall impact on consumers in terms of lost redress would be greater under our preferred option than under comparator option 2, since our preferred option would make no arrangement at all for alternative PSYROC.

A professional negligence claim is usually a claim for losses arising from a breach of the duty of care. The courts may award damages to compensate the claimant for the loss suffered, by putting them into the position they would have been in if the solicitor had not acted negligently. To successfully bring a professional negligence claim against a solicitor, the claimant will need to show that they have suffered more than just bad service. The solicitor must have done something (or failed to do something) that caused the claimant a loss. The standard of care to which the courts hold solicitors is the standard of a reasonable solicitor acting in the same circumstances. Establishing a claim in this way is more complex and less accessible than claiming against PSYROC.

As with all professional negligence claims – including PSYROC claims currently made to SIF – the claimant has six years from the date of the negligence to make a claim. If they find out about the negligence at a later stage, they will have three years from the date on which they found out about the negligence, or the end of the six-year period which runs from the date of the negligence – whichever is later.

Except in some rare cases, there is a ‘long stop’ limit of 15 years from the date of the negligence after which a claim cannot be made. The exceptions include deliberate concealment, dishonesty, claims involving Mental Health Act patients, claims involving minors, and certain aspects of wills, trusts and probate matters where the commencement of time for determining limitation may be different.

Bringing a professional negligence claim to court is likely to require legal assistance. This carries costs and may deter some prospective claimants from using this route to redress, although there are professionals that specialise in making claims against solicitors under ‘no win, no fee’ arrangements. Such arrangements can help consumers to bring a claim, but may reduce the value of any resulting redress below what they could obtain under comparator option 1.

Overall both comparator option 2 and our preferred option would mean that at least some of the very small number of consumers who may otherwise have been able to establish a claim to the SIF would in future be unable to obtain any redress. As noted above, our preferred option would have a greater impact than comparator option 2 in terms of consumer access to redress. It is our job to balance our various objectives to create a regulatory system that delivers the best possible outcomes in the public interest, and an appropriate level of consumer protection, however this does not guarantee no risk for consumers.

Consumer protection for other legal and professional services in England and Wales

The table below summarises the current regulatory requirements relating to liability for negligence after the closure of a firm, for a range of regulated professions in England and Wales, and the other sources of redress that may be available to consumers where a problem arises.

SPG comment: The table has been not copied but can be summarised as follows

Chartered legal executive: six years run-off and no additional cover

Barrister: six years run-off and no additional cover

Chartered surveyor: six years run-off and no additional cover

Chartered accountant: 2/6 years cover and no additional cover

Independent financial adviser: adequate closure cover but no additional cover

Medical doctor: adequate closure cover and indefinite subsequent member indemnity scheme

Dentist: adequate closure cover and indefinite member indemnity scheme

In summary doctors and dentists have lifetime cover but other professions do not

The table shows that solicitors working in SRA-authorized firms are currently outliers in the UK professional landscape in this respect, in

comparison both with other regulated legal professionals and with non-legal professionals, except to some extent in the healthcare professions where higher specific requirements can be set by terms of employment rather than regulation.

SPG comment: Presumably medical negligence emerges relatively quickly except possibly in children's cases. There would be an outcry if children's cases were not indemnified. Why should the solicitors profession be any different?

What is the reason for distinguishing the requirement due to employment rather than regulation?

The CLC administers a discretionary compensation fund on behalf of the profession which does provide cover for negligence claims, but the fund's policy statement notes that the great majority of claims arise from misuse of client monies. This indicates that if we implement our preferred option and do not adopt a regulatory requirement for PSYROC, the resulting level of consumer protection would broadly be similar to the requirements of other legal regulators, and higher than the requirements of non-legal and non-healthcare regulators.

SPG comment: Why should that not be the case if the solicitors profession has the advantage of a fund to pay for it?

Consumer protection in other jurisdictions

Analysis of key consumer protection arrangements for clients of legal services in other jurisdictions (Scotland, Ireland, New Zealand, and parts of Australia and Canada demonstrates a wide variety of approaches, from indefinite run-off cover as long as an existing scheme/policy remains in place (Ireland, British Columbia) to a regime with no

regulatory requirement at all for PII but a requirement for legal practices to disclose their PII cover levels to clients, including where no cover is held (New Zealand). Compensation arrangements for claims after the expiry of run off cover are often set up by professional bodies rather than regulators and provide cover for ethical failures rather than negligence.

SPG comment: Nothing can be gained by comparisons with over countries. The question is the status of the solicitors profession and its reputation in this country

Section 3: Impact on solicitors and legal firms

General impact - costs

Section 1 of this impact assessment discusses the need for additional funding if we were to impose a general or limited regulatory requirement for PSYROC. We expect that over time many of these costs may ultimately be passed on to consumers of legal services, as may the costs of the consumer protection requirements that we already impose.

SPG comment: “We expect”. Do we all “expect” or is it just assumption by the SRA have carried out no research on this point continental research which is attached at appendix 2 as to consumers use and appendix 3 as to the potential financial requirements

The speed and scale with which this is passed on will depend partly on the capitalisation and financial position of each firm.

However, we believe that any regulatory arrangement for ongoing PSYROC will still have some negative financial impact on the legal firms that fund it, whether directly if they choose to absorb the additional

costs of PSYROC funding, or indirectly if increasing the cost of legal services deters some consumers from accessing those services. A requirement for all firms to be covered by PSYROC (comparator option 1) would also mean firms that do not offer the types of legal services that give rise to PSYROC claims would effectively be required to subsidise those that do. These impacts must be weighed against the very limited number of solicitors and their former clients who would benefit directly from a regulatory arrangement that provides for PSYROC.

General impact - uncertainty

In the absence of PSYROC, individuals who have provided legal services in an SRA¹ authorised law firm that has closed with no successor would face the possibility of personal liability for past negligence long after the firm closes, for instance in retirement. At worst, they could risk losing their savings or their home. This is why PSYROC is often described as providing an important 'sleep easy' reassurance for solicitors, and particularly sole practitioners and those who have worked in, or plan to work in, smaller firms which are more likely to close at some point with no successor.

Our preferred option would have the effect of removing this 'sleep easy' reassurance, while comparator option 1 would retain it entirely and option 2 would retain it for those services which are covered by new arrangements. We realise that the Law Society and many solicitors will have concerns about our preferred option for this reason.

However, our role as the regulator is to fulfil our regulatory objectives, and to impose regulatory requirements only where they are a proportionate way of achieving those objectives. We recognise the importance of 'sleep easy' reassurance for solicitors. We consider that this is a more appropriate matter for the representative body, which may wish to consider whether there are any steps it should take to support its members.

SPG comment: But the representative body is hamstrung by not being able to replicate the indemnity aspect of the fund and potentially not even use it as a hardship fund if it borders on indemnity. Accordingly handing the funds over to the Law Society without there being the appropriate amendment to the Legal Services Act to allow the fund be administered as an indemnity fund by an alternative body such as the Law Society prevents the SRA's recognition of the importance of "sleep easy" reassurance for solicitors

It is for us to decide whether there is a regulatory rationale for ongoing provision of PSYROC in light of the consumer protection it brings.

SPG comment: On a statutory basis the decision must be that of the SRA but it must be a decision based on a reasonable analysis of the factors and the SRA's incorrect interpretation of the costs of the fund and the reliance on a completely unjustified and un-evidenced statement that the levy of up to £240 per annum will have an effect on the provision of legal services is an unreasonable and potentially challengeable exercise of any decision which it is entitled to make.

Mitigation – other forms of protection

Our preferred option will place those providing legal services in SRA-authorized firms in a similar position to other regulated professionals in England and Wales, including legal professionals, as discussed in section 2 of this assessment. The profession, supported by their professional body, may explore other steps to mitigate its exposure to risk. We

remain on hand to assist the Law Society in considering its options. We are open to discussing how we might be able to support the Law Society in delivering any option, where this aligns with our regulatory objectives and is focussed on consumer protection.

We recognise that any change could lead some solicitors to seek their own PSYROC insurance cover where available, to take out alternative forms of personal insurance such as asset protection cover, or to contribute to a mutual scheme or hardship fund that could help solicitors deal facing claims that arise more than six years after the closure of a firm. Such measures would generate (potentially substantial) additional costs for those who take them, and solicitors who are still practising may seek to pass some or all of those costs on to their clients.

In principle we consider this is likely to be a reasonable outcome in a competitive legal services market, because some consumers may be willing to pay higher fees in return for a higher level of protection than the regulatory minimum. Solicitors who do not take such steps would be able to compete on price accordingly, along with licensed conveyancers, probate practitioners and other legal professionals not regulated by us.

Mitigation – successor businesses

Solicitors who are closing a firm, for instance in order to retire, can also seek to manage the risk of claims after the six-year run-off period by finding a successor business to accept responsibility for past work. However, we recognise that this can be challenging. We are considering whether it would be proportionate for us to provide additional support to help them understand their options when they close and how to attract a successor practice. This may include reviewing our Successor Practice Rules to make sure they do not present any unnecessary barriers. Where a closing firm can find a successor business to take responsibility for past work, that may help to protect both the solicitors who have worked at the firm and their former clients.

Mitigation – legal structures

Solicitors are now able to incorporate their practice as a private limited company (PLC) or Limited Liability Partnership (LLP). This limited liability means that consumers will bring claims against the incorporated practice, rather than against individual solicitors. This reduces the personal liability of individual practitioners, except in some circumstances such as work done on a personal basis as a trustee, or wrongful trading in the context of insolvency. Where a law firm closes and is dissolved at Companies House, claimants can no longer seek redress against the firm unless there is some form of insurance run-off cover or the entity can successfully be restored by court order, at all times subject to the relevant limitation period. Adopting limited liability for a firm may help to protect the solicitors who have worked at that firm in the event of it closing, but will not protect their former clients.

Impact on individuals – litigation

Any claim for personal liability for negligence will have a significant impact on the professional involved in terms of the costs and stress involved in responding to the claim. Where the claim is successful, the individual will also face potentially significant financial loss.

The number of solicitors who would face the prospect of a claim for negligence if PSYROC is removed in these circumstances is very small in the overall context of the profession. An individual will only be affected if they have practised in a firm which closed more than six years ago with no successor business, in an area of law which has a risk of 'long tail' liability for negligence, and have not taken successful steps to mitigate the risk as outlined above.

Most claims relate to sole practitioners and small firms, with only 10% relating to firms with six or more partners. WTW analysis of PSYROC claims made to SIF indicates that in the absence of successful mitigation

of the risk of claims, the solicitors' profession could expect to receive on average around 31 claims each year where under SIF some payment would be made in relation to defence costs and/or a settlement.

As noted in section 2, looking over a ten year period from 2023 WTW estimate the average value of a successful claim as around £34,600. However, some individual claims will have a considerably higher value. The value of SIF claims paid between 2001 and 2016 is set out in WTW's report ('number of claims by claim amount', page 73). Of the 282 claims paid, 230 cost less than £44,000 but two cost over £400,000.

SPG comment: Below we set out and comment on the Annex relating to the draft Equality Impact Assessment

SIF consultation – draft Equality Impact Assessment

Introduction

The SRA is consulting on options for any future regulatory arrangements for firms we regulate to have access to 'post six-year run off cover' (PSYROC), to meet claims from past clients of firms which have been closed for more than six years and have no successor practice. This draft Equality Impact Assessment sets out our initial analysis of the impact of the options, and we are inviting feedback on it as part of the consultation. We are also publishing a draft Regulatory Impact Assessment as part of our consultation.

Our current preferred option, based on our initial analysis and subject to consultation, is that we do not continue the provision of ongoing PSYROC, either through the Solicitors Indemnity Fund (SIF) or another vehicle. This is because we think a regulatory arrangement for ongoing PSYROC would be disproportionate and incompatible with our regulatory objectives, given the very limited consumer protection that PSYROC provides and the costs that an ongoing arrangement would involve.

If we adopt this approach, the provision of PSYROC through the SIF will come to an end for new claims after 30 September 2022 as currently provided for in the SRA Indemnity Rules.

This draft Equality Impact Assessment sets out our current view of the likely equalities impact of our preferred consultation option and of two comparator options discussed in our consultation paper –

- a new regulatory arrangement for ongoing PSYROC through another vehicle in respect of all firms we regulate that close without a successor (comparator option 1)
- a new regulatory arrangement for partial ongoing PSYROC – there are several possible forms this could take, but this Impact Assessment considers a PSYROC arrangement that only covers the legal services that carry most risk of claims for negligence more than six years after closure, such as conveyancing, wills, trust and probate work (comparator option 2).

This document discusses how any continuing PSYROC provision under these comparator options could be funded, and the impact of any new funding requirements.

Assessing the equalities impact of our preferred option and the comparator options – which will affect only a small sub-set of the consumers of legal services and the firms we regulate – is not straightforward, and in some cases the data we have found to inform our Impact Assessments is of limited help. This draft Equality Impact Assessment refers to the consultation papers which summarise the evidence and data we have used. As part of the current consultation we are asking stakeholders to provide evidence and feedback to inform our assessment. The responses we receive will inform the final Equality Impact Assessment and the SRA Board’s decision on the way forward.

During pre-consultation discussion, some stakeholders raised concerns that reducing or removing the current PSYROC arrangements could indirectly disadvantage people with certain protected characteristics, in particular older solicitors and those from a Black, Asian and minority ethnic background. We believe these concerns arise largely because of the profile of solicitors in smaller firms, which are more likely than large firms to close without a successor business and be at risk of PSYROC claims. Our firm diversity data does indicate that smaller firms have a high proportion of solicitors from both groups and men compared to the wider firm population. There were also concerns expressed about the potential impact on disabled solicitors, although our data on disability does not allow us to determine with any 2 certainty whether disabled solicitors are over-represented in smaller firms. These are issues we will consider further in the light of responses to the current consultation.

To inform our consultation and our draft Regulatory and Equality Impact Assessments we and Willis Towers Watson (WTW) have carried out analysis of SIF claims data. This includes a comparison between the diversity characteristics of the partners in firms involved in PSYROC claims to SIF (including age, ethnicity, disability and gender), and the equivalent characteristics of partners in all closed firms, and in open firms. The findings of the analysis of partners in SIF claim firms and all closed firms are set out in the WTW report, and the charts of comparative data for all open firms are at Annex 1 to this Equality Impact Assessment. We did not have the data to compare these groups for other protected characteristics, namely gender reassignment, marriage or civil partnership, pregnancy or maternity, religion or belief, or sexual orientation.

The analysis shows that in most cases the diversity profile of the firms involved in PSYROC claims is broadly similar to their distribution across all closed firms and all open firms. Therefore, we have no indication that there will be any significantly different impact on any specific group as compared to the solicitor firm population overall. There are two key exceptions:

- Men are over-represented in the SIF claim firms – 77% of partners of firms involved in SIF claims are male, while 69% of partners in all closed firms are male, and only 61% of partners in all open firms are male
- White partners are over-represented in the SIF claim firms, while Asian partners are under-represented. 73% of partners in firms involved in SIF claims are White and 4% Asian, while in all closed firms 69% are White and 6% Asian, and in all open firms 70% are White and 8% are Asian.

These disparities between partners in firms involved in SIF claims and in all open firms may well reflect broader demographic changes in the profession. As discussed below, solicitors faced with a PSYROC claim in future are likely to be older than average and in many cases they will be retired. Women have become increasingly represented in the profession in recent decades; the Law Society’s 2019 Diversity Profile reported that while the total number of solicitors has grown by 26% since 2009, the number of women solicitors has grown by 43%. The disparity in terms of ethnicity may have similar origins with the more recent growth in the proportion of solicitors from a Black, Asian and minority ethnic background. We will consider these potential impacts further in the light of responses to the consultation.

These issues aside, this analysis suggests that in respect of the characteristics of partners of firms that have been involved in SIF claims, the overall equality impact of changes to the current scope of PSYROC on solicitors and legal firms would be broadly neutral. We have referred to this analysis where relevant in the remainder of this impact assessment.

Equality impact of the SRA’s preferred option – no future regulatory requirement or provision for PSYROC

Impact on consumers

If there is no future regulatory arrangement for PSYROC, there will be no additional funding required and no additional costs to consumers. Our preferred option will therefore avoid both the cross-subsidies that would be created by comparator option 1, and the additional cost 3 impact that comparator option would impose on some solicitors, firms and consumers as a consequence of providing them with PSYROC if needed, as discussed below.

Our preferred option would have consequences for the very small number of consumers who may wish to bring PSYROC claims in future. Since older consumers are more likely to experience problems with wills, trusts and probate which give rise to the second largest category of PSYROC claims to SIF, this is likely to have an impact on those consumers. However, since PSYROC is not currently provided or required by other legal regulators or the regulators of other non-healthcare professions, our preferred option will create a level of consumer protection comparable with other regulatory regimes, in and beyond the legal sector. We will consider all the evidence and the potential factors that might mitigate the equality impact of our preferred option and set out our conclusions in the final Equality Impact Assessment.

Otherwise, in the light of the analysis discussed above we think the equality impact of our preferred option on consumers would be broadly neutral.

Impact on solicitors and legal firms

Our preferred option will have a potentially significant impact on solicitors who are at risk of PSYROC claims, as set out in our draft Regulatory Impact Assessment. That assessment also sets out potential mitigations for this impact.

In general, in the light of the analysis discussed above we think there are potential impacts for white groups, male partners and older solicitors but we will be looking into this further during the consultation stage.

The issue of gender is discussed above. The issue of age relates to the fact that most solicitors faced with a PSYROC claim in future are likely to be older than average, and in many cases they will be retired. This is an inherent feature of PSYROC, and our preferred option will have a greater potential impact on older solicitors than on solicitors in general. However, there are potential ways of mitigating this impact as discussed in our draft Regulatory Impact Assessment. We will consider all the evidence and the potential factors that might mitigate the equality impact of our preferred option and set out our conclusions in the final Equality Impact Assessment.

Impact on other stakeholders

We have not identified any equality considerations in terms of the impact of our preferred option on other stakeholders. Our draft Regulatory Impact Assessment considers the potential impact of changes to PSYROC arrangements on the wider public interest, including on access to justice if changes lead solicitors to avoid some types of legal work. However, we do not have evidence to determine whether there will be equality implications at this stage, and will be considering this further during the consultation.

Equality impact of comparator option 1 – PSYROC for all firms

Impact on consumers

Paying for PSYROC

This comparator option would put additional costs on the profession, either in the form of insurance premiums or a levy on legal services providers. Given the difficulty of obtaining PSYROC on the open insurance market, it is likely that this would have to take the form of a levy on legal services providers. We expect that over time, many of these costs may ultimately be passed on to the consumers of legal

services, as discussed in our draft Regulatory Impact Assessment for this consultation.

SPG comment: The only cost which has been identified at the maximum is £16 per member of the profession or £240 per firm. It is facile to say that this would: “take the form of a levy on legal service providers or that over time many of these costs may ultimately be passed onto consumers of legal services”. The figure is now seriously questioned by the Honeycomb analysis. Compared with the cost of insurance over which the profession currently has no control, the impact of £16 per annum per member, if that, will be minuscule

A few types of legal work including conveyancing, wills, trusts and probate give rise to the large majority of PSYROC claims. A future regulatory requirement for all SRA-authorized firms to be covered by PSYROC and contribute to its costs would give rise to cross-subsidies between legal firms, and ultimately to some extent between consumers. Therefore consumers who use types of legal services which rarely lead to PSYROC claims – including family, welfare, immigration and housing law (excluding property transactions), many of which are publicly funded, as well as corporate legal services – would effectively be subsidising people who use legal services such as conveyancing, wills and trusts.

Our draft Regulatory Impact Assessment includes some information about the demographics of people who use different types of legal services, which shows that:

- the prevalence of legal problems relating to property, construction and planning decreases with age

- adults aged 65 or more are most likely to have legal issues related to wills, trusts and probate
- people from Black, Asian and minority ethnic backgrounds are less likely to have a will in place
- economically vulnerable populations are the most likely to use family law services
- people from Black, Asian and minority ethnic groups are over-represented in the criminal justice system and therefore more likely to need to access criminal law advice.

It has also been suggested that users of legal services relating to conveyancing, wills and trusts services may be wealthier than the average individual consumer of legal services, although we have not found reliable data to test that assumption.

It is difficult to draw firm conclusions from this information about the potential equalities impact that changes to PSYROC arrangements will have on consumers – something we will explore further through the consultation. However, it is clear that the cost of protecting the very small number of consumers who currently benefit from PSYROC by imposing a regulatory arrangement for universal PSYROC will fall to the whole profession, much of which may ultimately be passed to consumers.

SPG comment: We repeat that the passing on of a contribution of £240 a year even if that much, will be negligible in the increase to any costs to consumers

Under comparator option 1, a substantial proportion of any such cross-subsidy would be at the expense of larger firms and may be passed on to

corporate users of legal services, which is less likely to raise equality concerns.

Benefiting from PSYROC

The Regulatory Impact Assessment for this consultation sets out our view of the benefits of PSYROC for the very small number of consumers of legal services who may need to access it. We do not have data on the diversity profile of consumers who have made PSYROC claims in the past, or clear evidence of the diversity breakdown of clients using the legal services most likely to generate these claims, beyond the limited data in the draft Regulatory Impact Assessment.

As discussed in the section on impact on solicitors below, some stakeholders have raised concerns that:

- older solicitors and solicitors from a Black, Asian and minority background are over-represented in the smaller legal firms that are most likely to close without a successor business, and
- as well as affecting the solicitors involved, it has been suggested anecdotally that any reduction in PSYROC may have equality implications for the clients of those firms, who may also have a higher level of such characteristics.

SPG comment: The SPG does have a high proportion of Black Asian and minority background solicitors amongst its practitioner members. Many have not yet reached retirement age to be able to prompt post six year run-off claims for the purposes of the statistics. Whilst recognising that this group of solicitors will form a significant number of those affected by closure of the Fund, and whilst they are significantly represented on the SPG executive

committee, they do not hold themselves out as a special case but consider themselves fully part of the solicitors profession in which all members should be treated with equality.

It would be encouraging if the SRA were able to reflect that sentiment as between their treatment of solicitors and their clients.

As discussed in the introduction section, our analysis of SIF claims indicates that with the exception of the impacts on men and white partners in firms, there are not significant differences between the protected characteristics of the partners of firms involved in SIF claims and the partners of all closed and open firms. As discussed above, it is not clear if there is a correlation between some equality-related characteristics of partners in law firms and their clients. But either way, we do not have evidence to suggest that our decision on a regulatory arrangement that provides for universal or targeted PSYROC will have an equality impact on consumers of legal services. Again, we will consider this further in the light of responses to the current consultation.

Impact on solicitors and legal firms

As discussed above, we would expect a regulatory arrangement for PSYROC to have some negative financial impact on the legal firms that fund it, whether directly if they choose to absorb the additional costs of PSYROC funding, or indirectly if increasing the cost of legal services deters some consumers from accessing those services.

SPG comment: It is accepted by SRA representatives that no assessment or financial calculation has been carried out to assess whether there would be any negative financial impact as a result of the up to £240 per annum. The only factual as opposed to political argument that the SRA

has for the closure of the Fund is the disproportionality of its cost and in that respect the only argument can be put forward by SRA is: “it must increase costs mustn’t it” when the percentage effect on the firms overheads is minuscule.

Even this argument is now challenged by the Honeycomb report

The draft Regulatory Impact Assessment sets out how ongoing PSYROC would have some benefit for all solicitors who worked in firms that have closed with no successor business, by providing a ‘sleep easy’ factor and relieving them of the worry of facing personal liability for a claim of past negligence. PSYROC would also provide a significant benefit for those solicitors who actually face such claims.

SPG comment: There are a significant number of solicitors who have retired and are approaching or are within the post-six year run-off period and can take absolutely no action to protect themselves, bearing in mind that the SRA accept in the consultation that there is no affordable policy available to them.

SRA guidance in the past has indicated that such provision would be available in due course and that has now proved impossible because of the insurance market. The SRA should reflect that situation as a significant factor of good-faith in retaining the Fund as against the argument of proportionality

As discussed in the Regulatory Impact Assessment, we recognise the importance of these benefits, but providing reassurance for solicitors

may be considered more appropriate for the Law Society as the representative body for the profession, rather than for the SRA which must not act for the purpose of benefitting the profession.

SPG comment: Neither must the SRA act for the purpose of consciously damaging the profession which will have the effect of prejudicing the service that the profession can provide to the public, to which the SRA emphasise their duty.

To actively withdraw a facility which has so far had the effect of leaving no solicitor without a sleep easy factor, without any empirical evidence of damage to the provision of legal services would be wholly unjustified

Our analysis of SIF claims indicates that with the exception of men and white partners, there are not significant differences between the protected characteristics of the partners of firms involved in SIF claims and the partners of all closed and open firms. However, older solicitors – and particularly those who have retired – will inevitably be over-represented in the set of lawyers whose work is the subject of a PSYROC claim, and would therefore benefit from the continued protection against such claims provided by comparator option 1.

SPG comment: What is wrong with treating an older retired solicitor– whether black, white or otherwise– as having a characteristic disadvantage which should be taken into account. The disadvantage is that that solicitor is no longer working to be able to fund any claim or recoup any losses as a result of any claim in the future, as would be the case with individuals in active employment who can restore their fortunes in the event of a financial setback

In addition, there are a category of solicitors who for reasons of no-fault of their own are now in run-off while still actively practising as a result of a previous closure in run-off. The concern which they will inevitably face as a result of closure of the fund will not assist them in the service that they provide to their clients

That aside, we therefore think our decision on whether or not to introduce a regulatory arrangement for universal or targeted PSYROC will be largely neutral in terms of its equalities impact on solicitors.

SPG comment: Arguably neutral as between solicitors but definitely not neutral as against solicitors

Impact on other stakeholders

As with our preferred option, we have not identified any equality considerations in terms of the impact of universal PSYROC on other stakeholders.

Equality impact of comparator option 2 – PSYROC for firms that offer some types of legal services 6

Impact on consumers

Paying for PSYROC

It would be possible to limit any ongoing regulatory arrangement for PSYROC – for instance, to cover only the types of legal services that give rise to the large majority of PSYROC claims, such as conveyancing, wills, trusts and probate. Any limited arrangement covering those services would need new funding on a scale broadly similar to comparator option

1. However, its funding would be drawn primarily from the firms that provide the relevant services, and the cost of that funding may ultimately be passed on to the consumers of those services.

Any arrangement on these lines would avoid creating the cross-subsidies between different areas of legal work discussed in our assessment of comparative option 1 above, and the consequent financial disadvantage for some consumers of legal services, which may have equality implications.

However, such a limited arrangement would concentrate the extra costs of PSYROC on the legal services which give rise to most PSYROC claims, and as discussed in our draft Regulatory Impact Assessment, we expect that over time, many of those costs would ultimately be passed on to the users of those services.

SPG comment: Only an expectation without substance given the minimum contribution to an individual solicitors cost of practice

This would affect some categories of consumers, such as people aged 65 and over who are more likely to use legal services relating to wills, trusts and probate. This is a potential equality impact, but it is a direct consequence of the fact that option 2 will provide a small number of the consumers of such services with protection in the form of the limited PSYROC cover. In effect, this goes back to the wider debate about the appropriate level of run-off cover to protect consumers, as discussed in our consultation paper. The number of consumers who would actually benefit from access to limited PSYROC would be very small, while the number who would face a possibility of higher costs for legal services because of the existence of that cover would be much greater.

SPG comment: But the proportional effect on those who benefit from access to post six year run-off cover will dramatically exceed those whose

costs might at best be minimally increased by their solicitors contribution of a maximum of £240 per year to the continuation of the fund

As discussed above, we have heard concerns that a limited PSYROC arrangement would have wider equality implications for consumers of legal services. This is because (i) smaller firms are over-represented in the category of those who provide services that give rise to PSYROC claims, and (ii) smaller firms may be also more likely to have both solicitors and clients who are older solicitors and/or are from a Black, Asian and minority ethnic background.

We agree that these factors do create a potential risk of an equalities impact. However, our analysis of SIF claims indicates that with the exception of the identified and previously discussed impact on men and White partners in firms, there are not significant differences between the protected characteristics of the partners of firms involved in SIF claims and the partners of all closed and open firms. We therefore think that if there is a correlation between firms and clients in this respect, our decision will effectively be neutral in terms of its equality impact on consumers of legal services.

Impact on solicitors and legal firms

We think the equality impact of comparator option 2 on solicitors and legal firms is broadly the same as comparator option 1. Over time, many of the costs of a limited PSYROC arrangement **may be** passed on to consumers of legal services,

SPG comment: “...may be”. There you go again. On the other hand: “.....may not be”. And now effectively definitely not in the light of the reports attached to Appendices 3 and 4

and the analysis of SIF claims indicates that the benefits of limited cover to solicitors and firms – both in terms of the ‘sleep easy’ factor and

protection if a claim for personal negligence is raised – will be distributed in the same way as under comparator option 1. Impact on other stakeholders As with our preferred option and comparator option 1, we have not identified any equality considerations in terms of the impact of limited PSYROC on other stakeholders.

[End of draft equality impact assessment]

95. From the evidence gathered to date, there are two groups that we have found that may be disproportionately impacted by PSYROC ending, when compared to the general population of open and closed firms. These are men and white solicitors. Please see the equality impact assessment at annex 6 for further information. We suspect that the disparity with these groups reflect broader demographic changes in the profession. Women have become increasingly represented in the profession in recent decades; TLS 2019 Diversity Profile reported that while the total number of solicitors has grown by 26% since 2009, the number of women solicitors has grown by 43%. The disparity in terms of ethnicity may have similar origins with the more recent growth in the proportion of solicitors from a Black, Asian and minority ethnic background. However, we are seeking views on the possible reasons for this disparity, as well as the information in the impact assessments more broadly.

Q15: Do you have information on impacts to inform our assessments

SPG Response: Yes. The additional reports attached to this response

Our questions in full

A full list of our questions is set out below.

Q1: Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

SPG Reply: *Yes. On the basis set out in the various comments in this response the initial analysis of the SRA is flawed if it is based on the existing arguments of proportionality of cost to benefit.*

There is no tangible argument as to the costs of the Fund prejudicing access to justice.

There is however tangible argument as to the effect of the loss of the fund prejudicing a significant proportion of clients and a significant proportion of solicitors.

Q2: Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

SPG reply: *Yes. Having made the comments set out above and in respect of the impact assessments below, the SPG having canvassed its executive committee and its members strongly argue that in the interests of the public and the profession, insofar as the profession benefits the public rather than itself, the balance of interest is in favour of a continuation of the fund under some form of appropriate control and administered in the most efficient way.*

There is a fund. It is functioning. Its closure would dissipate the underlying funds.

From the point of view of the SRA's obligations to the public as opposed to the profession, it is now clear that there is so much disquiet amongst the profession as to the closure of the Fund that the effect of that disquiet will have an underlying effect

on the provision of legal services if only resulting from disquiet over a decision to close the Fund. It cannot be right for the SRA to override the significant views of the profession.

It further cannot be right that the SRA overrides the profession's views by the speculative suggestion that the costs of running the fund will have an effect on solicitors costs which will reduce access to justice. To say that an annual figure of up to £16 per annum solicitor which cannot be described as more than pocket money, would have a substantive effect on the provision of legal services, cannot be an argument with any foundation.

However, what can be said is that the practical effect of leaving a small proportion of the public and a small proportion of solicitors to litigate amongst themselves over valid post six year run-off claims, will be detrimental to the profession and accordingly its standing in the provision of legal services, even if on a strict accountancy basis it would not have been proportional to set up the existing Fund for this purpose.

The existing Fund is a historical benefit paid for by solicitors, many of whom would have been in practice when the original funds were accumulated pre-2000 and where solicitors should be entitled to the benefit of that Fund to continue to provide indemnity to the public from the end of the minimum terms run-off for any further residual claims.

Q3: Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

SPG reply: It is agreed that amending the minimum terms and conditions of the master policy in the face of the opposition by the insurers to cause more inflation in premiums which would have a negative effect on the costs of the provision of legal services which in view of the amount of those increases, as opposed to the amount of any contribution to the existing fund, would have to be passed on to clients

Q4: Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

SPG reply: No

Q5: Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

SPG Reply: The insurance industry responses indicate this is not available

Q6: Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

SPG reply: It is agreed that this model would be at a high cost in terms of premium and unless a reasonable financial proposal is put forward it is not worth taking for further stage. In any event it will require potential amendments as to its control in relation to the current limitations on the provision of indemnity

Q7: Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

SPG reply: *The advice so far received is that there is unlikely to be a suitable and cost-effective master policy available in the market*

Q8: Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

SPG reply: *It is the SPG's position on behalf of its sole practitioner members and on behalf of small firms generally that it is in the interests of the public as well as in the interests of solicitors that post six year run-off cover should continue into the foreseeable future if only to leave no position where a member of the public is disadvantaged by not being able to make a claim against a fund as opposed to an individual.*

Given the SRA's concerns about the cost effectiveness of the operation of the current fund it must be right that an alternative method of operation of a fund is considered. However, the basis of that fund must be the resources in the existing Fund without the run-off of the existing fund or the creation of a separate fund with the remaining assets. This would duplicate administration charges and not be cost-effective.

Clearly the SRA in giving advance notice of its preference in relation to the closure of the fund have a clear policy not to operate this fund and therefore the operation of the fund on a new basis may avoid the SRA being placed in a position of carrying out a function which they believe is not within their sphere of duties to the public as opposed to solicitors.

There should be a fund which is operated with control on behalf of the public, and on behalf of solicitors, without whose cooperation and encouragement, the public cannot continue to be protected.

Thought should be given as to whether the LSB should have overall control that fund with representatives from the Law Society and the SRA, thereby allowing the fund to come within the existing indemnity provisions. It is inherently unlikely that such a position could be achieved by the deadline of 30 September 2022 and the fund would need to continue under the SRA until such a position was analysed and adopted.

Q9: Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROK through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

SPG reply: the insurance industry responses indicate that there is no practical and viable alternative model

Q10: Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

SPG reply: *The benefits and drawbacks of targeted post six year run-off cover have been discussed on various occasions and at the meeting of the Virtual Reference Group. The consensus was that to distinguish between types of solicitors and classes of business and limitations on indemnity would overcomplicate the matter and lead to issues which would not have the effect of reducing the total expenditure of the fund*

Q11: If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

SPG reply: *Not applicable as above*

Q12: Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

SPG reply *No. As above*

Q13: Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

SPG reply: *The view of the significant majority of the Sole Practitioner Group members is that post six year*

run-off cover should continue under the most cost efficient regime using the existing funds of S I F Ltd which were provided by many of those members who will have retired or will shortly be retiring.

The majority of SPG members will also be prepared to pay the potential annual cost of £240 or whatever other proportionate division of the total requirement is decided on, but hopefully significantly less than is estimated by the consultation.

However whatever the cost, the members agree that they would wish to pay this amount or any similar contribution on an annual basis during their working careers to enable the continuance of the fund which provides that clients with indemnity to the full extent of any limitation period and which has the added effect of enabling solicitors to serve their clients with the knowledge and peace of mind and that in retirement they will not be faced with any significant claims resulting from their previous work for which they will be uninsured.

Q14: Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

SPG reply: Firstly SPG note that the SRA consultation question is to “mitigate the risk to clients”. The SRA should appreciate that the best way to mitigate the risk to clients is to mitigate the risk to solicitors so that they can serve their clients with greater confidence and peace of

mind of not having to face unnecessary risks in their retirement.

The suggestions above are very much a case of shutting the stable door after the horse has bolted and effectively emphasise the problems which are going to be caused to clients.

An important feature which arises from the consultation and its appendices is the distinction made by the SRA of the liability of firms with limited liability as against firms with unlimited liability. The SRA might make it a condition of the client care letter to clients that they should be advised that firms with limited liability will potentially not have any liability after six years if dissolved even if insurance is in place. A feature of the fund could be to allow clients to be protected even in the event of claims against limited liability entities which have been dissolved on cessation of business.

Q15: Do you have information on impacts to inform our assessments

SPG Response: Please see the reports in the further appendices 3 and 4

Appendix 2

Commentary on IRN research report

Due to the fact that it is obvious from lack of any reference in the consultation to any research having been done as to the impact of the withdrawal of the cover from the Fund on any consumers and on the basis that questions of the SRA have elicited confirmation that no such research has been carried out, the Sole Practitioners Group have decided to carry out such research.

They have engaged IRN research which is a legal research organisation which has carried out consumer research for the Law Society and the SRA in the past and is therefore an accepted research organisation in the field of consumer surveys concerning legal questions.

The total number of in-depth surveys carried out is 100 which is a satisfactory base for a reasonable assessment of consumer opinion

The survey report is attached and the results speak for themselves but the headline summaries can be as follows.

1. That 84% of those questioned were very concerned, concerned and slightly concerned as to any post six year claims not being covered by insurance.

This left 16% who were not really concerned or not at all concerned.

There then arises the justification by the SRA that the public would be concerned that an increase in costs and this justifies the closure. Because the consultation has been presented on the basis of an annual contribution to £240 and this is supported by the Law Society as being the preferable

contribution as opposed to an individual payment of £16, questions were then asked as to the consumer fears as to a potential increase in costs arising from the need for that contribution if it is passed on wholly to the consumer.

2. Again 77% agreed to the fee being paid and 11% not with 12% don't know.

3. As to the fact of the fee contribution being passed on at a possible increase of £1 a case, 79% agreed to that increase in fees with 11% disagreeing and 10% don't know.

Accordingly the argument of the SRA having considerable concern as to the increase in cost to consumers is not supported by research and is another argument which accordingly fails.

4. In case it is argued that a consumer's choice, or use of solicitor would be affected by a cost increase this question was asked and in that case 88% said it would not with 5% saying it would and 7% being don't know.

Accordingly the SRA consultation argument of the limitation of consumers use of solicitors again fails.

The last three questions in this consultation are on the premise of the need for £240 contribution by solicitors which contribution is seriously in question as a result of the groups investigation by forensic accountants of the basis upon which this figure is arrived at or indeed is needed at all.

The report is attached together with a summary of the responses made indicating that this was an in-depth survey and not just a tick box response.



Legal Services and Professional Negligence Insurance Consumer Survey Research Report

For

The Sole Practitioners Group

10th February 2022

Version 2

IRN Research

60 Eastern Green Road

Coventry CV5 7LH

UK

www.irn-research.com

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Introduction

In January 2022 IRN Research was commissioned by the Sole Practitioners Group (SPG) to undertake independent research amongst 100 consumers in England and Wales. This sample was asked to complete a short telephone interview.

The questions aimed to obtain feedback from law firm clients about possible negligence claims made against firms which have subsequently closed and which may not have insurance. The specific questions asked are included in specific sections of the report.

The questions are relatively straightforward but the context around the questions is slightly complicated for consumers to grasp quickly so some background information was sent to each consumer in advance of the call so that they had an understanding of insurance and the plans of the Solicitor Regulation Authority (SRA) to close the Solicitors Indemnity Fund.

Results overview

A large majority of consumers have some concerns about the lack of any insurance cover for professional negligence claims made more than six years after a firm has closed and they would be willing to pay the nominal extra fee of £1 to maintain cover via the Solicitors Indemnity Fund.

Survey results

Concerns over lack of insurance after 6 years

A large majority of consumers have some concerns about the lack of any insurance cover for negligence claims made more than six years after a firm has closed.

Almost half (49%) are either “very concerned” (13%) or “concerned” (36%) and another 35% are “slightly concerned”. Only 16% have no real concerns.

Question: Are you concerned to know that any negligence claim you may have to make against a firm of solicitors will not be covered by insurance, if it is made more than six years after the firm has closed?

Key themes from the comments linked to the above answers are:

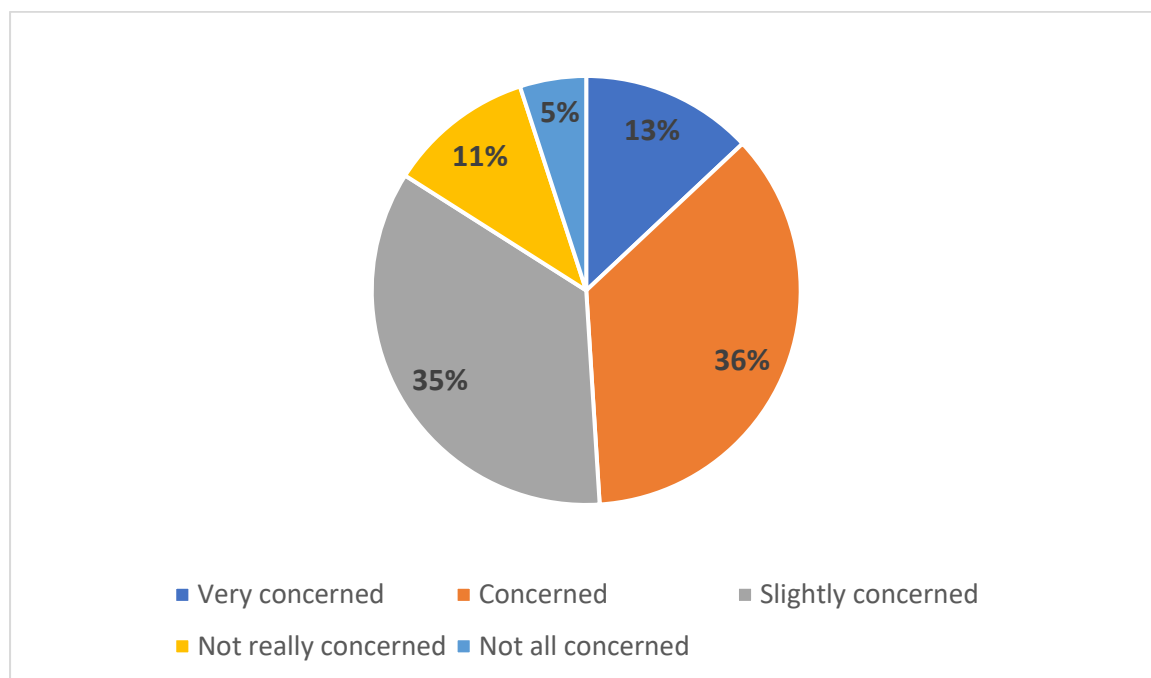
- If a firm has closed what other way would there be to make a claim? Where would you start? Even if they have insurance where do you know where to go to claim? (mentioned by 16 interviewees).
- Cases can take a long time to resolve so it is needed (8).
- Some kind of insurance is needed because you can't take a closed firm to court (6).

- You have probably paid a large fee to the adviser so you need recourse and insurance coverage if you find something wrong at a later stage (6).
- You don't always think about insurance cover when you start to use a solicitor as you have other things on your mind (6).

Those that are less concerned:

- It shouldn't take this long and any claims should have been dealt with much earlier (4).
- It's too far ahead to think about (4).

Figure 1: Level of concern for lack of insurance 6 years after closure



Source: IRN Research Consumer Survey, January/February 2022

Consumers say pay small annual fee to keep Solicitors Indemnity Fund

Over three-quarters of those questioned (77%) agree that an annual fee of around £240 should be paid by each law firm to keep the Solicitors Indemnity Fund running.

Just 11% say “No” to maintaining the fund and another 12% are “Don't knows”.

Question: Do you think that an annual payment (of approximately £240) paid by each firm of solicitors should be required to keep the Solicitors Indemnity Fund running and protect clients, bearing in mind that the average claim paid out to a client is about £34,000?

Key themes from the comments supporting the majority saying yes include: it is needed to protect the client/it is in the interest of the client; it is not that much; depends on firm size – a drop in the ocean for the larger firms but maybe significant amount for smaller firms; it

works if all firms contribute and there is a level playing field; agree if the average claim is really that much; something like the fund is essential given the claim culture.

Table 2: Agreement with keeping the Solicitors Indemnity Fund

	Number	%
Yes	77	77%
No	11	11%
Don't know	12	12%
TOTAL	100	100%

Source: IRN Research Consumer Survey, January/February 2022

Modest increase in fees acceptable to keep protection

Interviewees were asked if they would accept a modest increase in fees, calculated by the SPG of around £1 a case and almost eight out of 10 individuals said “Yes”. Only 11% said “No” and 10% were “Don’t knows”.

Question: Would you be satisfied with a modest increase in legal fees (of about £1 per case) to give you this protection?

The general consensus from the comments is that it is a small cost to give a client peace of mind.

Table 3: Acceptance of a modest fee increase

	Number	%
Yes	79	79%
No	11	11%
Don't know	10	10%
TOTAL	100	100%

Source: IRN Research Consumer Survey, January/February 2022

Modest increase would not impact on choice of a solicitor

For 88% of interviewees, a slight fee increase would not have an impact on a consumer’s choice of solicitor. It would only affect 5% of individuals and the other 7% are “Don’t knows”.

Question: Would a modest increase in legal fees (of about £1 per case) charged by a solicitor affect whether you use a solicitor?

Many of the 88% saying “No” state either that it would not impact on the total fees charged or say that the firm’s credentials/expertise/reputation should outweigh and marginal cost increase.

Table 4: Affect of modest fee increase on solicitor choice

	Number	%
Yes	5	5%
No	88	88%
Don't know	7	7%
Total of respondents	100	100%

Source: IRN Research Consumer Survey, January/February 2022

APPENDIX

Comments given by interviewees

Reasons given for supporting answers to Q1

Question: Are you concerned to know that any negligence claim you may have to make against a firm of solicitors will not be covered by insurance, if it is made more than six years after the firm has closed?

Concerned reasons

Similar comments:

You need protection if you are paying a large amount for the advice/ they charge a lot so you need to know there is a way to make sure they are doing things right/once you have paid all the fees at the end you are glad it's over but if you find out later that the solicitor messed up then you need something to get your money back/pay back years later for the amount you have spent (5 replies)

I would have paid good money to get the legal advice in the first place and so I would expect that if I had a negligence complaint even if they have gone then there would be some way of getting something so professional negligence insurance ...yes.

Similar comments:

You can't take direct action if they have gone and can't have your day in court so yes this would be worrying/ There is no other way I think to sue them or something like that so what do I do?/No court route to help you so needed (5 replies)

You can't take the firm to court when they have goneis that right? So insurance cover would be needed.

Cases can go on for years and I guess you could change solicitor if the original one goes bust or disappears so yes it would be a concern.

Similar comments:

Various comments about where to start?/where do I go?/can't think of how I would go about it (8 replies)

If a firm closes where do we go for redress and insurance for negligence after the event would be the way.

It really should have been dealt with sooner and I can't think of waiting 6 years after they close to take action but you say it can happen so yes I would want to be able to get something and wouldn't know where to start.

There is no connection between when you start and when you end in a legal case. I mean you don't think so far ahead especially 6 years after they have gone but it's something you need.

Access to justice is a human right so if they have messed up then even after a long time you should be able to get compensation even for closed firms so I would be concerned.

I had to make a complaint a few years back but this firm was still there. It took for ever to get anything back from them. They agreed in the end to reduce the fees charged but I don't know what I would have done if the firm was no longer there so yes this insurance sounds good.

I just naturally assumed that they were all covered but I suppose after 6 years it would be hard to find the details. So yes it's a concern.

Do they have to be insured when they are closed down? I don't know.

If you hadn't asked the question it wouldn't have crossed my mind to be honest. But I suppose it's possible I could make a claim way after the end of a legal issue.

Possibly not that important for me when I am looking for a solicitor but now it's something I would look at. Yes it would be a worry.

There should be some contingency so all sounds sensible to do it.

I have been through a really difficult probate after my husband died with his side of the family causing all kinds of issues and it is dragging on. I think my solicitor has acted correctly but it is still ongoing and who know what might happen in the future.

It protects the public from breaches in services from solicitors even when they are no longer practising.

That you are covered is important even if its years after the case and then you found that they acted wrongly.

I thought all law firms were reputable company and had insurance but I suppose I never thought about them closing down. But even if there is insurance available how do you know this if just a member of the public?

Mine was regulated by the SRA and this ensures they meet the required standards of professionalism and I had no complaints. I wouldn't expect any problems if I used them again but not sure what I would do if they closed and then something cropped up. So this insurance sounds important but I don't know how it would work.

Yes concern and insurance after the event of closure would assure customers.

I had a long and complicated family matter and at least I had the comfort of knowing that the solicitor was regulated by the professional body and if I had an issue with them I could take them to this body. If the firm has gone there would be no regulation then I am guessing so I would need this insurance yes.

They need to be held to account for their work even if they have closed.

There are standards I expect this law firm to meet and it could have closed anyway because of these problems you mention – you know not dealing with clients properly – so it may take a while for these things to come out and then I would be concerned if there was no cover.

The insurance would be a shield, covering people for many years.

There has to be justice and fairness so this would worry me especially as I think it would be complicated.

No insurance means a lack of reassurance to customers.

I know I have rights and can go to the Ombudsman I think but maybe not if the firm has gone. So I would need to know that there is some insurance there if it happens.

If a legal adviser has not met the standards they should have and later down the line this comes out then of course there must be a way to get compensation for this and I would be upset if there was no way to do this.

I didn't know this was available when I used my solicitor it has a form of redress, should anything go wrong in the future so yes I want it and would be concerned if it was not there.

Law firms have to abide by the rules of their business and 6 years or more sounds a long time after closure but my case lasted for years and years so it's something I would worry about if the firm closed.

Yes it would concern me as I need protection whenever I have a claim.

It's a guarantee that you can do something down the line so yes I would be concerned.

They had to abide to their regulations when they were still working so they still have to be answerable if they have closed because the complaint will be about when they were open. So we need the insurance you talk about.

Gives confidence that you can still make a claim all those years later so yes I would be uncomfortable if there was no way to make a professional negligence claim.

The insurance cover would be reassurance I suppose but I can't imagine going back to claim after so long.

Solicitors have to do their jobs properly and if they have closed down there still has to be way of getting justice so if I can't do this then I am worried.

The insurance gives confidence to the client.

Without it there seems like there would be no protection for customers.

I have used solicitors a fair bit and I know that if there are any problems I can report to the SRA which has authority over solicitors. Not sure what happens if they close down though. This sounds like something that is needed so it needs to be there.

It is somewhere to go if things go wrong but you only find out years later.

This cover sounds like it protects human rights even if the company has gone so I would be concerned.

The insurance reassures you even if the company has gone so it's necessary and needs to be there.

It looks bad if a firm has closed leaving professional negligence questions and I would start to question professional standards in the legal profession. If there is a fund to go to help me I would need it so it's a concern if nothing there to help.

The insurance would provide you with confidence but I don't think anyone would seriously think about it when they start working with a law firm.

You are not covered if you are given duff advice. You are not really guaranteed to be covered even after 6 years later.

You should be covered as a customer.

If your case is closed then it would be very hard to reopen it again after 6 years, so if you're not covered by the insurance I think it would make it impossible to get a solution.

If I made a claim I'd be concerned that the claim is covered by some form of insurance.

If negligence was apparent, through the law firm I'd made an original claim for. I want to make sure that I was fully covered.

Not concerned reasons

It's just a small possibility so not worth thinking about.

Really I can't think that far ahead – I would have moved on by then.

I think you would have settled by then anyway – 6 years after closing seems a ridiculous amount of time.

Any claim should have been dealt with by then really.

You want a claim finished quicker than that so no I wouldn't be concerned.

I can't imagine it would happen – our conveyancing firm closed but we got passed on to another firm and it was all OK.

Are you saying it could be 10 years after a closure? Just think that is too long and too far ahead.

I completed my divorce in 18 months. I thought that was a long time so I think more than 6 years after the firm has closed is not worrying about. It's a long time.

Can't you go the Ombudsman?

When you start a legal case you have to be confident that the adviser will be competent, actually more than competent, so it shouldn't be something to think about. But I don't think you can expect to make a claim year and years after a firm has closed.

Forget it if it's that far away.

If there has been professional negligence then you will probably have spotted it before then.

I can't think that far ahead to be honest.

I would probably have to get another solicitor to help me in a claim against someone else. I get it if you had spent a fortune on a complicated case but otherwise I would probably say no.

I have only used solicitors for relatively straightforward things like buying a house or making a will and I can't imagine professional negligence issues will be that important here after so long.

Reasons given for supporting answers to Q2

Do you agree that an annual payment (of approximately £240) paid by each firm of solicitors should be required to keep the Solicitors Indemnity Fund running and protect clients, bearing in mind that the average claim paid out to a client is about £34,000?

Reasons for those agreeing

Similar comments:

It protects us as clients/This would be in the interest of the client/ it's a good idea as I would be protected/it keeps clients safe even if the years go back/if it was clear that we had this then it gives us confidence that we are protected/it's all about safeguarding the customer/ it gives people peace of mind (similar answers from 36 interviewees).

Similar comments:

It's such a small amount/it's nothing really for a law firm/if this a genuine cost then all good/seems a no brainer if that is going to be the actual cost/yes such a minimal amount (similar answers from 20 interviewees)

It's such a minimal sum for a solicitor to pay. They could easily recoup those sums back extremely quickly.

It's such a minimal sum for a solicitor to pay. They could easily recoup those sums back extremely quickly.

I think it's a small thing but it's a precaution that does need to be taken.

At least I know it's there but covers for me in the longer term, regardless if I need it or not.

This depends on the size of the law firm. If it's a large scale firm it's nothing in the operating costs.

Sounds nothing really for most law firms.

Yes as hardly adds anything to their costs for such a big thing.

Because you are trying to sue a company that's not in existence.

It's only fair if every solicitor contributes. It would make it a fairer system for everyone. And it's only a small amount.

Depends if its mandatory or not. It doesn't work if some firms opt out.

Would we know every firm was paying it? Not that I looked at things like insurance when I instructed my solicitor.

The fund is vital and essential in an environment of a claim culture, therefore it is imperative to pay a nominal fee.

We are becoming more litigious in my opinion so this is what we need just in case.

Have law firms struggled like most in Covid? Is this survey because more are going to the wall?

The amount of £240 paid by each law firm needs to be increased, to cover projected outgoings.

If that's the average claim payout then I agree. No that's all.

There will some form of fallback financially.

As solicitors they should give right advice in the first place and you would trust them to do this. If there's a mistake then this fund pays out. It also depends on the advice you get as it can be expensive in the long run.

Reasons for those disagreeing

Like I said before I don't think this is a big thing so not worth it.

It doesn't feel like this is enough to cover it and will it pay out anyway?

I don't think it is going to happen to me so not bothered either way.

It is not relevant to me, sorry.

Not something that I am expecting to happen to me as I have the same solicitor for many years and always good.

I still don't get that if the firm has disappeared how would you use the insurance to get compensation?

Can't think it will happen.

I think it is going to cost more than a £1 on every case.

Reasons given for supporting answers given in Q3

Would a modest increase in legal fees (of about £1 per case) charged by a solicitor affect whether you use a solicitor?

Reasons from those saying No

Nearly everyone said it would not affect their choice and repeated the answer they gave to Q2 and here are some selected examples, e.g.: *it's a small fee; this is a good rate; again it's only a nominal fee...it's the price of a bar of chocolate; it's negligible; it's a far amount; for the same reason I just mentioned, it is cover for me; I wouldn't even think about it if it gave me cover (64 responses).*

Similar comments:

It's more about the reputation of the firm/fee is important but probably previous experience is more so/I would go with the feedback on the adviser – they can stick a £1 on if they have a good reputation/ credibility is the key first (20 responses)

Yes. It's a good thing and it's only £1. It gives me the protection.

Yes. Again it's a nominal fee in contrast to what solicitors pay in professional indemnity insurance.

I am paying so much in fees so £1 makes no difference.

If its only a £1 then yes but not worth adding a separate item on the bill.

Reasons for those saying Yes

No. I understand it's only £1 but why should the customer pay.

No. It's the solicitor's error for being negligent. It shouldn't be up to the customer to pay.

I'd expect the solicitors to pay this £1.

It should not be a cost to me – its only just over £200 a year so the law firm can pay it. They charge for every bit anyway like an email, letter so please don't add this silly amount.

Really! They would add a £1 to the fee. No

They could add more and I am sure some solicitors would take advantage and push up the fee for this insurance. So no.

Reasons given for supporting answers in Q4

Would a modest increase in legal fees (of about £1 per case) charged by a solicitor affect whether you use a solicitor?

Reasons for those saying No

Similar comments:

Reputation is reason to choose/Experience and reputation are important/Cost is just one thing to consider and £1 so what/I look for other things and then compare costs/fees are pretty high so £1 no difference (38 responses).

No. Again I think there are more important factors such having the right choice of solicitor rather than the £1.

No. It's still £1. It's the firm's credentials that should outweigh the costs.

Fee charged is important but along with a good reputation so this is not making a difference.

It's about first impressions – if you are comfortable with what they say and how they will help then you can decide if the fee is OK. £1 is nothing either way.

No I want them to give me quality advice and not quibble about a £1 here and there.

I paid a few thousand for my advice in a divorce so the £1 is not changing anything.

Similar comments:

No. Because £1 is very nominal./No. It's only a miniscule amount/ small price for reassurance/wouldn't be considered/ it's a small amount so No (38 responses)

It's small price and gesture for the greater good.

No. If I needed legal advice, an extra nominal charge will not have any significant bearing to the outcome of the service provision.

No. It would be dependent on the legal advisor telling me how that £1 is being used. It's not something I would ask about anyway.

No I wouldn't know about it anyway at the start unless the solicitor told me.

No, it's not the most important thing on your mind when you select a solicitor. You just want good service and advice.

No, would it be included in the client letter or somewhere else?

Reasons for those saying Yes

Yes. Same reasons again I would choose that particular solicitor as I know the cover is already in place.

Yes. If you pay this £1 it would give you the added protection but would you trust them to do the job properly even though you've paid this £1. It's down to personal preference.

Yes, if it was on the website say and you were comparing with another firm that didn't have it.

Appendix 3

Commentary on Honeycomb Forensic Accounting Report

As set out in a global summary to this response, the sole practitioners group have expressed concern as to the statements in the Willis Towers Watson report which formed so much of the basic premise for the fact of the costs of £2.4 million spread across the profession in order to maintain the fund.

Primarily it was clear that no income had been allowed for from the approximate £30 million invested on behalf the Fund. Admittedly some of that amount was required to cover an apparent immediate reserving position, but whilst any of that amount remained unspent, it was gaining investment income and currently continues at investment income on £30 million.

Secondly it was not clear to a lay person reading the report as to how the total contribution of £2.4 million, apparently on an annual basis was made up. Accordingly, it seemed the only way to answer this in order to be able to make a coherent response to the consultation was to commission a report from forensic accounting experts in order to explain the position and comment on it.

Accordingly Honeycomb Forensic Accounting have been instructed to carry out a report which is attached to this appendix.

In the absence of any similar report being obtained by the Law Society, that report has been obtained by the SPG admittedly close to the date of the closure of the consultation. However it has been possible for Honeycomb Forensic Accounting to raise questions in respect of Willis Towers Watson to clarify matters which have been incorporated into the Honeycomb report

It is hoped the SRA will provide facilities for a dialogue to continue and for there to be a final report based on that dialogue before a decision is made by the SRA as to the outcome of the consultation.

However, on the information available to Honeycomb the following appears to be clear.

- Over the historic period of the fund there has not been any substantive diminution in the capital value of the fund.

- The investment income has not been taken into account in the calculations of the £2.4 million potential levy which would be substantially different if it were.
- For the purpose of the ongoing fund the existing fund has been ruled off with a balance of £10 million available, when the original provision left a balance in the region of £22 million available. Accordingly, the existing liabilities have been placed into run-off leaving a balance of £10 million but then requiring a new fund to be created on the basis of that £10 million which in turn requires the levy of £2.4 million.
- In practical terms, on the basis of the continuance of the fund, the Willis report introduces a wholly unnecessary element of double counting which again reduces the amount required.

In addition, there had been substantial expenditure on high level claims insurance, none of which has been called on, and in hindsight may not have been necessary. Without the expenditure on this insurance the income of the Fund has exceeded the expenditure

On the face of it there would appear to be no reason why the Fund could not continue as it is without any levy until the position is reached if at all that the levy is required and can then be calculated and required of the profession on an ad hoc basis.

In summary therefore the requirement for £240 per firm per annum is open to question and may not be required at all at an initial stage.

There should be further examination of the premise to the consultation and the preferred option of the SRA to close the fund before the SRA reach a decision.

Clive Sutton
Honorary Secretary
Sole Practitioners Group



**SOLICITORS REGULATION AUTHORITY CONSULTATION
the Solicitors Indemnity Fund and Post six year run-off cover (PSYROC)**

**PRELIMINARY REVIEW AND ANALYSIS
OF SIF ACCOUNTS AND
OF PERTINENT ASPECTS OF THE REPORT OF WILLIS TOWERS WATSON
TO THE SRA DATED 19 NOVEMBER 2021
ON PSYROC – ANALYSIS OF OPTIONS**

15 February 2022

Acting on the instruction of the Solicitors' Sole Practitioners' Group

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EXECUTIVE SUMMARY

In its summary of potential options for future PSYROC funding the Willis Report reviews the affordability of a dedicated fund to provide indemnity coverage. It states:

“If this option is chosen, we would suggest that from 2022/23 further funding to meet the cost of future cover is required because it is clearly unsustainable for the profession to continue to receive expanding coverage from the legacy of SIF’s surplus without at some point providing additional funding to meet the underlying costs.”¹

The Willis Reports sets out that additional funding would be required because the present cover provided by SIF is on a claims made basis, whereas the underlying costs (i.e. total costs relating to all future claims post-cessation) would continue to accrue for future claims for a period of up to 26 years². The difference between covering, each year, the costs of claims made and the underlying ultimate future costs arising from claims by cessations in that year, gives rise to an uncovered exposure, measured at every year end from 2023 onwards in the Willis Report.

The Willis report broadly speaking, suggests that the current coverage should be ringfenced leaving a fund surplus of some £10 million. A separate fund should then be set up to manage coverage for additional future claims arising from new entitles/years. The annual cost of funding this additional cover is suggested by the Willis report to be £2.4 per annum, which we understand to be made up as follows

	£000
Expected annual cost of full run-off cover in 2023	1,200
Administration costs (non-claims handling)	700
Claims handling costs (15% of expected annual cost, above)	<u>180</u>
Initial expected cost in 2023	2,080
Required Capital Load	<u>300</u>
Underlying Total Charge in 2020	<u>2,380</u>

This report reviews the accounts and past performance of SIF as well as, and in conjunction with the Willis report.

¹ Willis Report, page 36

² As noted in the Willis Report, as a result of its analyses, at page 10

The following represents a summary of our conclusions and recommendations. More details can be found later on in this report

- 1) We can find no practical difference between the present arrangements and those proposed by the Willis report. There is at present a dedicated fund of some £30 million which past performance clearly indicates (and this is not denied by Willis) has been and remains sufficient to cover the risks of PSYROC.
- 2) The fund value was some £30 million 10 years ago, or £20 million net of provisions. It is still worth some £30 million, or some £20 million net of provisions.
- 3) The Willis report appears to be proposing that the existing fund be ringfenced, provisions increased to £20 million and the remaining £10 million treated as fund surplus. A new fund should then be set up, funded by an annual levy of £2.4 million allowing claims to be paid out and a new capital fund slowly built up.
- 4) This does strike us as reinventing the wheel when the present wheel remains fit for purpose.
- 5) The historical accounts do not support the Willis numbers, as follows:
 - a) The level of paid claims is far lower than Willis's projections
 - b) The accounts state that only some £10 million of provisions is needed, not £20 million
 - c) The accounts show that the SIF investment fund has produced £8.4 million of gains in the past 6 years, which is more than the amount of claims and claims handling costs put together.
 - d) In fact, the investment fund would have produced a surplus of £2 million over all the costs and provisioning required to run PSYROC properly and prudently over the six year period but for the decision of SIF to take out top-up insurance cover in the marketplace at a cost of £3.2 million covering the years 2017-2020. However, this top up insurance only covered a level of claims far in excess of anything experienced such that no claim was made on this insurance and the cost of it was effectively wasted
- 6) By failing to take account of and include investment returns, the Willis report produces a skewed view of the need for future funding

-
- 7) We are also concerned that by suggesting the present fund account for £22 million of provision and the profession be required to pay an annual levy of £2.4 million, increasing, each year, there is double counting of risk and cost.
 - 8) We are concerned that the Willis report represents a very large and heavy tool used to crack a very simple question: is there, or might there be in the future, a shortfall in cover, how much might it be and, if so, how best to manage this.
 - 9) We note that the costs of running the fund are essentially as high as the costs of paying out claims. We are concerned that, as a stand alone fund, managed by SIF itself, it cannot be run in as business-like, or cost effective way as if it was managed by an independent expert firm where overheads can be shared and the cost of the service arranged at competitive market rates.
 - 10) In our opinion, there is a number of steps to be taken, and questions asked and answered, before any decision can or should be made about the future of the fund, including:
 - a) Is there actually anything wrong with the present arrangements? Do the new proposed arrangements actually make any difference?
 - b) If there is, such issues need to be clearly analysed between performance issues, risk, cost management and overall management
 - c) Each of these then needs to be reviewed to ascertain and brainstorm the best and most appropriate solutions
 - d) Where there is perceived to be a need for an adjustment to how risk is managed, and as to adequacy of coverage, a careful study and debate as to the amounts involved
 - e) Only once there is a proper understanding of any need for adjustment, including fund top-ups, can there be a debate about how to make up the shortfall – how much is needed, how often and from whom (and how) to raise it
 - 11) We consider that these questions, and the other issues raised in this report and elsewhere in relation to this consultation, have not been adequately, or indeed correctly addressed to date.

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1 INTRODUCTION

The SRA, PSYROC and the SIF

- 1.1 The Solicitors Regulation Authority (“SRA”) is the regulator of solicitors and law firms in England and Wales. The SRA is consulting on its regulatory position in relation to the future of post six-year run-off cover (“PSYROC”) for solicitors and law firms and the future of the Solicitors Indemnity Fund (SIF). This is set out in its consultation publication “Post six year run-off cover and the Solicitors Indemnity Fund,” dated November 2021 (“SRA Consultation”).
- 1.2 The Law Society of England and Wales (“LS”) established SIF in 1987 for the purpose of providing compulsory professional indemnity cover to all solicitor practices in England and Wales. In September 2000, following a vote of Law Society members, the SIF was placed into run-off following the introduction of an open market insurance model, which required firms to hold professional indemnity insurance (“PII”) with an insurer operating in the open market. The minimum terms for that insurance have always included a requirement that, if a firm ceases without a successor firm, the last recorded insurer for the firm must provide cover for professional negligence claims made within six years of the firm closing.³
- 1.3 PSYROC concerns the risks of claims arising against retired solicitors/firms after the conclusion of the six year run off cover period.
- 1.4 In this regard, SIF has remained liable for claims made during the period a firm was covered by SIF (from inception to 31 August 2000) and for claims made after 31 August 2000 by law firms that ceased without a successor practice on or before 31 August 2000.⁴
- 1.5 Run-off cover is not time-limited and is not affected by the consultation. Irrespective of the consultation’s outcome, run-off cover will continue, whether provided by SIF or by transferring SIF’s outstanding liabilities to another party, such as a third party insurer. This would be funded using SIF’s residual funds.⁵
- 1.6 SIF also provides run-off cover to firms which ceased on or after 1 September 2000 once their six-year run-off cover has expired (PSYROC). PSYROC is provided by SIF.

³ SRA Consultation, paragraphs 4, 5

⁴ SRA Consultation, paragraphs 6, 7

⁵ SRA Consultation, paragraph 8

In broad commercial terms, SIF is a self insurer in that it maintains a self-managed investment fund to cover the risks of PSYROC, topped up from time to time by additional cover taken out with third party insurers.

- 1.7 This arrangement was put in place by TLS to run from 1 September 2007 (the point in time after which firms would cease to be covered by their own mandatory six-year run-off cover) to claims notified before 30 September 2017. The cost of this cover is met out of SIF's own self invested funds.⁶
- 1.8 Historical analysis indicates that approximately 90% of run-off claims are made within a six year period, the usual limitation period for bringing professional negligence claims.⁷
- 1.9 The purpose of PSYROC through SIF is to provide cover for the other 10% of claims which are made following the end of the six year run-off period. The provision of PSYROC has been extended three times in the past (in 2012, when a three-year extension to cover claims notified before 30 September 2020 was agreed, and further one-year extensions in June 2020 and June 2021) extending the provision of PSYROC through SIF until 30 September 2022.⁸
- 1.10 SIF manages a fund which, according to SIF's balance sheet as at 31 October 2020, stood at £30.8 million. Against this, there stood at that date a provision for the cost of future claims of £10.1 million. Thus, the net uncommitted value of the investment fund, in other words its "surplus" as at 31 October 2020 was effectively £20.7 million⁹.
- 1.11 We have not been provided with any SIF financial information relating to any period after 30 October 2020.

⁶ SRA Consultation, paragraph 9

⁷ SRA Consultation, paragraphs 10, 11

⁸ SRA Consultation, paragraphs 14, 16

⁹ SIF had other assets and liabilities such that the net assets of SIF at 31 October 2020 per the accounts was £22.5 million

The Consultation and the Willis report

- 1.12 The present consultation concerns how best to provide and manage coverage for, and the financing of, claims and associated costs which will arise after 1 October 2022.
- 1.13 SIF Limited, the company which administers SIF, has informed the SRA that it does not consider that it is prudent to continue the provision of PSYROC through SIF bearing in mind SIF Limited's solvency policy, and without any additional funding.¹⁰
- 1.14 The SRA is therefore consulting on the way forward for the future provision of PSYROC and the SIF.
- 1.15 In August 2021 the SRA appointed Willis Towers Watson ("Willis"), actuaries and insurance experts familiar with SIF, to analyse claims patterns and assess impacts on consumers and on solicitors/firms of terminating PSYROC, and cost considerations in relation to different options set out in the SRA Consultation.
- 1.16 Willis have submitted a report dated 19 November 2021 entitled "PSYROC – Analysis of Options" (the Willis report). The Willis Report sets out a detailed analysis of the options for PSYROC for solicitors.
- 1.17 The Willis Report was prepared for the SRA for its use in the context of considering potential options for the future arrangements of PSYROC for solicitors in England and Wales. It is based on based on SIF data as at 30 April 2021 and Willis's projected estimates of the claims experience as at 30 September 2022.
- 1.18 The Willis report outlined three main options for the future of PSYROC¹¹: (i) sourcing cover in the open market, (ii) establishing a dedicated fund to provide indemnity coverage, and (iii) arranging, via TLS or the SRA, master cover with a selected insurer.
- 1.19 It is our understanding of the Willis report that, in broad terms, it suggests that:
- there will be a need to provide coverage post October 2022 in relation to the scope of current and future claims coverage provided by SIF up to 30 September 2022, which it estimates to require a fund provision of £22.4 million (compared with the present provision of £10.1 million)

¹⁰ SRA Consultation, paragraphs 6, 17, 18

¹¹ Willis Report, from pages 32, 34 and 43 respectively

- the annual cost of additional claims risk arising from post October 2022 coverage will require funding of £2.4 million per year [and rising]. We have been asked to consider the second of these, the dedicated fund to provide indemnity coverage and have therefore focussed our comments on this area. We have noted wider issues that may be of potential relevance to the consultation in our recommendations at section [5].

Instructions

- 1.20 Honeycomb Forensic Accounting (Honeycomb) is a boutique firm of chartered accountants specialising in forensic accounting. As forensic accountants, the firm specialises in applying analytical and quantitative techniques and analysis and building financial models particularly with references to contentious situations, including insurance provision and claims.
- 1.21 Honeycomb are now instructed by the Sole Practitioners' Group for Solicitors in the UK (SPG) to consider the background and circumstances of PSYROC and the present consultation with particular references to the accounting information underlying the Willis report and the financial modelling contained therein.
- 1.22 In particular, Honeycomb has been asked to consider and analyse aspects of option 2 of the Willis Report, that is, with respect to the introduction/continuation/structure of a dedicated fund to provide ongoing PSYROC coverage
- 1.23 Honeycomb has been asked to consider the following specific points:
- i) What do the accounting records of SIF over the six years to 31 October 2020¹² actually show about the performance and cost of providing PSYROC over that period
 - ii) What can the evidence of the historical performance records contribute to the discussion of the future cost of covering PSYROC;
 - iii) Review are the key factors determining the £2.4m funding in 2023 (i.e. following the cessation of SIF coverage) that would be generated if a levy of £16 per

¹² While we have access to older sets of accounts, changes in accounting treatment in 2015 means that including older years involves complication. In any event, a review covering six historical years is more than enough to allow us to form the conclusions we set out in this report.

member or £240 per firm was introduced, and the impact of changes in these factors on any potential levy;¹³

- iv) What preliminary recommendations can be made about the management and control of the costs of managing the provision of PSYROC.

Scope of work

1.24 Pursuant to our instructions, Honeycomb has prepared this report in order to assist the SPG and TLS in considering the matters set out above on the information made available to us.

1.25 The analysis and comments expressed in this report are necessarily based on the documents and explanations provided to us. Should further information become available, we reserve the right to modify our analysis and comments where necessary

Documentation and information relied on

1.26 The principal documents provided to us and on which we have relied are listed below:

- SRA Consultation;
- The Willis Report; and,
- SIF Annual Report and Financial Statements for the years ended 31 October 2015 to 2020 ("SIF's Financial Statements 20XX").

1.27 The Willis report runs to some 131 pages and contains a significant amount of financial and other quantitative data, together with extensive narrative. It has not been clear to us how all of the quantitative computations and the conclusions in the Willis report have been reached. We have engaged with SRA to clarify some of these issues and have received explanations from SRA, for which we are grateful. Nonetheless, we consider that the Willis report could be more clearly expressed in a number of fundamental areas, some of which we touch on in this report, and would be the more helpful to the consultation process if it was.

1.28 This preliminary report has been prepared on the basis of our best understanding of the Willis report. when further explanations or information become available, we will update our report accordingly, as required.

¹³ Based on 150,000 members or 10,000 firms; Willis Report, page 38

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- 1.29 In considering the financial information available to us, we have not, unless specified, attempted independently to verify it, nor have we performed an audit, and our reliance upon any documents should not be taken as an opinion as to the veracity, or genuineness of the documents concerned.

Confidentiality

- 1.30 This report has been prepared strictly for use in this matter. We understand that it will be made available to the SPG, their legal advisors, and other parties connected with the consultation, including SIF, SRA and Willis. In contributing to the consultation, this report will, in effect, become a public document. Notwithstanding this, Honeycomb has prepared this report for its client's sole use and Honeycomb assumes no responsibility, nor accept any liability or duty of care, to any third party who may receive, read or act upon this report. Any reliance placed by a third party on the contents of this report is entirely at their own risk.
- 1.31 Subject to the above, this report remains confidential and should not be used, reproduced or circulated for any other purpose, in whole or in part, without our prior written consent.

2 REVIEW OF SIF's ACCOUNTS AND PAST PERFORMANCE

- 2.1. We have considered the past performance of SIF for the six years up to 31 October 2020 by reference to SIF's Financial Statements 2015 to 2020.^{14, 15}
- 2.2. Relevant information has been extracted from the Statements of Income and Expenditure and the related notes each year.

Table 1 claims paid out and cost of claims

	2015	2016	2017	2018	2019	2020	6 YEAR TOTAL
	£000	£000	£000	£000	£000	£000	£000
Claims expenditure							
Amounts paid	(430)	(792)	(365)	(428)	(732)	(1,103)	(3,850)
Indemnity recoveries received	688	512	395	79	117	93	1,884
Claims payment costs (net of indemnity recoveries)	258	(280)	30	(349)	(615)	(1,010)	(1,966)
Insurance recoveries	12	2	-	-	1	-	15
Net claims costs excluding claims handling costs	270	(278)	30	(349)	(614)	(1,010)	(1,951)
Costs of handling and settling claims, including overheads							
Claims handling costs	(337)	(226)	(151)	(87)	(269)	(305)	(1,375)
Legal and professional costs	(121)	(300)	(197)	(161)	(281)	(407)	(1,467)
Other overheads	(103)	(87)	(14)	(23)	-	(276)	(503)
	(561)	(613)	(362)	(271)	(550)	(988)	(3,345)
Total costs	(561)	(613)	(3,498)	(271)	(550)	(988)	(6,481)
Annual claims expenditure net of all costs	(291)	(891)	(3,468)	(620)	(1,164)	(1,998)	(8,432)
Less cost of one-off top-up Insurance Premium			(3,136)				(3,136)
Annual outflows on claims, net of all costs, after adding back top up cover	(291)	(891)	(332)	(620)	(1,164)	(1,998)	(5,296)

¹⁴ Financials – Solicitors Indemnity Fund (sifund.co.uk)

¹⁵ In respect of 2015, we have principally used the comparative amounts from SIF's 2016 Financial Statements due to the restatement of certain comparative amounts and differing reporting format in 2016

Review of costs of claims

- 2.3. The following key metrics can be taken away from the above review of the cost of claims over the six year period:
- i) actual claim payouts in the six years to 2020 amounted to a total of £3.85m, or £642,000 per year.
 - ii) net of indemnity and insurance recoveries, this 6 year total amount falls to less than £2.0m for the 6 years, or £325,000 per year.
 - iii) The total cost of running SIF and managing claims has amounted to nearly £6.5 million over the 6 year period, or more than three times the amount of claims paid out.
 - iv) Costs included a one off insurance premium paid in 2017 for provide top-up cover for the four years to 30 September 2020, covering exposure between £8.4 million and £20 million, at a cost of £3.1 million. It is clear from the accounts, and is confirmed in the Report of the Directors in the 2020 Accounts, that paid and estimated liabilities came nowhere near the lower limit of this top-up cover, such that this insurance was not touched. Nonetheless, a similar policy was taken out for an extension year to 30 September 2021 for claim cover above £1.7m and up to 4.3 million at a cost of £0.8 million.
 - v) Excluding this one off insurance top up, the annual costs of running the fund in the six years to September 2020 amounted to £3.45 million, or 85% of gross claims paid.
 - vi) The accounts show significant increases in the costs of running the fund across all areas of costs, including claims handling, legal and professional costs and other overheads.
 - vii) Total costs including claims handling, external legal fees and overheads, but excluding the one-off insurance premium for top-up cover, actually exceeded, at £3.3m, the cost of actual net claim payouts between 2015 and 2020, and equated to more than 85% of the gross amounts paid out for claims. This may be due to the relative complexity and/or difficulty encountered in processing and settling particular claims during the period, but it may also indicate poor cost control and inefficiencies and suggest questions about the efficiency or appropriateness of cost decisions.

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- viii) While it is not simple to track movements in costs because the cost based has changed over the period from contracted out services to taking claims management wholly in-house, total costs have increased in both absolute and relative terms being 63%, 75% and 90% of claims paid respectively in the past three years (to 2020).
 - ix) As the four year top-up insurance premium of £3.1m taken out in 2017 was not used, the decision to take out such expensive top up cover (renewed in 2021 at a cost of £0.8m¹⁶) could be queried, or the level of cover required recalibrated.
 - x) Costs in general have increased rapidly in the two most recent years (2019 and 2020) as administration has been taken in-house and legal costs have risen. There may be an issue whether SIF is the most efficient party actually to manage their own claims or whether it should again be outsourced on a competitive basis to a party with lower apportionable overheads, and a wider base of relevant expertise and experience which might make claims management more efficient and cost effective.

¹⁶ Willis Report, page 46

Table 2: provisions and movement in provisions

2.4. The table below shows: (i) provisions and movement on claims provisions, broken down into the provisions for known claims, unknown claims and claims handling costs¹⁷; and (ii) movement in indemnity claims recoveries¹⁸:

Movement on provisions	2015	2016	2017	2018	2019	2020	6 YEAR
	£000	£000	£000	£000	£000	£000	TOTAL
							£000
<u>provision for known claims</u>							
Opening balance		(3,607)	(2,822)	(4,056)	(5,012)	(5,676)	
Movement		785	(1,234)	(956)	(664)	(669)	
Closing balance	(3,607)	(2,822)	(4,056)	(5,012)	(5,676)	(6,345)	
<u>provision for unknown claims yet to be reported (IBNR)</u>							
Opening balance		(6,074)	(6,159)	(5,464)	(4,006)	(2,568)	
Movement		85	695	1,458	1,438	146	
Closing balance	(6,074)	(6,159)	(5,464)	(4,006)	(2,568)	(2,422)	
<u>Provision for claims handling costs</u>							
Opening balance		(1,750)	(1,524)	(1,268)	(1,493)	(1,369)	
Movement		226	256	(225)	124	49	
Closing balance	(1,750)	(1,524)	(1,268)	(1,493)	(1,369)	(1,320)	
Overall movement in claims provisions	(1,097)	926	(283)	277	898	(474)	247
Total year end quantum of provisions	(11,431)	(10,505)	(10,788)	(10,511)	(9,613)	(10,087)	
Movement in expected indemnity claim recoveries ¹⁹	(442)	(285)	(315)	(54)	(122)	53	(1,165)
Total movement in net provision for claims	(1,539)	641	(598)	223	776	(421)	(918)

¹⁷ Derived from note 12 to the accounts

¹⁸ A movement recognised in debtors, and explained in note 10 to the accounts

¹⁹ A decrease in provision in each year except for 2020

Review of provisions

2.5. The following key metrics can be taken away from the above review of provisioning for future claims over the six year period:

- i) There has, as shown in the table above, been an increase in the annual provision for future claims, including claims not notified to the fund, but only of £0.9 over the six years between 2015 and 2020. In fact, the negative movement was £1.5 million in 2015: in the 5 years since then the overall level of provisions has been reduced by more than £0.6 million.
- ii) The figures show that those responsible for reviewing the level of provisions on an annual basis actually decided that the level of provision could be reduced over the past three years. Over the period 2018-2020 the level of provision reduced by £577,000.
- iii) Upon further analysis, it can be seen that much of the need for provision related to providing in earlier years for a worsening position in the movement in expected indemnity claim recoveries. Furthermore, that while there has been a nearly £3 million increase in the level of provision needed for known claims, there has been a £3.5 million decrease in the level of provision considered necessary to cover the unknown level of future claims.
- iv) In other words, those responsible for advising on provisioning considered that the amount of provision needed to cover future claims could be reduced.
- v) The provision needed for anticipated future costs has also reduced.
- vi) It is our understanding of the Willis report that they say that the level of provisioning for future claims should be increased by £12.4 million. This requirement is not borne out by the accounts. Each year's accounts inform the reader that provisioning has been calculated after careful consideration and this has led to only marginal overall movements over the six year period. The Willis calculation that the present level of provisioning should be more than double that set out in the accounts needs to be revisited.
- vii) It is in the nature of provisioning that these sums represent best estimates of future costs. It should however be borne in mind that whether or not these estimates are spot on, they speak of sums which will be paid out, if at all, over several years. They are therefore of the nature of accounting estimates of future

costs. They are provided for as a matter of accounting convention and for the sake of prudence. However, they represent an extension of the annual claims cost line such that recognising annual costs and the gross amount of the provision is a form of double counting. For the purpose of making decisions about the future, it is more helpful to understand the provision in terms of what future annual costs will be. In this way double counting the level of future costs can also be avoided, such that appropriate and sensible decision making can take place.

Table 3: results of investing the fund

- 2.6. The Willis report ignores the fact that SIF is currently a fund in excess of £30 million, only a small fraction of which is shown as needed in each year to meet actual payment of claims and associated costs. Fundamental to the present consultation and its ability to reach the right decision for PSYROC going forward, is a correct understanding of how the present fund is performing, particularly as, if we have understood the Willis recommendations correctly, the proposal is to replace the fund with a new fund, funded by a levy, but essentially still to adopt a similar conceptual approach to risk management of maintaining a level of reserves sufficient to meet future claims.
- 2.7. To consider the cost of claims but to ignore the performance of the fund out of which claims are met tells only half the story, and leads to a skewed picture whether from an accounting, actuarial or commercial point of view.
- 2.8. The table below sets out: (i) the underlying performance of and returns made by the investment fund; and (ii) movements in the level of investments, both gross, and net of provisions.

Performance of the fund	2015	2016	2017	2018	2019	2020	6 YEAR TOTAL
	£000	£000	£000	£000	£000	£000	£000
Realised gains/(losses) on investments	(159)	(12)	347	(67)	4,845	(437)	4,517
Unrealised gains/(losses) on investments	58	1,498	1,315	(397)	(2,957)	1,243	760
Interest from investments and indemnity claim recoveries	1,125	491	490	329	417	479	3,331
Investment expenses	(39)	(14)	(14)	(8)	(27)	(146)	(248)
Total interest and investment movements	985	1,963	2,138	(143)	2,278	1,139	8,360

Gross and net values of the fund	2015	2016	2017	2018	2019	2020
	£000	£000	£000	£000	£000	£000
Investment portfolio (funds under management)	31,226	32,461	31,248	30,537	31,547	30,808
Total claims provisions	11,431	10,505	10,788	10,511	9,613	10,087
Investments net of claims provisions	19,795	21,956	20,460	20,026	21,934	20,721

Review of performance of investments

- 2.9. The following key metrics can be taken away from the above review of the performance of the SIF fund over the six year period:
- i) The investment fund produced value recognised as gains in the accounts amounting to £8.4 million in the six year period
 - ii) Such gains exceeded the value of claims paid out.
 - iii) Such gains exceeded the aggregate cost of claims paid out and all costs associated with managing claims and the fund, excluding the one off insurance top up premium paid in 2017.
 - iv) Over the six year period, the performance of investments less the total cost of the fund including claims paid out, costs and expenses and movement in provisions produced a deficit of less than £1 million.
 - v) Excluding the cost of unused top-up cover, the investment portfolio actually produced a surplus over all costs in the six year period of nearly £2 million.
 - vi) If one excludes movement in provisions and so concentrates more narrowly on sums paid out and sums produced by the investment fund, the surpluses produced by the investment fund were sufficient over the six year period to cover all outgoings.
 - vii) In terms of the value of the underlying fund itself:
 - The gross value of investments fell marginally from £31.3m in 2015 to £30.8m in 2020; after paying out all claims and expenses; and,
 - The value of the fund net of provisions increased from £19.8m in 2015 to £20.7m in 2020.

Table 4: Overall performance of SIF over the six year period

2.10. Taking an overall picture of the various elements of the fund's performance over the 6 years 2015-20 as set out in the above tables, performance can be mapped as follows:

Claims expenditure	2015 £000	2016 £000	2017 £000	2018 £000	2019 £000	2020 £000	6 YEAR TOTAL £000
Amounts paid	(430)	(792)	(365)	(428)	(732)	(1,103)	(3,850)
Net claims costs excluding claims handling costs	270	(278)	30	(349)	(614)	(1,010)	(1,951)
Costs of handling and settling claims, including overheads	(561)	(613)	(3,498)	(271)	(550)	(988)	(6,481)
Less cost of one-off top-up Insurance Premium			(3,136)				(3,136)
Annual outflows on claims, net of all costs, after adding back top up cover	(291)	(891)	(332)	(620)	(1,164)	(1,998)	(5,296)
Total movement in net provision for claims	(1,539)	641	(598)	223	776	(421)	(918)
Total interest and investment movements	985	1,963	2,138	(143)	2,278	1,139	8,360
Net deficit/surplus for the year per the accounts	(845)	1,713	(1,928)	(540)	1,890	(1,280)	(990)
Contributions receivable	11	8	7	1	-	-	27
(Deficit)/surplus before tax (per Financial Statements)	(834)	1,721	(1,921)	(539)	1,890	(1,280)	(963)
Adjust: one-off costs / (receipts)	-	-	3,136	-	(231)	-	2,905
Adjusted (deficit)/surplus before tax	(834)	1,721	1,215	(539)	1,659	(1,280)	1,942

Review of overall performance of the fund

2.11. The following key metrics can be taken away from the above review of the overall picture of the fund over the six year period:

- i) The results reported in the SIF Financial Statements show a total cost of claims over the six year period 2015 to 2020, including movement in provisions of less than £1 million.
- ii) The total gross "cost" of the scheme over the 6 year period 2015-2020, including the movement on reserves, but excluding total interest and investment returns, was £9.4m, or an average of £1.6m a year (including the top-up insurance).

- iii) Investment returns over the period were £8.4m, of which over half, £4.5m, were realised investment gains, while £3.3 million represented interest. The results are very material and relevant to the running of the fund. Interest and investment movements have not been included in the calculations in the Willis Report.
- iv) When adjusted for non-recurring, or one-off, costs and receipts, an overall surplus results and this indicates that the fund was self funding over that period.

3. REVIEW OF SPECIFIC ASPECTS OF THE WILLIS REPORT

- 3.1. In its summary of potential options for future PSYROC funding the Willis Report reviews the affordability of a dedicated fund to provide indemnity coverage. It states:

“If this option is chosen, we would suggest that from 2022/23 further funding to meet the cost of future cover is required because it is clearly unsustainable for the profession to continue to receive expanding coverage from the legacy of SIF’s surplus without at some point providing additional funding to meet the underlying costs.”²⁰

- 3.2. The Willis Reports sets out that additional funding would be required because the present cover provided by SIF is on a claims made basis, whereas the underlying costs (i.e. total costs relating to all future claims post-cessation) would continue to accrue for future claims for a period of up to 26 years²¹. The difference between covering, each year, the costs of claims made and the underlying ultimate future costs arising from claims by cessations in that year, gives rise to an uncovered exposure, measured at every year end from 2023 onwards in the Willis Report.
- 3.3. The Willis report broadly speaking, suggests that the current coverage should be ringfenced leaving a fund surplus of some £10 million. A separate fund should then be set up to manage coverage for additional future claims arising from new entities/years. The annual cost of funding this additional cover is suggested by the Willis report to be £2.4 per annum.

²⁰ Willis Report, page 36

²¹ As noted in the Willis Report, as a result of its analyses, at page 10

- 3.4. The Willis Report does not set out a clear, separate calculation of the annual £2.4m of additional funding. Based on our careful review of the report, it appears to us to be the “underlying total charge” in respect of 2023²² as follows:

	£000
Expected annual cost of full run-off cover in 2023	1,200
Administration costs (non-claims handling)	700
Claims handling costs (15% of expected annual cost, above)	<u>180</u>
Initial expected cost in 2023	2,080
Required Capital Load	<u>300</u>
Underlying Total Charge in 2020	<u>2,380</u>

- 3.5. The expected annual cost, non-claims handling administration cost and 15% for claims handling are set out at page 36 of the Willis Report. The quantum of the required capital load is set out only at page 48.
- 3.6. On this basis, it can be seen from page 48 of the Willis Report that the future equivalent cost in 2024 and beyond is projected to increase. This is driven by the target surplus capital of £10m which itself is projected to increase at an inflationary rate assumed at 3% per annum.²³ Reducing the target surplus capital to a lower amount would therefore also reduce the underlying total charge.

²² Willis Report, page 48: £2.381m as rounded up to £2.4m

²³ Willis Report, page 48. The other components of the Underlying Total Charge (accrual of indemnity, admin costs, claims handling expenses and Required Capital Load) are also projected to increase at 3% each year

- 3.7. We note that the current fund remains in surplus to £10 million even based on the increase in provisions suggested as needed by the Willis report. The Willis calculation for the increase is set out as follows:

	£000	£000
SIF Surplus (SIF 2020 Financial Statements)		22,483
Cost of SIF external reinsurance (2021)	(800)	
WTW Reserve Surplus	<u>3,190</u>	
		<u>2,319</u>
WTW Overall Estimated Surplus		24,873
WTW Exposure A	(6,027)	
WTW Exposure B	<u>(6,401)</u>	
		(12,428)
WTW claims handling expenses for Exposures A, B		<u>(1,864)</u>
Residual surplus		<u>10,581</u>

- 3.8. It is interesting to note that the Willis report actually considers that the claims cost will actually be lower by £3.2 million, as the table shows. There is a further adjustment for the actual one off insurance cost incurred in 2021. We are not convinced this one off cost belongs in this calculation as it will be part of 2021 costs, and such a single item of expenditure should not be included in isolation without considering the totality of expected 2021 SIF income and expenditure.
- 3.9. The Willis report then reduces the fund for additional exposures. However, as the fund currently stands per the 2020 accounts, there remains a gross fund of £30 million which, net of provisions and reserves estimated “*by specialist claims experts and panel solicitors*” of some £10 million, produces a current surplus of £20 million, rather than the £10 million suggested by Willis.
- 3.10. It is our understanding that the provision of £2.4 million funding a year is in addition to having already provided for £22.5m of the fund’s reserves to meet all and any claims which might arise from existing cover. This is a provision representing a number of future years outlay, running in parallel to the costs of new claims under extended cover. We have not been able to consider the detailed calculation performed by Willis, but we are concerned that there is an element of double counting both the cost of claim payouts and the costs of running the funds., as well as the omission of accounting for gains made by the fund over the same period.

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- 3.11. Seeing as the existing fund will continue to pay out in diminishing amounts while the new fund will start to pay out in increasing amounts, we question whether the combination of the two will exceed the current level of claims and provisions.
- 3.12. We are concerned that, where the Willis Report recommends an ongoing capital requirement of £2.4 million, this is in addition to the current cost of meeting current claims, which, before considering recoveries and investment returns (left out of their calculations by Willis but, of course, necessary to include if making any rational funding decision) appears also to be a sum of around £2.4 million. If this is the case, then Willis is essentially suggesting an ongoing cost of £4.8 million a year.
- 3.13. In the light of the above, it is difficult to understand why the Willis report:
- Does not regard the current surplus, whether this be £20 million or £10 million, as sufficient for the foreseeable future.
 - Recommends a decision be made now based on present uncertain calculations projecting 30 years into the future
 - Suggests that decision needs to be made now about the next 30 years of cover when clearly there is (i) not a crisis in the level of cover; (ii) the present arrangements have worked and appear still to work perfectly well; and (iii) the level of the fund both gross and net of provisions and reserves appears to be perfectly adequate.
- 3.14. It is also difficult to see how and in what respect the Willis report draws a distinction between the current fund, which it describes as a “claims made” based approach and their suggested fund which is approached on an accrual basis. Both the current and the Willis suggested funds work on the basis of dealing annually with twin concerns: (i) current expenditure and existing claims payouts, and (ii) the need to estimate and provide and reserve against future claims and the costs of managing them.

3.15. The similarity between the two approaches can be demonstrated in the following table:

	Approach per the SIF 2020 accounts £000	Willis approach £000
Annual cost of paying out claims	1,020	1,200
Admin and claims handling costs	988	880
Additional provisioning/required capital load	<u>421</u>	<u>300</u>
	2,429	2,410

3.16. It can be seen from the above table that the Willis proposals and the way the current fund operate are virtually identical. The only issue is whether those responsible for considering the question conclude whether the funding pot is adequate and, if not, how they propose topping it up.

3.17. In our view this exercise has not been adequately undertaken. In particular, no one appears to have given thought to the fact that the current fund value and structure has not changed significantly over 5 or even 10 years, and at no time appears to have been under threat, or not to provide adequate cover, certainly not to the extent that there has been any threat to access to justice, or coverage for the public's risk in dealing with the legal profession.

3.18. Thus, we note that, as at 1 January 2011, the gross fund stood at £34.1 million and the fund net of provisions and reserves, including creditors, at £20.6 million. The fund stands ten years later, net of provisions, at £20.7 million.

3.19. Furthermore, rather than deciding now what uncovered exposure there is for the next 30 years, and suggesting a new fund to cover this, the starting point should be that the present status quo already looks at risk and exposure on an annual basis. It would, therefore, make more sense to be taking periodic close looks at the adequacy of the fund with periodic decisions made as to the need for a fund "top-up", rather than to build a fresh, expensive and long term model which would include no incentive for cost cutting, other efficiencies, or

3.20. Where these might be considered to be uncovered exposure, this could be managed by periodic adjustments to the funds needed to meet this increase.

3.21. Furthermore, whether one considers the structure of the present fund or the format of a suggested new fund, it is clear that the costs of managing claims represent annual

outgoings as significant as the cost of paying out claims. Therefore, it is as important to review, now and periodically, how the fund and claims are managed and whether this is being performed in the way most in the best interest of the public, and as efficiently as possible.

- 3.22. We suggest that, building a model which simply assumes rising costs over a 30 year period, is a poor way to make such a decision, and is at the very least unbusinesslike.

4 COMMENTS ON THE PROPOSED LEVY

- 4.1 The Willis recommendation, and the only way forward seriously being considered, we understand, by the SRA, is Willis's option 2, i.e. "a dedicated fund to provide indemnity coverage"²⁴.
- 4.2 We note that this is exactly how coverage is being provided at present and we question what real differences Willis are envisaging or anticipating, other than as a question of measure of risk, and the appropriate quantum of provisioning and funding needed to meet that measure.
- 4.3 Willis see²⁵ the whole annual future cost of claims of £2.4 million as being met, and needing to be met, by annual funding, ignoring the existence of the existing fund or its historical and current adequacy in meeting all current and anticipated risk levels.
- 4.4 Willis make several suggestions with regard to the distribution of a levy but essentially suggest that the levy of £2.4 million should be spread across 150,000 practitioners (£16 per head annually) or across 10,000 firms (£240 per firm annually).
- 4.5 As an alternative at the other end of the scale, Willis mention the option of deferring a levy²⁶ and using up reserves.
- 4.6 We repeat our views that the need for any funds to be raised now or in the foreseeable future is questionable. We turn to making some recommendations in relation to risk management and the process in the next section, but mention here that we see no reason why the fund cannot continue as it currently is, possibly under different management, and with periodic reviews being performed on fund adequacy, and any shortfalls identified being met, possibly, by periodic levies.
- 4.7 A levy per member (£16), while immaterial in amount might be seen to penalise large firms. Our own view is that large firms are unlikely to notice the cost.
- 4.8 A levy per firm (£240) might be seen to penalise smaller firms and sole practitioners, and the cost may be more significant to such small firms.

²⁴ Willis report pages 34-42

²⁵ Willis report page 38

²⁶ Willis report page 39

- 4.9 We suggest a modelling exercise be undertaken, once the periodic incidence and amount of funding required is made clearer, to consider what is the fairest way to spread the burden of the scheme over the profession.
- 4.10 Our initial suggestion however is that it should be by firm, but tiered, so that the smaller firms pay less than £240, while the larger firms pay more than £240.

5 SELECT RECOMMENDATIONS

5.1 In this section we provide some high level recommendations which we consider would be helpful in progressing further certain aspects of the consultation raised by the Willis Report. We set these out with a focus on, first, procedural issues, secondly, substantive issues, to identify potential next steps and in terms of overall outcomes of the consultation.

Procedural issues

5.2 While, and perhaps because, the Willis report is substantial and contains much technical and quantitative data and analysis, it requires a period for review and direct engagement. Not all the sources of data or how they are used, or the conclusions derived from them are clear in the report, and there is a need for Willis/the SRA to engage with interested parties and their advisers (such as this firm) to “brainstorm” the data, how it is used and what to conclude from it, and for the results of that to be clearly and succinctly laid out for public review and response.

5.3 We consider that insufficient consideration has been given to the history of the SIF fund and how well it has performed. This needs to be part of, and built into, a more extensive consultation of a technical and quantitative nature.

5.4 The costs of managing the fund are not much less significant than the payment of claims. This side of past and future costs has, in our opinion, received insufficient attention. A process needs to be performed where the amount and necessity of spending is thoroughly investigated, forecasting and modelling of costs and options undertaken and explored so that appropriate decisions can be built into the overall recommendations for the future.

5.5 In particular, from our six year review of the fund's accounts and operations as set out at section 2 above, we noted that total costs excluding one-off items exceeded the cost of actual net claim payouts between 2015 and 2020, and were over 85% of the amounts paid out for claims (paragraph **Error! Reference source not found.**). This suggests the efficiency or appropriateness of cost decisions needs to be questioned (including the taking out of costly, one-off external insurance for large claims in 2017 and again

in 2021²⁷), and also suggest that, if re-introduced, the previous model of outsourcing claims handling could potentially be cheaper and more efficient.

Substantive issues

- 5.6 In our view, there still remains a need for a considerable amount of thought and debate about the numbers and what to do about them.
- 5.7 In particular, long before considering whether a levy at all, or in what, form is needed:
- i) is the Willis funding and levy proposal any difference from the current arrangement?
 - ii) Has the past performance of the fund been considered and built into the model carefully enough?
 - iii) Does the Willis report adequately analyse and report on the current fund and any future extension suitable for appropriate decisions to be made?
 - iv) How should the cost base and the management of the fund be implemented?
 - v) Is there an anticipated shortfall taking everything, including investment returns, into account? If so, how large is it, and how best to ensure it is covered?
 - vi) Is there a real underlying need for a structural change (assuming a change is actually being proposed) or is this only about where the fund lies and how it is managed going forward.
- 5.8 It seems to us that there are several quite distinct questions here. In particular, whether there is current or anticipated underfunding is a quite distinct issue to whether the current arrangements need to change structurally. These issues need to be addressed in turn. Only once the underfunding level is correctly identified can a review of the structure take place.
- 5.9 If there is underfunding, there will be a range of different ways this can be met, including a levy.

²⁷ Willis Report, page 46 (2021 cost of external reinsurance)

5.10 There is then a number of different ways in which a levy could be implemented, should this be the agreed basis going forward. Some are mentioned in passing in the Willis report, though with little further attempt to expand them. For example:

- Should a levy be annual or periodic?
- Is there a need to legislate now for the next 30 years, or would a better decision making approach be to review say every 2-3 years and apply a periodic Levy if required?
- How should any levy be apportioned across the profession in order to be as fair as possible to firms and practitioners, while ensuring public confidence and safety?
- How should increases in the levy be calculated, implemented, and managed?

Appendix 4

Commentary on survey of members responses

In order to provide credibility on behalf the Group to this response, the membership had been canvassed with the opportunity to comment on the whole of Appendix 1, and/or answer the four questions referred to in the table, or alternatively give general agreement to the draft responses.

The table below is a summary of the responses received. Only one objection was given to the Groups response on the basis that it acceded to the proposal of £240 per firm.

It is appreciated that the SRA will not be putting any significant credence on the views of individual solicitors but for the sake of completeness and authenticity of this response members have been circulated and their responses reported on in this Appendix 4.

In short no solicitor canvassed is in favour of the proposal to close the fund and every one of the respondents is likely to be in a position of not having posts six-year run-off cover at some stage in the future.

Clive Sutton

Survey of Sole Practitioners

Responses to questionnaire of members

Members replies 27

Questions asked

Responses

Do you agree with the sole practitioners draft Response?

Yes. Everybody with the exception of one respondent who did not agree with acceptance of the £240 per annum contribution for small firms

How close are you to retirement?

Committee largely in midcareer. Member respondents largely close to retirement

Do you feel you will find a successor practice?

Majority do not think they will find a successor practice

Were you aware that you would be uninsured?

Majority not aware of this

If you have been aware what you have been a sole practitioner?

Majority would not have entered into sole practice

SRA Consultation

Post six year run-off cover and the Solicitors Indemnity Fund SRA

Response by LawNet Limited 11 February 2022

Introduction - about LawNet

LawNet is a member-owned network of 72 solicitors'11 firms in the UK and Ireland, of which 67 are domiciled in England & Wales, and regulated by the SRA. Established in 1989, LawNet supports its members in a variety of ways summarised on the attached 'Benefits of Membership' infographic in the Appendix. The company is limited by guarantee, and therefore has no shareholders and no profit motive. Member firms join in order to be able to achieve more collectively than they could individually. Membership is by invitation, and the characteristics we look for in member firms include turnover usually between £2m-£25m, sound finances, good PII claims records and a progressive mindset.

LawNet is a highly credible proxy for the views of medium-to-large SME firms, with around £350m of turnover and more than 2,000 lawyers in the network. On joining LawNet, firms must: -

- Achieve our mandatory ISO9001 Quality Standard, within two years, and maintain it subsequently.
- Commit to our Excellence Mark requirements, involving a package of tools to measure the customer journey, including independent client experience audits and online client satisfaction surveys.
- Maintain PII cover of at least £10m per claim. While not mandatory, LawNet offers members the opportunity to take part in our Group PII Scheme, which allows them to purchase PII cover in a unique environment and benefit from consistency and a broker-written policy which exceeds SRA MTCs.

Although the proposals in your consultation regarding PSYROC would have a greater effect upon smaller firms and sole practitioners than upon our members, LawNet firms are concerned at the collateral damage that your proposals would pose to the reputation of all solicitors. This response is informed by discussions with LawNet members, and specifically by the results of a member survey.

Executive Summary

LawNet firms are enlightened legal services businesses who are not interested in preserving archaic practices or in protectionism. Our members' commitment to client satisfaction is matched only by their commitment to high levels of client protection. They submit to external assessment of their operating processes through our ISO9001 Quality Standard but recognise that mistakes can be made and that clients must be properly protected from the consequences of those mistakes. Their membership of LawNet means that they must carry a minimum of £10m per claim PII cover, and many top up considerably above that level, deciding on protection that is appropriate for the work types they undertake, the clients they serve and the risks that exist in relation to aggregation, defence costs and other issues.

This sensible approach to risk management, the efforts made towards minimisation of errors and superior client protection arrangements do not however insulate our members from the consequences of the proposals you make in this consultation. The effects of changes in this important area are likely to be felt most among sole practitioners and smaller firms, but our members nonetheless have concerns about what they see as inevitable repercussions for the whole of the solicitors profession.

Our views are summarised below.

- Your Consultation suggests that you are inclined to allow the current PSYROC arrangements through SIF to fall away. We believe that your proposal would be detrimental to clients and to retired solicitors, and that the SRA must find a way to continue the current protections.
- We note your separation of regulatory (clients) and representative (retired solicitors) protections, but we aver that the latter also protects the former as retired solicitors may not in the absence of PSYROC have the means to meet claims made by affected clients.
- Our member survey has delivered an overwhelming level of support for the continuation of PSYROC via SIF.
- We believe that it is perverse for a regulator to be proposing a reduction in client protections.
- We consider any abandonment of PSYROC through SIF (unless replaced by a fit-for-purpose replacement scheme) to be contrary to your regulatory objective of 'protecting and promoting the interests of consumers'.
- We agree with your assessment of the appetite in the commercial markets for a solution.
- We agree with your assessment of the viability of a master policy.
- We agree that an alternative indemnity fund would be difficult to achieve.
- We share your view that there is little to be gained from a targeted version of PSYROC.
- We accept your assessment of the current arrangements as being sub-optimal from an efficiency perspective. However, (i) PSYROC through SIF is a unique creation which sits within a package of consumer protections that we believe must be maintained, and (ii) it would be even more costly – if indeed possible – to replace it.
- We consider that a levy of the order suggested in the report prepared for you by Willis Towers Watson would represent good value and safeguard continuing protections both for clients and for retired solicitors.
- We note your concern that a levy might cause increases in the price of legal services, but we do not share it. Indeed, we regard it as fanciful.
- Our analysis and the results of our member survey (including some verbatim comments) follow.

Our analysis

The purpose of PSYROC through the SIF is to provide cover for claims over and above the six-year run-off period that is covered through the open market. PSYROC serves two principal purposes:

- it provides continuity of client financial protection (principally a regulatory function)
- it provides security for retired solicitors (sometimes referred to as the 'sleep easy' factor, (principally a representative function)

The SRA has extended the provision of PSYROC on three occasions. The first time was in 2012 when they agreed a three-year extension to cover claims notified before 30 September 2020. The SRA Board agreed a further a one-year extension in June 2020 and again in June 2021, extending the provision of PSYROC through the SIF until 30 September 2022.

The SRA Board states that, each time it has considered extending the provision of PSYROC through the SIF, it has carefully considered the affordability of doing so. It is important to note that based on actuarial advice that the SRA has received, it does not consider that the provision of PSYROC through the SIF for a further period is prudent, bearing in mind SIF Limited's solvency policy, **unless additional funding is secured.**

The SRA seeks feedback on its analysis of a number of options: -

1. **Continuation of PSYROC through SIF**, which the SRA is advised would be viable if a levy were to be applied of £16 p.a. per solicitor or £240 p.a. per firm (or presumably such other – perhaps tiered by firm size – 'per firm' arrangements as may be considered equitable). In its consultation the SRA states that this is **not its preferred option**, citing concerns about operational inefficiency, proportionality and fairness between solicitors/firms and a possibility of costs being passed on to clients.
2. **Insurance through the open market**; here the SRA states that the introduction of a requirement to add PSYROC to the minimum terms & conditions of PII cover is **not its preferred option**, expresses a view that the market would have little appetite for this and opines that consequently some firms might find it difficult to obtain cover.
3. **A Master Insurance Policy**. This would require a partnership with a credible commercial insurer in the open market and the SRA **considers it unlikely** that there would be appetite.
4. **An alternative indemnity fund**. The SRA view, after specialist advice, is that **it would be challenging** to establish a model outside of SIF to provide PSYROC in a more efficient/proportional/fair manner, and any new model would also require funding.
5. **Targeted PSYROC**. This approach, a variation of 4, above, would involve cover that is clearly focused on a combination of work types, firm sizes, claim amounts etc. The SRA's view is that such an approach **would not improve transparency, simplicity or certainty** for consumers or solicitors – and the funding requirement would not be much lower.
6. **No regulatory requirements for ongoing PSYROC**. This seems to be the SRA's favoured option and the arguments deployed in favour of this option include:
 - a. its view that any regulatory requirement for PSYROC might be 'disproportionate' because of the size and frequency of claims.

- b. its concerns that costs would be passed on and affect the affordability of legal services
- c. uniformity with other regulators of legal services
- d. mitigating measures – these are largely information and a willingness to work with the Law Society as representative body on a non-regulatory scheme to provide the ‘sleep easy’ factor for retired solicitors.

Summary

We see this as an issue that has been in need of a solution for some years and has been ‘bouncing’ between the SRA and the Law Society in recent times. **The SRA wishes to separate regulatory issues from representative ones**, hence the focus on consumer protection and no real exploration of any need to protect retired solicitors from claims that could cause them financial difficulty, even bankruptcy.

We believe **it would be a gross injustice** to the parties protected by the current **arrangements if those protections were to cease**. While the inherent inefficiencies of the current model are noted, **some observers may conclude**, based on a reading of the Consultation Paper, **that the SRA is keen to discontinue the scheme to avoid any administrative burden** that continuation would impose.

The SRA and its advisors’ analysis of the open market options seems uncontroversial and suggests the limited **alternatives of closure or maintaining an inefficient model with additional funding from the profession**. The inefficiency referred to is also uncontroversial; the process of dealing with PSYROC is expensive and resource intensive because of factors inherent in handling long tail claims, such as the absence of records, the need to locate the relevant solicitors and issues with establishing liability and limitation periods. Claims can remain open for a long period of time.

Ultimately, **the SRA’s preference seems to be to allow the provision of PSYROC through SIF to cease**, and it seems prepared to accept the consequent loss of protection to consumers because of its concerns on price rises being passed on, and the proportionality and fairness of any levy. **Solicitors may consider that a levy of 31p per week per solicitor, or £4.62 per week per firm** (or such other tiered model as may be adopted to raise a similar sum) **is highly unlikely to have any effect at all upon the price of legal services**. The SRA comments that continuation would leave in place a level of consumer protection that is ‘an outlier’ as compared to other providers of legal services. Solicitors may choose to see that as a positive and differentiating feature.

The third of the SRA’s eight regulatory objectives, flowing from the Legal Services Act 2007, is *‘protecting and promoting the interests of consumers’*. **Solicitors should consider whether it would be in the interests of consumers for PSYROC to be removed**; whether the SRA’s concerns about proportionality, efficiency and the possibility of price rises are trumped by the protections that PSYROC affords to those who need these protections.

While the risks posed to retired solicitors will be more immediate to those further advanced in their careers, all solicitors will retire at some point.

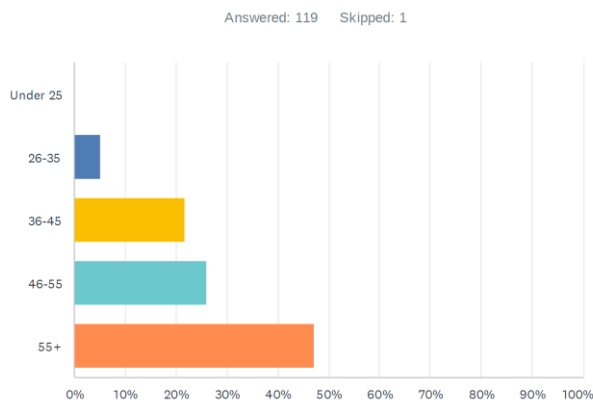
Our Survey

Your fifteen questions, requiring free-form answers and inviting comment on your own analysis and your data sources, were unsuited to a survey of our members. For this reason, we created a survey containing fewer, more targeted specific questions. These, in conjunction with our comments above, address the issues you have raised in your own questions.

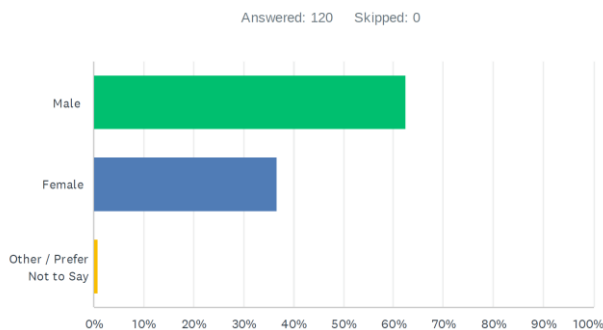
Respondents

120 solicitors in England & Wales responded, with these characteristics: -

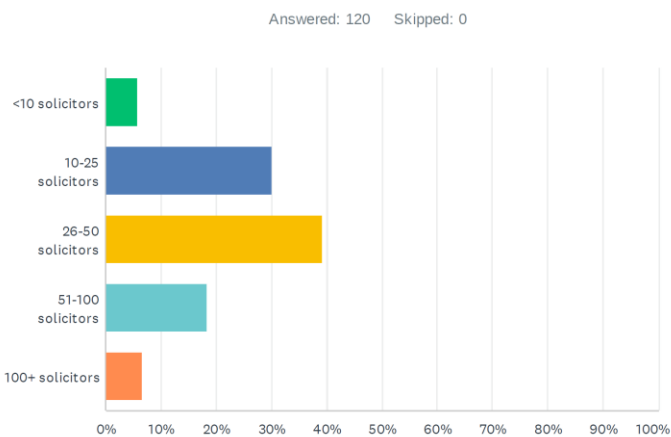
AGE



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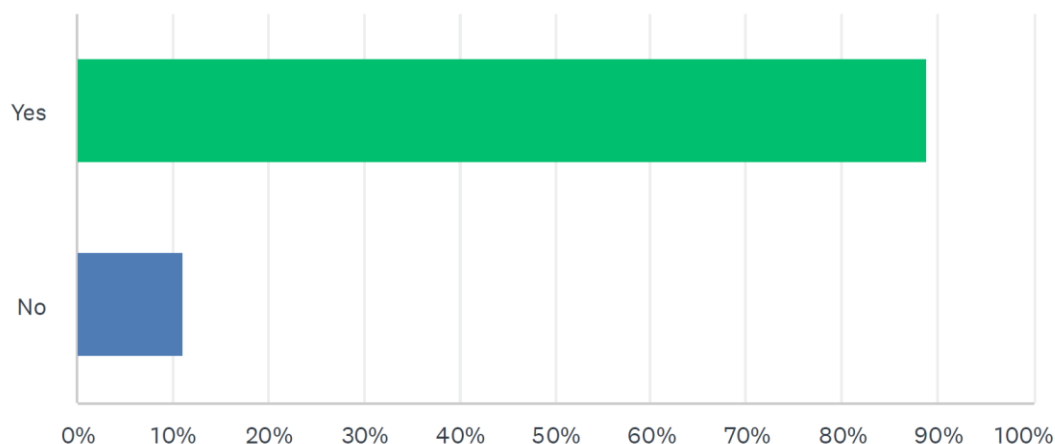
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Questions and responses

Should the SRA find a way to continue PSYROC protections for clients?

Answered: 118 Skipped: 2



VERBATIM COMMENTS

These proposals would leave clients vulnerable and unprotected

The SRA must protect the public

In the absence of cover, consumers' only course of redress will be dependent on the solicitor's ability to meet any claims from their personal assets. There is no guarantee that a solicitor (current or retired) has the ability to meet such claims which could be large. The client would essentially be left with no method of redress. As a profession that must put clients first and must maintain high levels of client care and PI whilst practising, removing PSYROC seems entirely at odds with those obligations.

There would be a risk that clients will not recover compensation.

The absence of protection would undermine confidence in the profession, and we will no longer have anything to set us apart from unregulated non-qualified lawyers.

This would have unintended consequences, ... which are likely to be far more damaging to clients than simply the trivial/non-existent risk of passing on an additional few pence in costs. Solicitors will move to working only in companies, which means no sole practitioners or smaller firms, accelerating the problem of fewer solicitors accessible from the high street and reduced affordability. Companies and larger firms tend only to deal with larger matters because they have higher overheads so clients will pay more or lose access to representation and advice.

Clients trust the Solicitor brand due to the protections we give.

The loss of protection would alter the balance of risk for solicitors such as myself as to whether to take on and deal with difficult cases. Consumers may find that they have nowhere to go.

Clients may be left with no-one to bring a claim against

Some limitation periods mean claims are made after more than six years

Reputation and long-term impact on all, future concern for those entering profession

Claims, which are inevitable, made without the benefit of PSYROC would be harder to pursue and more expensive. Insurance cover is a solid reason for clients to instruct regulated solicitors rather than unregulated providers. A competitive advantage would therefore be thrown away.

Clients instruct a solicitor in the knowledge there is robust insurance cover if things go wrong

Why should clients' protection depend on the financial positioning of their former solicitor? With the wrong publicity this could have a negative impact on consumer choice as clients would surely feel the need to opt for a larger firm that is a safer bet for continuity in the future.

It needs only a small number of high-profile cases where claimants fail to recover adequate recompense for it to reflect very badly on the profession as a whole

Reduces financial protection for clients

Would leave some deserving victims of solicitor error at risk of being unable to recover compensation

These protections are important because I am a client as well sometimes

Clients should not be left to pursue individuals

It is simple, the SRA should adopt the levy route and I do not see what the issue is that means solicitors have continued liability

Clients who find themselves without protection will have been let down by the profession and trust in the professions will be further diminished

This would be a public relations disaster for the profession

It would devalue the solicitor brand

Clients may not use solicitors if they are left unprotected.

It provides clients with peace of mind given the sums of money they are often spending to purchase legal services from a solicitor.

The solicitor brand will be damaged if a (solicitor at a) (now)defunct firm has been negligent but there is no source of redress

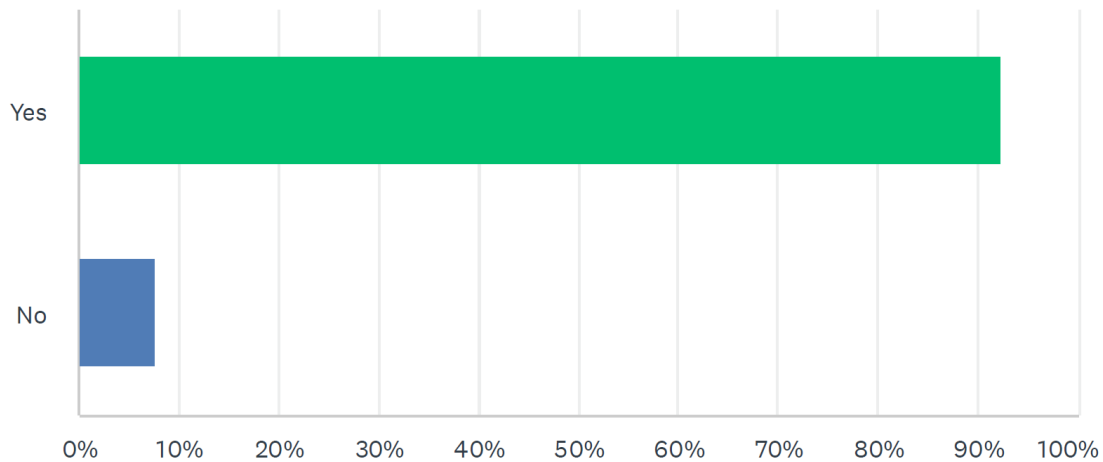
It would leave individuals exposed and there needs to be protection for them and for clients

Their claims would be uninsured.

Clients need ongoing protection after the mandatory PII has expired. (Retired) solicitors also need this SIF protection in place as there is no alternative in the open market.

Should the SRA find a way to continue PSYROC protections for retired solicitors?

Answered: 118 Skipped: 2



VERBATIM COMMENTS

Dependant on their status it leaves them vulnerable

Wouldn't want to be exposed to claims

As a solicitor in the middle of my career (aged 37, and 12 years PQE) I have no plans to retire soon. However, it is only in the last few years that I have only recently finished repaying my student loans (inc a loan I took out for the LPC). Having done that I am looking ahead to retirement (however long away that may be) and cannot possibly see how I would ever be in the position to potentially meet any claim brought against me at that time. If I thought that was a possibility then I (and I suspect many others) may take steps to protect/preserve any assets they have. Bearing in mind that it's highly unlikely that you could identify how much income/profit/benefit was received by a specific solicitor from a particular piece (and if you could, the benefit would likely be minimal) and may have even been undertaken by a different person/fee earner, why should that solicitor ultimately be liable. The potential risks are huge, and disproportionate. Would anyone be able to retire? Would anyone want to progress to become a partner/shareholder, if they thought that they would potentially be liable for time immemorial? I would certainly be concerned about it. I cannot think of any other profession where that is expected.

Risk of financial hardship for those who have served the profession

No former partner will be able to rest easy from 6 years after retirement unless they can negotiate an indemnity from their partners and this is likely to affect the severance package. Solicitors in private practice are already significantly behind the public sector when it comes to pension provision.

It is outrageous that officers of the court and those who have been willing to serve as solicitors under what may be seen as the historic conditions should now be at risk of bankruptcy. Estoppel would prevent this happening in most private/commercial situations - why should the regulator be permitted to do this?

They ought to be safe from claims

Any person retiring wishes to retire knowing they have left any liability from their career behind them. No other business would expose the owner to liability over and above Limited Liability status of the corporate body.

Solicitors often act as professional executors and trustees and attorneys where there are no other suitable individuals to act. The loss of protection for retired solicitors would impact on the willingness of myself and others to put our necks on the line for the benefit of clients. I have sleepless nights now while dealing with such matters and do not want to be haunted when I retire.

Sleep easy factor. They deserve to retire without such risks.

The protection is needed

My previous firm was in the ARP and had to close without any other cover and as it wasn't incorporated into another firm I would have personal liability which I believe to be unfair

Some limitation periods mean claims are made after more than six years

The potential financial damage of a claim in retirement at a point at which there is insufficient time to recover my financial position is a huge worry.

It could result in severe financial hardship

Retired solicitors should be able to 'sleep easy' - they are unable to protect themselves and their families by alternative means. Those that contributed to the fund for many years will be denied the comfort when it comes to their turn to retire and those who are presently much younger will, when their time comes, wish they had the protection. It is the solicitors from small to medium sized firms - those least able to suffer financial loss that will be the most exposed to risk as the likelihood of the larger firms discontinuing is so much less likely.

The "sleep easy" factor is not one to be dismissed out of hand for those who after years of hard work look forward to their retirement

The sleep easy factor

The loss will mean potential liability throughout retirement

It'll leave some lawyers, particularly in smaller partnerships at risk of uninsured loss claim indefinitely into retirement

The market has no appetite for long term liabilities, but retired partners need to be free from threat of bankruptcy, and the new generation of solicitors are wary of risk and if this withdrawal becomes known it will be even harder to persuade them to become partners, and local firms will cease

Confidence in retirement

The goalposts have moved over the years and the PI markets have hardened. I don't feel that today's solicitors should lack the protections that their predecessors enjoyed and that were available when they entered the profession

Unfairness to have a potential personal liability in retirement

The Limitation Act sets out the relevant periods and these extend well beyond the six year run-off period. I believe that doctors can obtain lifelong indemnity. Why should retired solicitors be any different?

It will put off people who don't have endless resources from becoming business owners, making the profession even less diverse than it already is at firm owner level. It has certainly put me off- the thought of constantly living in fear of claims in your retirement isn't exactly appealing.

Unable to retire if insurance unavailable.

It would create a personal liability for retired solicitors that they should not have to bear given the (modest) cost of continuing PSYROC at current levels.

Even if there is a defence, former solicitors will have to face...claims at their own expense. Limited liability and contractual exclusions will offer some protection but why should retired sole practitioners be put in the firing line? They paid their insurance every year and shut the firm in an orderly way, presumably.

Retired solicitors would be vulnerable to financial ruin.

To bolster continued confidence in the profession and to keep that USP which distinguishes us from non-solicitors

For benefit of clients and the solicitors

To guard against the possibility of clients having no protection in the event their solicitor has retired and no longer has insurance

Reassurance for clients dealing with small firms

It's irresponsible and unprofessional to leave clients without any recourse due to their former solicitor having died or lacking the funds to pay any claim

Because the relative cost is low and the system is already up and running.

It gives clients extra confidence in the profession

It would be cheap to do so

Clients will not be aware of the risks of lack of cover.

It should be a modest cost for the industry to support the vulnerable

Gives confidence in the profession

Mistakes and negligence should not cause clients to lose.

To protect them - the alternatives proposed thus far are not good enough

To preserve the reputation of the profession. It is fanciful that the potential cost of £240 per firm will give rise to any significant costs increase to Clients.

To ensure that solicitors don't get a bad reputation.

Justice for clients.

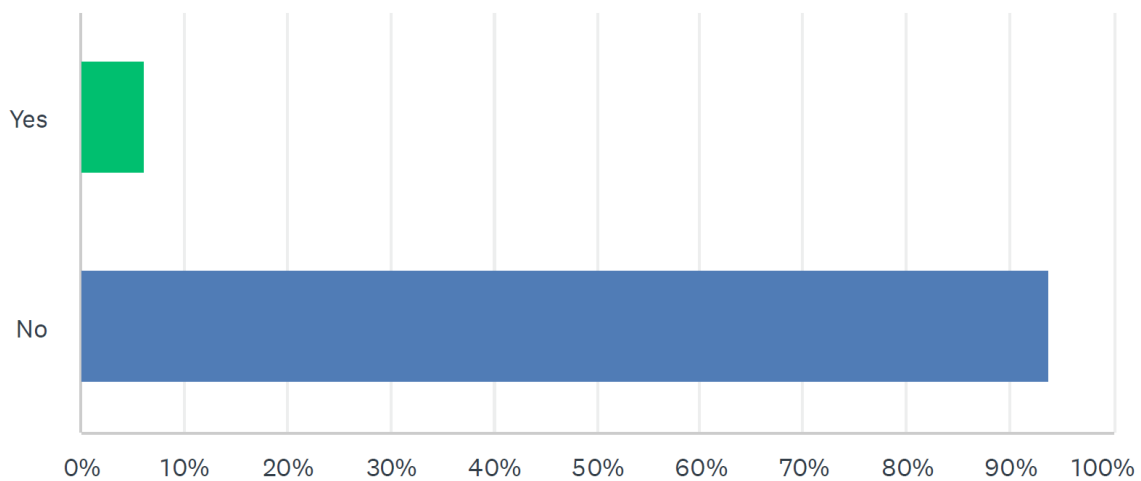
It's in nobody's interests for them to have no protection

Client protection. One bad story could be disastrous, not only for the client themselves but also for the reputation of the profession

The cost of keeping SIF going is very modest if spread across the profession. There is no open market solution. if any become available, they would be very expensive, far costlier than keeping SIF going.

Should the SRA allow PSYROC through SIF to be wound down?

Answered: 115 Skipped: 5



VERBATIM COMMENTS

It would lead to a loss of cover and protection for retired solicitors and consumers respectively

This would of course depend upon the funds available in the pot, but if in the pot then they should remain in place to fund the cover required. To what better use could the funds be placed and indeed why should the funds be used for any other purpose.

Because not otherwise covered

Keep it going -once you cancel it, it ain't coming back.

Not until a solution found

It was set up for good reason.

No alternative in the marketplace; the cost is not significant per lawyer and it would not affect consumer prices much if at all. If SRA want to stop sole practitioners operating or small partner firms it should say so rather than making it unviable due to lack of cover on retirement. It is very difficult to wind down a small practice already. Losing this cover would make it even harder.

Taking away protection for Clients and solicitors. There is a balance of SIF fund unused. We paid into that fund. Why should the SRA decide how it is used?

From the description above, whilst not ideal, this seems like the best and probably cheapest way for the cover to continue. The annual cost is modest and one would surmise that it would be a lot harder and more expensive to obtain this on the open market - if it could be obtained at all. It seems that if costs were to be passed on to clients (which seems unlikely in the SIF model) then there is great risk of this if left to the open market.

Cost benefit analysis

Money previously paid for the purpose of insuring the profession should be kept for that purpose so long as any funds are still there.

Without an alternative, firms without a successor practice will be left uninsured for claims made after six years

There would not appear to be a better alternative

It is logical to continue with this

Not if it is the only effective way to provide the cover, given the "lack of appetite" in the open market.

It is a proportionate spend to give really positive protections

It has worked well

There is no satisfactory alternative in place.

Although not ideal it is the best solution to maintain a centralised fund

It works

Only if there are competitive open market PII policies offered by insurance companies

The system appears to work, their arguments saying that the system can no longer be supported simply doesn't seem to stand up. I'm sure firms would rather contribute more towards it if necessary to retain it.

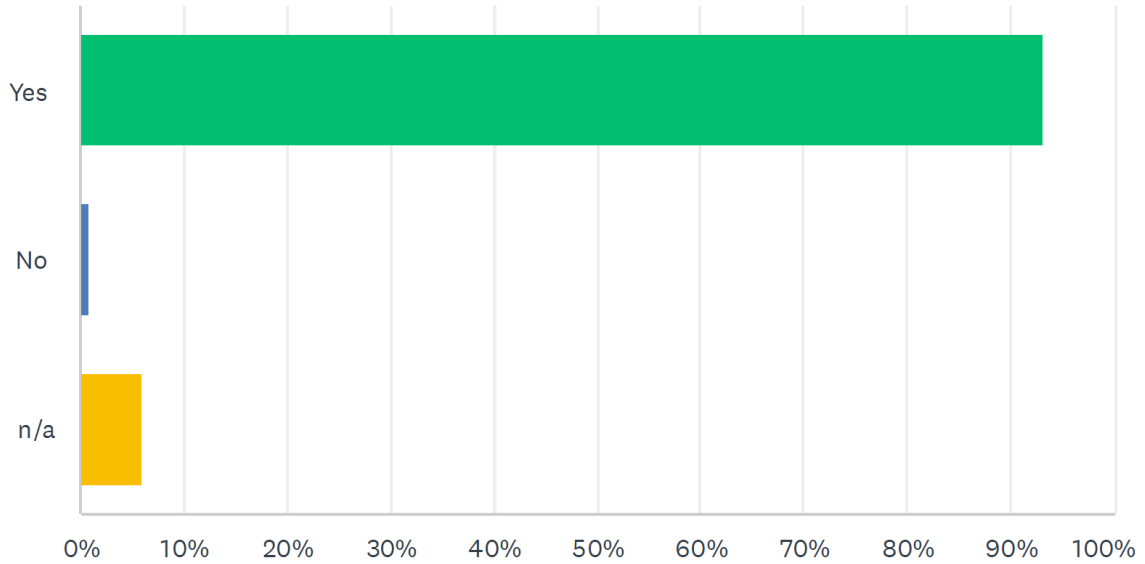
Seems the best way of meeting the objectives

Believe it is a very small problem that penalises all for the actions/omissions of a very few

SIF is needed to give protection to clients and to solicitors who cannot obtain alternative cover.

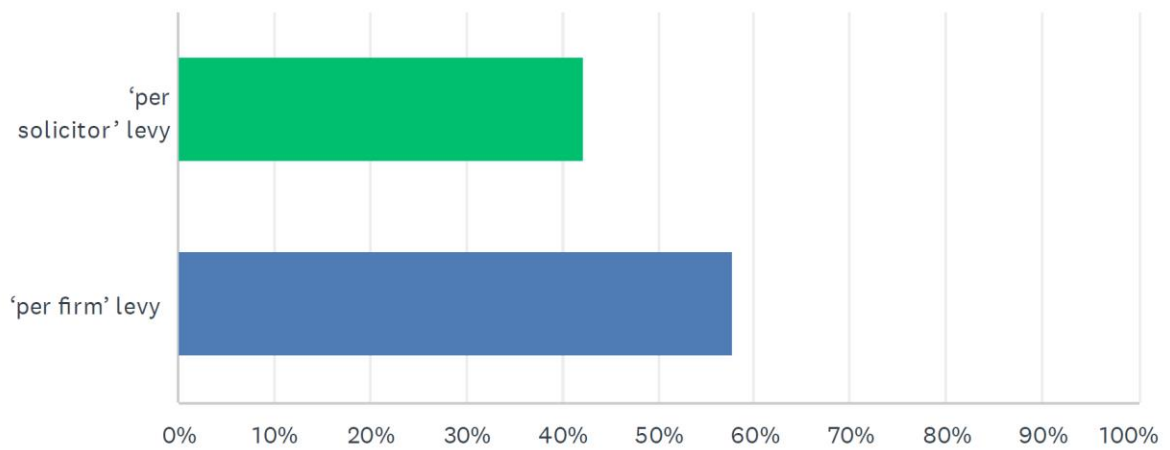
If a levy of £16 per solicitor per annum, or £240 per firm per annum were to be introduced in order to preserve PSYROC, would you consider this good value?

Answered: 119 Skipped: 1



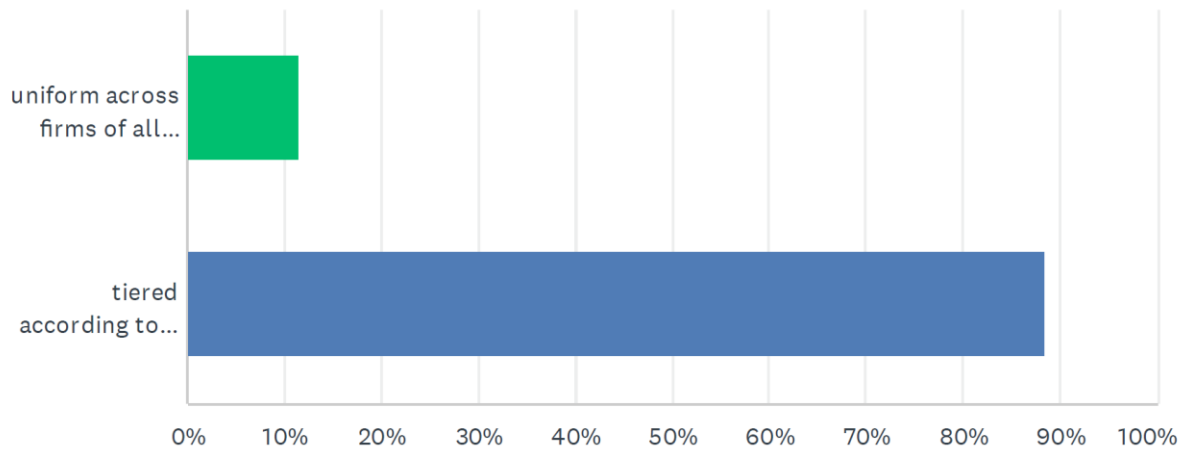
Which do you favour?

Answered: 116 Skipped: 4



If 'per firm', should it be uniform across firms of all sizes, or tiered according to firm size?

Answered: 95 Skipped: 25



Do you have any other comments or suggestions?

It seems to me that the cost of the levy represents good value. The cost to consumers appears minimal and would seem unlikely to impact on the costs of legal services. However, the benefits to them if something does go wrong are huge in comparison. Not withdrawing PSYROC is in line with the profession's objectives to put clients first. Likewise, the levy appears to be more affordable than any insurance that could be obtained on the market (if any). As a solicitor it feels like we are being squeezed from all angles - having to pay high PI premiums, having to contribute to the SCF, having to fund the SIF, and not to mention the running costs of the SRA (there have been some eye watering claims for costs in the SDT in the news which probably amount to more than the levy referred to above). The reason why solicitors agree to fund these expenses is because of the protection it provides to consumers and the trust they put in the profession, but also because of the protection and peace of mind it provides to practitioners. Would that protection and trust be eroded if practitioners thought they could lose everything they have worked for, as a result of an error they may make (however innocently), and which may not be noticed or picked up for many years?

The Law Society should be lobbying to be allowed to provide effective representation for solicitors. The government appears to be trying to demolish /undermine the profession and I have been most disappointed that we have accepted the establishment line and not stood up for solicitors where it counts and made a difference. There are few areas of work where anyone is in it these days for the public good - solicitors by and large are - or have been. This is going to change the approach - if we are that undervalued, what's the point in taking this risk?

Watering down protection to potentially save the general public potentially pennies on legal fees is not the way forward. Clients pay Solicitors' rates ... as it represents value to the client. They are paying for the safeguards which they want. At the end of the day the client could always do the legal work themselves. They do not have to. They pay for a service as they pay for experience and the

knowledge that if the Solicitor makes a mistake there is insurance to put them back in the same position where they were before the mistake.

The SIF option seems to be the obvious choice as it appears to be low cost and of benefit to the clients. I don't really have a strong preference on per firm or per solicitor, but if per firm there probably should be some tiering maybe on size and potentially work type

It would be manifestly unjust to solicitors and clients to take away the protection of PSYROC, particularly given the £20m odd still in SIF. The SRA's reasons for doing so are entirely self-serving.

I believe the SRA has a moral duty to resolve this for retired professionals who will otherwise be left in an impossible situation through no fault of their own. The SRA appears to be trying to wash their hands of the situation which is irresponsible.

It is difficult to understand the SRA's position as it exposes both clients and retired solicitors to an avoidable risk. The cost is negligible and would have no bearing on price.

I do not understand why the SRA do not consider this proposal to be appropriate, perhaps they are concentrating on themselves as they would prefer to close it down altogether. There seems to be a reluctance from the SRA to consider the lawyers and consumers who would benefit from a new scheme rather than the issue to hand.

I think individual solicitors should arrange their own cover, but if this is not enforceable I think a system needs to be in place to protect the individual consumer at the very least

I have no particular preference as to whether a per solicitor or firm levy but if a per firm levy, then perhaps the level of contribution could be capped for the smaller firms.

There is a significant fund which has been established over many years using a levy on the profession. If the SRA are determined to end the protection that is OUR money and should be returned to the profession

Solicitors should be protected from claims years after the event. There should be a limitation period of 6 years for the bringing of all claims.

A minimal cost which is unlikely to add to consumer cost whilst providing cover for consumers, sleep easy for us and a differentiation that could be promoted

Small price to pay for peace of mind and also means all clients are in the same boat irrespective of the financial status of their former solicitor. Client protection should be seen as a benefit of being a regulated profession and not something to give away in a race to the bottom in terms of pricing (although the reality is that the costs outlined are insignificant in terms of a firm's annual turnover unlike the very high cost of PII).

It would be unfair on consumers and retired solicitors to let this protection lapse.

With SRA making decisions and regulating our profession, we're all doomed.

The SRA seems to be the only regulator seeking to reduce rather than increase consumer protection! I seem to remember an article, the tenor of which, was that the average claim on SIF is £36,000 (inclusive of costs) and that there are only 30 something claims per year. This gives rise to the SRA's argument of proportionality. However, given that the average salary in the Country in 2021 was £25,971 a payment of £36,000 is potentially a very significant amount for some of the claimants.

Overall, Retired Solicitors must have certainty that any claims will be met by insurance

This issue is the sole reason why I have no interest in buying into a firm. I stayed at a non-owner director level at my previous firm purely due to the fact that I couldn't bear the thought of living with this potential liability once retired.

The Law Society should be leading the fight for PSYROC continuation.

Make solicitors practise through limited liability entities and have T+C which exclude personal liability except in cases of fraud. These will provide frontline defences to liability making insurance options more viable, leaving clients with insurance redress and individuals who can sleep easy.

It is essential that SIF remains in place to protect consumers and to protect the good name of the profession. there is no viable alternative. the cost of keeping SIF going is very good value for money and the best form in which to provide this ongoing protection to consumers and solicitors alike.

END

Chris Marston, CEO, LawNet

11/02/2022

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Proportionality of the provision of PSYROC through the SIF on an ongoing basis needs to be balanced against the ongoing risk of claims being made by consumers. There continue to be a number of consumer claims made against the SIF totalling over £1m. In the event PSYROC was not provided such consumers would have no effective recourse against firms other than former sole practitioners or limited partnerships. And should consumers with a claim need to pursue sole practitioners or limited partnerships, this is a lose-lose. Such a claim is likely to be difficult for the consumer who will need to incur substantial legal costs as well without the assurance of being able to recover costs; at the same it is also likely to present a huge liability to sole practitioners and limited partnerships who are likely to seek to wind-up their practices rather than face a future without the safety net of PSYROC.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

PSYROC for firms that are currently closed should continue to be funded through the SIF until the sooner of (i) all former principles of such firms are dead; or (ii) alternative arrangements providing equivalent cover is in place. It would not be in consumers interests to remove this protection. Although the SRA considers the level of consumer protection that PSYROC would deliver going forward will be very small it would have a massively detrimental effect on any individual consumer who was left without redress because it was removed.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

If the SIF can afford the PSYROC then it should continue to do so. That is what the fund is for. If the SRA cannot afford to administer the fund then it should outsource the administration to a cheaper organisation.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Yes, the MTCs should include 'perpetual run off' equivalent to PSYROC for closing firms. It's not right that only 6 years of cover is provided when liability can extend far beyond that period. As the SRA explains most claims are statute barred after 6 years and then 15 so the cover will hopefully not be too expensive.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Not including PSYROC cover in the MTC is in my opinion a dereliction of duty to the consumer.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The SRA should ensure this is an option for current practising solicitors and retiring solicitors should be able to purchase a perpetual 'run off' cover (not limited to the current 6 years). Solicitors who are already retired should be able to rely on the PSYROC arrangements in place when they retired.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

This could be a sensible option if the SRA is incapable of managing the fund effectively. The PSYROC for already retired solicitors should be funded from the SIF.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

if you changed the MTCs then you could force availability from insurers.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the

provision of PSYROC on an on-going basis?

A levy of #16 per solicitor or 240 flat fee per firm is very reasonable. Such a levy seems a proportionate cost to ensure that consumers are protected and the profession retains its good standing in the eyes of consumers.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

This seems unworkable.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Any targetting should be tied closely to possible risks under the limitations act. breaking the targetting into probate conveyancing etc may not be precise enough.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

if market funded or an alternative indemnity scheme this does need to be funded. The levy seems a sensible idea for low cost. Matching this with changes to the MTCs so insurers have to offer the equivalent of PSYROC seems sensible..

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Any change should be a 'look forward' action and funds should be set aside to cover the current PSYROC risk. Matching this with a levy to cover the risks would be sensible. Current PSYROC risks will die out eventually and if matched with changes to MTC for existing firms the problem will die out.

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

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1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

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2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

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3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

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4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I think the market has already made it clear that there is no interest for the provision of this type of insurance.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

If its likely to be cheaper then surely it makes sense.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

I don't think this is a bad idea. I do think that the reduction of the claim cap would make sense, and that targeting the SIF at conveyancing and private client work would also be sensible if these are the main areas of claim affected.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes. The possibility of there being no provision for claims beyond the 6 years of compulsory cover represents yet another bar to maintaining a diverse and effective profession. Only those from extremely wealthy backgrounds could consider becoming a business owner in the legal profession without fear of ruin if they can't ensure suitable succession in the business, which is becoming harder and harder to establish as the young become more risk averse due to the various disaster which have affected the solicitor profession (recession / opening up of regulated activities / the pandemic / increased burden and scapegoating of solicitors due to the government's AML methodology etc). The SIF represents a safety net for practitioners in retirement- they can retire without fear of being pulled back into the legal mire. Run-off cover itself is prohibitively expensive for many, removing the SIF/current PSYROC which most have contributed towards throughout their careers is just ridiculous.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Yes, they are not really mitigation suggestions at all- they are things which should already be undertaken as a matter of course. They certainly don't provide any kind of equal form of support to that which is already in place.

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes. I think it should continue. I was a salaried Partner at my previous firm. There was just me and one other partner but unfortunately he died suddenly and now I have learnt that I could be held liable personally for any future claims. I think this needs to be reconsidered taking into account people like me. I have had no equity from firm or got any profits yet I am liable for everything now.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Only as stated at section 1.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

You should do as not just my situation as not fair on retired solicitors either.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

You could make it voluntary but also you should provide cover for after 6 yrs.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Whatever way is best to protect us. We devote so much time to our careers yet and we should be protected. Perhaps the focus should be to stop the claims and not let unqualified people act eg in conveyancing I deal with unqualified so called paralegals who do not understand anything and so maybe you should enforce only qualified solicitors legal execs or licenced conveyancers to act then you wouldn't get claims.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

Am sure there is a way of funding it. You can't just walk away from it. The focus should be on having the policy but making sure those that act are qualified.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Only my comments earlier.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

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23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes through the SIF

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

No

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

It is disappointing that the SRA seems not to have considered the welfare of individual solicitors who may face claims many years after retirement. Insufficient attention has been paid to potential claimants' positions too.

The analysis that the money can be better spent in the public interest misses the point - the PSYROC has always been intended specifically as a safety net for the few claims that slip through the gaps in the limitation act, so it is bound to be helping a small number of people, but remains an important safety net.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

It is commercially illiterate. The insurance market is already difficult enough for firms to navigate without further barriers being put up.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

It is not needed. The SIF appears to do the job it was retained to do, and could be funded by a simple levy of less than £20 on a practising certificate. You are trying to fix something that isn't broken.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

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24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

They don't address the issue and betray that the SRA does not understand the lot of small firms. Clients are not going to insure against the sorts of claims the SIF deals with, and claims can arise no matter how tidily a firm is closed down.

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

In my view I feel that as I retired sole practitioner once my run off cover expires in 3 years time if no protection is afforded to me I will be in a very vulnerable position that I can't do anything to change
Surely with assets of some £22 million some continued protection could be provided to people in my position
I paid out in excess of £30 k to get run off cover and now after the event you endeavour to change the position which will be to my detriment
At any time I could be hit with a claim that could ruin me and hence my family
This is simply unfair

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

There is some £22 million that could provide some insurance cover

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

No

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

No other than my view that funds are available

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Yes

Very firmly of the opinion that on going cover must be provided

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I am sure there exists insurers who would provide cover for a premium of £22 million

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Any amendments necessary to continue with protection should be made

It is in the interests of consumers to have access to insurance as opposed to having to sue retired solicitors in their later years

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

No

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Yes

Insurance cover be provided

If this means increase in contributions from those in practice fine as they will have the income to pay whereas retired solicitors will be living off pensions

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Alternative indemnity scheme

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

No views

25. 15) Do you have information on impacts to inform our assessments?

No

Post six year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:67 Data

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I BELIEVE THAT THE SRA HAS TAKEN INSUFFICIENT NOTE OF THE POSSIBLE DISPROPORTIONATE EFFECT ON ELDERLY MEMBERS AND FORMER MEMBERS OF THE PROFESSION WHO HAVE RELIED AND STILL RELY ON THE SIF COVER AGAINST POTENTIAL CLAIMS OF WHICH THEY HAVE NO KNOWLEDGE AND HAVE NO PRACTICAL MEANS AGAINST WHICH THEY CAN ARRANGE INSURANCE COVER SHOULD THEIR OLD FIRMS HAVE CEASED TO PRACTICE OR WHOSE OLD FIRMS HAVE CEASED, OR WILL HAVE CEASED TO HAVE PRACTICED, AFTER THEIR RETIREMENT. MANY RETIRED SOLICITORS MAY FACE POTENTIAL CLAIMS FOR MANY YEARS TO COME WHICH MAY FOLLOW THEM BEYOND THE GRAVE.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

THE FUNDS WERE PAID FOR THAT PURPOSE AND ARE HELD ON TRUST BY THE SRA FOR THAT PURPOSE. THERE IS NO GOOD REASON, BAR THE CONVENIENCE TO THE SRA ITSELF, TO DISPOSE ITSELF OF A "CHORE", TO WIND UP THE FUND WHICH POTENTIALLY BENEFITS BOTH THE CONSUMER OF LEGAL SERVICES AND SOLICITORS THEMSELVES. IT IS SCORING A MONSTROUS "OWN-GOAL" AND THE SRA SHOULD DECLINE TO FOLLOW ANY RECOMMENDATION TO REMOVE PSYROC AT ALL.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I HAVE STRONG DOUBTS AS TO WHETHER ANY OF THE INSURERS BEING WILLING TO PROVIDE SUCH COVER, CERTAINLY ON ACCEPTABLE TERMS, AND THAT IT WILL MAKE PII COVER EVEN MORE DIFFICULT AND EXPENSIVE TO OBTAIN.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

NO

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

MY UNDERSTANDING IS THAT IT IS SIMPLY SOMETHING THAT INSURERS WILL BE UNWILLING TO PROVIDE, AND I CANNOT FAULT THEM FOR SUCH UNWILLINGNESS.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

IF YOU CAN ACHIEVE IT THEN YES, BUT DO NOT CLOSE THE SIF UNLESS AN ALTERNATIVE IS AVAILABLE.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

NO

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

SIF PROVIDES THE REQUIRED COVER SO WHY SEEK AN ALTERNATIVE PARTICULARLY WHEN IT SEEMS UNLIKELY THAT ALTERNATIVE COVER CAN BE ARRANGED.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

NO. SIF HAS OPERATED VERY WELL TO DATE AND IS LIKELY TO BE BETTER THAN ANYTHING THAT MIGHT REPLACE IT.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

NO

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

THE RISKS ARE LIMITED IN ANY EVENT TO CLAIMS WHERE THE PERIOD OF LIMITATION OF ACTIONS HAS NOT COMMENCED OR NOT YET EXPIRED.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

NO

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

YES, THROUGH SIF AS IT CURRENTLY EXISTS AND AN ALTERNATIVE SEEMS UNLIKELY TO BE AVAILABLE.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

DO IT IF POSSIBLE.

25. 15) Do you have information on impacts to inform our assessments?

NO

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

yes SIF should remain open , it protects the public and it protects the solicitors who have paid into SIF.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Through their working lives Solicitors paid into SIF in the expectation that they were insured post retirement. It would be a breach of faith by the SRA to close SIF without the consent of the Solicitors who have paid into SIF. If SIF were closed the last body that should have the money is the SRA. The money should 100% be returned to the Law Society who could then perhaps create a new SIF.

The SIF can on present financial forecasts provide cover for many years to come, so why close ?

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Yes , such cover appears to be unobtainable so why does the SRA keep trying to justify its stance in attempting to close SIF on the ground that alternative insurance cover is available ?

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Yes , do not close SIF unless the SRA can provide a new SIF and transfer to the new SIF all the money in the current SIF

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

Yes. It cannot possibly be in the public interest to close SIF unless the SRA can provide a new SIF

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-

going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Do not close the SIF. It is obvious that the insurance market will not provide cover. So the risk is that the public will have a claim but there is no money to pay them , what are you going to do if the Solicitor is bankrupt ? Any claim made by the public cannot be paid if the solicitor is bankrupt. I would suggest therefore that due to the negligence of the SRA in closing SIF that the public should sue the SRA for compensation . Closing the SIF is not in the public interest.

25. 15) Do you have information on impacts to inform our assessments?

Is it not a breach of trust [as well as good faith] If you close SIF neither the public nor retired Solicitors will be protected , how can you justify that ?

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:81 Data

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I consider that PSYROC should continue to be provided through SIF.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

No.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

It appears that such cover is not actually available on the open market.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

No.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

No.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

I think it is very difficult to target this and it would be simpler and administratively cheaper for everyone to pay a small fee as part of their practising certificate fee to continue the cover.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes, through SIF.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

No.

25. 15) Do you have information on impacts to inform our assessments?

I believe that this will be a considerable worry for solicitors throughout their retirement and appears unjust when they have paid into the fund throughout their careers. It would also be unjust to claimants if they are unable to obtain payment from a former solicitor if they are unable to obtain cover on the open market.

3. Consultation questions

10.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

No. I agree with the proposal to cease providing PSYROC at the expiry of the current SIF contract, as it covers a vanishingly

small group of consumers, at a large cost to qualified professionals.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

24. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes I do have a view.

The SRA has failed to understand the insurance market; the duty of client care and the profession which it regulates.

The insurance market has shown no desire to step in and provide an alternative.

Clients will be left in a more vulnerable position than at present.

Retiring Solicitors will be left with the potential loss of their homes if a claim arises following retirement and withdrawal of the run off insurance

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

I have had to contact a solicitor in his nineties regarding a case he had been involved in many years ago. That conversation would have been very different had I had to inform him that there was a claim against him personally .

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Yes

The analysis is flawed and shows a complete lack of understanding of the legal market.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

The SRA has role and a duty it should strive to fulfill its duty not abandon a role because it is difficult

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Soon the regulatory frameworks around law firms, and in particular conveyancing firms, will be so vast and yet the personal liability on lawyers after practicing so on-going and wide ranging, that I do believe it will put off future lawyers from enfranchising to become future owners off firms.

My suggestion would be to increase the cost of Practicing Certificates significantly to cover the increasing costs of maintaining the status quo in that once you retire after a life of hard work and service, you can do so safe in th knowledge you will not be sought out in older age when you are not ell placed to deal with such things finacially.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

In my opinion it is not only right and fair, but also a must as I can't see that owning a law firm will be a prospect many lawyers of the future will relish if tings continue the way they are.

As I understand it, with the increase in consultancy based firm's there is already push away from the traditional type of arrangement.

The consultancy firm model in itself could be argued to be flawed as for the wrong type of fee earner it inadvertently incentivises billing ahead of quality .

In my opinion, anything that makes the traditional model less appealing or encourages the move towards consultancy based firms will decrease consumer access to legal services.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Sorry but this question is not clear.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

See above

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

This should be avoided, we all know the pitfalls of sourcing insurance on the open market and being subject to the insurers fluctuation costs and appetites.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

See above.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

See above.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

See above.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

See above.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

See above.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

See above.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See above.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes and SIF

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

See above.

25. 15) Do you have information on impacts to inform our assessments?

Please look at the matter more generally, I know that practicing solicitors want and try to do the right thing all the time and work hard to achieve this. In return the feeling our regulator has our (families') backs once we retire is something that should be cherished.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:114 Data

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes it is flawed and just wrong

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

It will protect the public and retired solicitors

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Yes again it is flawed and wrong

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No, I have already made my view quite clear

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

No but in the current market it is unlikely to be reasonable or fair

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Again please see what I have said above.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

How would I know I am not an insurance professional. As a solicitor having regard to the current disruption to the market I would think it unlikely.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Yes, as above flawed and wrong. Why change what works for totally spurious reasons.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-

going provision of PSYROC?

Please see above. I do not believe that it properly serves the public or retired solicitors.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Continue as at present.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Continue as at present, why seek change for something that works.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

See the answer above

25. 15) Do you have information on impacts to inform our assessments?

I agree with the Law Society view on this in regard to both the public and retired solicitors.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:121 Data

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

The fund should be continued.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

It would be too expensive for individuals to maintain their own cover.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance

solution or other)?

It should be maintained through SIF

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

it is wrong to support those who can get insurance on the market . ultimately it is clients who pay and the question is why should clients who chose larger firms support those who choose smaller firms
why should established firms support those who undercut them in the market and do so by economising on insurance

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

if there is no support from the profession then there will be a market for this insurance its a question of scale. there is no market now as there is little demand

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:149 Data

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

No. I consider PSYROC should continue to be provided through the SIF on an ongoing basis

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

No.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

No

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

No

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

No

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

No

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

I consider that PSYROC should continue to be provided but do not have views on the mechanism for this.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I have endeavoured to obtain quotes for indemnity insurance without success.

25. 15) Do you have information on impacts to inform our assessments?

the taking out of Indemnity insurance to cover the risk does not appear to be practical and it is likely that the public and solicitors will not be covered despite the fact that solicitors have throughout their professional lives contributed towards providing such cover for the pulic and profession as a whole.

Post six year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:153 Data

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I RETIRED AS A SOLE PRACTITIONER OVER 6 YEARS AGO AND I AM HORRIFIED AT THE ATTITUDE OF THE SRA. CONTINUING PROTECTION SHOULD BE AUTOMATIC AND THEY SHOULD NOT HAVE CONSIDERED OTHERWISE. I HAD NO CLAIMS IN OVER 20 YEARS AS A SOLE PRACTITIONER.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

IT IS PROPORTIONATE HOW CAN IT NOT BE

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

YES SHOULD BE CONTINUING

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

NO BUT THE PREMIUM SHOULD TAKE INTO ACCOUNT THE CLAIM HISTORY OF THE WHOLE PERIOD INCLUDING RUN OFF

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

NO INSURANCE CO WANTS TO KNOW - I HAVE BEEN UNABLE TO GET COVER EVEN THOUGH I AM CLAIM FREE

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

GOOD IDE

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

MAASTE POLIC

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

NO

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

NO

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

NO

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

The analysis makes reference to a "sleep easy" factor concerning retired solicitors. However, important as this as a factor, it does not place sufficient emphasis on the financial considerations. I have opened and closed a sole practitioner solicitor's practice. In doing so, hugely important is making sure the finances make sense, both on opening a practice and closing the practice. Insurance is frequently the most substantial financial commitment taken on by a small practice. A significant part of the the equation (which, given its large cost, must be taken into account at the time of opening the practice as well as the time of closing the practice) is cover following closure. Previously, this would be on the basis of purchasing 6 year run off cover followed by PSYROC under SIF. The cost of the initial 6 year run off cover is significant (typically the same as 3 years' annual insurance when trading, in my case over £30,000). This had to be taken into account in business plans throughout the operation of the practice. If it had been known from the start that SIF would not deal with PSYROC, this would have to have been taken into account in all financial decisions, such as:

- the viability of opening the practice in the first place;
- the charging structure throughout the operation of the practice, so that account could be taken of the effective long term cost of insurance;
- retention of profit within the business to make provision for PSYROC;
- the desirability of trying to find a successor practice when closing the business;
- the financial worth of any proposal made by a successor practice.

Many practices that have opened and/or closed during the relevant period will have made these decisions on the understanding that PSYROC would be handled by SIF. If the rules are now changed, that means the financial decisions previously taken were not made on sound information. Essentially the goalposts have moved.

Given the SRA has identified PSYROC to be potentially uneconomical for itself, it is likely to be costly insurance for any sole practitioner to purchase on the open market; it is not even clear whether such insurance will be available at all. Accordingly, financial decisions already made will be slewed significantly.

The effect could be ameliorated by continuing PSYROC solely for practices that have already started trading. New practices, therefore, would know their future potential liabilities before opening - the goalposts would be fixed.

Another option to reduce the impact on past practices, would be to continue PSYROC in respect of practices that have already entered their six year run off cover, or completed their 6 year run off cover. The cost of doing so is likely to be limited and quantifiable. Not to cover these practices would be manifestly unfair as they had no possibility of assessing the cost to themselves of PSYROC at the time they closed their practices.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

It would be useful to have further details of the cost of individual practices taking out PSYROC on the open market.

The SRA on the one hand states that the cost of continuing cover is disproportionate, but that the risk of claims beyond 6 years is low. There seems to be a disconnect between these statements. If the cost of providing cover for the SRA is likely to be disproportionate, it is likely to be more so for sole practitioners on the open market. Whereas SIF has the advantage of being able to evaluate the potential cost of claims on a historical and average basis, and so spread the potential liability, for a sole practitioner hit by a single large claim, this could mean loss of house and bankruptcy, as well as loss to the client making the claim.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

It is not clear how such amendment could work in relation to practices that have already entered six year run off (and hence already made payment for their run off cover).

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

It is eminently foreseeable that such insurance will be difficult to obtain and/or expensive.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

PSYROC should be continue to be provided under SIF. If it is withdrawn, it should at least be continued for firms that have already entered the six year run off period. If SIF is not the appropriate mechanism, an alternative mechanism should be selected which does not place an undue financial burden on retired solicitors wishing to obtain PSYROC.

Reasons have been set out above in addition to those covered in the consultation analysis.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

10.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I see no compelling justification for change.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

A fuller impact assessment is required.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Public confidence is crucial. I'm not sure the analysis recognises this sufficiently.

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

As 3

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Changing what was a compulsory scheme to a voluntary one is not a good idea.

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

It should match existing cover through SIF. If, as a matter of economy and simplification the SIF scheme is to be fully closed, that should only be done if the SRA can provide equivalent cover in the market and fund the cost out of normal fees.

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

As 6 - I have no idea about the availability or cost of a master policy but if it is not obtainable that undermines fundamentally any justification for scrapping the current SIF run off cover.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Not my preferred outcome.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

Not my preferred outcome.

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Not my preferred outcome.

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Not my preferred outcome.

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

Not my preferred outcome.

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Retain existing SIF unless an equivalent master policy is provided.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Not sufficient to outweigh the detriment of change. It is not good enough to try to take steps to mitigate risks to clients when those risks result entirely from changes made by SRA. If an outcome without increased risk is not possible, leave the system as it is.

24. 15) Do you have information on impacts to inform our assessments?

No, as my firm closed 31/12/1999 and I subsequently practised as a consultant to another firm until 2019, it seems to me that there is no impact on me personally. By making proposals to mitigate risks to clients, SRA acknowledges increased risk to clients from the changes put forward and I find this fundamentally unacceptable. See 6 above.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

SIF should continue to exist to provide PASROC.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Firstly, PSYROC is already being provided. I do not believe it is proportionate to stop doing so.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

No

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

This option is not available in the open market so far as I am aware, and not likely to be in the future. My own run-off cover insurers (Lockton) do not provide such cover when I asked them in summer 2021. In addition, they said they had no plans to do so.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

No

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that

this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Confidence in the profession will be damaged if there is not a safety net provided by the profession as a whole.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I believe the limited claims on the SIF are not a disproportionate burden on the SF or the Profession bearing in mind the purpose of the SIF when set up and subsequently and show a continuing benefit to the profession and clients

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

I believe it is proportionate and justifiable to continue and the benefit of so doing to both the profession and third parties is substantial in providing long term assto both urance and a benefit

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

see above

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

see above

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

I believe this cost would be disproptrionate and better covered by the profession as a whole and as a benefit to third parties instructing solicitors

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

If this could be covered at a reasonable cost it would be worth consideration alongside the existing cover

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

That is the issue with the current volatility in the PII market and length of cover required with risk of failures in the meantime

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

This could be focussed so as to mitigate costs for those low risk low fee firms such as legal aid criminal / housing law providers

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

See above

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

see above - Q 10

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes on most cost effective basis whilst ensuring long term adequate cover for those claims that might arise taking into account the risks and rewards applicable with regard to differing firms

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

See above - though can also take into account risks with business failures/ cessation generally in recovering for any subsequent losses

25. 15) Do you have information on impacts to inform our assessments?

No

Post six year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:175 Data

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes. I consider the current arrangements should continue to prevail

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

PSYROC provides a valuable resource particularly for sole practitioners unable to obtain a successor practice and should be retained.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

SRA should continue to maintain the SIF provision of PSYROC

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Making the MTCs more onerous will only cause premiums to increase at a greater rate making ordinary practice unaffordable for many.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

No.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

SIF worked well when available generally to the profession before insurance took over.
Let it continue in that vein.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I cannot imagine the insurers will not exploit such a situation. It is already oppressive for those solicitors with an unblemished record, Lexcel and CQS qualifications etc. not to benefit from a no-claims discount.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

The matter is better managed in-house rather than being left to the vagaries of the insurance market place.No

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

As above

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

See above comments.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

It is unfair on those practising properly.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Continue via SIF.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Regulation should include suitable protection.

25. 15) Do you have information on impacts to inform our assessments?

No.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

The objective of a regulator is to protect the public. I have concerns that it is superficial in that endeavour simply to cite numbers of cases. The nature of cases, their seriousness and the impact on those who are deprived of a claim might have been given more weight in the balance. I am also concerned about the impact on the profession in general in terms of the effect of rising PII premiums and how that could effect the quality and quantity of legal service providers as years role on and I am not sure this has been accounted for adequately.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

It is important to consider indirect adverse consequences and therefore to take account of the effect of any change on the supply and affordability of PII cover upon the profession as a whole. Premium inflation has gone out of control over recent years and may start to create problems of access to justice and access to legal services if geographical or practice areas predominantly served by smaller firms. Affordability for existing practices and discouragement of star-ups and new practices could lead to a shrinking provision. That in turn could lead to a lack of competition or a lack of supply. This is an aspect that seems not to be being given adequate research, analysis or given adequate weighting in the decision making

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Given the narrowing of the market and the difficulties in renewals being faced I doubt if there is a real prospect of having an adequate open market.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

My feeling is that the market is unlikely to provide a solution which makes some collective or mutual approach necessary irrespective of theoretical advantages or disadvantages and ideological preferences. We are, after all, in a situation where the shrinking PII market on the supply side is creating a crisis for continuing practices who will be paying premiums into the future, and thus will be more attractive than closed firms. The over-riding problem is that some causes of action for solicitors clients are unlikely to be known to those claimants within six years. For example a mistake in a house purchase might not be apparent until sale, or with a will until the relevant death which seems to me to create a public benefit in a system to give ongoing protection to clients.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I have no knowledge of the matter but it seems to me that regulator or other public body is more likely to be able to establish a master policy than attempting provision on a case by case basis in respect of closed firms. It also strikes me that the analysis of the small number of claims arising more than six years after the advice date has a greater resonance as a generality than it might in respect of the former clients of a particular closed practice.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

I think that the mutual SIF model has worked well and is the best and most practical alternative. The move away from mutuality to individual practice insurance bought on the open market has not worked well at all as has been illustrated in the difficulties in obtaining and the costs of cover in recent years as the number of providers has declined. The PII renewal is imposing an almost unbearable burden of management time and affordability for much of the profession even for practices with good claims records and I believe that any open market solution to this issue will prove to be an equally false step. It is all very well in theory but the experience of the real world has revealed the difference between theory and practice in the real world and I fear that a similar mistake could be made here. For those of us old enough to remember the reasoning and theorising are very familiar.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I think I have set these out in my previous answer other than the sanguine observation that the bottom line is likely that it is the profession which will end up footing the bill for whatever solution is decided upon and therefore self-interest would lead one to argue in favour of making no provision at all. Not my view, but a thought which illustrates the difficulties and cost implications which seem inherent in each possible alternative route and the fact that there might be a conflict between protecting the public in this way and encouraging and enhancing the affordable supply of regulated and insured legal services to the public at large.

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

The analysis whilst interesting does not give sufficient weight to the reality that closure of the SIF fund will harm consumers, damage the reputation of the profession, expose all solicitors to potential risk and likewise any staff who work in an advice giving role. In terms of proportionality these factors should surely outweigh the considerations set out. Further there are, no doubt, mitigations that could be put in place to reduce cost and improve efficiency. The peace of mind factor is not only for the solicitor and their staff but also the consumer generally or particular client.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

See response to Q1. Proportionality is not just a question of cost. The fact of the fund's existence provides reassurance to consumers and serves to differentiate the profession from other advice givers. To close the fund and expose consumers to risk will very much harm the profession. Further for all solicitors and their advice giving staff the existence of the SIF fund means that there is a source from which compensation can be paid in appropriate cases. I say all solicitors and staff as in my view it is not just a question isolated to firms/ solicitors without a successor. What happens if the successor closes without a successor? Liability will revert to the original solicitor or staff member if that solicitor has disappeared or become insolvent/ unable to meet any judgement.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

As there is reluctance in the insurance market to even look at PYSROC in any shape or form it seems unlikely that amending MTCs will assist. As I see this it strengthens the need for the fund to continue.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

I can say from personal experience when seeking PYSROC via my brokers that discussions concerning a requirement for PYSROC were not helpful and my broker commented that insurers were reluctant to even consider it given the requirement to provide run off cover anyway and the difficulties arising where there was no payment of premium.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

See Q4. I have had discussions concerning PYSROC with my broker- with whom I had a multi year insurance relationship- and he confirmed that nothing was available on any realistic terms. I thus do not believe that this is a realistic option.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

See Q4. it seems to me that there will be no realistic appetite for this in the market.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available

in the market?

I do not believe so. As noted my broker felt that no insurers had any appetite for this. Surely though this strengthens the arguments for the retention of the SIF fund.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

See Q4. as part of my discussions with my broker he mentioned discussions in the industry for PYSROC on targeted terms. He confirmed there was no appetite for this in the industry. I do not believe that restrictions would be appropriate anyway for all the reasons set out in Q1.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

N/A

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

I do not believe so.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

I very much believe that PYSROC should continue and given the reluctance of the insurance market to become involved it seems to me that the SIF fund should continue. I consider PYSROC essential to protect:

1. Consumers/ clients. Clearly clients with proper claims should have the knowledge that cover is available. It is not right that they should be left to no win no fee litigation to achieve redress for appropriate claims as such claims do not necessarily result in full recovery of either loss or costs plus the deduction of the success fee. Cover for claims is a clear distinguisher of solicitors from others and is worth retention for consumer confidence.

2. The reputation of the profession. As noted the fact that advice given is backed by insurance in case it is erroneous is a matter that inspires confidence in the profession and should not be abandoned. Further it provides reassurance to staff particularly if they move from one firm to another or move on to another career. This also protects the reputation of the profession and allows greater diversity of access.

3. Solicitors. I appreciate this debate is often only seen as affecting solicitors and their firms which close without a successor practice. I have outlined above why I do not think such a view is correct. this affects all solicitors as if eventually there is no successor practice then any residual liability comes back to the individual solicitor concerned. What if a claim does arise after run off? First there are the direct consequences for the solicitor including possible insolvency but second if that solicitor is still working within the profession there are conduct issues in having a judgement against him or her and/ or being insolvent leading almost inevitably to striking off and deprivation of the means of living. These issues very much militate against closure of the SIF fund. The possible threat is enough to deter diversity of entry into the profession.

4. Staff. It is clearly established that if the principal cannot pay then the member of staff who gave the advice might be liable. No one has broadcast to solicitors advice giving staff the risk they take on. They are comforted by the knowledge that PI insurance is in place and that run off will be provided if the firm shuts. Very few will have knowledge of PYSROC or the lack of it and yet proposals are made for the abandonment of cover that protects them without any say. The real implications for staff once appreciated will affect entry into legal services and diversity.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I do not consider that the mitigations provide any adequate solutions. They do not help in the case of firms which have already closed and they do not assist clients in achieving a proper resolution to a genuine claim.

25. 15) Do you have information on impacts to inform our assessments?

As a solicitor who closed a firm without a successor and purchased run off insurance as required. I am deeply affected by the possible closure of the fund and advocate strongly against it for all the reasons outlined. I am very concerned for my former advice giving staff and urge the SRA to consider this aspect when weighing proportionality. I have striven to provide for cover in the open market without success and so far as I can see the only viable option is the continuance of the SIF fund. I would happily contribute to the fund. One should put ones self in the position of those affected when deciding on continuance.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes I feel that the PSYROC should continue to be provided through the SIF for consumer protection reasons but mainly to give retired solicitors peace of mind. I do not the latter factor was given sufficient weight in the Consultation. I feel solicitors would be happy to pay the modest sums involved for that protection. I write as an in-house solicitor who has no "skin in the game" but I feel it is an issue of fairness and solidarity with professional colleagues.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:194 Data

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

seems disproportionately expensive

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

no

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

no

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

no

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

no

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

could be worthwhile

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

i do not know

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

no

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

no

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

no

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

i cannot comment

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

no

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

SIF

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

for claims this long in the tooth, older than 6 years and into longstop latent damage limitation, if there is no cover the claimant is likely to fold their tents, because the defendant is likely to be dead (and distributed) or unfindable or indigent, so that the only reason the speculative claimant issues is because there is a compensation pot,

The fact of PSYROC is a honeypot, if there is no cover the claims will fade away

25. 15) Do you have information on impacts to inform our assessments?

no

3. Consultation questions

10.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Only that it must be a primary objective to ensure that:

- (a) former clients are protected under all circumstance, particularly the insolvency of a former practitioner; and
- (b) retired practitioners have the peace of mind of knowing that there are no lurking obligations that may come back to bite them.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Although the analysis seems to place great emphasis on costs v benefit, the overriding objective is one that seems to transcend such a simple regard for costs.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

No.

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No.

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

No.

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Only that I think that PSYROC should continue on an on-going basis.

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No.

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

No.

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

N/a

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No.

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes. The discontinuance of the scheme will be an example of moving the goalposts. Solicitors like me retired in the knowledge that we were protected by the scheme. Had I known that the cover would be removed in the future, I may well have made my own alternative arrangements. Discontinuance would represent pulling away the carpet.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

No.

24. 15) Do you have information on impacts to inform our assessments?

Only to repeat that discontinuance of the existing scheme would be a retrospective abandonment of, in effect, assurances to both solicitors and former clients on which they will have relied.

It would cause solicitors and clients in the future to question whether they can rely on the veracity of the on-going financial basis upon which the public are continually invited to rely.

The public have been, and are, assured that the solicitors' profession is a certain bet, because of the guarantee of its financial structure. To abandon that undermines the mainstay of the professional model.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

The peace of mind for retired & former solicitors appears to me to invaluable not to mention the protection afforded to unfortunate members of the public who find themselves in a position of having to claim against their solicitors after the firm has been closed or defunct more than six year. From what I have read in the press it appears to me that the PSYROC should be continued to be administered via SIF.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

The removal of the PSYROC from SIF and placing it with the open market who I understand there is not much of an appetite will inevitably drive up the cost practice and does nothing to assist the very consumers it seeks to protect.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

I do not think it should be made a voluntary option because of market forces.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I am not as versed with this particular option as I would like to be but my first view on this what will the difference be. There are certain issues that should not be left in the hands of private providers where possible.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

I do not think it should be on a targeted basis. The burden should be borne by the professional on an equal basis with appropriate variations.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

Not all sectors of the profession will feel the impact in the same way and to the same extent. As we all know the lower/smaller end of the spectrum is likely to be disproportionately impacted. I am in support what can be done to lessen the impact on smaller firms and sole practitioners which will in turn help the profession deliver the sterling service we are all striving to achieve.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes. I was in private practice when the SIF provided cover. It was never envisaged that the firm and its partners would ever be without cover for appropriate claims and to remove such cover against the wishes and needs of the professionals who paid into the fund in good faith and to expose the clients (now consumers) at risk in the manner proposed is, i would submit wholly unjust and unreasonable. The impact upon those individuals who may be exposed is far greater than continuing a mutual fund at a fairly nominal cost to the profession. Unmet claims could bring the profession into disrepute and cannot be in the interest of the wider public. In respect of the individual solicitor, one claim against a retired professional, no matter how spurious could have a catastrophic impact upon the life and family of the uninsured solicitor the subject of the claim. I submit that the suggestion is disproportionate and unjust and in breach of Human Rights- as identified the proposal has a significant adverse impact upon elderly solicitors which could easily be mitigated by continuing a mutual fund for the nominal claims that could potentially arrive in future. Insurance cannot be obtained on the open market to cover these risks as a matter of fact.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No, save comments above.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

No

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No, save as above.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

To my knowledge this type of cover is simply unavailable and is not a realistic option.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

No

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

There is no such policy available to my knowledge.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No, save as above.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

No

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

No.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

The SIF for reasons stated above.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

NO, save as stated above.

25. 15) Do you have information on impacts to inform our assessments?

No

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

I am of the view that this should be optional for solicitors or the SRA to put in place. I believe that there is a lot of burden placed on practitioners who are already grappling with the others on a daily basis and the run off should in my view be scrapped.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance

solution or other)?

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:250 Data

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I agree it cannot continue in the medium to longer term without additional funding

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

I accept and understand the impact of the costs

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I think MTCs should include all post-cessation cover not just six years. I dont believe insurers will withdraw from the market

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

No

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Not realistic

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

Unlikely

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

No

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

No

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

See above

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Advising clients to obtain their own insurance will not work, because the insurers will still be able to pursue claims on a subrogated basis. It is important that retired solicitors are not left without insurance cover.

25. 15) Do you have information on impacts to inform our assessments?

No

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:251 Data

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

My view is that SIF should continue

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

I think it is proportionate and is the only way forward

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

no

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

no

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

You are aware that this is not possible

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

no

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

no

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

no

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

no

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

no

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes - it should be provided through SIF

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:259 Data

3. Consultation questions

8.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes

It should be continued as there is no open market alternative available

9.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

There are funds available in SIF which should be used for this purpose.

Further funding can be subject to a consultation with members.

10.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

none

11.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

no

12.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

no

13. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

no

14. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

no

15. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

no

16. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

no

17. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

no

18. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

it should be professional wide so that payment per individual or firm is lower

19. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

no

20. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Can it not be dealt with through the Law Society

21. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

no

22. 15) Do you have information on impacts to inform our assessments?

no

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:261 Data

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

No

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No information but our view is the costs are excessive and could be reduced.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

No views on analysis but we disagree with amending the MTC's to require provision of PSYROC. it will cause many problems.

You have not asked the question whether we agree or disagree with the proposal.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

no information but we disagree with amending the MTC's to require provision of PSYROC. it will cause many problems.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

no

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

no

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

no information but we think it is unlikely.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

no

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

no - you could conduct a pre-tendering exercise to establish the costs.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

no

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

no we do not think it should be targeted it should apply all claims and work types

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

no

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes. The public and solicitors should have protection. The cost involved is very modest given the size of the profession and the SRA fees charged each yer.

This consultation is very complicated and has very closed questions. This is the only question which asks should the current arrangements continue. We are concerned the response to the consultation will be limited due to the complexity and design of the consultation.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

The mitigation actions proposed are completely inadequate.

Providing information will be of no benefit if there is no solution.

Notifying past clients a firm is closing is completely impractical for most firms. Many clients will have moved and the firm will not have current contact details. The costs would be disproportionate.

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I strongly believe that it is in the interest of clients that cover through the SIF or a similar vehicle should continue. Until now clients have had the peace of mind in knowing that in the rare event that something has gone wrong, they will be fully protected beyond the 6 year period.

The SRA rejects the idea of a small compulsory levy on the grounds of cross subsidisation, but apparently does not see any illogicality in the fact that compensation fund payments are required from all solicitors/ firms, however blameless. The suggested annual payments of £16 for an individual and £240 for a firm are so small that they are unlikely to be reflected in the cost of services to clients, but they will provide them with a considerable benefit.

I believe that the vast majority of solicitors aim for a quality of service for the public superior to some other professions, e.g. will writers. I consider that their insurance arrangements which you quote are not a fair comparison

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

. The SRA somewhat optimistically has outlined assistance which might be given to solicitors seeking to close their firms. No thought is being given to the position of solicitors, whether partners or staff, who have left or retired from firms which were ongoing at the time of their departure, but subsequently close. Those solicitors have no control over arrangements made on closure of their former firms and the insurance then in place. Moreover they would not have access to the firm's insurance records, or recent claims record to be able to put in place any insurance of their own for the benefit of themselves or their clients.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I am firmly of the view that any necessary amendment should be made to ensure the provision of PSYROC.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

No, but reiterate that solicitors of firms which were ongoing when they left or retired and their clients are unlikely to be able to take out cover of their own

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Provided cover continues, I am happy for this to be provided in the way the SRA thinks fit.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available

in the market?

No

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Although it may be true to say that post 6 year claims tend to be concentrated in wills trusts and probate and conveyancing. (e.g. a claim for an incorrectly registered overage could result in a large claim after 14 1/2 years), it is not true to say that it is only solicitors working in sole practice or small firms and their clients who could be affected. I do not consider that cover should be targeted to certain areas of work, by size of firm or time limited, as this would be discriminatory, and leave many clients potentially exposed

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Please see reply to question 10

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

Please see reply to question 10

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Definitely for the reasons stated above.

It is part of the SRA's remit to ensure the best possible service from solicitors and that should include insurance in the rare event of something going wrong.

At present young entrants may not consider what could happen in many years time when they retire, but precisely those individuals whom the profession seeks to attract could be deterred, if it becomes known that they could be taking on personal liability indefinitely.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

The spokesman for the SRA in your recent webinar alluded to the fact that operating as an LLP will afford a large measure of protection to solicitors, but did not mention the fact that an individual solicitor or employee may still be personally liable. This will only provide some protection to the members of the LLP and clients may be left in a worse position.

It seems unlikely that advising clients of the potential risks on closure of a firm will be helpful, as it is hard to see how those clients would be in a position to arrange insurance, even if they could see the necessity for it and many clients may no longer be contactable.

25. 15) Do you have information on impacts to inform our assessments?

I consider that the SRA is wrong in its cost/ benefit analysis. The cost to the profession of continuing cover is minimal compared to its benefit for the public, partners in law firms and their employees, as well as the image of the profession as a whole. If the only way of authorising such a levy is through the SRA and it cannot delegate its power to the Law Society, then it must arrange

for the continuance of such cover.

3. Consultation questions

10.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

These questions are badly drafted, excessive in number and repetitive. However, doing the best I can, my overriding view is that the SIF does not need to be continued in its present form, but that PSYROC should instead be provided on an ongoing basis by the profession at large.

In other words the solicitors' profession should self-insure against PSYROC claims, with the cost of claims being recovered as an annual surcharge on the practising certificate.

This is because the anticipated costs of paying PSYROC claims at £16 per solicitor is so tiny as to be irrelevant in comparison to the benefits it would provide, both to retired solicitors and potential claimants.

The argument that such a trivial sum would raise costs to law firms' clients is self-evidently absurd - it would have about the same impact as a modest increase in the price of Nespresso capsules or copy paper. Compared to the other costs incurred in running a practice a tiny sum like this would not even be noticed.

Such a self-insurance model would (1) provide peace of mind to retired solicitors, who had never budgeted for the possibility of being personally liable; (2) provide certainty of cover for consumers, who may otherwise be left without redress, as many retired solicitors would be unwilling and/or unable to meet claims; and (3) provide reassurance for solicitors who are currently practising that they could retire without fear of uninsured claims.

There would be no need for SIF to continue at all, and the reserves held could either be used to pay claims or used for the benefit of the profession generally.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

See above.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

See above.

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

See above.

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

This is just a completely stupid option, and you know it. The only solicitors that could obtain such cover would be those who didn't need it. Those with a poor claims history, or who hadn't paid their run-off cover would not be able (or, in most cases,

willing) to obtain cover, yet they are the very ones that are most likely to give rise to claims. Furthermore, as is evident from the report, insurers would have absolutely no appetite for such policies. The idea is a complete non-starter.

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Another silly idea. Establishing what is, in effect, just another SIF would be expensive and pointless. Self-insurance is the only way forward.

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

See above.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

See above.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

There's no point establishing an alternative indemnity fund, as it would have exactly the same issues as the SIF. Another non-starter.

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Even sillier than previous suggestions. Completely disproportionate expense for an infinitesimal benefit.

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

See above.

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See above.

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

The profession should self-insure, i.e. pay PSYROC claims out of revenue. It's an immensely wealthy profession, and the costs of paying such claims would be a drop in the ocean of overall operating income and costs.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

These are, I'm sorry to say, indicative of the authors of the report having little, if any experience of the reality of life for most law firm clients. For example, one recommendation is "Ensuring that appropriate information is provided to clients at the time that a firm closes so that the client is in a position to take pro-active steps, for example taking out insurance themselves." Are you serious?? How on earth is the average first-time buyer type client expected to respond to such ludicrous advice? Even if such insurance was available (which it almost certainly isn't) why should they be expected to pay the (no doubt hefty) premium? Are you really unable to imagine the huge damage that such a measure would cause to the image of the profession? Do none of you read The Daily Mail or The Guardian?

24. 15) Do you have information on impacts to inform our assessments?

See above.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

PSYROC must continue in its present form. It will a gross injustice to the public and to Solicitors who were previously Partners if it does not. The cost of continuing is said to be in the region of £16 per solicitor or £240 per firm and seems a very reasonable price to pay. I am happy to pay it indefinitely.

I retired from Partnership in a Firm in 1995 and have not been a Partner in any firm since. I later learned that my former firm was closed by the Law Society in 2002 and both my former Partners have since died. I have long been an employed Solicitor and was hoping to retire with some peace of mind in the next couple of years. I am surprised and horrified to read what is in the Consultation Paper.

I feel very strongly and looking ahead to the further questions, I expect to be repeating parts of this answer in the hope the message will be heard loud and clear and be acted upon.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

I retired from Partnership in a Firm in 1995 and have not been a Partner in any firm since. I later learned that my former firm was closed by the Law Society in 2002 and both my former Partners have since died. I have long been an employed Solicitor and was hoping to retire with some peace of mind in the next couple of years. I am surprised and horrified to read what is in the Consultation Paper.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

PSYROC must continue in its present form. It will a gross injustice to the public and to Solicitors who were previously Partners if it does not. The cost of continuing is said to be in the region of £16 per solicitor or £240 per firm and seems a very reasonable price to pay. I am happy to pay it indefinitely

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

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I

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

PSYROC must continue in its present form. It will a gross injustice to the public and to Solicitors who were previously Partners if it does not. The cost of continuing is said to be in the region of £16 per solicitor or £240 per firm and seems a very reasonable price to pay. I am happy to pay it indefinitely

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of

PSYROC on an on-going basis?

PSYROC must continue in its present form. It will a gross injustice to the public and to Solicitors who were previously Partners if it does not. The cost of continuing is said to be in the region of £16 per solicitor or £240 per firm and seems a very reasonable price to pay. I am happy to pay it indefinitely

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

PSYROC must continue in its present form. It will a gross injustice to the public and to Solicitors who were previously Partners if it does not. The cost of continuing is said to be in the region of £16 per solicitor or £240 per firm and seems a very reasonable price to pay. I am happy to pay it indefinitely

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

PSYROC must continue in its present form. It will a gross injustice to the public and to Solicitors who were previously Partners if it does not. The cost of continuing is said to be in the region of £16 per solicitor or £240 per firm and seems a very reasonable price to pay. I am happy to pay it indefinitely

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

I retired from Partnership in a Firm in 1995 and have not been a Partner in any firm since. I later learned that my former firm was closed by the Law Society in 2002 and both my former Partners have since died. I have long been an employed Solicitor and was hoping to retire with some peace of mind in the next couple of years. I am surprised and horrified to read what is in the Consultation Paper.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I retired from Partnership in a Firm in 1995 and have not been a Partner in any firm since. I later learned that my former firm was closed by the Law Society in 2002 and both my former Partners have since died. I have long been an employed Solicitor and was hoping to retire with some peace of mind in the next couple of years. I am surprised and horrified to read what is in the Consultation Paper.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

PSYROC must continue in its present form. It will a gross injustice to the public and to Solicitors who were previously Partners if it does not. The cost of continuing is said to be in the region of £16 per solicitor or £240 per firm and seems a very reasonable price to pay. I am happy to pay it indefinitely

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

PSYROC must continue in its present form. It will a gross injustice to the public and to Solicitors who were previously Partners if it does not. The cost of continuing is said to be in the region of £16 per solicitor or £240 per firm and seems a very reasonable price to pay. I am happy to pay it indefinitely

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

PSYROC must continue in its present form. It will a gross injustice to the public and to Solicitors who were previously Partners if it does not. The cost of continuing is said to be in the region of £16 per solicitor or £240 per firm and seems a very reasonable price to pay. I am happy to pay it indefinitely

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

PSYROC must continue in its present form. It will a gross injustice to the public and to Solicitors who were previously Partners if it does not. The cost of continuing is said to be in the region of £16 per solicitor or £240 per firm and seems a very reasonable price to pay. I am happy to pay it indefinitely

25. 15) Do you have information on impacts to inform our assessments?

PSYROC must continue in its present form. It will a gross injustice to the public and to Solicitors who were previously Partners if it does not. The cost of continuing is said to be in the region of £16 per solicitor or £240 per firm and seems a very reasonable price to pay. I am happy to pay it indefinitely

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

As a small sole practitioner in a niche area of law, I think it is very important to maintain the PSYROC through the SIF on an on-going basis. The funding required for maintaining the status quo is by no means exorbitant and can easily be met by ongoing fees on the profession. To require individuals to purchase private cover for post-run off insurance would be inequitable and effectively a retrospective imposition, particularly for those sole practitioners that are nearing retirement and for various reasons may not be in a position to secure a successor practice.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

For the reasons stated above, I feel it is both fair and proportionate to maintain PSYROC through the SIF. Many small businesses and sole practitioners made decisions for their practice based on the SIF arrangements and the removal of the SIF cover would effectively be a retrospective and therefore unfair imposition. At the very least, any changes to the PSYROC if these are to be implemented should have a very long lead in time, I would suggest 10 years, so that those practitioners approaching towards retirement and may not be in a position to secure a successor practice are not unfairly affected by any change.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

If the PSYROC is not maintained through the SIF, I think the matter of PSYROC cover should be a matter of individual choice for each individual. Many small practices are very unlikely due to the nature of their particular business to ever have recourse to any PSYROC and it is very unfair to impose the cover as an obligatory requirement on a 'one size fits all' basis.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

As above

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

If the PSYROC is not maintained by the SIF, any cover should be purely voluntary for the reasons mentioned in 3 above.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I would not support this. It is unlikely that the premiums (which would be passed on to the profession) would be better than the current SIF arrangement and again the master insurance policy would impose obligations that are likely to be prejudicial to sole practitioners nearing retirement.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

As above

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

As above

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

As above

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

As above.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

As above

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

As above

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

As above

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

No comments

25. 15) Do you have information on impacts to inform our assessments?

I would ask you to consider matters relevant to my own practice. I am a sole practitioner specialising in a niche area of law. I do not run a client account. I do not do any conveyancing, probate or commercial work. The cases I deal with are concluded within 2 months at most and do not carry a high financial risk or one that would not be immediately evident by the end of the case. There will I am sure be many other examples of small niche practices where the imposition of PSYROC obligations would be inequitable and unnecessary in view of the particular specialised nature of the work they undertake and their business model.

3. Consultation questions

10.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I believe that too little attention has been paid to the future reputation of the profession if PSYROC does not continue through SIF or some other institution on an ongoing basis. I believe that the Solicitors Sole Practitioners Group (SPG), on whose National Executive Committee Committee I sat for 25 years, have made extensive enquiries through their preferred brokers regarding alternative cover and the brokers have not been able to find any insurance company who will offer suitable terms at an affordable price. I imagine that SPG will be submitting their own response to this consultation when they will no doubt confirm this. If therefore the PSYROC disappears and individual solicitors or their estates are sued years after the event there is the probability that judgements will not be satisfied, deceased solicitors families will be harrassed and all this will no doubt be taken up by the media thereby damaging considerably the professions overall reputation.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Please consider my comments in 1 above. If the fund has to be topped up by a levy the figures quoted in the consultation for individual solicitors and firms are minuscule and can be added to the annual practising certificate fee easily.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I accept that if MTC was required on an ongoing basis the cost of PII would be completely unaffordable for most firms

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

See my comments in 1 above

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

No

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

See my comment in 1 above

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

If the SIF funds could be transferred to the Compensation Fund then presumably any necessary legislation to allow the fund to

deal with PSYROC claims can be applied for and obtained. I believe that there is some procedure whereby the Ministry of Justice can do this on a fast track basis

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No - see 8 above

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

No

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

I do not think that this should be targeted

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes as this will be an appropriate consumer protection measure within the Legal Services Act and regulations in addition to the Solicitors "sleep easy " factor. The costs could be raised by way of a Practising Certificate levy mentioned above and would be minuscule per solicitor. If the SIF must close then hand the funds over to the Law Society's compensation fund and amend the legislation to enable the LS to deal with these claims vis the compensation fund. I believe that, as mentioned in 1 above the SPG have made extensive market enquiries through their preferred brokers and no insurance market solution appears to be available on suitable terms at an affordable price.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

No

24. 15) Do you have information on impacts to inform our assessments?

No

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I disagree with your proposed option and would have thought if the number of claims and value paid out are so small then it should be relatively easy to continue cover as per now and cannot see on this basis why it couldn't be cost prohibitive. The insurance market is not providing this type of policy so shouldn't dump it back on us and preferred option is Continuing post six-year run-off cover with new funding arrangements, and through different models

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Hasn't this been looked at over last few years and there is nothing on the open market that is suitable

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC

should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes. See previous comments re reasons for SIF

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I understand that the cost of continuing this arrangement would be small if shared by a small levy on all solicitors.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

It is

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance

solution or other)?

Yes, solicitors are members of the public . It would enhance the confidence of the profession in the SRA

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I believe that PSYROC though SIF is fundamental to the provision of our legal services that we offer to our consumers and to the professionals themselves.

I was a former sole practitioner, that turned her practice into a limited company in 2017 and then merged with a larger firm to protect myself from the risk of personal liability. The worry being that I deal with private client work the limitation period of which can start from the point of death so many years after the drafting of a will.

Professionals that insure themselves and do all they can to take care of their clients and their personal lives should not be left on their own in retirement with the risk of a claim personally against them. It's a reason not to enter into the profession.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Yes consumer trust and confidence in solicitors. I always have pride in telling my clients that they are using a regulated firm and that consumer protection is paramount - that we have comprehensive insurance, that there is run off cover and protection to them from the compensation fund and the SIF. We warn our clients about unregulated competitors and the risks that they run in using such services - if we are regulated then we should protect consumers at all costs and the professionals that do this very difficult job.

31 claims a year is minimal and I believe that for peace of mind of the consumers and the profession that we would all pay into the fund to protect both.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Protecting the professionals that you regulate needs to be key to any decisions that are made as well as the consumer

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

This could be an option but the SRA would need to ensure that such products are available to professionals that want to take that cover. Like myself I have merged with a larger company but if the company closed I may want to take out a policy that protects all my past work to protect me and my family. Would these policies be available and would they be cost effective? The SRA should not close SIF without such policies being available to professionals.

Do we need to fund a retirement policy though the profession that we all pay a yearly amount to? There are ways to bridge the funding that individually would be large to the professional but as a whole group of professionals if we all pay in would protect the profession as a whole and the consumers.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

So long as there is cover there for the professional and the consumer I would be happy that the SRA are prioritising the protection of consumers and the professionals that they regulate.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

If this policy isn't available and there is no appetite for it with the insurers then PSYROC should remain in the form of SIF - our regulator should not under any circumstances place consumers or the profession that they regulate at risk.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Anything that protects the consumer and the profession has my vote.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

I appreciate the costs of running SIF are substantial, but I believe that they are fundamental to the principles that we as professionals pride ourselves in. I qualified as a solicitor to help people and to operate in a professional environment that protected the consumer but also protected the professional.

It is so upsetting to see that the SRA are even considering the closure of SIF, looking at alternative ways to provide the cover is something the SRA must do but to close SIF with no protection measures in place is intolerable.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

If you were to target on an ongoing basis you should look at the areas of work that need the PSYROC cover - i.e conveyancing, wills and probate, family work. These often will be regular people trusting the profession if there is no cover in place should something go wrong how can we say that we are protecting the consumer.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes, SIF would established at the point of change of providing insurance - it was considered fundamental at the time - why change something that provides such protection. As I have said if it is funding then the profession as a whole should contribute. I would never want to hear of situations where a client is left with no redress if errors are made or a professional faces personal financial losses for errors that they didn't intend to make at a time that they were practicing and they had done all that was required by the SRA to protect themselves and the consumers that they acted for.

This should not and can not happen.

We are a profession that protects the consumer first and foremost - that is paramount to our businesses and all solicitors firms across the country would agree.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Your analysis is rather biased towards mitigating the costs of administering PSYROC, it does not take into account the non-monetary benefits this provides for both solicitors and consumers.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Given you have faced substantial resistance from Participating insurers on the current MTCs I do not believe you will be able to get the current MTCs amended, if you insist on the same then the number of participation insurers will be significantly reduced and if this happens there will be wholesale closures of firms and the n the access to legal services question will loom large

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Given the current hard market (as one can only see if getting harder) the cost of voluntary take up will be prohibitive and this will impact consumers in the long term

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

my view is that such a master policy is unlikely to be available and given the current hard market for PII (which I can only see getting harder).

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Why not transfer to TLS to administer

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

TLS and they can charge a levy of say £16 per practicing certificate

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-

going provision of PSYROC?

If a targeted regulatory arrangements for PSYROC are utilised then would this not simply encourage firms to close? Also would this not leave you open to criticism from participating insurers to relax the MTC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

No targetting

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

I am of the opinion that the status quo should be maintained as it provides simplicity and certainty, certainty for solicitors and simplicity and certainty for consumers.

If alternative arrangements are to be considered then TLS should take over and long term funding should be though a levy of not more than £16 p.a per practicing certificate. This is equitable given larger firms turnover and claims burdens.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

You do not seem to have considered the costs of your mitigations actions in this analysis, what do these amount to? I do not think they would be proportionate to the current level of protection for both consumers and solicitors

25. 15) Do you have information on impacts to inform our assessments?

In my view the SRA should actually consider going back to the SIF model of insurance.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

It appears that the protection to the consumer has been minimised and there has not been much consideration albeit of an average modest claim of £34,000 (significant amount to a consumer nevertheless) upon small practices of a potential claim. No proper and viable contingency has been identified.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

The risks and disadvantages associated with this mean that it is not a viable option.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

There were lengthy and detailed debates in the profession that led to the decision in 2000 to end SIF and to end mutual insurance. I believe the profession came to the conclusion that it was not right for some parts of the profession to have to subsidise the professional insurance cover of other parts of the profession. I have to say that until this debate arose, I was not aware that we still were! Given the costs of doing so, I do not think that we should continue to do so.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

It does seem that the cost of continuing to provide PSYROC is unrealistically high.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

It does seem that if the insurance market is not prepared to take it on, then increasing the mandatory run-off period to over six years would not be a realistic option.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

It seems to me there are two issues.

First, from a public protection position, we are told there will be around 31 claims a year that will not be covered by insurance, averaging around £34,600 each. It may well be that even without insurance, a number of defendant solicitors, even though likely to be retired, will be able to afford to cover most of such claims. I would be quite happy to see the Compensation Fund extended to cover any cases where there is a deserving consumer claim that is not covered. The benefit of using the compensation fund is that there would be a discretion to cover those where the consumer is in justifiable need, but to exclude, for example paying out large corporate claims. It might of course result in a larger compensation fund payment from time to time, but it would protect the public.

Secondly, there is the 'sleep easy' aspect for Solicitors who are not covered by insurance. Again, in many of the 31 expected annual claims, the Solicitor may well be in a position to cover the claim without undue hardship, but where not there is the Solicitors Charity (the former Solicitor's Benevolent Association) that is there to assist Solicitors in need and in maybe that a proportion of the surplus funds from SIF could be passed to them to cover this issue.

Meanwhile, there is need to have a major drive to get sole and small firm practitioners to understand their risk and, at the very least, to adopt limited liability status so that solicitors can reduce their personal risk.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I can not see how it would be fair to say, cover conveyancing claims but not, say family law of housing claims.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

See 8 above

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Yes, educating small firms and sole practitioner of the risks and how to mitigate them is essential. Persuading them to adopt limited liability status is one obvious step.

25. 15) Do you have information on impacts to inform our assessments?

One concern I have is that if sole practitioners / firms without successor practices were given an artificial benefit of automatic insurance run off cover after six years, that might encourage many more solicitors to come out of partnership and practice as sole practitioners so as to obtain the benefit of such cover - and as a result the claims could increase over the years and the premiums escalate.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I believe it is fair, reasonable and appropriate for the cover to continue. The Cover has been in place and has been funded by the profession historically i.e. by those benefiting from the cover, including retired solicitors and partners.

To cease cover whilst there is still a risk for those who contributed to the scheme historically and who may no longer have the resources or ability to secure alternative cover abrogates the duty which I believe not only the scheme but the profession owe to those who have contributed and remain vulnerable.

Equally leaving the consumer to pursue uninsured claims against solicitors who long since ceased practice and who as a result of the decision of the SRA no longer have insurance cover abrogates the obligation which the regulators and the profession have to protect the consumer.

The profession wide SIF and compulsory insurance regime is designed to provide security on both counts and to remove that cover prejudices not only the consumer and former practitioners, it also prejudices the reputation of the profession.

Part of the analysis used to justify the cessation of PSROC is that the potential claims are minimal and yet the cost of handling those claims is potentially high. This justification is specious. As with any insurance, the longer the tail on the claim the greater the uncertainty and the greater the challenge of adducing evidence on either side of the claim. However that is not a justification for abrogating the duty to cover that risk. Run off cover by its very nature covers such eventualities. For SIF and its successors to justify cessation of the cover by stating that it is difficult to assess the risk and that the cost of managing the claim is 'disproportionate' is inappropriate and invalid.

When analysing the cost of continuing PSYROC the statement is made that 'the additional cost would likely be passed on to the consumers Therefore any obligation that would benefit a very small number of consumers may have a negative impact on a larger number of consumers'. This statement is potentially misleading. The levy is stated to be £16 per solicitor and £240 per firm. That cost is so low it is unlikely to be passed on to the consumer and if it was, the overall impact on the pricing regime to a consumer would be infinitesimal.

The justification that the 'pricing' of PSYROC is unlikely to proportionate is similarly flawed. Proportionality must be taken in context. The size of the levy is proportionally miniscule in the context of the cover provided for both the consumer individually, the reputation of the profession as a whole and in terms of the duty owed to past practitioners who contributed to the fund in good faith.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

The analysis recognises that the SRA inherited the responsibility for SIF when it took over certain functions from TLS under statutory powers. That inheritance is a reality. To say now that the inherited responsibilities to the profession is not its responsibility i.e. we consider that is is a more appropriate matter for the representative body, is both fickle and unfair. The SRA adopted that responsibility along with the other regulatory functions associated with regulating the profession and to abrogate that responsibility now on grounds that it is challenging or 'inappropriate' to its other functions abrogates the responsibility that the SRA took on when it took over from TLS.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

The potential impact of amending the MTCs on a market which is proving increasingly challenging to many mainstream firms is counter to the need to maintain consumer choice and the reputation of the profession as a well insured well managed source of independent legal advice.

The cost of a flat rate levy to practices and the maintenance of the current PSYROC regime is a more appropriate cost effective

means of maintaining a necessary and appropriate device offering consumer protection and continuity whilst meeting the obligations to practitioners.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

On my limited investigation cost effective cover is not available to individuals. Offering a voluntary option is unlikely to provide a better option. The base on which SIF rested was mutual cover across the profession. I believe that foundation should be maintained.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

The WTW report quoted makes clear that this alternative to a levy to sustain the current regime, is potentially unworkable and unlikely to attract market interest.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

The analysis concludes that the search for alternative ways to deliver PSYROC is likely to be elusive. Although the SIFL infrastructure may be less well suited to managing PSYROC than it was to managing current claims, the reality is that if PSYROC cover is to be provided an infrastructure is required and trying to find an alternative to the current regime is likely to be fruitless if not cost ineffective in relative terms. As stated the cost effectiveness of the existing exercise needs to be taken in context. The levy is small. Any cost saving against that relatively low cost is likely to be small in itself.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

If PSYROC is to continue, as I believe it should, the relative cost saving of targeting cover serves little purpose. The savings are marginal and the targeting of cover defeats the principle upon which universal indemnity insurance is based i.e. that all consumers and all practitioners enjoy the same level of cover. To cherry pick defeats that principle on which universal PII is predicated.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

PSYROC is predicated on and arises out of a regulatory history requiring universal PII for the profession and for all consumers accessing professional legal services. To analyse and discount the benefit of that cover by reference to the disproportionate cost

of a small element of that cover, which has been compartmentalised as a result of historic decisions within the profession, based on the principle that the cost to the consumer is disproportionate is specious. It ignores the fact that the 'disproportionate' cost, if passed on to all consumers would be an uncountably small sum, potentially less than a penny per client.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

The analysis is myopically focused on closing PSYROC. As a result it focuses on one argument i.e. the disproportionality of the cost of a flat levy and the statistical assumption that this will be passed on to the consumer.

Firstly it is unlikely that a nominal levy outlined in the analysis will be passed on, it is likely to be absorbed by the practice.

Secondly if passed on the cost to the consumer would be infinitesimal.

Thirdly the analysis, although focusing apparently on the financial detriment to the consumer, the analysis fails to address fully the benefit to the consumer of recourse to an insurance fund which is likely to provide a real remedy to claimants whereas the analysis recognises that without the fund, claimants will struggle to bring claims and even if successful there is no guarantee that there will be resources to meet the claim if it succeeds.

Fourthly the consultation makes various assumptions about the consumer, however there seems to be no consultation with those whose name is taken in vain.

25. 15) Do you have information on impacts to inform our assessments?

Please see the fourth point in the comments made in 14 above.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:371 Data

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Keep current system - it works!

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I do not think that your analysis fairly reflects the position of retired solicitors such as me who made contributions to the Fund on the basis that it would provide run off cover. I would like that contractual obligation to be fulfilled. To do otherwise would be a breach of trust.

Furthermore your analysis omits some of the history of the Fund. Significant increased contributions were made on actuarial advice which turned out to be incorrect and after I retired, my recollection is that the Fund was used to top up the Law Society Staff Pension Fund and the that further monies were returned to firms, in my case to my former partners.

In these circumstances the Profession which followed me have been treated fairly and your responsibility in to those who have paid for this cover in their retirement. The ongoing cost to the Profession seems minimal.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

See 1 above

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

See 1 above

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

See 1 above

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

I doubt that this would be available

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

See previous comments

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I doubt it

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

No

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

N/A

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes a mutual scheme seems the best alternative

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

The Profession should assume these risks.

25. 15) Do you have information on impacts to inform our assessments?

No

3. Consultation questions

10.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I disagree with your analysis. It is clear from the WTW report that SIF is sufficiently well funded, with the possible addition of a modest levy on the profession, in order to continue to provide cover. The cost of dealing with claims is not material to the principle of providing cover for the protection of clients.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

I merged my practice in 2014 with a firm that did not become a successor practice for PII purposes. We were a two partner firm and our last annual premium for PII was approximately £13,500. A firm levy of £240 to keep SIF running as mentioned in the WTW report would have had no material effect on our finances and would not have resulted in any increase in fees to clients.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I agree that amending the MTCs will not be attractive to insurers.

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

I have enquired about obtaining PSYROC and it is abundantly clear that there is no product available on the market.

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

See 4) above. If there was a product available at a reasonable cost it would be an option.

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

No

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

If SRA is not prepared to continue SIF then the Law Society should be free to make arrangements as it sees fit.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Capping the maximum payout may be a worthwhile arrangement.

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

N/A

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

No, the Law Society should be the regulator.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

No

24. 15) Do you have information on impacts to inform our assessments?

No

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

No analysis has been made of claims over the last 30 years which would give a sounder basis of claims made and going forward. The analysis for the future is made on the basis that Conveyancing and Private Client work does not increase within the Profession and is clearly taken the view as expanded in the consultation that others such as Licence Conveyancers will undertake residential conveyancing and Wills will be undertaken by unregulated organisations. No analysis is made as to the type of work undertaken that gives rise to the claims in the first place to aim to prevent them or reduce them.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Firstly although you do not wish to target the profession who appear to say that there are no claims or very few from other areas of Law which is surprising. Secondly you are pitting Solicitors who undertake conveyancing and wills against Solicitors in other practice areas. Thirdly you ignore that historical most Solicitors, not just firms, undertook conveyancing and Wills, being viewed as the "bread and butter" of the profession. Fourth you do not consider the need for the public for these services Fifth you do not consider the trust the public have in Solicitors as opposed to others which could be partly due to the knowledge they have PII and SIF cover. These considerations do not fall within your proportionately assessment but should do. However each individual claim should be met

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

The cover should continue for the public, public policy and the Profession. The Profession including those that have taken run off have been the back bone of the Profession and have kept public confidence in the Profession as a whole .In taking away the cover you are discriminating against the sole practitioner and small practices and also creating an elite Profession dealing with more high brow , commercial matters where the Courts are more involved. Private Practice dealing with individual's needs will disappear. By removing cover younger Solicitors and firms will cease to carry out such works. no cover no help. To take away cover because in time less people will claim and claims will amount to less in damages would normally be viewed as good. The problem is the cost of cover that is what you analysis really shows. So its the Insurers who should be looked at . The Profession has paid and in run off we have paid and we deserve that our contributions cover us I would say for 20 years after our run off period. You fail to analysis the effect of lack of cover for the Profession and ultimately for the families of those Solicitors. You are also making it more difficult for mergers of smaller firms. Why do you not analysis this . I would be surprised if once qualified anyone would remain in Practice. I can see the very bed rock of the Profession being rocked if cover was not on going. Analysis THAT

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Set out above

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

How this would be voluntary has not been made clear. We pay for run off when Licenced Conveyancer do not. Their previous

insurance over the years covers them. SO we pay our last PII x6, which could in most cases be the cost of the purchase of an average house in England, over £400,000. Why should we look over our back even beyond our death for the privilege of being a Solicitor? So for us to take further cover ourselves is unfair. Our past payments should have taken into account future claims after run off. What is the surplus on the fund please, it should be made available to each sole practitioner and firm who did conveyancing and Wills over the last 25 years , share it.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

A master policy for the current Profession yes. I believe years ago we had a separate cover , for PII and SIF. can not the Law Society take back insurance cover for the Profession for all firms under a master policy

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I am not in insurance so do not pass the responsibility to me.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

As above

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

reply to 7 repeated

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Although your consultation shows a bias against targeting the provision and making Solicitors in other disciplines pay it is clear for the good of Society and the Public that claimants should not be disadvantaged and Solicitors choosing to assist should not be disadvantaged. Perhaps Limited companies for all firms may reduce liability?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

No

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

None other than above

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes for all the above reasons. Again firms should limit their liability, perhaps disclaimers from the public might help. But ultimately an alternative cover is required. I repeat CLC do not have run off, their insurers cover all their work undertaken during the time the firm were open. If claims arise subsequently its for the earlier work before and is covered. I suggest we look at their model of insurance.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

How can we in run off be protected in the future , the question is yours not mine. I have come to the Profession in good faith, paid my dues and expect financial assistance post run off. If I had been told that I was putting myself and family (they take on

the liability post my death) at risk I would NEVER have come into the Profession. The current system should protect us, if you wish to remove it, it must be replaced at least with the system to cover run offs for the last 25 year - covering the 15 yr period and stop the Profession undertaking risky work. The real solution is to look at the CLC cover and compare.why was this not analysed?

25. 15) Do you have information on impacts to inform our assessments?

Impact on Society as a whole, the Profession as a whole if Solicitors choose not to do this work , and Families.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Only that it is vital for retired partner/solicitors for psyroc to be provided in some form for our future protection against negligence claims. Via SIF or some substituted SIF scheme or a master policy appears to be the obvious way to achieve it.

Some fund raising including from already retired partner/solicitors should be put into place to boost SIF funds or whatever replaces it so that it is able to provide that cover. I retired from legal practice 13 years ago and probably can't usefully contribute much to the consultation questions other to urge all parties to put into place some alternative scheme if SIF is closed. All that we worked for in financial terms over our legal careers is now potentially being put at risk if no scheme is devised. The risk of facing a significant claim without such a scheme is extremely worrying.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Such a master insurance policy is likely to be very popular amongst retired solicitor/partners to provide a source of insurance cover to protect our interests in the years to come.

A relatively high excess sum could be incorporated into such a policy so that more minor claims would be omitted from the insurance cover. That high excess sum should make the policy attractive and viable for the insurer.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

With a relatively high excess sum so that more minor claims are not met from the insurance policy or at least the excess sum being contributed towards the claim, surely insurers can construct a master policy which is financially worth their while. The fear I suspect for many in my position is not from the more minor claims but the large claim(s) after our retirement. My old firm had a good claims record over 20 years and no claims to date after dissolution but that fear of a large claim in the future will always remain. Some form of master policy is the obvious way to address this.

Having paid at our firm's closure the 6 year run off premium to our insurers which run off expired in 2016 we believed at our closure that SIF would remain in place to protect us indefinitely. It remains vital that some replacement insurance scheme is put into place. Of course I recognise that we will need to make a financial contribution again to establish it but it is unthinkable that the Law Society and/or SRA cannot produce such an outcome.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I have read the very detailed response provided by Howdens and agree wholeheartedly with all the points made .

I am a sole practitioner and I would have no objection at all to paying an annual levy o £240 to enable PSYROC to continue to be provided though the SIF . It is hard to see on what basis larger firms could possibly object to this

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

See comments at Q1

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

See comments at Q1

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

See comments at Q1

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

See comments at Q1

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

See comments at Q1

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

See comments at Q1

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

See comments at Q1

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

See comments at Q1

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

See comments at Q1

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

See comments at Q1

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See comments at Q1

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

See comments at Q1

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

See comments at Q1

25. 15) Do you have information on impacts to inform our assessments?

See comments at Q1

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

We are in favour of continuing SIF as we believe that is the most cost effective to protect the interest of consumers. In the analysis that is given, the SRA have confirmed that the annual cost to an individual solicitor is relatively modest compared to the cost to an individual claimant - which may be catastrophic. We truly believe if that ever happened the image of the profession may be tarnished in consequence.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

As SIF already exists, then we submit that this is the most proportionate option of supplementing the coffers and having protection available for consumers and practitioners alike.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

If insurers were open to the idea of providing PSYROC on a comparable basis then this would be an acceptable alternative. However, indications the previous discussions on this topic indicates very strongly that quite a number of solicitors and/or firms will be unable to obtain terms of insurance which are acceptable.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

With the PII insurance hardening with the associated difficulties and costs of obtaining insurance - we do not believe that amending the MTCs will be a viable option.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Please see our views on the open market. We understand that neither the SRA or the Law Society have been able to get agreement from insurers in general (at least not on reasonable terms) and we do not foresee the situation changing any time in the future.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

This does not seem to be the best use of the SRA's or the Law Society's time given the fact that there is already a mutual fund (SIF) in existence. The cost of supplementing an existing framework must surely be more cost effective than trying to get another insurer in the open market.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

We do not believe that the SRA or the Law Society will be able to obtain a suitable or cost-effective master policy in the insurance market.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No. We agree with the analysis that it would not be a viable alternative to the current SIF model.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Again it comes down to viability. On your analysis it is not a viable option as the benefits of having a targeted on-going provision of PSYROC would be outweighed by the administrative costs.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

n/a

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

no

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

We submit that PSYROC should continue through the SIF model for the following reasons:

- the absence of PSYROC would result in significant consumer detriment – no evidence has been provided to suggest otherwise
- despite the SRA's representations on proportionality; and
- there is no evidence that the continued provision of PSYROC would negatively impact on consumers, increase the cost of services for consumers, or undermine public confidence in legal services.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

We do not believe that the mitigating actions are effective for consumer protection.

25. 15) Do you have information on impacts to inform our assessments?

no

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes. We believe that it is important to continue the PSYROC cover due to the fact that not only does it allow greater access to the public to different legal providers from sole practitioners to partnerships means that it creates greater competition. In addition, its retention will allow a greater diversity of the profession and allow entrants to want to come into the market so not reducing access to the public. Greater choice keeps the standards up.

In addition, those in the profession already have a greater challenge covering the six year run off cover and entered the profession knowing this was an obligation NOT to provide cover PSYROC. Surely the analysis that the continued contribution to the PSYROC fund can continue as this cost is nominal compared to the detrimental and adverse impact it will have should PSYROC be removed.

The retention of PSYROC is in everyone's interest as it gives the public confidence to actually want to use the law and gives the profession peace of mind.

The SRA surely cannot promote that only big firms can provide legal services as this is not in the public interest or the professions as access to all the public is key to justice and a fair society. In addition we are aiming for a fairer and more equal society this can only damage that intention as well as flexible working for those who have family or caring commitments

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

See our response to question 1)

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

In addition, not retaining PSYROC will mean the already difficult ability to retire will be further enhanced and could potentially cause harm to the profession and the public as the insurance market continues to decrease and the choice available to the public.

The premiums are already at an all time high and the removal of the PSYROC will not assist in this, but actually cause more harm than retaining it.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Please see our response to question 3)

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Closing the Solicitors Indemnity Fund (SIF) has been on the agenda for some years and the open market has not offered a clear and affordable solution. We do not consider that this will change. In actual fact all it has done is put pressure on smaller firms and sole practitioners wondering if they will be left with a financial burden that did not exist when they became that small firm or sole practitioner.

While some insurers might indicate that they would be prepared to offer cover in some cases, we expect that this would be very

limited and restricted in the following ways:

- Cover would only be offered to closed firms with the very best risk profiles and all areas of law carry risk. As a large part of the public tend to use a conveyancer in their lifetime this is the greatest risk and the public should not be forced to only access one or two providers.
- Firms that have already been closed for some time might have difficulties accessing the information required by underwriters and lead to mental and financial harm
- Long term policies are unlikely and ongoing renewals would be required so do more harm than good
- Cost is likely to be difficult if not prohibitive for retired practitioners as the market is ever decreasing for this sector, but provide greater choice for the public
- It is likely that cover would be more restricted than the current minimum terms

Given the above issues we do not consider that PSYROC on the open market is a realistic or sensible solution as more harm will be done than good.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

We do not consider there is appetite in the open market to want to join a master policy. Even if there were, the same limitations and restrictions noted in our response to question 5 above would also apply.

The SRA should also be concerned about the longevity of a master policy option. It previously failed as a solution to solicitors' PII leading to the formation of SIF.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

We have nothing further to add to our response at number 6)

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

In our view it is a fair and proportionate approach to maintain SIF to ensure affordability and longevity. This will inevitably involve the continued levy to the profession and the most cost effective way to do this is with a standard per firm annual levy and turnover over a certain amount or even number of employees (as non fee earners do carry out work which enhances risk) which is collected on the PC renewal . Potentially a review of current operational issues to ensure that administration and defence costs are kept to an acceptable level. We do not consider that this presents issues in relation to proportionality or targeting as explained in our response to question 1) and that presented by the response of insurance brokers such as Howdens.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

Please see our response at number 6) as we have nothing to add.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Applying limitations or restrictions will cause more confusion and harm than allowing the SIF to continue as is. It is in the public good to allow the SIF and helps protect the profession. Please also see our response at number 1).

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

We do not agree or consider that a targeted approach to PSYROC would be appropriate given:

- the cost of the added administrative burden is disproportionate
- the limited savings that would be achieved
- the conflict with the minimum terms would cause confusion and be disproportionate
- the potential for uncertainty and potentially damage the profession

- the inconsistency between the regulatory prohibition on limiting liability and a regulatory-based solution that does not ensure the availability of matching cover or at a reasonable premium.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

Please see our responses at number 6) 10) and 11) as we have nothing further to add.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes, we do consider that PSYROC should continue to be provided for within the SRA's regulatory arrangements and would propose that SIF continue with funding via a firm-based levy on the profession and potentially an enhanced levy for turnover over a certain amount or even number of employees (as non fee earners do carry out work which enhances risk) and those with a high level of claims whilst practising collected on the PC renewal.

In summary:

- At a levy of £240 per annum per firm with an additional levy based on either turnover or number of employees , maintaining PSYROC is proportionate to the consumer protection it provides. The majority of claims relate to conveyancing and involve a claimant's most significant personal asset thus the most common claim. The protection for consumers involves only a relatively modest cost to the profession.
- If there is a regulatory prohibition on solicitors limiting their liability below the minimum terms cover they are required to hold, regulatory arrangements should likewise provide a mechanism to ensure cover.
- The absence of PSYROC could impact access to justice if the profession is required to plan for the increased cost of market PSYROC (if available) on closure or ensure that they will be in a position to fund any PSYROC claims that arise.
- The absence of PSYROC will potentially be a barrier to entry to the profession in that the prospect of uninsurable liability post closure of a practice could be deter new start-ups.
- While most claims arise from conveyancing, wills, trusts and probate, no practice area is immune from claims and £240 per firm per annum - A "per firm" levy is affordable and proportionate even if there is a uplift lift for number of employees or turnover. It ensures that the owners of larger practices, who are less likely to use the cover, are not required to make a disproportionate contribution even if - A "per firm" levy is affordable and proportionate. It ensures that the owners of larger practices, who are less likely to use the cover, are not required to make a disproportionate contribution. The majority of the funding will come from sole practices and smaller firms that are more likely to benefit from the cover even with an uplift levy for firms with many employees due to the fact that lots are not qualified but carry out regulated work with supervision.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

We do not consider that the two actions proposed would mitigate the risks to clients of firms not having PSYROC and we comment as follows:

- a) Providing support to firms to help them understand their options when they close and how to attract a successor practice. There is already in existence an industry of professionals in the market who undertake this work, including independent consultants, accountancy practices, professionals within banks that hold client account funds and specialist PII brokers. The reality is that for many firms, closure and run-off or succession and elective runoff are the only options and this is already disproportionately a burden on those firms. You cannot re-write a claims or disciplinary history and over the last 21 years of the open market, acquiring firms have become acutely aware of the need for caution when succeeding to another practice. Guidance from the SRA is not an adequate solution. It is not appropriate to comment on what changes to the successor practice rules would achieve without any indication in the consultation as to what they would or could propose.
- b) Providing information to clients when a firm closes including information on taking insurance cover out themselves. This would need to include past clients for whom the firm might no longer have current contact details. It could be a confusing issue for many clients and cause a great deal of stress and impact upon the profession as a whole. The actual availability of appropriate insurance products and the ability of consumers to meet such a cost assuming it was affordable is a concern too.

25. 15) Do you have information on impacts to inform our assessments?

We have nothing further to add other than the points made above.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:433 Data

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

No

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I would be in favour of the terms being amended and would be willing to pay an additional premium for this

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

no

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I would be in favour of the creation of a master policy and would be willing to pay towards this

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

no

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

no

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

no

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

no

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

don't know

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

no

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

yes, for the protection of the public and retired solicitors

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

no

25. 15) Do you have information on impacts to inform our assessments?

no

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Solicitors paid their premiums to SIF on the basis that it would cover claims after the solicitors' six-year run-off cover expired. SIF should continue to provide clients with the continuing protection envisaged and to give retired solicitors some certainty this cover while ever it has funds to do so'

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Solicitors paid their premiums to SIF on the basis that it would cover claims after the solicitors' six-year run-off cover expired. SIF should continue to provide clients with the continuing protection envisaged and to give retired solicitors some certainty this cover while ever it has funds to do so'

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Solicitors paid their premiums to SIF on the basis that it would cover claims after the solicitors' six-year run-off cover expired. SIF should continue to provide clients with the continuing protection envisaged and to give retired solicitors some certainty this cover while ever it has funds to do so'

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Solicitors paid their premiums to SIF on the basis that it would cover claims after the solicitors' six-year run-off cover expired. SIF should continue to provide clients with the continuing protection envisaged and to give retired solicitors some certainty this cover while ever it has funds to do so'

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Solicitors paid their premiums to SIF on the basis that it would cover claims after the solicitors' six-year run-off cover expired. SIF should continue to provide clients with the continuing protection envisaged and to give retired solicitors some certainty this cover while ever it has funds to do so'

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Solicitors paid their premiums to SIF on the basis that it would cover claims after the solicitors' six-year run-off cover expired. SIF should continue to provide clients with the continuing protection envisaged and to give retired solicitors some certainty this cover while ever it has funds to do so'

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Solicitors paid their premiums to SIF on the basis that it would cover claims after the solicitors' six-year run-off cover expired. SIF should continue to provide clients with the continuing protection envisaged and to give retired solicitors some certainty this cover while ever it has funds to do so'

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

Solicitors paid their premiums to SIF on the basis that it would cover claims after the solicitors' six-year run-off cover expired. SIF should continue to provide clients with the continuing protection envisaged and to give retired solicitors some certainty this cover while ever it has funds to do so'

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Solicitors paid their premiums to SIF on the basis that it would cover claims after the solicitors' six-year run-off cover expired. SIF should continue to provide clients with the continuing protection envisaged and to give retired solicitors some certainty this cover while ever it has funds to do so'

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Solicitors paid their premiums to SIF on the basis that it would cover claims after the solicitors' six-year run-off cover expired. SIF should continue to provide clients with the continuing protection envisaged and to give retired solicitors some certainty this cover while ever it has funds to do so'

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

Solicitors paid their premiums to SIF on the basis that it would cover claims after the solicitors' six-year run-off cover expired. SIF should continue to provide clients with the continuing protection envisaged and to give retired solicitors some certainty this cover while ever it has funds to do so'

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Solicitors paid their premiums to SIF on the basis that it would cover claims after the solicitors' six-year run-off cover expired. SIF should continue to provide clients with the continuing protection envisaged and to give retired solicitors some certainty this cover while ever it has funds to do so'

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Solicitors paid their premiums to SIF on the basis that it would cover claims after the solicitors' six-year run-off cover expired. SIF should continue to provide clients with the continuing protection envisaged and to give retired solicitors some certainty this cover while ever it has funds to do so'

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I have read the views of the Law Society and agree entirely with their response. The Law society concludes, having considered the alternatives, that the only option that would adequately

meet the regulatory objectives and principles is a continuation of the SIF funded through a levy on firms.

The SRA's own experts estimate that the annual cost of such a levy would be £240 per firm.

This cost would be targeted, because only consumers who purchase legal services from regulated entities can access PSYROC, and proportionate, because smaller firms would pay

more as a percentage of turnover, but consumers who purchase their services are more likely to have long-tail claims.

The profession consider £240 to be a reasonable price to pay in order to:

- protect and promote the public interest; support the constitutional principle of the rule of law; improve access to justice; protect and promote the interests of consumers of legal

- services; promote competition in the provision of legal services; encourage an independent, strong, diverse and effective legal profession; promote and maintain adherence to the professional principles; and

- ensure compliance with the regulatory principles that require regulatory activities to be transparent, accountable, proportionate and consistent.

Closing the SIF without making any arrangements for the ongoing provision of SIF on a regulatory basis would create uncertainty for consumer who might want to pursue long-tail

claims, and it would be a perverse decision for the regulator to remove an important consumer protection when the profession is willing to pay for it.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No additional information

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Yes, I concur with the submission of the Law Society

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No additional information

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

No additional information

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

The cover should continue to be provided through a master insurance policy

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No additional information

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

I concur with the views of the Law Society

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No additional information

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I concur with the views of the Law Society

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

I concur with the views of the Law Society

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No additional information

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

The only option that would adequately meet the regulatory objectives and principles is a continuation of the SIF funded through a levy on firms.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I concur with the views of the Law Society

25. 15) Do you have information on impacts to inform our assessments?

Leaving retired solicitors with potential claims without cover is a scandalous suggestion

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes, it must be maintained for the protection of the public. Post-six year claims are still occurring and the consumer needs protection.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No information but it is the best way to achieve the desired outcome

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Not a good idea. This would not achieve the objective of protecting the public as a whole. Unreliable firms are most likely to ignore the option but are more likely to be the source of claims, including post-six year claims.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

So long as it is ongoing and continues to protect the public then that is a possible solution. But is an insurer available?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

In my opinion the SIF has adequately provided the required protection. I don't see the need to change the model wholesale but obviously it needs to be paid for.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that

this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

As before, I consider the current model works and protects the public in case of a post six-year claim not otherwise covered so the SIF model should be retained if possible, subject to suitable funding, which should be from a levy on operating firms.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

As will be clear from the above my objective is to maintain the standing of the profession and if there is a danger that certain clients find themselves without a remedy through what amounts to bad luck then this needs to be mitigated by the profession. The SIF model provides certainty in this regard and should be retained and suitably supported by the profession.

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

This is gravely unfair to the Legal Professions whereas all other professions do not such draconian, unfair, unlawful rules being imposed without Legislation approved by Parliament. Limitation Act 1980 is the final arbitrator for any claims to be pursued against any person. Just consider a Sole Practitioner in his 80's carrying FEAR and STRESS of impending claim until he dies, even then his fear of his descendants will have to pay for the unjust and unfair mistakes of other staff employed by a Sole Practitioner. His staff would who were the cause of any claim (often false) without any blame upon the Owners of the practice. This tragic step should be considered by the SRA Rules who have not experienced of High Street Small practices where False claims are in abundance these days and will become a CLAIMS INDUSTRY (according to Times Business Section) in the coming years. Any genuine claims can and SHOULD arise within 6 years period. Any other claims MUST be treated as WHIPLASH Claims were treated by Parliament. ONLY difference is that victims in Whiplash were INSURANCE COMPANIES who sponsored law makers in crushing Whiplash Claims at birth. Poor High Street Firms (who will bear the brunt of these changes in Rules) have NO ONE to stand up for their pains and sufferings. On top of this SRA are bent upon crushing them further until their dying days suffering from anxiety and fear of False claims arising after 6 years period. I ask SRA/ LSB members to visit High Street small and medium firms and see what sort of sacrifice they make in providing Pro Bona help and support to the needy and vulnerable when legal aid is gone. Most of them do not understand what awaits them and when they will close their firm. All hell will let loose once their crafty and cunning ex clients know your firms are closed and will be easy target for Fraudulent Claims. SRA needs to stop Fraudulent Claimants advertisement by unprofessional solicitors enticing ex clients to sue their previous solicitors at No Win Win basis. These solicitors know well that once Letter of claim is sent to insurers they will take over the case from the solicitors and DO their best to settle even if it is a clear Fraudulent claim. Insurers will then claim thousands from retired Sole Traders by way of EXCESS on the Runn Office Policy. SRA and LSB should investigate such claims before proceedings with a most ill conceived and ruthless Policy. It appears they do not care for the rights of retired Partners who spent all their lives helping needy and vulnerable citizen and rewarded in their old age and retirement a Sword hanging over their heads until they die. This is most inhumane treatment of honest and caring Solicitors in their old age. I wish some of the decision makers know what anguish and pain these retired Sole Practitioners will endure if they impose such merciless, unethical and unfair policy. 6 years is a long time for a genuine Complaint to arise. Any complaint over the 6 years beyond Runn Off period must be at the risk of claimants for failing to raise such claims within the time limit. Alternately SRA and LSB must change Limitation Act 1980 if they are so concerned for a very few (mostly fraudulent claimants). We believe these measures do not conform with similar Regulations in other civilized countries and other professions.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

It must be fair and just to sole traders who will bear the brunt of these changes and not, LLP, Limited Companies or City and larger firms. Their pockets are very deep and their average earnings are 100 times more than High Street Firms owned by mainly sole traders or a few Partners who live a very poor life after their retirement. Your decisions will affect their mental health dreadfully daily fraudulent claims encouraged by equally unprofessional Claims Management Companies which are now turning their attention to "SUE your SOLICITOR" advertisement without any action from any one including Law Society. It is time Solicitors in private practice form a UNION, as all other Professions have, to safeguard their interests being trampled upon by ruthless non Solicitors.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

This is least SRA can do is to continue support of a very few life long devotees of providing Legal Services to help low income vulnerable members of Public. Sadly there is no one out there to raise their voice once they are retired and left to suffer indignities from Ex Clients' threats to sue them or write off their costs. Once they know firm is closing they Blackmail their solicitors in refusing to pay Costs on the ground that a Professional Negligence Claim will hit them for the rest of their lives. We have live examples of such claims in the last few years. These will increase if SRA decision goes ahead. The fear of future actions will deter any retired solicitor to have sleepless nights and an early death.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

We can provide examples as stated above which will support our above honest comments.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Insurers have their own interest: PROFIT PROFIT and PROFIT. They either refuse to renew or grant new PII if they are not sure they will make Millions from the project. Do you how much EXCESS they charge the Insured on each Complaint made by a fraudulent Client even THEY know if it is CLEARLY FRAUDULENT. They have devised a TERM in every policy that any complaint, however Fraudulent, means that the Insured will make payment to the Insurer in the next Premium. Furthermore they will charge the Solicitor all of their Own COSTS (at Exorbitant RATES for their inhouse claim handlers, solicitors and Counsel, even if the end result is thumping WIN and NO CASE AGAINST the solicitors. SRA /LSB/ Law Society need to consider this scam and perhaps the 2 % of the profits made by Insurers from such scams would be more than enough to pay PSYROC payment for ever.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Profits from 6 years RUN OFF Insurances should be sufficient for the Insurers to contribute to a lasting FUND to cover any (11 %) cases which may arise after 6 years. Solicitors have more issue to deal with post retirement than fear of paying additional Insurances for the rest of his life. This is clearly not fair and just in a Civilised Society.

Master Insurance Policy is not fair and just for solicitors who paid Insurances all their lives and retired with dreadful fear of paying yet more until they die. 6 years is the Limitation Period and any genuine claimant MUST issue his before expiry of this period. Why you are choosing Solicitors out of all professions. Sadly the few solicitors so affected do not belong to RICH CATS or City Firms and Employed by Multinationals who do have any such problems. It is the few High Street medium to low ranged firms who are the target of this unfair scheme.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

Insurance Market does not work for charitable purposes. They need profits. Any Master Policy will not solve the issues faced by Solicitors in the retirements. They need to be considered just as Other Professionals Union do. Why should legal Profession lag behind and discriminate.

Genuine Complaints have six years from the close of their case to raise any complaint. That is the law. Any change must come from changing the law.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Your views are centered on a very few percentage of honest Claimants. There is provision in the Civil Court Procedures to prolong Limitation period on legitimate Grounds. What is the need for adding an unauthorised scheme which can already be dealt with under existing Powers of the Court.

With great respect this Scheme will give encouragement to " SUE your SOLICITOR " industry as raised by TIMES NEWSPAPER . This Industry started when parking closed Whiplash Industry with great success. In assisting a few claimants (who should know the Limitation periods) these schemes are vehicle for a huge avalanche of false claims against Solicitors in next few years when Insurers will be hit hard and Parliament will take note. Meanwhile poor retired solicitors will die of the fear faced by them daily. Stick to 6 year limit and that must be the end game.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

WE recommend you research Other Commonwealth Countries practices ; Medical ; Engineering Profession, Accountancy Profession. You have huge precedents . Why not follow these and reach a fair and just system if you are not determined to railroad your unlawful , extremely dangerous scheme. You need to raise this matter with the parliament and seek a just and fair solution.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Any regulatory arrangement would be counterproductive , unfair and unjust unless you seek to amend Limitation Act .

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Same as above .

Please seek practice examples for the front line solicitors who face these problems on daily basis . It is not good making regulations when NONE of them have sent a ray in High Street practice to see the truth. Honest clients do not need extending Limitation period. Genuine and honest clients have enough time to issue proceedings within 6 years. All else breeds and encourages Fraud.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

as above

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

1. PII insurance Industry should have inbuilt provision to allocate 5% of the Insurance premium from each Insurer in covering all claims which arise after RUN OFF Insurance. Solicitors need financial help at the end of their practices / Retirement.

2. Firms will be able to pay additional premium during their Existence while they are able to contribute towards any the Limitation period cover comes into play. It would inhuman to make them suffer mentally after their closed / retired with uncertainty / claimities which may visit them while waiting to die.

3. Insurers must contribute any such additional contributions to any SIF or alternative remedy during the life time of any business after 6 years RUN Off period ends. Such Fund can replace existing arrangement or Insurers can pool a new Fund to pay for any eventuality.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

1. Firstly any clients who do not issue proceeding on the last day of 6 year Limitation period is HIMSELF or his LEGAL Advisors to blame/ negligent . Such a client will have another 6 year period (making this 12 years) to take action against the second solicitor.

2. Other professions have similar concerns as SRA about the clients. Why not follow practices / procedures? Fear is this new scheme will act as catalyst to fraudsters to make claims when the Solicitors at his weakest : Does not have staff who dealt with the case time elapsed; Insurers would not defend him to short cut and enter mediation.

3. Mitigate a risk to Client is a FICTION. No sane client will miss the opportunity to issue claim within 6 year Run Off period. Only Fraudster will wait for longer period to get advantage ; lack of evidence to defend etc . ASK SOLICITORS WHO HAVE SUCH EXPERIENCES in practice. You can not make GOOD rules when you do not have first hand experiences of how False Claims Industry operates. Just read newspapers encouraging fraudsters. Or ask Solicitors to send you horror stories of False Claims. No one bothers to ask front line case workers.

25. 15) Do you have information on impacts to inform our assessments?

You are doing this wrongway round. You needed to ask Case workers (with evidence in confidence) to asses if Mitigation to client is REAL or a fiction. Please ask for an audit of False Claims made by client over one year and genuine claims . It is wrong way to say how many complaints were made . 11 Percent made complaints . How many turned out to be Genuine and how many Fraudulent . Once you know this data you will be in better position to consider if you are on the RIGHT TRACK in considering any change to Limitation period or it a mere DO GOODER exercise to impress Public that SRA are doing good public. Sadly you will be doing good to Fraudsters if you do not carry out more research on facts and not on assumptions. If you carryout you will face an huge rise of NEW INDUSTRY as predicted by TIMES NEWSPAPER last year. We have some real examples which we are prepared to disclose in confidence (with full evidence). Many other firms can do the same. However that will not make you popular with the public as it will be the truth and the whole truth.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

In its consultation document, the Solicitors Regulation Authority (SRA) has signalled its desire to close the Solicitors Indemnity Fund (SIF) and remove any regulatory requirement for solicitors to maintain post six-year run-off cover (PSYROC).

This would end the current arrangements, which protect consumers from long-term risks relating to legal services, especially in areas like conveyancing, wills and probate, and childhood personal injury, and remove important safeguards to their rights established by parliament and maintained by the courts under the Limitation Act 1980.

It is not the SIF, or the regulatory requirement for PSYROC, which create liability for late arising claims; the Limitation Act 1980 establishes statutory rights of protection that consumers have a legitimate expectation to exercise.

Around 11% of post-closure claims arise more than six years after a firm has ceased to operate (and mandatory run-off cover has expired).

The availability of PSYROC is important for consumers with long-tail claims, because seeking recompense through other means (such as through litigation) is considerably more costly and difficult after a long delay.

Our view

We are concerned that any decision by the SRA to close the SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

We believe the SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

The SRA's approach to the consultation

Based on an application of its decision-making framework, the SRA should have given proper consideration to each of the following options and their likely outcomes:

Option 1: Continuing the current regulatory arrangements (maintaining SIF without the injection of new funds)

Option 2: Continuing the current regulatory arrangements with adaptations (maintaining SIF funded by an annual levy on the profession)

Option 3: Terminating the current arrangements (closing the SIF and making no further arrangements for the regulatory provision of PSYROC)

The SRA has only systematically analysed Option 1, correctly concluding that it would not be viable to maintain the SIF without the injection of new funds.

In our view, it did not give proper consideration, based on the regulatory objectives and principles, to Option 2 (the clear consumer benefits of maintaining the SIF, funded by a proportionate levy on the profession) or Option 3 (the likely consumer detriment of closing the SIF without any realistic alternative means for the provision of PSYROC).

The SRA's expert report suggests there are around 31 successful claims from the SIF each year, with an average value of £36,400. The SRA characterises this sum as "modest", although it is more than the median annual pay for a full-time employee in England and Wales. In the absence of PSYROC, claimants may have to resort to litigation against the principals of closed firms in order to receive compensation. But this process would be costly and time

consuming, and may not result in restitution.

This is why we believe a levy on firms to maintain the SIF would be a proportionate response to provide ongoing protection for consumers.

Conclusion

Having considered the alternatives, we consider that the only option that would adequately meet the regulatory objectives and principles is a continuation of the SIF funded through a levy on firms.

The SRA's own experts estimate that the annual cost of such a levy would be £240 per firm. This cost would be targeted, because only consumers who purchase legal services from regulated entities can access PSYROC, and proportionate, because smaller firms would pay more as a percentage of turnover, but consumers who purchase their services are more likely to have long-tail claims.

The profession consider £240 to be a reasonable price to pay in order to:

- protect and promote the public interest; support the constitutional principle of the rule of law; improve access to justice; protect and promote the interests of consumers of legal services; promote competition in the provision of legal services; encourage an independent, strong, diverse and effective legal profession; promote and maintain adherence to the professional principles; and
- ensure compliance with the regulatory principles that require regulatory activities to be transparent, accountable, proportionate and consistent.

Closing the SIF without making any arrangements for the ongoing provision of SIF on a regulatory basis would create uncertainty for consumer who might want to pursue long-tail claims, and it would be a perverse decision for the regulator to remove an important consumer protection when the profession is willing to pay for it.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential

operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes, I consider your analysis to be flawed as it fails adequately to consider all possible options, including a levy for the future viability of the SIF

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

What is "proportionate"? It is part of the SRA's ongoing regulatory function under the Legal Services Act 2007 to protect and promote the interests of consumers, "so far as is reasonably practical". Those 'consumers' are the former clients of Solicitors in closed practices; those former clients should not be penalised or their rights compromised, by the closure of the SIF. Continuing the SIF with an annual levy from practising Solicitors or firms is, in my view, more than "reasonably practical" and will enable the SRA to perform its regulatory function in accordance with the governing legislation.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

This is impractical due to the unavailability of cover on the PII market, as clearly expressed by the insurance industry. Even if it were to be available, the cost of cover would be extortionate and impose an unfair burden on the profession, with ongoing pricing implications for clients everywhere.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

See 3 above

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

See 3 above, although this is really a matter for the insurance market. Given that cover is not available, the option is not a feasible one

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I agree with your analysis. As in the case of 5 above, this just isn't a feasible option

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

Why re-invent the wheel? The SIF already exists to provide this cover and can be continued with the payment of modest annual levies from within the profession, either on an individual or firm by firm basis.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

See 7 above

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

I qualified as a Solicitor, not an insurance adviser, so this question should be addressed to the insurance industry!

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Targeted PSYROC is simply unnecessary (the perfectly usable SIF already exists!) and would be prohibitively expensive as well as an administrative nightmare.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

The ongoing provision of PSYROC can and should continue via the SIF. It works and can continue to work in an effective cost-efficient manner if attitudes to abolishing it weren't so ill-considered and blinkered.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See above

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

See 11 above

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

They will damage the reputation of the profession and potentially lead to inadequate consumer protection. (See my point in paragraph 1).

When I was training as a Solicitor, our profession was considered on a par with the medical profession; on a basic level, doctors deal with people's lives, solicitors deal with their money and property, and both patients and clients need to know that they can obtain compensation in the event that their doctor or their solicitor was negligent, even if - especially if - that claim arises years down the line.

25. 15) Do you have information on impacts to inform our assessments?

See my comments above

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

In my view the only option that would adequately meet the regulatory objectives and principles is a continuation of the SIF funded through a levy on firms.

The SRA's own experts estimate that the annual cost of such a levy would be £240 per firm. This cost would be targeted, because only consumers who purchase legal services from regulated entities can access PSYROC, and proportionate, because smaller firms would pay more as a percentage of turnover, but consumers who purchase their services are more likely to have long-tail claims.

I understand that the profession considers £240 to be a reasonable price to pay in order to:

- protect and promote the public interest; support the constitutional principle of the rule of law; improve access to justice; protect and promote the interests of consumers of legal services; promote competition in the provision of legal services; encourage an independent, strong, diverse and effective legal profession; promote and maintain adherence to the professional principles; and

- ensure compliance with the regulatory principles that require regulatory activities to be transparent, accountable, proportionate and consistent.

Closing the SIF without making any arrangements for the ongoing provision of SIF on a regulatory basis would create uncertainty for consumer who might want to pursue long-tail claims, and it would be a perverse decision for the regulator to remove an important consumer protection when the profession is willing to pay for it

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

no

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

no

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

no

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

no

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

no

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

no

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

no

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

no

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

no

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

It should not be targeted

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

no

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

I have no additional views beyond what i said in item 1

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

no

25. 15) Do you have information on impacts to inform our assessments?

no

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:485 Data

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I believe it is unfair on retired solicitors to cease the provision of PSYROC. This would also have an effect on consumers and I question whether the effect will be as limited as the consultation paper suggests.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I think this is a possibility but I anticipate the insurance industry will be hostile.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

No.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

No.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I have no information as to the potential availability of such a policy.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-

going provision of PSYROC?

No.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

I do not think it should be targeted.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes and ideally it should continue to be provided through SIF.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

No.

25. 15) Do you have information on impacts to inform our assessments?

No.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

No

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

It is imperative for the protection of the public (and also individual solicitors) that PSYROC continues to be universally provided in respect of every solicitor, as putting a consumer in the position of losing out because the loss did not arise or was not discoverable until after the 6 years would be seen by the general public as (and is) unacceptable. The method by which this is achieved is largely immaterial.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I have no doubt that this would cause issues for the operation of the insurance market and in practice PSYROC would be priced and reinsured on a different basis to ongoing cover.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

It is imperative for the protection of the public (and also individual solicitors) that PSYROC continues to be universally provided in respect of every solicitor, as putting a consumer in the position of losing out because the loss did not arise or was not discoverable until after the 6 years would be seen by the general public as (and is) unacceptable. The method by which this is achieved is largely immaterial.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

It is imperative for the protection of the public (and also individual solicitors) that PSYROC continues to be universally provided in respect of every solicitor, as putting a consumer in the position of losing out because the loss did not arise or was not discoverable until after the 6 years would be seen by the general public as (and is) unacceptable. I do not see that voluntary coverage would adequately protect the public.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

No

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

It is imperative for the protection of the public (and also individual solicitors) that PSYROC continues to be universally provided in respect of every solicitor, as putting a consumer in the position of losing out because the loss did not arise or was not discoverable until after the 6 years would be seen by the general public as (and is) unacceptable. The method by which this is

achieved is largely immaterial.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Given the SRA's position on the scope of its permitted activities (to include things further from professional regulation than PSYROC), I would expect that regulating PSYROC would fall well within the SRA's conception of its powers.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

It is imperative for the protection of the public (and also individual solicitors) that PSYROC continues to be universally provided in respect of every solicitor, as putting a consumer in the position of losing out because the loss did not arise or was not discoverable until after the 6 years would be seen by the general public as (and is) unacceptable. The method by which this is achieved is largely immaterial. Ultimately, the sums involved are sufficiently small that a per-capita annual levy on the profession would be sufficiently fair (as PSYROC by definition involves those no longer practicing, there is no danger of perverse incentives to take on risky business insured by others who do not).

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

It is imperative for the protection of the public (and also individual solicitors) that PSYROC continues to be universally provided in respect of every solicitor, as putting a consumer in the position of losing out because the loss did not arise or was not discoverable until after the 6 years would be seen by the general public as (and is) unacceptable. I do not see that targeted coverage would adequately achieve this, as a single instance of non-coverage would result in a loss of public confidence in the profession.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

It is imperative for the protection of the public (and also individual solicitors) that PSYROC continues to be universally provided in respect of every solicitor, as putting a consumer in the position of losing out because the loss did not arise or was not discoverable until after the 6 years would be seen by the general public as (and is) unacceptable. I do not see that targeted coverage would adequately achieve this, as a single instance of non-coverage would result in a loss of public confidence in the profession.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

It is imperative for the protection of the public (and also individual solicitors) that PSYROC continues to be universally provided in respect of every solicitor, as putting a consumer in the position of losing out because the loss did not arise or was not discoverable until after the 6 years would be seen by the general public as (and is) unacceptable. I do not see that targeted coverage would adequately achieve this, as a single instance of non-coverage would result in a loss of public confidence in the profession.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

It is imperative for the protection of the public (and also individual solicitors) that PSYROC continues to be universally provided in respect of every solicitor, as putting a consumer in the position of losing out because the loss did not arise or was not discoverable until after the 6 years would be seen by the general public as (and is) unacceptable. The method by which this is achieved is largely immaterial. Ultimately, the sums involved are sufficiently small that a per-capita annual levy on the profession would be sufficiently fair (as PSYROC by definition involves those no longer practicing, there is no danger of perverse incentives to take on risky business insured by others who do not).

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having

PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

No.

25. 15) Do you have information on impacts to inform our assessments?

Given that small firm and sole practitioners are the principal object of PSYROC (being unlikely to have a successor practice), and these types of practitioner are disproportionately from BAME backgrounds (and may in future become disproportionately female as the impact of the changing gender balance of the profession filters through to firm leaders), there will be a significant adverse impact on minority/diversity groups within the profession if PSYROC is terminated.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

The funds were provided as insurance for the profession. The insurance was not only for the protection of the public but also, which was uppermost in the minds of the people who paid the premiums, to protect the profession from unexpected claims. No part of this latter protection seems to be of relevance now.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

It depends on who you are, whether it is proportionate. As a retired solicitor (qualified in 1973) who has practiced for over 45 years, latterly as a sole practitioner until I closed my practice in 2010 paying my run off cover, I am very fearful of a claim arising. I have never had a successful claim of negligence made against me during my entire professional life. But it is a fear that something would now turn up when I am deprived of continuing cover. I never made much money but have put aside limited funds for my old age and the thought that this would always be in peril is a very frightening thought to me. I asked my last insurers if I could buy further run-off cover when the six year period of cover expired but they said they would not. As far as I can see, no one else will provide me with cover either.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes I fully support the proposal put forward by Howdens for a yearly extra payment from each firm. The proposal is for a small amount of annual fee and will be deductible from profits before paying tax so should be less than the £240 proposed in practice. The SRA and predecessors have a duty to assist retiring solicitors in this way as we have all paid over the years for others to be protected. Not doing so will reduce the standing of all solicitors.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

see above

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I agree with the submissions made by Howdens solicitors and support the arguments put forward by them in respect of this question

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

I support the arguments put forward by Howdens solicitors with regard to this question

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

None other than put forward by Howdens solicitors which arguments and information I fully support

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

As above. I rely on the submissions made by Howdens and agree with them totally

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

As above I rely on the submissions made by Howdens with regard to this question

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

As above my views coincide with those submitted by Howdens and ask that you refer to their response with which I totally agree

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

As above I agree totally with Howdens

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

I do not think they should be targeted as one claim unexpected could cause real financial problems for any solicitor

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes i consider it should continue and all alternatives should be available for use

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I support the position set out by Howdens. I you require me to attach their submissions for ease of reference please advise

25. 15) Do you have information on impacts to inform our assessments?

No other than the submissions of Howdens

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

The analysis is very much focussed on sole practitioners, understandably so, however, it appears to be focussed on quantitative analysis rather than being balanced by qualitative analysis. In addition, there seems to be an acceptance that those sole practitioners that may be affected by having a claim brought against them individually is an acceptable risk. By doing so all the humanity is taken out of this matter. First, most sole practitioners are on the High Street providing an extremely valuable service; they tend not to make huge amounts of profit, unlike larger firms and, if a claim were to be made where there was no cover, such solicitors could well lose their homes in defending the claims whether the claims were successful or not. To be placed in this situation is inequitable. Secondly, it isn't just small firms that go into administration who may fall outside the proposed scheme, Halliwells LLP went into administration in 2010 and Semple Fraser entered into administration in 2013 to mention two. Not all parts of these firms were bought by other practices. In those examples, there may be individuals not covered by the present schemes, still less so by the new proposals. It appears that solicitors who worked for firms which closed on or between 1 September 2000 and 30 September are most impacted which would include some employees of those firms. Thirdly, where solicitors are not covered by the proposed scheme (whether or not they are or were sole practitioners) and have no funds to pay in the event of successful claims brought, there is no remedy for those former clients. The proposals therefore risk being inequitable for both former clients and solicitors in the event they become claimants and defendants. The wider benefit to the public would be that making a successful claim should be less stressful knowing that a fund exists rather than a prospect of bringing a claim, being successful and then being unable to enforce payment. That gives no certainty of protection to those clients nor solicitors.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

In order to support future claims, a levy could be raised as part of the practising certificate fee. The simplest would be a variable levy across the board. It would be equitable if the fee was based upon the size of the practice, sole practitioners paying say £10, 2 to 10 Partners £20 and so on. There is no evidence to support the argument that these costs would be passed on to clients.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

My view is that the provision of PSYROC should continue based upon a small levy outlined above. The main reason being the protection of clients with long term cover, especially when some potential claims don't come to light for a significant period of time after a transaction or advice.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Please see above.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Please see above.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of

PSYROC on an on-going basis?

If the advice from WTW is that it would be challenging to "interest market insurers in this risk", it would seem that a levy on the profession as outlined above would be a better option.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

Please see above.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Please see above.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

Please see above.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

This proposal seems potentially to be the worst of all worlds: complex, costly and opaque. The Supreme Court has recently handed a decision about a claim concerning a limitation period [2021] UKSC 19. The time frame of that case began in 2008 and the claim was brought in 2011 and the final decision of the courts given a decade later. In that particular case the appellants were unsuccessful and the claim failed; presumably there may be a claim against the solicitors who failed to issue proceedings in time. This claim would probably be outside those areas of high density claims in the event the solicitors originally instructed were a firm no longer in existence. Such a scenario transfers an unacceptable risk from solicitors (and insurers) to clients.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Please see above, targeted provision of PSYROC has significant flaws; such flaws are likely to mean satellite litigation on what claims may or may not fall within such a scheme; that leads to increased uncertainty.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

Please see above.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

PSYROC should continue to be provided for within the SRA's regulatory arrangements. Closing down the fund and handing the money back to the Law Society would not be effective as the consultation appears to imply, the Law Society has no regulatory function and can't administer a similar scheme to PSYROC. A variable levy is a simple solution, with the continuation of SIF, please see above. On the research about demand, it is more likely that at the time of instruction, the assumption is that the client is instructing competent solicitors, the last thing likely to be on their mind is that the solicitors may be negligent or unprofessional. Anecdotally, when recently instructing solicitors on a probate matter, we were looking for a solicitor who would carry out the work in a professional and timely manner. That turned out not to be the case and we sought redress via the Ombudsman. Having looked at the firm beforehand, with reviews, the letter of engagement etc, it never occurred to us we would end up complaining to the firm and then the Ombudsman. More research on motivations when instructing solicitors would be helpful.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having

PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Please see above. Any option other than a variable levy across the profession to continue with PSYROC would lead to uncertainty for clients and potential clients.

25. 15) Do you have information on impacts to inform our assessments?

Nothing specific.

POST SIX YEAR RUN-OFF COVER AND THE SOLICITORS INDEMNITY FUND: CONSULTATION

Response ID:510 Data

3. Consultation questions

10.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

It seems to me that closing SIF, without making any alternative arrangements, would be inequitable both for clients and for retired members of the profession. Clients employ solicitors in the knowledge that, if things go wrong, they can ultimately make a claim against their solicitor, and this will be backed-up by compulsory indemnity. They do not distinguish between claims arising within six years, and those arising after six years. By the same token, solicitors who are now retired made their retirement plans in the knowledge that future claims would be covered, irrespective of when they arose. They did not expect the goal posts to be moved,

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

No

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

No

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

No

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential

operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I do not think that provision should be targeted or restricted in any way

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

No

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes I do. I think that this is what clients expect, and it is what solicitors who are now retired were entitled to expect when they made their retirement plans. I cannot comment on what mechanism should be employed. However, given the relatively small cost for each practising solicitor, I think that SIF, or something similar, should continue.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

No

24. 15) Do you have information on impacts to inform our assessments?

No

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:515 Data

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

My view is that the protection of clients should be the aim. While I accept that there are relatively few claims made per annum, the number of such claims is not insignificant and the impact of a claimant being unable to recover losses can be devastating. The cost to an individual solicitor of retaining cover, which is estimated to be £16 per annum, is trivial sum. The impact of claims upon retired solicitors, many of whom will be unable to obtain run-off cover, will also be enormous. Many such solicitors have worked all their lives and it to be hoped that regard will be given to the need to provide protection to such solicitors for such a modest input from practicing solicitors, some of whom may benefit from the continuation of the scheme in the future. I have not spoken to any solicitor who objects to making such a payment. The present arrangements work and there is no need to change the present system to one which is more complex and/or will not be available to all.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

No

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

No

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

No

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

No

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

No

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

As above.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

As above.

25. 15) Do you have information on impacts to inform our assessments?

As above.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:519 Data

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I concur with the template response prepared and filed

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

as per 1 above

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

as per 1 above

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

as per 1 above

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

as per 1 above

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

as per 1 above

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

as per 1 above

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

as per 1 above

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

as per 1 above

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

as per 1 above

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

as per 1 above

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

as per 1 above

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

as per 1 above

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

as per 1 above

25. 15) Do you have information on impacts to inform our assessments?

as per 1 above

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

It appears that the SRA does understand the problem of PSYROC which needs to be resolved.

I would have thought that the least expensive and, more importantly, the most secure option would be to maintain the SIF on an ongoing basis to provide PSYROC.

this could be supported by a relatively small addition to the cost of a Practising Certificate.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

I am a retired sole practitioner, known as Savill & Co Practice number 368939, which I ran from 2002 to 2015 prior to which I was employed in other practices, some of which as a "Salaried Partner" . From 2015 to 2019 I was employed as a consultant to another practice.

Upon closing Savill & Co in 2015 I obtained the mandatory 6 year run-off cover. No further cover was available, even if I could have afforded it. I am extremely concerned that should any negligence claim arise all my personal assets, including my estate after my death, would be at risk.

Since starting in the profession in 1972 (Qualifying in 1977) we have had post six year run-off cover through the SIF. Very few of us could have afforded any other form of cover - even if it had been available. It seems cruel and unfair to all of the profession to lose SIF cover now.

I have had no negligence claims against Savill & Co (so far) and am not aware of any reason for there to be such a claim but one never knows what my happen in the future.

As a precaution, and in accordance with good practice, I am keeping Savill & Co files in storage.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

So far as I am aware no such cover is available - and/or is likely to be prohibitively expensive.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

From what we have been told so far, there are unlikely to be any such insurers interested in this and/or it would be prohibitively expensive and with the ongoing risk of such insurer withdrawing from the market or becoming insolvent themselves.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

see answer to Q6 above

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

I would prefer that SIF should continue or that a suitable alternative indemnity scheme be established.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

It would be nice if the Statute of Limitations could be amended to provide an absolute time limit for all claims without exception - but this is most unlikely to occur. We therefore have to plan for claims being made many years after the alleged negligence may have occurred.

25. 15) Do you have information on impacts to inform our assessments?

As stated above myself, other former sole practitioners, and anyone whose former practice has closed without any successor remain personally liable up to the limits of all their assets unless proper and secure PSYROC remains in place.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:528 Data

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

SIF should continue to main PSYROC on an on-going basis.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

No specific views.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

No

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

No

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No further information, but perhaps the board should speak to insurers to see if a cost-effective policy can be obtained.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

No

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Yes. Maybe a collection of premium from solicitors' firms based on their size.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes. First through SIF. If that ceases to exist then market insurance.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

A proportion of the fund can be collected from the clients which can be sent direct to SIF to either built up a pot or to purchase indemnity insurance in the open market specifically for PSYROC

25. 15) Do you have information on impacts to inform our assessments?

no

3. Consultation questions

10.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I am annoyed that this issue has been dealt with by way of a bean counting exercise.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

When my business closed in 2017 without a successor practice I was informed by my insurance broker that an extension to run-off cover could be purchased once the initial compulsory six year period had expired. My brokers advice was based what was available at the time. The arrangements made for the closure of my practice were made in the reasonable belief that an extension to run-off cover could be purchased from insurers in 2023. Insurance companies have since withdrawn the availability of such policies, thereby leaving me (and any potential claimant client) up a creek without a paddle. The profession voted for an insurance based open market scheme commencing in the year 2000, some seven years before the SRA was launched. The condition of the legal insurance market was very different in 2000. It was not anticipated that a class of cover would be withdrawn totally. It is not proportionate to withdraw PSYROC because clients place their trust in solicitors, and accordingly it is for the SRA to ensure there is a safety net to protect the public in those rare cases where instructions have been handled negligently. The profession has shoulders broad enough to cover the cost, which is a small price to pay to maintain public faith. Furthermore it is not proportionate to reason that the financial cost to the profession would automatically be passed onto clients. During Covid 19 many businesses had to absorb costs to maintain customer goodwill., so it is proportionate for solicitors absorb the cost of PSYROC for the same good reason . I imagine that withdrawal of PSYROC by the SRA will be met by public incredulity as to how the SRA could consider it appropriate to walk away from protecting clients.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I was ready and willing to buy excess run-off cover once the initial 6 year compulsory cover had expired. My understanding was that such cover would be comparatively cheap, as most claims arise during the first 6 years. An amendment of MTC's is requested to incentivise retired solicitors to pay a fair and reasonable contribution by offering a reduced policy excess. Those who decline to pay would bear a higher excess. The overall cost of PSYROC would thereby be shared between practising solicitors and those who have retired from practice

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Reference has been made to an anticipated 31 successful claims annually with an average payout of £34,500 including defence costs. I did not see any reference to the average annual number of historic claims notified which turned out to be unsuccessful. I submit that claims fielded by experienced insurance-backed defence solicitors result (a) in valid claims being settled quickly, and (b) in worthless claims being weeded out before the complainant client has incurred much in the way of costs. Without such support the retired solicitor may fail to grasp the strengths and weaknesses of the claimants case, leading to protracted litigation. Claimants may also face the problem of debt enforcement if litigation is successful. The public is better served if retired solicitors are resourced to deal with claims properly and minimise distress to those claimants with a valid claim. I anticipate that withdrawal of PSYROC will result in an increase in claims referred to court and all the accompanying anxiety this entails,

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

See 3 above

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

A master policy is the only option, as PSYROC is not available to retired solicitors on the open market

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I don't

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No further comment

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No further comment

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

No further comment

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

No further comment

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No further comment

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

No further comment

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

See above

24. 15) Do you have information on impacts to inform our assessments?

No further comment

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

You do not seem to have considered the trust law implications of the SIF monies. These are the residue of monies previously paid by solicitors for a specific purpose i.e. the provision of indemnity insurance. I can't see how they can be used for another purpose and furthermore the purposes of that trust should be maintained by yourselves as trustee so that the monies are used to continue the cover already provided or a comparable alternative.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

See response to Q1

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

No, save to say that I am not aware of there being any such open market options nor is the market showing any appetite to create any.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

See response to Q1

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

This seems very unlikely.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

See response to Q1

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Targeted provision is attractive as it is the smaller firms that are most affected but I can't see that squares with the trust position I have mentioned in Q1.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

See previous response.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See response to Q10

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes through SIF because those monies are held on trust to be used to provide indemnity.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

If this cover is not provided by the SRA the requirement will have to be removed as there is no commercially available run-off PII for smaller firms / sole practitioners. As that is not the proposal all that will happen is: no insurance/bankruptcy /suicidal people. There will be no consumer protection at all.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Try get affordable Pli let alone PSYROC there are no insurers.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Either the SRA provides PSYROC for smaller firms/sole practitioner firms or the requirements are removed for them.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Review again in 6 years maybe things will be better
Negotiations with the market should be undertaken by the SEA which is what the Law Society did such that insurers happy to insure the big firms also had to provide the run-off cover.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Does not exist for the firms that need it

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

If you are serious about providing protection for the public it will need to be provided by the SRA

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

The master policy could be provided if the SRA negotiated but otherwise it is not there at an individual firm level even for firms with no history of claims

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

If the SRA dies not provide it then any requirements will have to be abandoned as there is no such PII available in the market.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential

operating models for and costs of establishing and maintaining an alternative indemnity fund?

Speak to the ICEAW

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

The type of business conducted by the firm and claims history

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes

SIF

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

In its consultation document, the Solicitors Regulation Authority (SRA) has signalled its desire to close the Solicitors Indemnity Fund (SIF) and remove any regulatory requirement for solicitors to maintain post six-year run-off cover (PSYROC).

This would end the current arrangements, which protect consumers from long-term risks relating to legal services, especially in areas like conveyancing, wills and probate, and childhood personal injury, and remove important safeguards to their rights established by parliament and maintained by the courts under the Limitation Act 1980.

It is not the SIF, or the regulatory requirement for PSYROC, which create liability for late arising claims; the Limitation Act 1980 establishes statutory rights of protection that consumers have a legitimate expectation to exercise.

Around 11% of post-closure claims arise more than six years after a firm has ceased to operate (and mandatory run-off cover has expired).

The availability of PSYROC is important for consumers with long-tail claims, because seeking recompense through other means (such as through litigation) is considerably more costly and difficult after a long delay.

My view

I share the Law Society's concern that any decision by the SRA to close the SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

The SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

The SRA's approach to the consultation

Based on an application of its decision-making framework, the SRA should have given proper consideration to each of the following options and their likely outcomes:

Option 1: Continuing the current regulatory arrangements (maintaining SIF without the injection of new funds)

Option 2: Continuing the current regulatory arrangements with adaptations (maintaining SIF funded by an annual levy on the profession)

Option 3: Terminating the current arrangements (closing the SIF and making no further arrangements for the regulatory provision of PSYROC)

The SRA has only systematically analysed Option 1, correctly concluding that it would not be viable to maintain the SIF without the injection of new funds.

In my view, it did not give proper consideration, based on the regulatory objectives and principles, to Option 2 (the clear consumer benefits of maintaining the SIF, funded by a proportionate levy on the profession) or Option 3 (the likely consumer detriment of closing the SIF without any realistic alternative means for the provision of PSYROC).

Any solution to the provision of PRYSOC should be based on the following objectives:

- protecting consumers by maintaining existing long-term cover
- maintaining public confidence in legal services provided by solicitors and accordingly enabling the entry of new firms into the market

- protecting the reputation of the profession
- enabling all solicitors to change their career path without creating new risks for former clients
- making solicitor retirement costs predictable and affordable, also for the employees of closed firms
- allowing the orderly cessation of member practices

Furthermore, if practical, the following considerations should also be taken into account:

- providing an equitable distribution of costs between members; and
- ensuring manageable and sustainable costs for the profession

The SRA's expert report suggests there are around 31 successful claims from the SIF each year, with an average value of £36,400. The SRA characterises this sum as "modest", although it is more than the median annual pay for a full-time employee in England and Wales. In the absence of PSYROC, claimants may have to resort to litigation against the principals of closed firms in order to receive compensation. But this process would be costly and time consuming, and may not result in restitution.

This is why I believe a levy on firms to maintain the SIF would be a proportionate response to provide ongoing protection for consumers.

Conclusion

Having considered the alternatives, I agree with the Law Society that the only option that would adequately meet the regulatory objectives and principles is a continuation of the SIF funded through a levy on firms.

The SRA's own experts estimate that the annual cost of such a levy would be £240 per firm. This cost would be targeted, because only consumers who purchase legal services from regulated entities can access PSYROC, and proportionate, because smaller firms would pay more as a percentage of turnover, but consumers who purchase their services are more likely to have long-tail claims.

£240 is a reasonable price for each firm to pay in order to:

- protect and promote the public interest; support the constitutional principle of the rule of law; improve access to justice; protect and promote the interests of consumers of legal services; promote competition in the provision of legal services; encourage an independent, strong, diverse and effective legal profession; promote and maintain adherence to the professional principles; and
- ensure compliance with the regulatory principles that require regulatory activities to be transparent, accountable, proportionate and consistent.

My firm (founded in 1895) closed without a successor practice for indemnity insurance purposes in 2017. As a partner in that firm since 1980 I contributed towards the £20 million reserve held by the SIF. This fund should be applied towards the continuation of the SIF so that it remains available for the benefit of the firms who contributed to it and aggregated with the proposed future annual levy payable by existing practices. To do otherwise would be a breach of Trust.

The fact that PSYROC is available on the open market to other professionals but not generally to Solicitors demonstrates that the risks in the legal sector are longer tailed and far more problematic but they will not be extinguished by simply ignoring them. For the benefit consumers and the profession the solution lies in the levy on firms to continue the SIF.

The absence of mandatory PSYROC would inevitably deter Solicitors, Legal Executives and Paralegals from seeking employment with small and medium sized practices and would be a disincentive to young Solicitors from taking up partnerships. This will result in the closure of many firms and reduce competition and access to justice (particularly in rural areas) which must be contrary to the public interest

Closing the SIF without making any arrangements for the ongoing provision of SIF on a regulatory basis would create uncertainty and potentially remove the existing safeguard in the form of financial remedy for consumers who might want to pursue long-tail claims

It would be a perverse decision for the regulator to remove an important consumer protection when the profession is willing to pay for it.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Please see my response to Q1 above

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Please see my response to Q1 above

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Please see my response to Q1 above

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Please see my response to Q1 above

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Please see my response to Q1 above

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

Please see my response to Q1 above

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Please see my response to Q1 above

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

Please see my response to Q1 above. I have no information regarding possible operating models but presumably such models will have been put in place by Insurers for other professionals and can be referenced and modified as required for legal PI cover

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Please see my response to Q 12 below

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Please see my response to Q12 below

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

There should be no removal of the existing consumer safeguards. If the proposal with regard to the continuation of the SIF with all firms paying an annual levy is implemented there should be no need to impose any limitation of cover as to time or practice area. To ensure adequate protection claims should be capped at at £3million subject to review and increase every 5 years by reference to an appropriate indexation.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes by continuing SIF with levies. Please see my response to Q1

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

The mitigation proposals, whilst reasonable aspirations, will be unhelpful in practice. PSYROC cover is generally unavailable on the open market and potential successor practices and their insurers are understandably extremely sensitive to anything that may damage their risk profile and during merger/take over negotiations will resist the transfer of what is after all an unknown liability for an indeterminate period of time

25. 15) Do you have information on impacts to inform our assessments?

No.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

You have only actually analysed Option 1 there is no evidence you have carried out any proper consideration as required by the regulatory objectives of the other Options notably Option 2 (maintaining SIF funded by a proportionate levy) or the serious potential impact on consumers if you were to pursue Option 3 (closure of SIF with no alternative provision of PSYROC) In those circumstances your consideration and decision making process is flawed and potentially unlawful. The impact on consumers will be much more serious than you say. The majority of claims arise from private client conveyancing so the claim relates to their most significant asset an uninsured loss would be life changing.

There is no evidence that any sort of diversity impact assessment has been made it is quite possible that this change has a greater impact on ethnic minority or similar potentially disadvantaged groups from entering or remaining in the profession. There is no evidence any research has been undertaken to establish the willingness of the profession to meet any future levy indeed all the available evidence from the Law Society and other representative groups suggests a strong willingness to meet a modest levy as indicated in the WTW report.

There is no evidence that the views of consumers has been obtained a stark omission given protecting consumers is a core regulatory objective. A further point I acknowledge the subject matter is complex and not readily accessible for the public however I was taught during my training that a core skill in legal practice is the ability to explain in a manner which enabled full understanding so clients could give informed instructions. There is no evidence you have done that. I doubt many if any members of the public would understand the language of this consultation for example. How in those circumstances are you able to claim you are acting in the public interest?

The reference to what cover and protections other professional bodies provide or require is irrelevant. Solicitors are in a unique position in terms of the range and diverse nature of the work we undertake and the potential risks that arise. Legal practice is constantly affected by changes in public policy and the law. The development of the law on Limitation in conveyancing the changing requirements imposed on us by the Council of Mortgage Lenders in their Rule 6 Certificate of Title and the rules governing solicitors undertakings are working examples. It is notable but not mentioned in your analysis that claims patterns show spikes in the periods 1989- 92 (when MIRAS was abolished) and around 2009 - 12(after the banking crisis) and will again probably when the effects of the latest fiscal cliff edge from June 2021 (when the SDLT concessions ended) comes through. It shows how resilient the SIF mutual fund model is and the historic funding of it that it has coped well all of those challenges with no new funds for over 20 years. It provides a sound platform with a very good investment record and quite clearly represents the best means available to provide this very important consumer protection into the future.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

The evidence from your own experts report indicates that the current SIF scheme is actually reasonable in terms of its operating and management costs given the nature of claims arising from closed practices perhaps many years after they have closed indeed possibly after anyone associated with them is still living!! The alternatives will be significantly more expensive if they are available at all.

It is also clear from your expert report that alternatives would be unlikely to be available in the open market at all. All recent market developments have seen less willing providers even for the MTC compulsory cover. I am told by brokers that the 6 year post closure run off cover is one of the most unattractive elements of continuing to offer cover. Much is made of the cost and whether it is proportionate given the comparatively small number of claims. I suggest the costs reflect the nature of the work and perhaps the uncertainty which has surrounded SIF. It has always been open to you to review costs with colleagues from SIF. If

that is done whilst establishing SIF on a long term basis with secured funding by way of a very small levy no doubt savings could be achieved. There are no alternatives at present in any event thus securing the future at such a modest cost seems the obvious way forward. It is also a very useful route for consumers to be able to register claims. It is also clear from the SIF data there are many more claims made which are not pursued or are determined as nil claims.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

It is clear from your own experts report that it would not be possible for firms to obtain such cover so you would be regulating for the impossible. It may also lead to more providers withdrawing from the market making what is already a tough market even worse! Further that approach of course takes no account of the position that solicitors who retired since 2000 with no successor practice would face.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

I repeat what is said in previous answer. It is of course difficult for anyone to comment on such an open question without more a more detailed proposal from you. It suggests to this responder that the matter has not been properly considered by you prior to launching this consultation. Yet further evidence supporting the view that your decision making process is seriously flawed.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

I recently contacted AON the insurers who provided my run off cover - it expired in 2014. I have not had a response from them. I add that I was in practice on my own account from 1994 until 2008 with the same insurer. I had no claims of any kind in that time. I am also of the view that it would be very difficult for me to provide the sort of detailed information underwriters may require some 14 years after I closed.

The only evidence you have strongly indicates that it is highly unlikely that there is any insurer interested in providing cover for such a scheme

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Such an option is very unlikely to be possible according to the views of your own expert. I am old enough to recall the time when SIF was set up in 1987? as I recall in response to the demise of the previous master policy scheme. All the same issues arise as with any such proposal the need for annual renewal and the likely requirement by a provider to restrict the scope of the policy not wanting to include firms with a poor claim history with levels of premium unmanageable for retired solicitors on pension income.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

see answer to 6 above

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Taking account of all the available evidence the most appropriate arrangement for PSYROC consistent with your regulatory objectives is to maintain SIF with funding by way of the very small levy per firm proposed by your own experts report. I suggest the amount of the levy is actually arrived at by means of a very cautious calculation as it takes no account of the potential investment income obtained from retained reserves which have been at between £1- 2 m annually and makes no allowance for potential savings in operational costs which might be achieved if they are considered with the uncertainty for the future removed.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

See 6 above

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I agree with the conclusion reached in para 79 of your consultation notes. Limiting scope of cover to the practice areas which have provided most of the claims namely conveyancing and probate will and trusts would achieve very little in reducing overall costs of PSYROC and would probably give rise to higher administration costs as well as creating unhelpful uncertainty for consumers. In the light of the claims history of PSYROC capping liability below MTC level would not achieve any significant reduction in costs. It would also create a serious anomaly in your regulatory scheme on one hand you prohibit the profession from limiting liability below the MTC level and therefore surely as regulator must to be consistent provide a scheme solution with the same level of cover.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

I do not consider a targeted approach for PSYROC is appropriate for the following reasons -

- limited if any savings would arise
- costs of admin would be higher
- there would be a serious difference between MTC and PSYROC
- potential for confusion
- the inconsistency in the regulatory scheme prohibiting limits on liability during in practice +6 cover but not providing cover to meet the consequences of that in PSYROC

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

see 10 and 11 above

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

YES. I strongly support the proposal to continue SIF funded by the very small levy per firm as indicated in your WTW report.

My reasons are already covered in answers to your earlier questions but in summary -

- a scheme which prohibits the profession from limiting liability below the MTC cover required in practice +6 years must provide a means to cover the consequences of that in the form of same level cover in PSYRO period.
- the levy of £240 per firm to maintain PSYROC is fair and proportionate given the consumer protection it provides. It is most often required to deal with their most significant asset and yet is a very small cost to the profession.
- the absence of PSYROC would have made me seriously question setting up a small practice I know many others are of the same view it is the smaller firms who are most accessible in terms of fees and removing this vital protection could make legal advice unaffordable to many.
- a per firm levy is a fair distribution of cost as it is a miniscule sum for medium and large firms and very small even for the smallest although proportionately more which reflects the evidence showing it is the small or SP firms more likely to benefit from cover.
- a simple universal scheme because no area of practice is immune from risk and it rightly protects all who use legal services.
- there is no evidence before you to indicate there are any open market alternatives notwithstanding some 10 years to consider it.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

It is my very strong view and I suggest all the evidence available to you indicates that what you propose will have no practical

value.

It ignores the problem that may already arise for those who closed from 2000 to the present with no successor. I was well known in my locality but there was no interest in taking on my practice as I provided a specialist service at much lower fee rates than offered by larger firm. There is a whole industry of advice and support available to those coming up to retirement/wishing to close.

Your other idea to contact all clients and former clients is quite impractical- I doubt I could repeat what many of my mainly private clientele would say in response to a suggestion they obtain insurance at their own expense. I regret to say that idea has come from someone with no relevant experience of running a small private client practice!!

25. 15) Do you have information on impacts to inform our assessments?

There has already been significant impact on those of us you seem prepared to place at risk. I wonder how many have already made quite lawful plans to protect their family finances. Consumers will be the losers which is in complete contravention of your regulatory objectives. Whilst it may be the number of claims is quite small an average of over £30k is not. The human cost as well as the financial loss should not be ignored so lightly and given the evidence from the claims history it would be life changing for most of those unable to claim. Imagine how you would feel if that happened to a member of your family.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

In its consultation document, the Solicitors Regulation Authority (SRA) has signalled its desire to close the Solicitors Indemnity Fund (SIF) and remove any regulatory requirement for solicitors to maintain post six-year run-off cover (PSYROC).

This would end the current arrangements, which protect consumers from long-term risks relating to legal services, especially in areas like conveyancing, wills and probate, and childhood personal injury, and remove important safeguards to their rights established by parliament and maintained by the courts under the Limitation Act 1980.

It is not the SIF, or the regulatory requirement for PSYROC, which create liability for late arising claims; the Limitation Act 1980 establishes statutory rights of protection that consumers have a legitimate expectation to exercise.

Around 11% of post-closure claims arise more than six years after a firm has ceased to operate (and mandatory run-off cover has expired).

The availability of PSYROC is important for consumers with long-tail claims, because seeking recompense through other means (such as through litigation) is considerably more costly and difficult after a long delay.

My view

I share the Law Society's concern that any decision by the SRA to close the SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

The SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

The SRA's approach to the consultation

Based on an application of its decision-making framework, the SRA should have given proper consideration to each of the following options and their likely outcomes:

Option 1: Continuing the current regulatory arrangements (maintaining SIF without the injection of new funds)

Option 2: Continuing the current regulatory arrangements with adaptations (maintaining SIF funded by an annual levy on the profession)

Option 3: Terminating the current arrangements (closing the SIF and making no further arrangements for the regulatory provision of PSYROC)

The SRA has only systematically analysed Option 1, correctly concluding that it would not be viable to maintain the SIF without the injection of new funds.

In my view, it did not give proper consideration, based on the regulatory objectives and principles, to Option 2 (the clear consumer benefits of maintaining the SIF, funded by a proportionate levy on the profession) or Option 3 (the likely consumer detriment of closing the SIF without any realistic alternative means for the provision of PSYROC).

Any solution to the provision of PRYSOC should be based on the following objectives:

- protecting consumers by maintaining existing long-term cover
- maintaining public confidence in legal services provided by solicitors and accordingly enabling the entry of new firms into the market

- protecting the reputation of the profession
- enabling all solicitors to change their career path without creating new risks for former clients
- making solicitor retirement costs predictable and affordable, also for the employees of closed firms
- allowing the orderly cessation of member practices

Furthermore, if practical, the following considerations should also be taken into account:

- providing an equitable distribution of costs between members; and
- ensuring manageable and sustainable costs for the profession

The SRA's expert report suggests there are around 31 successful claims from the SIF each year, with an average value of £36,400. The SRA characterises this sum as "modest", although it is more than the median annual pay for a full-time employee in England and Wales. In the absence of PSYROC, claimants may have to resort to litigation against the principals of closed firms in order to receive compensation. But this process would be costly and time consuming, and may not result in restitution.

This is why I believe a levy on firms to maintain the SIF would be a proportionate response to provide ongoing protection for consumers.

Conclusion

Having considered the alternatives, I agree with the Law Society that the only option that would adequately meet the regulatory objectives and principles is a continuation of the SIF funded through a levy on firms.

The SRA's own experts estimate that the annual cost of such a levy would be £240 per firm. This cost would be targeted, because only consumers who purchase legal services from regulated entities can access PSYROC, and proportionate, because smaller firms would pay more as a percentage of turnover, but consumers who purchase their services are more likely to have long-tail claims.

£240 is a reasonable price for each firm to pay in order to:

- protect and promote the public interest; support the constitutional principle of the rule of law; improve access to justice; protect and promote the interests of consumers of legal services; promote competition in the provision of legal services; encourage an independent, strong, diverse and effective legal profession; promote and maintain adherence to the professional principles; and
- ensure compliance with the regulatory principles that require regulatory activities to be transparent, accountable, proportionate and consistent.

My firm (founded in 1895) closed without a successor practice for indemnity insurance purposes in 2017. As a partner in that firm from 1999 I contributed towards the £20 million reserve held by the SIF. This fund should be applied towards the continuation of the SIF so that it remains available for the benefit of the firms who contributed to it and aggregated with the proposed future annual levy payable by existing practices. To do otherwise would be a breach of Trust.

The fact that PSYROC is available on the open market to other professionals but not generally to Solicitors demonstrates that the risks in the legal sector are longer tailed and far more problematic but they will not be extinguished by simply ignoring them. For the benefit consumers and the profession the solution lies in the levy on firms to continue the SIF.

The absence of mandatory PSYROC would inevitably deter Solicitors, Legal Executives and Paralegals from seeking employment with small and medium sized practices and would be a disincentive to young Solicitors from taking up partnerships. This will result in the closure of many firms and reduce competition and access to justice (particularly in rural areas) which must be contrary to the public interest

Closing the SIF without making any arrangements for the ongoing provision of SIF on a regulatory basis would create uncertainty and potentially remove the existing safeguard in the form of financial remedy for consumers who might want to pursue long-tail claims

It would be a perverse decision for the regulator to remove an important consumer protection when the profession is willing to pay for it.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Please see my response to Q1

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Please see my response to Q1

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Please see my response to Q1

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Please see my response to Q1

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

Please see my response to Q1

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

Please see my response to Q1

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Please see my response to Q1

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

Please see my response to Q1. I have no information regarding possible operating models but presumably such models will have been effected by Insurers for other professionals and could be referenced and modified as appropriate for legal PI cover

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Please see my response to Q12 below

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Please see my response to Q12 below

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC

should be targeted?

There should be no removal of the existing consumer safeguards. If the proposal with regard to the continuation of the SIF with all firms paying an annual levy is implemented there should be no need to impose any limitation of cover as to time or practice area. To ensure adequate protection claims should be capped at £3million subject to review and increase every 5 years by reference to an appropriate indexation.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes, by continuing SIF with payment of annual levies by firms. Please see my response to Q1

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

The mitigation proposals, whilst not unreasonable in aspiration, will be unhelpful in practice. PSYROC cover is generally unavailable on the open market and potential successor practices and their insurers are understandably extremely sensitive to anything that may damage their risk profile and during merger/take over negotiations will resist the transfer of what is after all an unknown liability for an indeterminate period of time

25. 15) Do you have information on impacts to inform our assessments?

No

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:552 Data

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

no

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

no

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

no

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

no

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

no

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

no

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

no further information.

Unlikely to be a suitable & cost effective master policy available in the market

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that

this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

you set it up, don't move the goalposts
SIF

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

not everything can or should be insured. sometimes the proper answer to a claim is "your loss"

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I firmly believe that you should continue to provide PSYROC through SIF on an ongoing basis, and feel extremely let down if that assistance is not continued. The exercise of the SRA's powers to continue the protection must comply with section 28 of the Legal Services Act 2007 (LSA 2007) and be proportionate. Continuing to provide cover will require funding; WTW estimate that this would cost £16 per solicitor annually, but that does not allow for investment income on a fund of, say, £20m. The WTW report contains no case studies of claims. The SRA's position is that it is not its role to protect solicitors. However, SIF was established under section 37 of the Solicitors Act 1974, the provisions of which protect not only consumers, whose interests must of course be the first consideration, but also solicitors and their staff: *Swain v The Law Society* [1983] 1 AC 598 at p.618 B-C. Amendments to section 37 in the LSA 2007 did not affect this.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

The SRA suggests that The Law Society should arrange cover for its members, but post-LSA 2007 The Law Society, which derives its powers from Royal Charters, appears to have no power to implement an insurance scheme: such powers as it had were transferred to the SRA. Nor does The Law Society have power to compel payment of premiums or contributions to provide such cover; a voluntary scheme in my view would be unsustainable.

The consultation compares the run-off insurance provisions for other professions, which afford less protection, but these do not advance the debate: the limitation periods may be the same, but those in other branches of the legal profession and in other professions do not, in practice, have as great an exposure to long-tail claims as solicitors. Claims statistics in the WTW report cover reporting delays of up to 19 years, but there is no absolute maximum period in which claims can be made.

Solicitors are exposed, for example, by acting for children on personal injury claims and in trust cases, where time may not even start running for many years, and in conveyancing work, where a title defect may not be discovered until sale many years later.

Unlike other professions, we already have a mechanism in place providing protection for consumers, and for solicitors and their staff. If we didn't, we might not create it, but we do, so let's not allow it to wither on the vine when the current arrangements expire on 30 September 2022. If St Paul's Cathedral did not exist, we probably would not build it today, but it does, and we take steps to preserve it.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I have my personal view, as a holder of a PC (non practising). I would pay the addition £16 pa to continue cover.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

I think this would adversely penalise those who need it most - sole practitioners and retired solicitors

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I think you should continue with SIF, and ask for contributions that way through the PCs

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

RESPONSE TO SRA CONSULTATION ON PSYROC AND SIF

Janis Purdy, Solicitor, SRA No 115220

It is incomprehensible to me why the SRA thinks it is best to close down SIF and so end the only available option for providing PSYROC. I have carefully read the SRA's consultation and the supporting documents and there is nothing in there to persuade me that SIF should be shut down. Quite the opposite.

PSYROC should be continued. It is unquestionably part of the SRA's regulatory function to do so. PSYROC can and should be continued indefinitely in its current form, through SIF.

If the SRA close SIF they will be in breach of the regulatory objectives and obligations as set out in The Legal Services Act (2007). The SRA do not think so. They base their whole argument on "proportionality". The SRA's view of what is proportionate is certainly not mine. And I don't believe it would be the view of the public if they knew about this and understood it.

The real SRA agenda is not at all transparent. In the face of the disastrous and predictable consequences, and the WTW analysis and their suggested solution, it defies all understanding as to why the SRA would choose to remove such an essential brick in the wall of client protection. Such a move would be a perverse, irrational and unreasonable exercise of its discretion. It could even be said to be an abuse of the SRA's power. What I mean is that the SRA could be said to be closing SIF just because it can. Perhaps so far as the SRA is concerned, SIF is just an inconvenience. With all due respect, I fail to understand the SRA Board's rationale or decision-making.

So SIF should be kept going indefinitely. Here is why:

1. The regulatory objectives. The first regulatory objective under Clause 1 of The Legal Services Act (2007) is protecting and promoting the public interest. That is a legal obligation of the SRA.

The SRA seems to recognise the problems there will be for consumers if SIF is closed. Affected clients will be trying to pursue claims against solicitors who have retired, disappeared or died. Consumers will have to pursue claims in the courts, and could well find that any judgement they obtain is worthless because it cannot be satisfied. To any lawyer, the problems are obvious and there is no need to go on about them here. So how is the closure of SIF protecting the public interest?

If SIF is closed there will be long-reaching and damaging consequences for consumer protection.

2. The solution is a levy. There is a considerable sum in the SIF pot. But of course it will need to be topped up. That can easily be done. SIF can be financed simply and cheaply into the indefinite future with a small annual levy imposed on the practising profession with the PC fee. This could be an individual levy of £16 or a flat firm levy of £240. This levy is suggested in the very detailed and excellent WTW analysis commissioned by the SRA.

The solution is a "no brainer". (For reasons explained below, I believe a flat firm levy is preferable.) The levy might require a bit of adjusting up or down every year or so to take account of levels of claims and costs against investment income. But that's not too difficult. The Compensation Fund contribution and the PC fee are adjusted every year. The accounting expertise is on hand.

3. What is proportionate? The SRA bases its arguments in favour of closing SIF on its own idea of what is proportionate. They say that the risks are small and the costs of covering those risks are disproportionate. But proportionality is a subjective concept. It is the continuation of SIF which would be a proportionate course of action. This will ensure that the SRA meets the SRA's regulatory objectives.

Every single claimant is important. Every loss is important, especially the losses of individuals who cannot afford to lose out. The number of consumers who will potentially lose out, according to the WTW analysis, cannot be regarded as "small". Nor can the amount of the average claim (£34,600) be dismissed as insignificant. Try telling that to somebody who suddenly finds themselves £34,600 less well off. And that figure is only an average. Claims go higher. I see that two of the highest recorded claims paid out have been as high as £400,000. The fact that the SRA regards these kinds of losses as insignificant and not worth protecting against is an indication of how far removed they are from real life.

The reality is that SIF is not just underwriting long-tail claims actually made by consumers. It is also potentially underwriting what must be millions of transactions going on every year. Any one of those transactions could cause problems in the long term.

Let's take a closer look at the numbers. The WTW forecast of the number of likely claims from 2023 onwards will peak at 45 in

2023 and level off to 31 from 2029. What surprises me is the statement that "the claim notification counts exclude nil claims where there will not be any payments". Nil payment claims are apparently 50% of claims notified. So that means the actual number of claims notified could range from 62 to 90.

Thus historical claims with no pay-outs have been successfully defended, probably because they were lacking merit, time-barred, or not pursued. Of course the outcomes would have been disappointing to claimants, but at least these people were given closure. They were saved from years of wasted time and money spent on pursuing spurious claims. That in itself is a worthy purpose for SIF, and is in the public interest.

4. Does the SRA care about damage to the reputation of the profession and its regulator, and public confidence? To close SIF would cause serious and irreparable damage to the reputation of the profession, and the reputation of its regulator the SRA, and so undermine public confidence. One of the hallmarks of our profession is the excellent protection we give our clients. It is worrying and confusing that the SRA, as the profession's regulator, does not seem to be too concerned about that.

The SRA seem to be saying that being concerned about reputational damage to the profession is a bad thing. The SRA should try that one out on doctors. The GMC and the BMA would not take that view.

What will the SRA do when distressed clients are ringing and emailing them to ask for help in making claims? What advice will they be giving to clients who cannot trace their solicitor and cannot get any redress? Are they going to set up a special department at huge cost to deal with this? Will their advice to distressed clients really be – "well, just see a solicitor and get a no win no fee agreement"?

It's easy to imagine the bad publicity. How will the SRA deal with the headlines in the Daily Mail? I hope their press department is ready. In all the mainstream media including the Times, the Telegraph, the Guardian, the Financial Times and even Which magazine, and the New York Times the story will be that solicitors have left their clients to rot because the SRA won't let solicitors pay the price of four cups of coffee to save them. And social media will have a field day. There will be outrage expressed by unhappy clients when they contact consumer groups and Money Box on BBC Radio Four. Perhaps we will feature on Panorama. Solicitors have abandoned their clients, they will say, and the SRA have caused it.

5. Why on earth would the cost of a very small levy be passed on to consumers? The SRA has not produced any evidence that a small annual levy of £16 per solicitor or £240 per firm would be passed on to clients and so increase the cost of legal services. That contention is frankly absurd. Does the SRA really think that a firm would add fractions of pence to the charging rates of their fee-earners? And if a firm rendered 1,000 invoices per annum would they really add a massive 24 pence added to each bill?

When you consider the outgoings of a solicitors firm – PII, staff costs, PC fees, accountancy fees, rent, mortgage, advertising, utilities - it would be easier to tell the staff that they will have to bring in their own biscuits. The costs of a partners' meeting to work out how to make the clients pay would cost far more than the levy.

6. The costs are proportionate. The SRA say that the costs of running SIF outweigh the benefits. Again this is the SRA's own concept of what is proportionate. I am sure there is scope for looking into running costs and reducing those costs in the future. But the costs are proportionate considering the enormous benefits SIF provides. And the quoted defence costs do not seem to be much out of step with litigation costs generally.

The running costs could have had an overhaul long ago, with savings made, but I suppose the SRA's determination thus far to close SIF has scotched this.

7. What's wrong with cross-subsidisation? Yes, a levy would mean cross-subsidisation between sizes of firms and types of work. But the idea that this is somehow unfair, or that the profession would object to this, is misguided. We already have cross-subsidisation in the form of the PC fee and the Compensation Fund. The vast majority of the profession abide by and respect our professional rules. But we solicitors acknowledge that cross-subsidisation is there to protect consumers, the reputation of the profession, and public confidence.

One only has to consider cross-subsidisation more broadly to understand that it is an essential part of a civilised society. Thus, taxpayers pay to support services they might never use, and social security benefits they might never need – but one never knows. And for example, house and car insurance premiums across the board cross-subsidise between those who have claims and those who never have a claim.

8. A flat firm levy is preferable. Although either an individual levy of £16 or a flat firm levy of £240 is a very cheap solution for solicitors, a flat firm levy would probably be fairer. I believe that the big firms, who are far less likely to need SIF (for themselves and their clients) will have no objection to paying what for them is a drop in the ocean. They will be keen to preserve the reputation of the profession which reflects on their own reputations. Small firms and sole practitioners, who inevitably have most to gain by the continuation of SIF, will be thankful for a positive outcome and will not feel disadvantaged by the payment £240 per annum. They will see it as a very small price to pay.

There is nothing wrong or unfair in making the payment of a levy a condition of being able to practise either as an individual solicitor, or as a firm of solicitors. The same principle applies to the PC fee and the Compensation Fund contribution.

A flat firm levy has the advantage of being simpler and easier for the SRA to administer and collect.

9. Why drop our standards of client protection simply to be like others? Just because some other professions and other providers of legal services do not have PSYROC does not mean that the solicitors profession has to drop its standards of client protection and become like them. The SRA call us "outliers" as though that is a bad thing. But being an "outlier" is a good thing. It is one of the hallmarks of our profession that we provide excellent protection for our clients.

In any event comparisons are not helpful. For a start, the kind of work done by other legal service providers and other professions is different. Limitation legislation in other jurisdictions is variable. We would be better to compare ourselves to doctors and dentists who have indefinite cover. And to hold up unregulated will-writers as a shining example is absolutely ludicrous and insulting.

10. Less choice for consumers. To put it bluntly, if SIF is closed, who in their right mind would want to set up as a sole practitioner or a small firm? That means less choice for consumers.

The SRA is supposed to be improving access to justice, and encouraging an independent, strong, diverse and effective legal profession. These are the regulatory objectives c and f. The shutdown of SIF would put the SRA in breach of those regulatory objectives.

The closure of SIF would be a major disincentive to solicitors wanting to set up their own small firms. They will think twice about undertaking what are fundamental and crucial areas of work. To close SIF would mean the long term erosion of a diverse profession, and a steady reduction in client choice and the ready availability of legal services in the high street. Most people need legal services where they live – not in a city miles away.

The SRA say there is no evidence for there being less choice for consumers. Well, no, they won't find it, at least not yet. But the prospect is entirely predictable.

11. There is no alternative to SIF. There is no open market insurance solution available, nor is there ever likely to be. The Law Society has been exploring this possibility for some time. The SRA have also been asking representatives of the insurance industry. The answer from the insurance industry has been loud and clear. They would never be interested in operating a master policy, nor being involved in any "alternative indemnity scheme", nor offering bespoke policies to closing firms or firms post their run-off. The SRA acknowledges this.

SIF works, and is viable into the indefinite future with extra funding by way of a compulsory levy on the profession. There is absolutely no point in trying to reinvent the wheel.

12. Targeted solutions won't work. "Targeted solutions" such as a scheme that is restricted to certain sizes of firm or certain types of work, would be far too complicated and costly to administer. And there will inevitably be gaps in cover and confusion for consumers.

13. Changing the successor practice rules will not help. There are big problems for small firms trying to find a successor practice. This is being driven by the insurers who are understandably not permitting the acquiring firm to take on the small firm's potential liabilities. Thus small firms are forced to take run off cover in order for their businesses to be taken over. The SRA recognise these problems. When the successor rules changed some years ago, the new rules were a welcome innovation. But now we have the prospect of SIF closing, this changes everything. More and more firms will be closing without a successor practice, with no protection for clients with long-tail claims. In recent months there have been large firms going into forced closure. A change in the successor practice rules is not the cure. The answer lies in making sure that SIF is on a secure financial footing so that it can be maintained indefinitely.

It is a concern that without SIF there will be sole practitioners and partners in small firms putting off closure, struggling on when they really should be retiring. Mistakes can be made, closures can be forced upon them and, in extremis, bankruptcies and premiums for PII and run-off not paid. This has consequences for their clients and the insurance industry, and will lead to further rises in insurance premiums generally and potentially more claims on the Compensation Fund. The present situation also causes problems for the larger firms keen to expand and increase their scope of operation.

14. MTC amendments will make things worse. Amending the MTCs to require insurers to provide PSYROC would lead to huge increases in PII premiums, forced firm closures, and insurers exiting an already shrinking market.

15. The clients of all sizes of firms can be affected. The majority of long-tail claims come from sole practitioners and small firms. This is no surprise, and no reflection on them. They are of course the firms most likely to close with no successor practice. The practising big firms have long tail claims too, but of course those claims are covered by their insurer.

Having said that, big firms are not immune from closure, as recent cases have shown. Further, key partners or employees in big firms who were previously working in small firms that went into run off could find themselves at the end of a claim which will bankrupt them or place them, and their present firm, in a very awkward position, financially and reputationally.

16. The Law Society cannot help. The wellbeing and protection of solicitors cannot be of concern to the SRA. This is the role of The Law Society as the representative body. But the SRA know that The Law Society is extremely limited in what it can do, if anything, to remedy the damage that will be caused by the closure of SIF.

The Law Society has no regulatory power and cannot provide an indemnity scheme, as indemnity is a regulatory matter. Voluntary hardship funds and the like will not be viable or effective. The Law Society has already looked into this and quite rightly dismissed the idea.

17. Mitigation suggestions are not realistic. The suggestions made for possible mitigating actions are simply not realistic, nor proportionate to the risks to the public and the damage to public confidence if SIF is closed.

The suggestion that the SRA and/or TLS could provide "support to firms to help them understand their options when they close and how to attract a successor practice" is rather patronising. If I had a broken leg I would not think much of being offered a band aid and an aspirin as a cure. In any event, that kind of advice and support is already available and easily accessible.

18. Finally, in answer to Question 13 of the SRA's online questionnaire: In a nutshell, regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through SIF, a vehicle which is already set up and delivering. SIF can be financially supported by a very modest annual levy on the practising profession. The continuation of SIF is essential to maintain consumer protection, to preserve the reputation of the solicitors profession and its regulator, to maintain public confidence, to promote diversity in the profession and choice for consumers. No alternative vehicle for PSYROC exists, nor is ever likely to exist. My detailed reasons for this conclusion are stated above.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Please see response to Q1

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Please see response to Q1

14.

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21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

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22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

Please see response to Q1

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

In a nutshell, regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through SIF, a vehicle which is already set up and delivering. SIF can be financially supported by a very modest annual levy on the practising profession. The continuation of SIF is essential to maintain consumer protection, to preserve the reputation of the solicitors profession and its regulator, to maintain public confidence, to promote diversity in the profession and choice for consumers. No alternative vehicle for PSYROC exists, nor is ever likely to exist. My detailed reasons for this conclusion are stated in response to Q1

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Please see response to Q1

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I am concerned that any decision by the SRA to close SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts (WTW) who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

I believe the SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

SIF should continue in order to protect consumers of legal services from being unable to gain redress for long-tail claims. The SRA makes clear that it recognises the problems there will be for consumers trying to pursue claims against solicitors who have retired, disappeared or deceased. Consumers will have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. We do not need to spell out those potential problems there.

To close SIF would also pose a threat to diversity, client choice, and access to justice by creating barriers to setting up small firms, and barriers to firms undertaking what are fundamental and crucial areas of work (such as conveyancing, wills and probate). To close SIF would mean the long-term erosion of a diverse profession and a steady reduction in consumer choice.

I would respectfully point out that the SRA is supposed to be improving access to justice, and encouraging an independent, strong, diverse and effective legal profession. (Regulatory objectives c and f.)

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A decision to keep SIF going would be a proportionate and wholly justified course of action. The solution to keeping SIF continuing indefinitely is obvious and straightforward. No other solution is available for the provision of PSYROC.

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I agree with the view that to amend the MTCs to require insurers to provide PSYROC would lead to hugely increased and unsustainable PII premiums, forced firm closures, and departures of insurers from the market. The insurance industry is making that very clear to the Law Society.

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nor is there ever likely to be. This has been explored at length by The Law Society, and also it seems by the SRA. And I understand that the insurance industry would never be interested in operating a master policy, nor being involved in any "alternative indemnity scheme". I understand that the SRA acknowledges this.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I do not think these proposed mitigations are realistic, nor are they proportionate to the risks to the public and the damage to public confidence if SIF is closed. They will certainly not mitigate the damage that will be caused to public protection, the reputation of the profession, and public confidence in the profession.

I consider that the notion of the SRA "ensuring appropriate information is provided to clients at the time a firm closes" is misguided. It is not credible to insist on a closing firm telling their clients how to sue them if they have been negligent. The same applies to developing guidance to consumers when they have a claim. The mitigation factor is minimal. Added to this will be the additional costs of the SRA setting up and running a department to deal with consumers' queries and concerns.

24. 15) Do you have information on impacts to inform our assessments?

See the comments above.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I believe your proposed approach is entirely misguided. The likely cost of on-going consumer protection will have a minimal effect on fees charged by law firms, and the absence of ongoing protection is likely to be universally unpopular with the public. One of the reasons for instructing a solicitor rather than others offering legal services is the consumer protection available. I have read the submissions by Howdens and agree with them, so do not propose to repeat them

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Clearly the idea of providing PSYROC does not appeal to the insurance industry; given they operate to make a profit and have concluded that they would be unable to do so. To force insurers to provide a product for which they have no appetite is likely to cause insurers to leave the legal PII market altogether. Fewer participating insurers will mean less competition and that, inevitably will give rise to higher premiums; as premiums form part of a solicitors overheads if they increase then fees charged will increase.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

If insurers had any interest in providing this cover then they would have come forward with an appropriate product. The prospect of the closure on the SIF has been known since the profession moved to open market insurance and no insurer has come forward in that time (20 years?) even showing an interest in offering cover, let alone actually having developed a product which addresses the need for insurance post run-off.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

It is just no going to happen. Why has SRA not engaged with the insurance industry to understand why it does not wish to involve itself in PSYROC?

How would this work if the insurer providing the cover wishes to leave the market or goes bust - many solicitors were insured with Independent Insurance which failed part way through a policy year leaving its clients without cover.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

The SIF provides an appropriate, cost effective vehicle for PSYROC.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

The SIF is the most appropriate model for PSYROC. It can be maintained at minimal cost per solicitor or firm, a cost which has minimal impact on fees charged to clients. If a very small firm undertakes 240 cases in a year then the cost per case is £1.00. If this is passed on it will have minimal impact on affordability and most clients would willingly pay this for open ended insurance cover.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

no

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Limiting PSYROC cover to selected work types seems to serve little purpose. The whole point of a professional insurance scheme is to ensure that all who use our professional services will be within the protection of the policy if later an error comes to light.

Your proposal is unlikely to bring a significant saving, yet leaves large numbers of clients outside the protection of the professional insurance scheme.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

No; it goes against what solicitors stand for and the public expect. It potentially gives rise to uncertainty and confusion as to who is covered and who is not. Those who are outside any scheme will feel aggrieved if they perceive that the premiums for such cover were spread across all work types, and it is impractical for solicitors to charge the costs to only certain case types and not across the board. If everyone is paying then everyone should have the benefit of cover.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

It is simply not appropriate to take this path for the reasons given in 12 above.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

There is no-one presently authorised to address indemnity issues and if it is to continue then it should be within the function. To have a separate organisation responsible for the regulation of PSYROC adds to confusion and expense. The cost to the profession of funding the regulator is passed on to the client - I cannot imagine any client thinking another regulator would be an expense they wish to bear.

Unless there is to be no PSYROC at all then the cheapest and most efficient way of providing this is via SIF, and continuing the SIF funded through a small levy on the profession. There is no alternative available.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

The 2 actions you propose are utterly pointless.

a) My own experience of closing a practice is that no-one whom we considered suitable to take over our business wished to be a "successor" practice. You can provide all the advice you like but there is no real appetite for firms to take on the risk of claims from a closing firm.

b) As to clients taking their own insurance this is wholly impractical. When we closed our business we sent approximately 3000 letters - these being to clients for whom we held documents in custody. About 25% were returned by the Post Office marked

"gone away" and about 15% received no reply.

We had approximately a further 7000 clients on our database whom we did not contact and we had no means of identifying clients of the firm for whom we had not acted after the inception of our database. Contacting all the clients of a firm would be impossible.

Moreover, as there is no insurance product available, let alone a competitive market this proposition cannot work. Have you thought about the means of providing information and the expense of doing so. In addition if you create an obligation to undertake this task do you not create a risk of liability for SRA if you fail to carry it out effectively? Any liability will, no doubt, be passed back to the profession and thereafter on to the clients.

25. 15) Do you have information on impacts to inform our assessments?

I closed my practice in 2011. There were 3 partners, one of whom died in 2012 and whose estate has been distributed. I have almost no assets and so any claim against me is, if successful, unlikely to be satisfied. If SIF is abolished then I expect that I will not be the only (former) solicitor in this position (whether by design or default) and the detriment to the public which results could have been wholly avoided by retaining SIF.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I think PSYROC should continue through SIF or some other entity for client protection and security. Sole practitioners are quite often members of a minority community and they serve their community, where no other solicitors or larger firms would either be approached by that community and in any event larger firms would not be interested in doing the work of the minority community as it would not be worth their while. So by not extending PSYROC through SIF or some other entity, the SRA are effectively precluding minority sections of the community from getting legal advice, it is no use saying, 'they can go to the Citizens Advice' if they need help, as the CABs are full to capacity. Sole Practitioners generally do go that 'extra mile' in order to do a good job for their clients, they are conscientious and caring, and do not charge top end fees. I found that in my own sole practice, as I preferred not to make my own decisions and control my own time. I do think very strongly that SIF should continue.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No. As a former SP, I would be quite willing to pay a small annual levy, either as suggested £16 pa or slightly more. or £240 per firm.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

No but see above.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

See above.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

See above.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

See above.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

See above. For relatively little sums which you say might be £16 per solicitor, if that is the case, SIF would be viable, I question the alleged management costs of £1.4 million. How does that actually arise? Have cheaper models been investigated? Surely there would be an investment income from the funds of over £20 million currently held? Has this been factored in?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the

provision of PSYROC on an on-going basis?

See above.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

See above.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

See above.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Either per solicitor or per firm annually.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See above.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes. See above. If alternatively The Law Society had the capacity to run it, that would be better.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

SIF in one form or another should continue.. It is not reasonable or necessary to wind it up. What will be done with the funds held? There are only a small number of claims annually. The question has to be why is the SRA so keen to get rid of SIF, when it serves a purpose.

25. 15) Do you have information on impacts to inform our assessments?

See above, particularly the impact on minority communities, who prefer to consult 'one of their own'. The lack of SIF will quite possibly lead to reduced numbers of sole practitioners and in turn reduced access to justice. Sole practitioners quite often chose this method of delivering service towards the end of their careers, quite possibly after having been in a partnership and prefer to do things on their own and manage their own time more effectively as well as serving the communities and clients they prefer eg getting to know their clients well. it is often a lifestyle choice as well. i think some communities would suffer with the lack of sole practitioners or small firms if SIF is abandoned. Not everyone wants to work in a large practice.

3. Consultation questions

10.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

We consider that the consultation does not attach sufficient importance to the issue of consumer protection. The Articles of Association of the SRA approved in September 2020 state that the SRA's object is to exercise and discharge its regulatory functions in the public interest and for the benefit and protection of the public in compliance with charity law and in a way that adheres to the regulatory objectives. Consumers consult solicitors for advice in relation to the most important events in their lives. Consumers expect that solicitors will provide advice of the highest quality but also expect that in the rare circumstances when something does go wrong they will be protected and have recourse to effective redress. Paragraph 35 indicates that approximately three quarters of all claims relate to conveyancing transactions. Conveyancing transactions are very often the largest transactions in the lives of consumers. Grounds for claims often only become apparent when consumers sell their homes and that is frequently after the expiration of the standard six-year limitation period. If the firm that had conduct of the conveyancing transaction has closed and there is no PSYROC it is quite likely that the consumer will have difficulty in making a successful claim against a firm that has closed or against the retired principals of the closed firm or the estates of the retired principals of the closed firm. That could result in catastrophic consequences for the consumer. It is accepted that the number of claims is not high but the impact on the individuals making the claims could be extremely high. Paragraph 47 acknowledges that there "will be a small number of consumers that will likely not receive redress if there was no PSYROC in the future, but who would receive redress under the current arrangements with SIF providing PSYROC." We consider that the protection of consumers is paramount and that any steps to reduce the level of protection would be a retrograde step.

The SRA has advanced a preferred option that ongoing protection of consumers by the Solicitors Indemnity Fund through PSYROC should not continue as a regulatory arrangement. This option would have the effect of immediately ending long-term protection for consumers who remain exposed to long-tail risks. We fundamentally disagree with that preferred option and think it is wrong to remove protection from consumers that have expected as an integral part of the provision of legal services.

Further we note that paragraph 57 suggests that "future funding of PSYROC will increase the cost of regulation and is likely to increase costs for consumers and therefore, potentially, barriers to accessing legal services". We disagree strongly with this suggestion and consider that a levy of £16 per solicitor or £240 per firm estimated by the SRA that would be required to maintain the Solicitors Indemnity Fund (paragraph 52 of the consultation) could easily be absorbed in the overheads of firms and sole practitioners. If that levy were to be passed on to consumers by way of an increase in costs the level of the increase would not be such that it would create a barrier to accessing legal services.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

We have nothing to add to the comments made in response to Q1.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

We understand that insurers in the open market are not particularly keen on providing the six year run off cover element of professional indemnity cover which is a requirement of the existing MTCs. Should the SRA amend their MTCs to require insurers in the open market to provide cover for more than six years we are concerned that this could deter some insurers in the open market from offering any form of professional indemnity insurance and further reduce the number of insurers offering professional indemnity insurance in what is a challenging market.

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

We consider that that the SRA should consider carefully the number of insurers in the open market who have ceased to offer professional indemnity insurance since the introduction of the open market insurance model in September 2000. We suspect that if the professional indemnity market had been as challenging in September 2000 as it is now the Law Society members would not have voted to introduce the open market insurance model. We are extremely concerned that if the SRA amends its MTCs to require the provision of cover for more than six years the open market will become even more challenging than it is now.

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

We are aware that the SRA agreed to extend the closure of the Solicitors Indemnity Fund until 2020 following a request made by the Law Society in 2013. We are also aware that during the last two years the Law Society has had extensive discussions with brokers, underwriters and insurers to explore the possibility of a market solution to fill the gap that would be created by the closure of the Solicitors Indemnity Fund. We understand there is little or no appetite in the open market to offer cover that effectively replaces the Solicitors Indemnity Fund. Further we are concerned that if there are any insurers who are prepared to offer cover that cover is likely to be only offered to closed firms with very good risk profiles, the cost of cover is likely to be prohibitive to retired practitioners, any cover offered is likely to be offered on an annual basis only and there is the risk that any cover offered would more restrictive than the SRA's MTCs. For those reasons we do not think it is a realistic expectation that a solution will be found with the open market offering PSYROC on a sensible basis.

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

We understand from insurers that there is little interest in the open market in the establishment of a master insurance policy. We would add that it is essential to find a long term solution to the PSYROC problem.

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

We repeat that it is essential to find a long term solution to the PSYROC problem. The failure of a previous master policy led to the creation of the Solicitors Indemnity Fund. Given the lack of interest in the market we think it is highly unlikely that a suitable and cost-effective policy will become available in the open market.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

We consider that given the lack of interest in the open market in offering run off cover for more than six years the most sensible option would be to retain the Solicitors Indemnity Fund. We accept that to fund this there will need to be a levy on the profession. We note that the SRA estimates (paragraph 52 of the consultation) the levy that would be required to maintain the Solicitors Indemnity Fund would be £16 per solicitor or £240 per firm. Discussions we have had indicate that such a levy would be acceptable to the profession.

We also consider that there should be a review of the operation of the Solicitors Indemnity Fund to ensure that the administration of the Solicitors Indemnity Fund is efficient and cost-effective.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

We have nothing to add to the comments made in response to Q6.

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

We have considered the points made in paragraphs 76 to 80 (inclusive) of the consultation but we agree with the conclusion in

paragraph 79 that though PSYROC could be targeted, the reduction in the call on the fund would be comparatively small and most importantly fewer consumers would be protected. In particular we agree with the statement that "This targeting would not improve transparency, simplicity or certainty for consumers or solicitors."

In relation to paragraph 80 which discusses the potential capping of claims we note that the concentration of historic claims has been of low value and that capping would be unlikely to have a material impact on claims paid.

We would be concerned if there were to be a difference between the level of cover under PSYROC and the level at which the profession can limit its liability. Again this would be confusing for consumers and solicitors.

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Again, having considered the points made in paragraphs 76 to 80 (inclusive) of the consultation we do not think the regulatory arrangements for PSYROC should be targeted given that following what is said in paragraph 79:

1. There would only be a small reduction in the call on the fund.
2. The cost of administration would be increased.
3. Fewer consumers would be protected.
4. There would potentially be a mismatch between MTC's and the availability of matching cover.
5. There would be potential for confusion for consumers and solicitors given that targeting would not improve transparency

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

We have nothing to add to the comments we have made in response to Q10 and Q11.

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

We strongly consider given it is highly unlikely that there will be an open market insurance solution that will give the same level of cover and that PSYROC should continue to be provided within the SRA's regulatory arrangements to protect consumers from long term risks relating to legal services and that SIF should continue funded by a levy on the profession.

Regulatory arrangements should provide a mechanism to ensure that solicitors are able to obtain matching cover if the MTCs prohibit solicitors limiting their liability below the minimum level of cover prescribed by the MTCs.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

We have considered paragraph 87 but our strongly held view is that neither of the two actions proposed would sufficiently mitigate the risks to clients of closed firms not having PSYROC. Provision of support will not overcome the harsh fact that given the wariness of acquiring firms that has grown since 2000 and the risks that now come with the acquisition of another practice the only option for many firms would be closure and run-off.

Further we suspect that even if firms held up-to date contact details for all former clients it could be distressing and confusing for clients who thought that they would be entitled to claim against the firm they had instructed to be advised to take out their own insurance.

24. 15) Do you have information on impacts to inform our assessments?

We have nothing to add to the points we have made above.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes it should continue to protect clients and give security to retiring solicitors.

The consultation is weighted more in favour of discontinuing PSYROC through SIF rather than protecting clients.

Removal of the system may encourage firms to seek an unsuitable successor practice which is not in the clients interests, as they may think any successor practice is better than none.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Clients will have confidence in sole practitioner/small firms if they know that any valid claim post 6 years will be settled. Without the system in place it could prejudice competent sole practitioners/small firms.

More focus should be on funding the present system.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Yes amending MTC's would be advantageous but not help recently retired or about to retire solicitors. Protection for them and their clients need to be put into place.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

Yes it is likely to be very expensive if available at all. The consultation has stated there is presently very little appetite. Should this change it is likely to be expensive which could result in retired/ill solicitors not taking out the insurance which would not be in clients interests.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

There needs to be provision in place to ensure retired solicitors cannot afford it and not have a situation where the policy is not paid for as again this is not in the clients interest.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory

arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

There should be ongoing PSYROC on reasonable terms paid for by the profession as a whole. Clients have confidence any post 6 year claim would be settled without firms having to go with an unsuitable successor practice to be able to retire. Not all successor practices are the same as your firms and can be unsuitable for existing clients so forcing solicitors down this route can be detrimental to clients.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

There could be targeting to high claims areas of work but should be paid for by the profession. Indication from the consultation is £250 per firm per annum. These figures are easily affordable compared to PII premiums.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes SRA would retain control over an important public confidence issue and the public would continue to have confidence in the profession.

The SRA should keep control of the fund and seek additional/ongoing funding from the profession.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Moving to a situation where firms may not have PSYROC is only going to lead to the public having no confidence in the profession.

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I wish to adopt as my responses to all questions the replies given in the response submitted on behalf of Newcastle Law Society. I have read their response and agree with the submissions contained therein.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

as above

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

as above

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

as above

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

as above

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

as above

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

as above

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

as above

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

as above

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-

going provision of PSYROC?

as above

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

as above

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

as above

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

as above

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

as above

25. 15) Do you have information on impacts to inform our assessments?

asabove

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I am concerned that any decision by the SRA to close SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts (WTW) who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

I believe the SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

SIF should continue in order to protect consumers of legal services from being unable to gain redress for long-tail claims. The SRA makes clear that it recognises the problems there will be for consumers trying to pursue claims against solicitors who have retired, disappeared or deceased. Consumers will have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. We do not need to spell out those potential problems there.

To close SIF would also pose a threat to diversity, client choice, and access to justice by creating barriers to setting up small firms, and barriers to firms undertaking what are fundamental and crucial areas of work (such as conveyancing, wills and probate). To close SIF would mean the long-term erosion of a diverse profession and a steady reduction in consumer choice.

I would respectfully point out that the SRA is supposed to be improving access to justice, and encouraging an independent, strong, diverse and effective legal profession. (Regulatory objectives c and f.)

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

As set out above, in the absence of PSYROC claimants may have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. This is why I support the Law Society's proposal that a levy on firms to maintain the SIF would be a proportionate response to provide ongoing protection for consumers.

A decision to keep SIF going would be a proportionate and wholly justified course of action. The solution to keeping SIF continuing indefinitely is obvious and straightforward. No other solution is available for the provision of PSYROC.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I agree with the view that to amend the MTCs to require insurers to provide PSYROC would lead to hugely increased and unsustainable PII premiums, forced firm closures, and departures of insurers from the market. The insurance industry is making that very clear to the Law Society.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Apart from what I have already said, no. This question is one for the insurance industry.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The Law Society have been advised that this is not a feasible option and I agree. No insurance would be available. The insurance industry has already confirmed that. Please see the comments above.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I agree with the SRA analysis that this is not a feasible option.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I agree with the Law Society's position that PSYROC should not, and could not, be provided through a master policy. A suitable vehicle (SIF) is already in place. SIF works and is viable into the indefinite future with extra funding by way of a compulsory levy on the profession. There is absolutely no point in trying to reinvent the wheel. In any event is highly unlikely that there will ever be a master policy available in the market, at any cost. I understand that the insurance industry has already said as much to the Law Society.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

See the comments above. Following extensive investigation by the Law Society it appears that an alternative indemnity model is not feasible.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No. This is a question for insurers.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I agree with the SRA analysis that targeted PSYROC would be counterproductive. A potentially small savings in costs would be offset by increased administration and its associated costs, and uncertainty and confusion for affected consumers, and a lower level of protection. This would not be a sensible solution.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle, SIF. No, it should not be targeted for reasons stated above.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See above.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

As stated above, regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle SIF, although I acknowledge that this will require financial support.

The Law Society have suggested, and I agree, that SIF can be financed by a small annual levy imposed on the practising profession with the PC fee. Calculations suggest that this could be an individual levy of approximately £16 per annum or a flat firm levy of approximately £240 per annum. They and I favour a flat firm levy. This is a simple and obvious solution and I understand from the Law Society is a solution suggested by WTW in their actuarial analysis commissioned by the SRA.

I understand from the Law Society that no other insurance solution exists. There is no open market insurance solution available,

nor is there ever likely to be. This has been explored at length by The Law Society, and also it seems by the SRA. And I understand that the insurance industry would never be interested in operating a master policy, nor being involved in any "alternative indemnity scheme". I understand that the SRA acknowledges this.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I do not think these proposed mitigations are realistic, nor are they proportionate to the risks to the public and the damage to public confidence if SIF is closed. They will certainly not mitigate the damage that will be caused to public protection, the reputation of the profession, and public confidence in the profession.

I consider that the notion of the SRA "ensuring appropriate information is provided to clients at the time a firm closes" is misguided. It is not credible to insist on a closing firm telling their clients how to sue them if they have been negligent. The same applies to developing guidance to consumers when they have a claim. The mitigation factor is minimal. Added to this will be the additional costs of the SRA setting up and running a department to deal with consumers' queries and concerns.

25. 15) Do you have information on impacts to inform our assessments?

See the comments above.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I consider PSYROC should continue as a one size fits all for the benefit of clients and solicitors alike

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Losing PSYROC may lead to actions against retired solicitors of limited means and faculties to the detriment of claimants

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

To require insurers to provide PSYROC cover will lead to unsustainable rises in PII premia

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

The question is one for the insurance industry.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The Law Society has been advised this is not a feasible option.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I agree with the SRA that this is not a feasible option.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I do consider that PSYROC should not and could not be provided through a master policy for reasons stated by the Law Society.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

I do not consider an alternative indemnity model is feasible

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

This is a question for insurers

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I agree with the SRA that targeted PSYROC would be counter productive.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

I agree PSYROC should be provided through the existing vehicle and should not be targeted

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See above

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes. See answer to Q 1 above

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

The proposed mitigations are not realistic or proportionate to the risks to the public.

25. 15) Do you have information on impacts to inform our assessments?

As raised in this reply.

3. Consultation questions

10.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I am concerned that any decision by the SRA to close SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts (WTW) who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

I believe the SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

SIF should continue in order to protect consumers of legal services from being unable to gain redress for long-tail claims. The SRA makes clear that it recognises the problems there will be for consumers trying to pursue claims against solicitors who have retired, disappeared or deceased. Consumers will have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. We do not need to spell out those potential problems there.

To close SIF would also pose a threat to diversity, client choice, and access to justice by creating barriers to setting up small firms, and barriers to firms undertaking what are fundamental and crucial areas of work (such as conveyancing, wills and probate). To close SIF would mean the long-term erosion of a diverse profession and a steady reduction in consumer choice.

I would respectfully point out that the SRA is supposed to be improving access to justice, and encouraging an independent, strong, diverse and effective legal profession. (Regulatory objectives c and f.)

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I consider that the notion of the SRA "ensuring appropriate information is provided to clients at the time a firm closes" is misguided. It is not credible to insist on a closing firm telling their clients how to sue them if they have been negligent. The same applies to developing guidance to consumers when they have a claim. The mitigation factor is minimal. Added to this will be the additional costs of the SRA setting up and running a department to deal with consumers' queries and concerns.

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See the comments above.

3. Consultation questions

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1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

: I am concerned that any decision by the SRA to close SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts (WTW) who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

I believe the SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

SIF should continue in order to protect consumers of legal services from being unable to gain redress for long-tail claims. The SRA makes clear that it recognises the problems there will be for consumers trying to pursue claims against solicitors who have retired, disappeared or deceased. Consumers will have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. We do not need to spell out those potential problems there.

To close SIF would also pose a threat to diversity, client choice, and access to justice by creating barriers to setting up small firms, and barriers to firms undertaking what are fundamental and crucial areas of work (such as conveyancing, wills and probate). To close SIF would mean the long-term erosion of a diverse profession and a steady reduction in consumer choice.

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A decision to keep SIF going would be a proportionate and wholly justified course of action. The solution to keeping SIF continuing indefinitely is obvious and straightforward. No other solution is available for the provision of PSYROC.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I agree with the view that to amend the MTCs to require insurers to provide PSYROC would lead to hugely increased and unsustainable PII premiums, forced firm closures, and departures of insurers from the market. The insurance industry is making that very clear to the Law Society.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Apart from what I have already said, no. This question is one for the insurance industry.

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5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The Law Society have been advised that this is not a feasible option and I agree. No insurance would be available. The insurance industry has already confirmed that. Please see the comments above

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

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No. This is a question for insurers

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I agree with the SRA analysis that targeted PSYROC would be counterproductive. A potentially small savings in costs would be offset by increased administration and its associated costs, and uncertainty and confusion for affected consumers, and a lower level of protection. This would not be a sensible solution.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle, SIF. No, it should not be targeted for reasons stated above

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See above

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

As stated above, regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle SIF, although I acknowledge that this will require financial support.

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I understand from the Law Society that no other insurance solution exists. There is no open market insurance solution available,

nor is there ever likely to be. This has been explored at length by The Law Society, and also it seems by the SRA. And I understand that the insurance industry would never be interested in operating a master policy, nor being involved in any "alternative indemnity scheme". I understand that the SRA acknowledges this.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I do not think these proposed mitigations are realistic, nor are they proportionate to the risks to the public and the damage to public confidence if SIF is closed. They will certainly not mitigate the damage that will be caused to public protection, the reputation of the profession, and public confidence in the profession.

I consider that the notion of the SRA "ensuring appropriate information is provided to clients at the time a firm closes" is misguided. It is not credible to insist on a closing firm telling their clients how to sue them if they have been negligent. The same applies to developing guidance to consumers when they have a claim. The mitigation factor is minimal. Added to this will be the additional costs of the SRA setting up and running a department to deal with consumers' queries and concerns.

25. 15) Do you have information on impacts to inform our assessments?

See the comments above

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

The analysis seems to be justifying the reason for closing SIF.

We need to think carefully about consumer protection and the effect that it could have on the public's perception of the profession. There are not a vast number of claims but it doesn't take many to get bad publicity.

I do not see how a levy of £240 per firm per annum (or £16 per lawyer per annum) can be regarded as increasing the costs for consumers. This would, presumably be paid with the Practising Certificate fee and would not be seen by the individual; solicitor and would merely be built into the overheads

I think that that the cross subsidy point is missing what happens in practice. It is inevitable that the majority of claims come from the smaller firms as they are the ones who tend to close on retirement and buy the run off cover. Some of us then go to work for larger firms.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

I do think that not only do we need to think about consumer protection but we need to think about the lawyers coming into the profession. They may not be aware of the risk of working for a firm that subsequently closes. This could affect the smaller firms disproportionately as lawyers may not want to work for these firms which again affects the public.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I think that this is unlikely to be available. I have been speaking to my firm's insurance brokers and there is no appetite in the market for extending. In view of the drop in insurers offering insurance I think it unlikely that they will offer it which will make insurance more expensive and cause even more firms to close because they will not be able to afford the premiums.

This does not help those of us who have already exceeded the six- year run off cover. What would you propose happens in that instance?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

I do not think that it will be possible and it would be irresponsible to close SIF if it is not available

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

I speak to my current firm's insurance broker regularly on the subject and I am told that there is no appetite for taking this risk on.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

My concern would be how long such a master insurance policy would last. I assume that this has previously been discussed by the SRA with insurers and hasn't been available as the closure of SIF has been discussed for a number of years.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I have no information about master policies but seriously doubt that they would be as effective as SIF.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

My view is that SIF should be kept in place. We accept that there would need to be contributions to maintain it but these do not seem excessive levies being suggested

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No further information.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I agree that limiting the scope doesn't work and probably adds to the administrative costs. A flat levy seems the fairest and clearest.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

NO. A flat levy seems fairest and clearest for both the profession and the consumers.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

Nothing further to add

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

I consider that PSYROC should continue to be provided within SRA. It is already set up and works and is clear to both the profession and clients. The proposed annual levy of £240 per firm is not an excessive amount and as mentioned above without it there could be unprotected clients and solicitors. I think that this is proportionate to the issue in hand. I do not believe that the SRA have come up with a realistic alternative to SIF.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I do not believe that the proposed actions adequately mitigate the risk to clients of firms that do not have PSYROC. I cannot see that SIF can be closed without a realistic long term solution in place and I cannot see that forthcoming from the insurers which leaves the profession to protect itself and the only viable solution I can see that has been put forward so far is to continue SIF with an annual levy from existing firms

25. 15) Do you have information on impacts to inform our assessments?

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:627 Data

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

we wish the status quo to continue whereby any firm closing buys six year run off PII cover and any claims after that are covered by SIF. There is also a consumer protection angle whereby the clients should not have to track down the individual solicitor who acted

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

See above it is not proportionate for liability to switch to personal solicitor liability

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

See above

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21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

See above

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See above

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

See above

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

See above

25. 15) Do you have information on impacts to inform our assessments?

See above

3. Consultation questions

10.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I consider it does not give sufficient weight to the fact that the fund was established to provide insurance cover for solicitors ceasing practise through retirement or otherwise on the understanding this would provide ongoing and adequate protection to consumers

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

I consider the concept of "proportionality" misconceived in this context.
It was not anticipated by solicitors paying into this fund over a lengthy period that this cover would cease during the period of their retirement.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

Cover should continue under the current S.I.F. model

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

PSYROC cover should continue on an ongoing basis.

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

I do not consider it practicable or sensible that PSYROC cover should continue only on a voluntary basis.

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

If similar to S.I.F this would appear reasonable.

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

This should if necessary be explored by expert brokers.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

I consider the suggestion that the remaining S.I.F. Fund could be used for anything other than it's original purpose to be entirely inappropriate.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential

operating models for and costs of establishing and maintaining an alternative indemnity fund?

This is a matter for expert advice.

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Inappropriate the cover should be for the whole profession

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Cover should be for the whole profession.

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

The S.I.F.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

In my view that situation should not be allowed to arise as it would be very damaging to public confidence in the Profession.

24. 15) Do you have information on impacts to inform our assessments?

I consider that the assessments are too narrow in focusing on actuarial and insolvency issues rather than addressing the practical effects on retired solicitors and the general confidence of the public in the profession and its ability to provide comprehensive, continuing and appropriate cover.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

It is concerning that it is no longer being continued and makes me worried about the risk of being personally liable

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

I think that it should continue to be provided, to leave solicitors without cover is unfair

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I am concerned if it causes a rise in costs for Firms, as it is a challenging time at present and additional costs are worrying

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please

give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

My main concern is ensuring that in no way can a solicitor become personally liable if their firm closes through no fault of their own

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

It focuses too much on monetary considerations as opposed to doing what is right for members of the profession / public

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

I believe the continuation of the SIF in whatever form using residual funds is more realistic than attempting an open market solution

although amending the MTC's to oblige insurers to provide cover would be preferable to no solution at all.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

This would be a viable alternative and the thinking that insurers would vacate the market in any meaningful way is misgu

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

The cost to member firms is minimal and they benefit in many ways by being regulated members of the profession. Firms have to take a rounded approach and accept both benefits and obligations for the greater good

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

I have tried to gain such insurance but have been told it is not available

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I think the best option using residual SIF funds is the continuation of the SIF but if a master policy is the only way forward I would accept this with the amendment of the MTC's

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I suspect the open market will not provide a satisfactory solution unless compulsion was introduced through amending MTC's

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

no, other than to say it is not acceptable to throw hardworking retired members of the profession onto the railway tracks when over the years they have been bound by professional rules and could expect ongoing protection which is being removed at a time in their lives when they should have expected better from the profession and their regulators

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory

arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

no,except as above

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

no

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

i believe the profession as a whole should bear the responsibility as well as the benefits they enjoy

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

I have been running a solicitor's firm for 40 years both in a small partnership and as a sole practitioner for the last 33 years. I have accepted not being able to adopt limited liability until recently because I assumed that I would be protected by a profession I respected and was proud to be a member of. I deplore the recent attempts to "let dog eat dog" and targeting rather than to continue to find solutions for all. To do otherwise leads to fragmentation and a "me first mentality". It really depends on what type of organisation one wants to produce in the future.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

There has to be a safety net. It is just not right to tell members who have or are about to retire that you will be cut adrift with no alternative private market solution available.

25. 15) Do you have information on impacts to inform our assessments?

I have served the profession/public for 45 years and do not consider it appropriate to be left without protection from claims when the insurance options which were indicated as being available before I retired no longer seem to be so. I retired as a result of the covid pandemic which no one expected. I have a wife, to whom I have been married for 48 years, who is a vulnerable adult being on immunosuppressant drugs as a result of having suffered lupus for many years. I could possibly have struggled on but decided that Covid was going to affect us all for some time to come. I had read articles in the Gazette suggesting PSYROC would be available by way of open market insurance but that has not come to pass. I feel I and others in similar positions should not be abandoned in this way having supported a profession for many years and facing a scenario where one is basically being given the message "tough!"

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Others have commented

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

The SIF is an established entity and serves a public need.

Everyone member of the public and in this term I include anyone working in the legal profession and even SRA employees, will have a need for legal services at some point in their lives. The majority of cases will proceed and be satisfactorily concluded. There will be some that go wrong and will probably be covered by the practice's insurance.

However, coverage assumes that insurance in place. If a run-off period has expired and the SIF no-longer exists then there is none.

It is easy to view this whole issue of the SIF as an abstract issue, but we are talking about the lives of individuals. By way of example, a small firm takes on a trainee who qualifies. Post qualification the trainee handles mainly personal injury work, but in a partners absence completes the writing of a will that partner had started, as the client was about to go abroad to work for six months and needed it before they went.

A couple of years later the former trainee leaves to work for another firm, gets married and there is a child on the way.

A few more years pass and unbeknown to the former trainee, one partner left the firm and died. He does not have much by way of assets. The other partner suffered from had ill-health, such that he was not able to work much and had to close the practice as there was nothing worth selling to a successor practice.

A personal injury case that the young solicitor worked on involved a minor who has now turned 18 and challenges the settlement reached on grounds the firm failed to properly put before the court all the relevant evidence to maximise the award.

The estate of the testator who went aboard and had died will was incompetently handled by the partner because of his ill-health and the beneficiaries are challenging this.

Neither of the above can pursue the partners as one is dead with no assets to speak of, the other is now in a hospice and all his assets have been used to pay for care. The six-year run-off cover has expired.

Out of the blue the young solicitor received letters before action relating to each of the above claims. He has no papers, no insurance, a wife and young child and a large mortgage.

Without the SIF's presence, he has no body to turn to.

Without the SIF's presence the claimants are unlikely to recover anything

The young solicitor has all the stress and worry of having to deal with the claims. The stress causes him problems at work, such that he loses his job. His marriage breaks down.

None of the above is far-fetched, but the consequences for all affected are serious.

If 11% of all claims fall outside the 6-year run-off and the average cost of each claim is £34,000, this means that those members of the public affected miss out on substantial compensation.

In summary it is proportionate to retain the SIF as it fulfils the public protection remit of the SRA. By analogy, there is the Compensation Fund which is maintained and to which solicitors contribute. This fulfils a public protection function as well. The SIF is set up already and it works.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

It is a known fact that the Law Society has been trying for over three years to find an insurance-market led replacement without success.

There are major practical issues anyway. How is an insurance underwriter to work out what to charge, on what information? Also it presupposes that an individual solicitor can afford the annual premium set. What if they 'fall on hard times'?

There is simply too much uncertainty to make PSYROC via insurance a viable substitute. If there were, there would be a product in place already.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please

give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

10.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

yes

we fully understand your analysis but respectfully disagree with your conclusions and response for ongoing position
we agree with the law societys detailed response as endorsed by a large number of local law societies

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

we think it is not only proportionate but vital that PSYROC is provided via SIF (or similar) albeit further funding of sif will become necessary

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

we think sif should continue and be funded by regulated law firms on an annual mutual basis dependent on size of firm . The extent of funding required to be considered annually and based on claims advice and experience

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

we consider it should continue as at present . If , as seems highly likely further funding is needed this can be easily provided as a small addition to law firm PC fees or some other specific levy -we feel firms not individuals should pay a levy for ease of administration

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

totally unrealistic in current climate

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

unlikely to be established and unnecessary if sif continues to be funded by the current profession going forward

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

unrealistic

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

no

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory

arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

no

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

no

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

targeted to existing law firms only -funding should be on mutual basis based on size of firm

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

no

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

sif as present . Simple scheme easily understood by profession and public and with a track record .

why change it ? the only issue is funding and that can be dealt with by funding by existing law firms on a mutual basis based on size of firm

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

without a fund in place it is a free for all with uncertainty for public and all solicitors alike due to the absence of an alternative insurer

24. 15) Do you have information on impacts to inform our assessments?

no

3. Consultation questions

10.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I am concerned that any decision by the SRA to close SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts (WTW) who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

I believe the SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

SIF should continue in order to protect consumers of legal services from being unable to gain redress for long-tail claims. The SRA makes clear that it recognises the problems there will be for consumers trying to pursue claims against solicitors who have retired, disappeared or deceased. Consumers will have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. We do not need to spell out those potential problems there.

To close SIF would also pose a threat to diversity, client choice, and access to justice by creating barriers to setting up small firms, and barriers to firms undertaking what are fundamental and crucial areas of work (such as conveyancing, wills and probate). To close SIF would mean the long-term erosion of a diverse profession and a steady reduction in consumer choice.

I would respectfully point out that the SRA is supposed to be improving access to justice, and encouraging an independent, strong, diverse and effective legal profession. (Regulatory objectives c and f.)

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

As set out above, in the absence of PSYROC claimants may have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. This is why I support the Law Society's proposal that a levy on firms to maintain the SIF would be a proportionate response to provide ongoing protection for consumers.

A decision to keep SIF going would be a proportionate and wholly justified course of action. The solution to keeping SIF continuing indefinitely is obvious and straightforward. No other solution is available for the provision of PSYROC.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I agree with the view that to amend the MTCs to require insurers to provide PSYROC would lead to hugely increased and unsustainable PII premiums, forced firm closures, and departures of insurers from the market. The insurance industry is making that very clear to the Law Society.

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Apart from what I have already said, no. This question is one for the insurance industry.

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The Law Society have been advised that this is not a feasible option and I agree. No insurance would be available. The insurance industry has already confirmed that. Please see the comments above.

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I agree with the SRA analysis that this is not a feasible option.

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I agree with the Law Society's position that PSYROC should not, and could not, be provided through a master policy. A suitable vehicle (SIF) is already in place. SIF works and is viable into the indefinite future with extra funding by way of a compulsory levy on the profession. There is absolutely no point in trying to reinvent the wheel. In any event is highly unlikely that there will ever be a master policy available in the market, at any cost. I understand that the insurance industry has already said as much to the Law Society.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

See the comments above. Following extensive investigation by the Law Society it appears that an alternative indemnity model is not feasible.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No. This is a question for insurers.

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I agree with the SRA analysis that targeted PSYROC would be counterproductive. A potentially small savings in costs would be offset by increased administration and its associated costs, and uncertainty and confusion for affected consumers, and a lower level of protection. This would not be a sensible solution.

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle, SIF. No, it should not be targeted for reasons stated above.

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See above.

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

As stated above, regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle SIF, although I acknowledge that this will require financial support.

The Law Society have suggested, and I agree, that SIF can be financed by a small annual levy imposed on the practising profession with the PC fee. Calculations suggest that this could be an individual levy of approximately £16 per annum or a flat firm levy of approximately £240 per annum. They and I favour a flat firm levy. This is a simple and obvious solution and I understand from the Law Society is a solution suggested by WTW in their actuarial analysis commissioned by the SRA.

I understand from the Law Society that no other insurance solution exists. There is no open market insurance solution available,

nor is there ever likely to be. This has been explored at length by The Law Society, and also it seems by the SRA. And I understand that the insurance industry would never be interested in operating a master policy, nor being involved in any "alternative indemnity scheme". I understand that the SRA acknowledges this.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I do not think these proposed mitigations are realistic, nor are they proportionate to the risks to the public and the damage to public confidence if SIF is closed. They will certainly not mitigate the damage that will be caused to public protection, the reputation of the profession, and public confidence in the profession.

I consider that the notion of the SRA "ensuring appropriate information is provided to clients at the time a firm closes" is misguided. It is not credible to insist on a closing firm telling their clients how to sue them if they have been negligent. The same applies to developing guidance to consumers when they have a claim. The mitigation factor is minimal. Added to this will be the additional costs of the SRA setting up and running a department to deal with consumers' queries and concerns.

24. 15) Do you have information on impacts to inform our assessments?

See the comments above.

3. Consultation questions

10.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Yes, I do not agree with your analysis or conclusion. The confidence which the public has in the legal profession relates to their certainty that their rights to be appropriately compensated are protected and whether that is one consumer or more involved, the risk of undermining that is not compensated by savings of thousands of pounds in administration costs nor in a cost benefit analysis of the sums involved and nor in throwing away the experience of the SIF. The legal profession exists to provide a wide variety of services, and it has not been decided that wills probates and trusts should no longer form part of that breadth and so to target that subset for special write off is not warranted or respectful and fails to take account of the strength derived from unity and the interdependence within the legal profession. It is also to show little respect for the "person in the street" who does not have material resources and can ill afford to lose this cover.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

Proportionality, in the light of its ongoing costs appears to be your primary consideration and that should not be the case. It is also the protection of the public and not just the "well-off" public; the solicitors who have to cover these claims are also members of the public. The level of consumer protection, as I have already said is not just the sums involved but also the loss of confidence in the profession due to claims not being met and the loss of reputation of the legal profession at it's apparent heartless disregard for seemingly "the white male", but for all it's members.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

This does not appear to be a viable option, what insurer would want to take this on?

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

No.

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

It is a non-starter for the reasons given.

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

No, see above.

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No, see above.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Yes, a levy on every individual solicitor including on the retired is proportionate and cost effective and the appropriate further funding model. You are not acting in the public interest to seemingly solely allow the costs to direct your thinking relative to the claims experience. Why is it in the interests of the public to effectively allow those with money and other resources to pursue their entitlements direct in the courts and not through SIF. See also above.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

The current regime should be continued with a levy as above.

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I do not agree with this. See above.

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

No.

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No comment.

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes, through the SIF as at present with a levy. The established experience of the SIF would be maintained, the surplus funds would be further used, the level of consumer protection would be maintained which would continue to solidify the credibility of the legal profession that it is still a profession and can be trusted and that it is not just for the well off and well heeled. Any claim on the fund after all makes no distinction, rich as well as poor can apply. Whilst the mathematical cost analysis has relevance, it cannot be the driving force alone, proportionality is not just a simple maths equation and proportionality impacts on the public interest, the confidence the public has in the legal profession. The levy amount across the board is insignificant but would have great effects in continuing the cover.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I think they are inadequate and no solution especially for those who are retired who if successfully sued have no time left to recover their losses and it appears have no viable insurance alternative.

24. 15) Do you have information on impacts to inform our assessments?

No except that in my view the in effect purposeful bankruptcy or impoverishment of even one member of the legal profession is not something I am prepared to stand with especially when those members have no viable alternative to protect themselves, and have had no opportunity to accept this risk before taking on the liabilities.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

Public confidence is not susceptible to actuarial assessment.

One can speculate about possible consequences and as to the sensible advice which consumer groups may offer and how such may resonate with consumers, for example:

'You can have confidence that solicitors' practices must have full professional indemnity insurance in accordance with the minimum terms laid down. However, if the practice you instructed should close down without a successor – not common but it happens – that insurance will only cover claims notified within the 6 years after closure and if you try and make a negligence claim after that you will be left pursuing the individual solicitors themselves or simply coping with the loss as best you can. The average loss paid out on such a claim of £X is a hefty amount of money but in any individual case the loss suffered could be less or very considerably more.

So that if, say, there turns out to have been a problem with the title of your dream home for life - which should have been spotted etc and wasn't - you could eventually find yourself with a life-altering loss with no easy remedy.

In short there is something of a reverse lottery going on nowadays. To coin a phrase, "It could be you".'

It is plainly in the public interest for the public to have access to an independent legal profession. For that access to be real it must instil public confidence. Removing PSYROC – the 'backstop' – is to give the public reason for doubt.

Following a withdrawal of PSYROC it is likely that cases of unmet or unmeetable PSYRO Claims will receive public attention/scrutiny and the more so because of the general use of social media. Neither social media nor for that matter news agencies are required to use the same standards as lawyers.

It is not an issue which will go away. We might find that 'SIF' had to be re-invented at greater expense in order to preserve public confidence.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

'SIF poor value for providing with PSYROC'

At first sight this may be correct if you focus on the narrow picture of the average number of claims and average cost per claim set against the overall size and expense of continuing to run a dedicated organization. A pre-existing commercial entity might be able to suggest a cheaper cost.

But is there a wider picture to consider?

A dedicated organization is exactly that. It has no other purpose. Side issues or distractions if any should be limited. It can to a substantial extent be planned and reviewed at appropriate intervals. There is no profit issue. Come to that no profit to factor in to the cost. Arguably it should also provide a more stable solution in the medium and longer terms.

Cost/Benefit and Targeted contribution

If the required additional funding is £17 per practising solicitor why is that considered a large amount or too much? It is the tiniest fraction of any individual solicitor's likely costs target. If funding is made by a per firm contribution that would in real terms favour the larger firms which overall benefit less from PSYROC through SIF.

For that money:

1. the public and profession get the benefit of PSYROC
2. the paying public can be confident that for the presently-foreseeable future PSYROC is in place and there is no question of a 'lottery'.
3. solicitors thinking of starting their own practices that there is back-up if their practices close. This factor is vital for the

promotion of proper competition. (In the absence of such generally-applicable PSYROC both the SRA and the Law Society will of course feel obliged to bring this fact to such solicitors' attention.)

If of course the profession is to move generally to LLPs and limited companies then perhaps PSYROC will become less important as the profession evolves.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Please see my answer to question 2.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes, I do. I consider that PSYROC should continue through SIF. Please refer my responses to questions 1 and 2.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

Any system or strategy which does not deliver that PSYROC for the benefit of clients of all closed firms is in my view fatally flawed. The actions you propose are unlikely to be more than very partially successful and that only in respect of future closures. Again for the client it would become a lottery.

25. 15) Do you have information on impacts to inform our assessments?

Please refer to my answer to question 2.

Ongoing public perception of and confidence in solicitors remains of considerable importance. This affects affects the large mass of consumers save presumably the larger or largest businesses.

PSYROC or lack of it also affects the solicitors from closed practices although many such solicitors currently are part of the cohort which contributed towards the SIF surplus presently being used as funding and would presumably remain an essential plank of funding for some time.

On the basis of firm-based annual contribution the amount of cross-subsidy by larger firms would be very small indeed and in keeping with solicitors being one profession. The amount of cross-subsidy by the clients of such firm would seem be tiny to the point of being not statistically significant. An objection of cross-subsidy in that respect could then only be sustained on a matter of principle.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I am concerned that any decision by the SRA to close SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts (WTW) who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

I believe the SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

SIF should continue in order to protect consumers of legal services from being unable to gain redress for long-tail claims. The SRA makes clear that it recognises the problems there will be for consumers trying to pursue claims against solicitors who have retired, disappeared or deceased. Consumers will have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. We do not need to spell out those potential problems there.

To close SIF would also pose a threat to diversity, client choice, and access to justice by creating barriers to setting up small firms, and barriers to firms undertaking what are fundamental and crucial areas of work (such as conveyancing, wills and probate). To close SIF would mean the long-term erosion of a diverse profession and a steady reduction in consumer choice.

I would respectfully point out that the SRA is supposed to be improving access to justice, and encouraging an independent, strong, diverse and effective legal profession. (Regulatory objectives c and f.)

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

As set out above, in the absence of PSYROC claimants may have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. This is why I support the Law Society's proposal that a levy on firms to maintain the SIF would be a proportionate response to provide ongoing protection for consumers.

A decision to keep SIF going would be a proportionate and wholly justified course of action. The solution to keeping SIF continuing indefinitely is obvious and straightforward. No other solution is available for the provision of PSYROC.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I agree with the view that to amend the MTCs to require insurers to provide PSYROC would lead to hugely increased and unsustainable PII premiums, forced firm closures, and departures of insurers from the market. The insurance industry is making that very clear to the Law Society.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Apart from what I have already said, no. This question is one for the insurance industry.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The Law Society have been advised that this is not a feasible option and I agree. No insurance would be available. The insurance industry has already confirmed that. Please see the comments above.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I agree with the SRA analysis that this is not a feasible option.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I agree with the Law Society's position that PSYROC should not, and could not, be provided through a master policy. A suitable vehicle (SIF) is already in place. SIF works and is viable into the indefinite future with extra funding by way of a compulsory levy on the profession. There is absolutely no point in trying to reinvent the wheel. In any event is highly unlikely that there will ever be a master policy available in the market, at any cost. I understand that the insurance industry has already said as much to the Law Society.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

See the comments above. Following extensive investigation by the Law Society it appears that an alternative indemnity model is not feasible.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No. This is a question for insurers.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I agree with the SRA analysis that targeted PSYROC would be counterproductive. A potentially small savings in costs would be offset by increased administration and its associated costs, and uncertainty and confusion for affected consumers, and a lower level of protection. This would not be a sensible solution.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle, SIF. No, it should not be targeted for reasons stated above.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See above.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

As stated above, regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle SIF, although I acknowledge that this will require financial support.

The Law Society have suggested, and I agree, that SIF can be financed by a small annual levy imposed on the practising profession with the PC fee. Calculations suggest that this could be an individual levy of approximately £16 per annum or a flat firm levy of approximately £240 per annum. They and I favour a flat firm levy. This is a simple and obvious solution and I understand from the Law Society is a solution suggested by WTW in their actuarial analysis commissioned by the SRA.

I understand from the Law Society that no other insurance solution exists. There is no open market insurance solution available,

nor is there ever likely to be. This has been explored at length by The Law Society, and also it seems by the SRA. And I understand that the insurance industry would never be interested in operating a master policy, nor being involved in any "alternative indemnity scheme". I understand that the SRA acknowledges this.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I do not think these proposed mitigations are realistic, nor are they proportionate to the risks to the public and the damage to public confidence if SIF is closed. They will certainly not mitigate the damage that will be caused to public protection, the reputation of the profession, and public confidence in the profession.

I consider that the notion of the SRA "ensuring appropriate information is provided to clients at the time a firm closes" is misguided. It is not credible to insist on a closing firm telling their clients how to sue them if they have been negligent. The same applies to developing guidance to consumers when they have a claim. The mitigation factor is minimal. Added to this will be the additional costs of the SRA setting up and running a department to deal with consumers' queries and concerns.

25. 15) Do you have information on impacts to inform our assessments?

See the comments above.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

In principle I would prefer PSYROC to continue but I accept the arguments about the high costs of continue to manage the fund and claims.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

No, save I personally would like to continue to have the 'sleep easy' factor available which could be difficult to obtain via insurers in future.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I can see this could have some benefits to prolonging the funds available.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

See above.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

This does not seem likely to be freely available at a reasonable cost.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

This could be an alternative, as long as it was at a reasonable cost.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

No.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

No.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No, save see above.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

No.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Yes, if this keeps the costs down. It makes sense to target it at the departments where there are the most claims as long as there is some assistance to other areas if it arose.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No save above.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Ideally it would continue under the SIF but improvements needs to be made to cut the management costs.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

No.

25. 15) Do you have information on impacts to inform our assessments?

No.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I am concerned that any decision by the SRA to close SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts (WTW) who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

I believe the SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

SIF should continue in order to protect consumers of legal services from being unable to gain redress for long-tail claims. The SRA makes clear that it recognises the problems there will be for consumers trying to pursue claims against solicitors who have retired, disappeared or deceased. Consumers will have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. We do not need to spell out those potential problems there.

To close SIF would also pose a threat to diversity, client choice, and access to justice by creating barriers to setting up small firms, and barriers to firms undertaking what are fundamental and crucial areas of work (such as conveyancing, wills and probate). To close SIF would mean the long-term erosion of a diverse profession and a steady reduction in consumer choice.

I would respectfully point out that the SRA is supposed to be improving access to justice, and encouraging an independent, strong, diverse and effective legal profession. (Regulatory objectives c and f.)

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

As set out above, in the absence of PSYROC claimants may have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. This is why I support the Law Society's proposal that a levy on firms to maintain the SIF would be a proportionate response to provide ongoing protection for consumers.

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13.

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I agree with the view that to amend the MTCs to require insurers to provide PSYROC would lead to hugely increased and unsustainable PII premiums, forced firm closures, and departures of insurers from the market. The insurance industry is making that very clear to the Law Society.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Apart from what I have already said, no. This question is one for the insurance industry.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The Law Society have been advised that this is not a feasible option and I agree. No insurance would be available. The insurance industry has already confirmed that. Please see the comments above.

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22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See above.

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I understand from the Law Society that no other insurance solution exists. There is no open market insurance solution available,

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24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I do not think these proposed mitigations are realistic, nor are they proportionate to the risks to the public and the damage to public confidence if SIF is closed. They will certainly not mitigate the damage that will be caused to public protection, the reputation of the profession, and public confidence in the profession.

I consider that the notion of the SRA "ensuring appropriate information is provided to clients at the time a firm closes" is misguided. It is not credible to insist on a closing firm telling their clients how to sue them if they have been negligent. The same applies to developing guidance to consumers when they have a claim. The mitigation factor is minimal. Added to this will be the additional costs of the SRA setting up and running a department to deal with consumers' queries and concerns.

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See the comments above.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I am concerned that any decision by the SRA to close SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts (WTW) who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

I believe the SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

SIF should continue in order to protect consumers of legal services from being unable to gain redress for long-tail claims. The SRA makes clear that it recognises the problems there will be for consumers trying to pursue claims against solicitors who have retired, disappeared or deceased. Consumers will have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. We do not need to spell out those potential problems there.

To close SIF would also pose a threat to diversity, client choice, and access to justice by creating barriers to setting up small firms, and barriers to firms undertaking what are fundamental and crucial areas of work (such as conveyancing, wills and probate). To close SIF would mean the long-term erosion of a diverse profession and a steady reduction in consumer choice.

I would respectfully point out that the SRA is supposed to be improving access to justice, and encouraging an independent, strong, diverse and effective legal profession. (Regulatory objectives c and f.)

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

As set out above, in the absence of PSYROC claimants may have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. This is why I support the Law Society's proposal that a levy on firms to maintain the SIF would be a proportionate response to provide ongoing protection for consumers.

A decision to keep SIF going would be a proportionate and wholly justified course of action. The solution to keeping SIF continuing indefinitely is obvious and straightforward. No other solution is available for the provision of PSYROC.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I agree with the view that to amend the MTCs to require insurers to provide PSYROC would lead to hugely increased and unsustainable PII premiums, forced firm closures, and departures of insurers from the market. The insurance industry is making that very clear to the Law Society.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Apart from what I have already said, no. This question is one for the insurance industry.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The Law Society have been advised that this is not a feasible option and I agree. No insurance would be available. The insurance industry has already confirmed that. Please see the comments above.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I agree with the SRA analysis that this is not a feasible option.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I agree with the Law Society's position that PSYROC should not, and could not, be provided through a master policy. A suitable vehicle (SIF) is already in place. SIF works and is viable into the indefinite future with extra funding by way of a compulsory levy on the profession. There is absolutely no point in trying to reinvent the wheel. In any event is highly unlikely that there will ever be a master policy available in the market, at any cost. I understand that the insurance industry has already said as much to the Law Society.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

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1. The SRA's position is that it is not its role to protect solicitors. However, SIF was established under section 37 of the Solicitors Act 1974, the provisions of which protect not only consumers, whose interests must of course be the first consideration, but also solicitors and their staff: *Swain v The Law Society* [1983] 1 AC 598 at p.618 B-C. Amendments to section 37 in the LSA 2007 did not affect this. (source: Legal Risk LLP <https://www.legalrisk.co.uk/publications/riskupdate-january-2022/>)

2. Whilst there is a supply of funds to meet a clear demand for PSYROC cover, the scheme should continue post 30th September 2022 and be reviewed at regular intervals as and when needs cease ("if it's not broke, why fix it?").

3. There is also the major problem of what happens to any money post 30th September not held back in reserve for claims intimated before the arrangement is terminated, which sum will be substantial.

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Any action must eliminate the risk for all.

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The SRA's draft Equality Impact Assessment includes shortcomings:

1. The data collated and analysed is limited to the impact based on:

- solicitors - this should include staff and consumers who come under the SRA's remit

- only a few protected characteristics rather than all and those solicitors coming from lower socio-economic backgrounds

- historic claims - it should consider future potential claims in the light of demographic changes.

2. It confirms that certain protected characteristics are impacted and yet goes on to say that the impact is "neutral"; this appears to be a contradiction in terms.

3. It states "These are issues we will consider further in the light of responses to the current consultation" - the onus surely is on the SRA to show there is no equality impact; it is not on solicitors, their staff, consumers and other stakeholders to prove there is.

4. The aging population is living longer and as this issue affects retired lawyers/staff/aged customers, this group is more likely to be adversely impacted if not protected.

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To close SIF would also pose a threat to diversity, client choice, and access to justice by creating barriers to setting up small firms, and barriers to firms undertaking what are fundamental and crucial areas of work (such as conveyancing, wills and probate). To close SIF would mean the long-term erosion of a diverse profession and a steady reduction in consumer choice. I would respectfully point out that the SRA is supposed to be improving access to justice, and encouraging an independent, strong, diverse and effective legal profession.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

As set out in 1, in the absence of PSYROC, claimants may have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. This is why I support the Law Society's proposal that a levy on firms to maintain the SIF would be a proportionate response to provide ongoing protection for consumers.

A decision to keep SIF going would be a proportionate and wholly justified course of action. The solution to keeping SIF continuing indefinitely is obvious and straightforward. No other solution is available for the provision of PSYROC.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I agree with the view that to amend the MTCs to require insurers to provide PSYROC would lead to hugely increased and unsustainable PII premiums, forced firm closures, and departures of insurers from the market. The insurance industry is making that very clear to the Law Society.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Apart from what I have already said, no. This question is one for the insurance industry.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The Law Society have been advised that this is not a feasible option and I agree. No insurance would be available. The insurance industry has already confirmed that. Please see the comments above.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I agree with the SRA analysis that this is not a feasible option.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I agree with the Law Society's position that PSYROC should not, and could not, be provided through a master policy. A suitable vehicle (SIF) is already in place. SIF works and is viable into the indefinite future with extra funding by way of a compulsory levy on the profession. There is absolutely no point in trying to reinvent the wheel. In any event is highly unlikely that there will ever be a master policy available in the market, at any cost. I understand that the insurance industry has already said as much to the Law Society.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

See the comments above. Following extensive investigation by the Law Society it appears that an alternative indemnity model is not feasible.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No. This is a question for insurers.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I agree with the SRA analysis that targeted PSYROC would be counterproductive. A potentially small savings in costs would be offset by increased administration and its associated costs, and uncertainty and confusion for affected consumers, and a lower level of protection. This would not be a sensible solution.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle, SIF. No, it should not be targeted for reasons stated above.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See above

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

As stated above, regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle SIF, although I acknowledge that this will require financial support.

The Law Society have suggested, and I agree, that SIF can be financed by a small annual levy imposed on the practising profession with the PC fee. Calculations suggest that this could be an individual levy of approximately £16 per annum or a flat firm levy of approximately £240 per annum. They and I favour a flat firm levy. This is a simple and obvious solution and I understand from the Law Society is a solution suggested by WTW in their actuarial analysis commissioned by the SRA.

I understand from the Law Society that no other insurance solution exists. There is no open market insurance solution available, nor is there ever likely to be. This has been explored at length by The Law Society, and also it seems by the SRA. And I understand that the insurance industry would never be interested in operating a master policy, nor being involved in any "alternative indemnity scheme". I understand that the SRA acknowledges this.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I do not think these proposed mitigations are realistic, nor are they proportionate to the risks to the public and the damage to public confidence if SIF is closed. They will certainly not mitigate the damage that will be caused to public protection, the reputation of the profession, and public confidence in the profession.

I consider that the notion of the SRA "ensuring appropriate information is provided to clients at the time a firm closes" is misguided. It is not credible to insist on a closing firm telling their clients how to sue them if they have been negligent. The same applies to developing guidance to consumers when they have a claim. The mitigation factor is minimal. Added to this will be the additional costs of the SRA setting up and running a department to deal with consumers' queries and concerns.

25. 15) Do you have information on impacts to inform our assessments?

See the comments above.

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I disagree with your conclusion in para.54. Given that the funds was established for this purpose, it is absolutely proportionate for the funds to be used as they currently are. PSYROC is required to protect consumers and to keep consumer confidence in regulated legal provision.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

If there is an alternative way for the profession to continue providing PSYROC then that is something which could be considered. I believe that PSYROC must be continued but but it is fair to consider alternative methods.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

It appears from your analysis that you believe that the current SIF provision of PSYROC would be preferable to amending the MTCs. I concur but if the SIF is ended, the MTCs must be amended, as PSYROC must continue.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

PSYROC is required for consumer confidence in the regulated legal sector and therefore the expense of complying with amended MTCs is worthwhile.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

I do not believe that PSYROC should be voluntary. It would create two classes of client protection levels, yet clients would be unlikely to know how protected they were until it was too late.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

No

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

Only that a master policy would be more cost-effective if compulsory.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Your analysis suggests to me that SIF should remain as it appears to be the most efficient provider of PSYROC. However, if the decision to end SIF is made, there should be further research.

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

Has research been done into the availability of top-up PSYROC insurance on top of targeted (reduced) SIF?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

PSYROC could be targeted for cases arising from files opened in the future, provided that top-up insurance was available. Old files prior to the change should be eligible for 100% PSYROC.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

Yes, for consumer confidence, and through whatever mechanism seems most efficient. At any event, there should be no retrospective reduction in cover, and there should be no reduction whatsoever without an alternative mechanism being available.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

You make no proposal to mitigate the risks to clients of firms already closed. At the very minimum, PSYROC should continue for firms already closed.

25. 15) Do you have information on impacts to inform our assessments?

Claims may be relatively low but their impact is likely to be disproportionately high both on the individual consumers and on the retired solicitors. As these claims disproportionately affect sole practices and small firms, the impact of the claims is likely to be higher on "little people", whether they are ordinary home-owners, the owners of small businesses, or ordinary people who have made wills.

POST SIX year run-off cover and the Solicitors Indemnity Fund: Consultation

Response ID:701 Data

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I do not agree that the costs of maintaining PSYROC would be disproportionate and a cost to consumers. The cost, either as a solicitor levy or firm levy is so small I would anticipate that the cost would be absorbed by firms without any additional cost to consumers.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

I understand that the firm charge would be £240 and individual fee earner cost of £16.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

n/a

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

n/a

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

n/a

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

n/a

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

n/a

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

n/a

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

n/a

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

n/a

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

n/a

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

n/a

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

It seems that maintaining SIF will be the most cost effective way of maintaining cover which is in the best interests of consumers. I therefore endorse the Law Society's view that:

1 We should protect consumers by maintaining existing long-term cover as this help maintain public confidence in legal services provided by solicitors

2 Such protections enables the entry of new firms into the market, particularly in areas where access to legal services is limited, especially demographically diverse areas of our cities and towns.

3 Removal of PSOROC has the potential for unintended consequences which could disproportionately affect the economically disadvantaged and those from ethnic backgrounds. Retaining the cover is the best was to promote widest possible availability of legal services.

4 Retention of the cover will also protect the reputation of the profession and its regulator.

5 Lastly, the retention of the cover will make solicitor retirement costs predictable and affordable, not least for the employees of closed firms.

All this is in keeping with the objectives further to section 1 of the Legal Services Act 2007:

Protecting and promoting the public interest;

Supporting the constitutional principle of the rule of law;

Improving access to justice;

Protecting and promoting the interests of consumers of legal services;

Promoting competition in the provision of legal services;

Encouraging an independent, strong, diverse and effective legal profession;

Increasing public understanding of the citizen's legal rights and duties;

Promoting and maintaining adherence to the professional principles;

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

n/a

25. 15) Do you have information on impacts to inform our assessments?

n/a

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

: I am concerned that any decision by the SRA to close SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts (WTW) who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

I believe the SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

SIF should continue in order to protect consumers of legal services from being unable to gain redress for long-tail claims. The SRA makes clear that it recognises the problems there will be for consumers trying to pursue claims against solicitors who have retired, disappeared or deceased. Consumers will have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. We do not need to spell out those potential problems there.

To close SIF would also pose a threat to diversity, client choice, and access to justice by creating barriers to setting up small firms, and barriers to firms undertaking what are fundamental and crucial areas of work (such as conveyancing, wills and probate). To close SIF would mean the long-term erosion of a diverse profession and a steady reduction in consumer choice.

I would respectfully point out that the SRA is supposed to be improving access to justice, and encouraging an independent, strong, diverse and effective legal profession. (Regulatory objectives c and f.)

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

As set out above, in the absence of PSYROC claimants may have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. This is why I support the Law Society's proposal that a levy on firms to maintain the SIF would be a proportionate response to provide ongoing protection for consumers.

A decision to keep SIF going would be a proportionate and wholly justified course of action. The solution to keeping SIF continuing indefinitely is obvious and straightforward. No other solution is available for the provision of PSYROC.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I agree with the view that to amend the MTCs to require insurers to provide PSYROC would lead to hugely increased and unsustainable PII premiums, forced firm closures, and departures of insurers from the market. The insurance industry is making that very clear to the Law Society.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Apart from what I have already said, no. This question is one for the insurance industry.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The Law Society have been advised that this is not a feasible option and I agree. No insurance would be available. The insurance industry has already confirmed that. Please see the comments above.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I agree with the SRA analysis that this is not a feasible option.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I agree with the Law Society's position that PSYROC should not, and could not, be provided through a master policy. A suitable vehicle (SIF) is already in place. SIF works and is viable into the indefinite future with extra funding by way of a compulsory levy on the profession. There is absolutely no point in trying to reinvent the wheel. In any event is highly unlikely that there will ever be a master policy available in the market, at any cost. I understand that the insurance industry has already said as much to the Law Society.

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See the comments above. Following extensive investigation by the Law Society it appears that an alternative indemnity model is not feasible.

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No. This is a question for insurers.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I agree with the SRA analysis that targeted PSYROC would be counterproductive. A potentially small savings in costs would be offset by increased administration and its associated costs, and uncertainty and confusion for affected consumers, and a lower level of protection. This would not be a sensible solution.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle, SIF. No, it should not be targeted for reasons stated above.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See above.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

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The Law Society have suggested, and I agree, that SIF can be financed by a small annual levy imposed on the practising profession with the PC fee. Calculations suggest that this could be an individual levy of approximately £16 per annum or a flat firm levy of approximately £240 per annum. They and I favour a flat firm levy. This is a simple and obvious solution and I understand from the Law Society is a solution suggested by WTW in their actuarial analysis commissioned by the SRA.

I understand from the Law Society that no other insurance solution exists. There is no open market insurance solution available,

nor is there ever likely to be. This has been explored at length by The Law Society, and also it seems by the SRA. And I understand that the insurance industry would never be interested in operating a master policy, nor being involved in any "alternative indemnity scheme". I understand that the SRA acknowledges this.

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I do not think these proposed mitigations are realistic, nor are they proportionate to the risks to the public and the damage to public confidence if SIF is closed. They will certainly not mitigate the damage that will be caused to public protection, the reputation of the profession, and public confidence in the profession.

I consider that the notion of the SRA "ensuring appropriate information is provided to clients at the time a firm closes" is misguided. It is not credible to insist on a closing firm telling their clients how to sue them if they have been negligent. The same applies to developing guidance to consumers when they have a claim. The mitigation factor is minimal. Added to this will be the additional costs of the SRA setting up and running a department to deal with consumers' queries and concerns.

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I am concerned that any decision by the SRA to close SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts (WTW) who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

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I agree with the view that to amend the MTCs to require insurers to provide PSYROC would lead to hugely increased and unsustainable PII premiums, force firm closures, and departures of insurers from the market. The insurance industry is making that very clear to the Law Society.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Nothing further save for my comments above - this question is one for the insurance industry.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The Law Society has been advised that this is not a feasible option and I agree. No insurance would be available. The insurance industry has already confirmed that. Please also see my comments above.

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

I agree with the SRA analysis i.e. that this is not a feasible option.

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

I agree with the Law Society's position i.e. that PSYROC should not, and could not, be provided through a master policy. A suitable vehicle (SIF) is already in place. SIF works and is viable into the indefinite future with extra funding by way of a compulsory levy on the profession. There is absolutely no point in trying to reinvent the wheel. In any event is highly unlikely that there will ever be a master policy available in the market, at any cost. I believe that the insurance industry has already confirmed as such to the Law Society.

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

Following extensive investigation by the Law Society it appears that an alternative indemnity model is not feasible. See also my comments above

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

No. This is a question for insurers.

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

I agree with the SRA analysis that targeted PSYROC would be counterproductive. A potentially small savings in costs would be offset by increased administration and its associated costs, and uncertainty and confusion for affected consumers, and a lower level of protection. This would not be a sensible solution.

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle, SIF. No, it should not be targeted for reasons stated above.

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

See above.

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

As stated above, regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle SIF, although I acknowledge that this will require financial support.

The Law Society have suggested, and I agree, that SIF can be financed by a small annual levy imposed on the practising profession with the PC fee. Calculations suggest that this could be an individual levy of approximately £16 per annum or a flat firm levy of approximately £240 per annum. They and I favour a flat firm levy. This is a simple and obvious solution and I understand from the Law Society is a solution suggested by WTW in their actuarial analysis commissioned by the SRA.

I understand from the Law Society that no other insurance solution exists. There is no open market insurance solution available,

nor is there ever likely to be. This has been explored at length by The Law Society, and also it seems by the SRA. I also understand that the insurance industry would never be interested in operating a master policy, nor being involved in any "alternative indemnity scheme". I understand that the SRA acknowledges this.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I do not think these proposed mitigations are realistic, nor are they proportionate to the risks to the public and the damage to public confidence if SIF is closed. They will certainly not mitigate the damage that will be caused to public protection, the reputation of the profession, and public confidence in the profession.

I consider that the notion of the SRA "ensuring appropriate information is provided to clients at the time a firm closes" is misguided. It is not credible to insist on a closing firm telling their clients how to sue them if they have been negligent. The same applies to developing guidance to consumers when they have a claim. The mitigation factor is minimal. Added to this will be the additional costs of the SRA setting up and running a department to deal with consumers' queries and concerns.

25. 15) Do you have information on impacts to inform our assessments?

Please see my comments above

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

It is not possible to get PSYROC in the open market at any rate which is reasonable. Such policies are simply not there. Any retiring solicitor will, in practice, remain in a position of not being covered by insurance. The SIF may need to be funded to pay for such insurance (and there are discussions to be had about the methods of such funding) but at least the cover would be there - which would protect both the public and the solicitors (or ex-solicitors) concerned.

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

The MTCs will not be retroactive. For example, I left my last firm more than 6 years ago. Run-off cover was provided pursuant to the SIF. However, claims may be made up to 15 years after the firm closed (particularly for latent issues). I remain at risk for errors any of my ex-partners may have made (or I myself may have made) without on-going cover. MTCs cannot retroactively force the last insurer to reinstate cover.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

16. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

17. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

18. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

19. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

20. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

21. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

22. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

23. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

I think the PSYROC should continue to be provided through the SIF, subject to a levy on all solicitors. It is a tried and tested mechanism (i.e it works) - and was and is within the reasonable expectation as the protective net for anyone who went into practice. Quite simply (subject to funding it) "If it ain't broke, don't fix it".

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

25. 15) Do you have information on impacts to inform our assessments?

3. Consultation questions

11.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

I am concerned that any decision by the SRA to close SIF and terminate PSYROC as a regulatory arrangement would not address the practical alternatives suggested by the analysts (WTW) who provided their expert report. It would also be bad for consumers, whose interests the SRA is under a statutory duty to promote and protect.

I believe the SRA's regulatory objectives and the regulatory principles would be better served through a continuation of the SIF, funded through an annual levy on law firms. The proper application of the SRA's own decision-making framework would support this course of action, which is also supported by the profession.

SIF should continue in order to protect consumers of legal services from being unable to gain redress for long-tail claims. The SRA makes clear that it recognises the problems there will be for consumers trying to pursue claims against solicitors who have retired, disappeared or deceased. Consumers will have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. We do not need to spell out those potential problems there.

To close SIF would also pose a threat to diversity, client choice, and access to justice by creating barriers to setting up small firms, and barriers to firms undertaking what are fundamental and crucial areas of work (such as conveyancing, wills and probate). To close SIF would mean the long-term erosion of a diverse profession and a steady reduction in consumer choice.

I would respectfully point out that the SRA is supposed to be improving access to justice, and encouraging an independent, strong, diverse and effective legal profession. (Regulatory objectives c and f.)

12.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

As set out above, in the absence of PSYROC claimants may have to resort to litigation against the likely uninsured principals of closed firms in order to receive compensation. However, this process would be costly and time consuming, and may not result in restitution. This is why I support the Law Society's proposal that a levy on firms to maintain the SIF would be a proportionate response to provide ongoing protection for consumers.

A decision to keep SIF going would be a proportionate and wholly justified course of action. The solution to keeping SIF continuing indefinitely is obvious and straightforward. No other solution is available for the provision of PSYROC.

13.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

I agree with the view that to amend the MTCs to require insurers to provide PSYROC would lead to hugely increased and unsustainable PII premiums, forced firm closures, and departures of insurers from the market. The insurance industry is making that very clear to the Law Society.

14.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

Apart from what I have already said, no. This question is one for the insurance industry.

15.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

The Law Society have been advised that this is not a feasible option and I agree. No insurance would be available. The insurance industry has already confirmed that. Please see the comments above.

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See the comments above. Following extensive investigation by the Law Society it appears that an alternative indemnity model is not feasible.

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firm levy of approximately £240 per annum. They and I favour a flat firm levy. This is a simple and obvious solution and I understand from the Law Society is a solution suggested by WTW in their actuarial analysis commissioned by the SRA. I understand from the Law Society that no other insurance solution exists. There is no open market insurance solution available, nor is there ever likely to be. This has been explored at length by The Law Society, and also it seems by the SRA. And I understand that the insurance industry would never be interested in operating a master policy, nor being involved in any "alternative indemnity scheme". I understand that the SRA acknowledges this.

24. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

I do not think these proposed mitigations are realistic, nor are they proportionate to the risks to the public and the damage to public confidence if SIF is closed. They will certainly not mitigate the damage that will be caused to public protection, the reputation of the profession, and public confidence in the profession.

I consider that the notion of the SRA "ensuring appropriate information is provided to clients at the time a firm closes" is misguided. It is not credible to insist on a closing firm telling their clients how to sue them if they have been negligent. The same applies to developing guidance to consumers when they have a claim. The mitigation factor is minimal. Added to this will be the additional costs of the SRA setting up and running a department to deal with consumers' queries and concerns.

25. 15) Do you have information on impacts to inform our assessments?

See the comments above.

3. Consultation questions

10.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

We consider that the consultation does not attach sufficient importance to the issue of consumer protection. The Articles of Association of the SRA approved in September 2020 state that the SRA's object is to exercise and discharge its regulatory functions in the public interest and for the benefit and protection of the public in compliance with charity law and in a way that adheres to the regulatory objectives. Consumers consult solicitors for advice in relation to the most important events in their lives. Consumers expect that solicitors will provide advice of the highest quality but also expect that in the rare circumstances when something does go wrong they will be protected and have recourse to effective redress. Paragraph 35 indicates that approximately three quarters of all claims relate to conveyancing transactions. Conveyancing transactions are very often the largest transactions in the lives of consumers. Grounds for claims often only become apparent when consumers sell their homes and that is frequently after the expiration of the standard six year limitation period. If the firm that had conduct of the conveyancing transaction has closed and there is no PSYROC it is quite likely that the consumer will have difficulty in making a successful claim against a firm that has closed or against the retired principals of the closed firm or the estates of the retired principals of the closed firm. That could result in catastrophic consequences for the consumer. It is accepted that the number of claims is not high but the impact on the individuals making the claims could be extremely high. Paragraph 47 acknowledges that there "will be a small number of consumers that will likely not receive redress if there was no PSYROC in the future, but who would receive redress under the current arrangements with SIF providing PSYROC." We consider that the protection of consumers is paramount and that any steps to reduce the level of protection would be a retrograde step.

The SRA has advanced a preferred option that ongoing protection of consumers by the Solicitors Indemnity Fund through PSYROC should not continue as a regulatory arrangement. This option would have the effect of immediately ending long-term protection for consumers who remain exposed to long-tail risks. We fundamentally disagree with that preferred option and think it is wrong to remove protection from consumers that have expected as an integral part of the provision of legal services.

Further we note that paragraph 57 suggests that "future funding of PSYROC will increase the cost of regulation and is likely to increase costs for consumers and therefore, potentially, barriers to accessing legal services". We disagree strongly with this suggestion and consider that a levy of £16 per solicitor or £240 per firm estimated by the SRA that would be required to maintain the Solicitors Indemnity Fund (paragraph 52 of the consultation) could easily be absorbed in the overheads of firms and sole practitioners. If that levy were to be passed on to consumers by way of an increase in costs the level of the increase would not be such that it would create a barrier to accessing legal services.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

We have nothing to add to the comments made in response to Q1.

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

We understand that insurers in the open market are not particularly keen on providing the six year run off cover element of professional indemnity cover which is a requirement of the existing MTCs. Should the SRA amend their MTCs to require insurers in the open market to provide cover for more than six years we are concerned that this could deter some insurers in the open market from offering any form of professional indemnity insurance and further reduce the number of insurers offering professional indemnity insurance in what is a challenging market.

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

We consider that that the SRA should consider carefully the number of insurers in the open market who have ceased to offer professional indemnity insurance since the introduction of the open market insurance model in September 2000. We suspect that if the professional indemnity market had been as challenging in September 2000 as it is now the Law Society members would not have voted to introduce the open market insurance model. We are extremely concerned that if the SRA amends its MTCs to require the provision of cover for more than six years the open market will become even more challenging than it is now

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

We are aware that the SRA agreed to extend the closure of the Solicitors Indemnity Fund until 2020 following a request made by the Law Society in 2013. We are also aware that during the last two years the Law Society has had extensive discussions with brokers, underwriters and insurers to explore the possibility of a market solution to fill the gap that would be created by the closure of the Solicitors Indemnity Fund. We understand there is little or no appetite in the open market to offer cover that effectively replaces the Solicitors Indemnity Fund. Further we are concerned that if there are any insurers who are prepared to offer cover that cover is likely to be only offered to closed firms with very good risk profiles, the cost of cover is likely to be prohibitive to retired practitioners, any cover offered is likely to be offered on an annual basis only and there is the risk that any cover offered would more restrictive than the SRA's MTCs. For those reasons we do not think it is a realistic expectation that a solution will be found with the open market offering PSYROC on a sensible basis.

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

We understand from insurers that there is little interest in the open market in the establishment of a master insurance policy. We would add that it is essential to find a long term solution to the PSYROC problem.

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

We repeat that it is essential to find a long term solution to the PSYROC problem. The failure of a previous master policy led to the creation of the Solicitors Indemnity Fund. Given the lack of interest in the market we think it is highly unlikely that a suitable and cost-effective policy will become available in the open market.

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

We consider that given the lack of interest in the open market in offering run off cover for more than six years the most sensible option would be to retain the Solicitors Indemnity Fund. We accept that to fund this there will need to be a levy on the profession. We note that the SRA estimates (paragraph 52 of the consultation) the levy that would be required to maintain the Solicitors Indemnity Fund would be £16 per solicitor or £240 per firm. Discussions we have had indicate that such a levy would be acceptable to the profession.

We also consider that there should be a review of the operation of the Solicitors Indemnity Fund to ensure that the administration of the Solicitors Indemnity Fund is efficient and cost-effective.

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

We have nothing to add to the comments made in response to Q6.

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-

going provision of PSYROC?

We have considered the points made in paragraphs 76 to 80 (inclusive) of the consultation but we agree with the conclusion in paragraph 79 that though PSYROC could be targeted, the reduction in the call on the fund would be comparatively small and most importantly fewer consumers would be protected. In particular we agree with the statement that "This targeting would not improve transparency, simplicity or certainty for consumers or solicitors." In relation to paragraph 80 which discusses the potential capping of claims we note that the concentration of historic claims has been of low value and that capping would be unlikely to have a material impact on claims paid. We would be concerned if there were to be a difference between the level of cover under PSYROC and the level at which the profession can limit its liability. Again this would be confusing for consumers and solicitors.

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

Again, having considered the points made in paragraphs 76 to 80 (inclusive) of the consultation we do not think the regulatory arrangements for PSYROC should be targeted given that following what is said in paragraph 79:

1. There would only be a small reduction in the call on the fund.
2. The cost of administration would be increased.
3. Fewer consumers would be protected.
4. There would potentially be a mismatch between MTC's and the availability of matching cover.
5. There would be potential for confusion for consumers and solicitors given that targeting would not improve transparency

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

We have nothing to add to the comments we have made in response to Q10 and Q11.

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

We strongly consider given it is highly unlikely that there will be an open market insurance solution that will give the same level of cover and that PSYROC should continue to be provided within the SRA's regulatory arrangements to protect consumers from long term risks relating to legal services and that SIF should continue funded by a levy on the profession.

Regulatory arrangements should provide a mechanism to ensure that solicitors are able to obtain matching cover if the MTCs prohibit solicitors limiting their liability below the minimum level of cover prescribed by the MTCs.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

We have considered paragraph 87 but our strongly held view is that neither of the two actions proposed would sufficiently mitigate the risks to clients of closed firms not having PSYROC. Provision of support will not overcome the harsh fact that given the wariness of acquiring firms that has grown since 2000 and the risks that now come with the acquisition of another practice the only option for many firms would be closure and run-off.

Further we suspect that even if firms held up-to date contact details for all former clients it could be distressing and confusing for clients who thought that they would be entitled to claim against the firm they had instructed to be advised to take out their own insurance

24. 15) Do you have information on impacts to inform our assessments?

We have nothing to add to the points we have made above.

3. Consultation questions

10.

1) Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

First we make some general points:

The Institute and Faculty of Actuaries (IFoA) welcomes the opportunity to respond to the Solicitors Regulation Authority (SRA)'s consultation on Post Six Year Run-Off Cover (PSYROC) and the Solicitor's Indemnity Fund (SIF). The IFoA is based in the UK and is a royal chartered, not-for-profit, professional body, representing and regulating over 32,000 actuaries worldwide.

In drafting our response, we have drawn upon input from IFoA members working for consultancies advising general insurance clients. Note that we have just answered a selection of the consultation questions, focussing our response where we believe we can best provide useful input, and have relied on the information provided including the independent actuarial analysis in Annex 4 of consultation paper.

There is a clear parallel with the SRA's public interest role as a regulator with the IFoA's own regulatory responsibility. At the IFoA we have a public interest responsibility to regulate our members in such a way to assure public trust, but with this balanced with supporting business and innovation.

We note that in developing its proposals, the SRA has sought to balance its regulatory objectives/ relevant principles, with the aim of providing a regulatory system that delivers the best possible outcomes in the public interest. In our response below we recognise that the SRA is aiming for an appropriate level of consumer protection, rather than a framework that guarantees no risk for consumers. Furthermore, the reference in the consultation paper to the SRA carrying out its regulatory function primarily in the public interest (rather than a focus on the interests of individual law firms/ solicitors) provides helpful context.

Consistent with the IFoA's own public interest obligations, and as with any IFoA consultation response, we have considered the SRA's proposals from an independent, public interest perspective.

We now give our response to Q1:

We note that the SRA have not put forward the option of merging the SIF and the Compensation Fund (CF), and it is unclear to us why this option has not been considered in the consultation paper. From our understanding of the paper (and supplementary documents), we infer that the SIF and CF operate quite differently: SIF being a statutory fund with its claim provisions on its balance sheet, and the CF a discretionary fund with accounting policies that are predominantly of a cash accounting nature. However, although the CF does not ordinarily make payments for incidents of negligence, we understand that there is a limited provision for it to do so.

We therefore wonder whether it would be possible to extend the CF's scope to make payments for PSYROC an option. Such a change might open up the option for a transfer of PSYROC claims to the CF enabling the SRA to continue to provide compensation for consumers, with any surplus funds returned to The Law Society. If possible, such a transfer may meet the SRA's aim of an appropriate level of consumer protection, potentially achieved on a proportionate basis.

We also note from the CF Annual Report that a rule change was made to the CF in 2012 to add the provision to cover certain incidents of negligence (relating to the Assigned Risks Pool). Given this precedent, we wonder if further rule change to the CF could be considered if necessary to include the coverage the SIF currently provides to facilitate a merger of the SIF and CF.

More generally, in an insurance company context such mergers between funds are common and can achieve synergies and

capital efficiencies.

We understand from our reading of the consultation paper that most claimants are members of the public. Hence, it may be in the public interest for PYSROC (cover) to continue if it can be provided more effectively from the CF.

We have some observations on claim size from an individual consumer's perspective. Although the consultation paper describes the amounts paid to consumers as modest, the average claim of £34,600 may be significant or at least non trivial to most individual consumers, even after deducting defence costs. In addition, those seeking compensation may be in vulnerable state financially, or mentally.

On a similar note, we are not fully convinced that the need for an annual levy for £16 per solicitor if passed on to the consumer could be described as having a negative impact on a large number of consumers. In particular, it is not clear that any consequent cross-subsidy would necessarily be disproportionate or anti-competitive.

The consultation paper includes commentary on the ongoing running costs of the Solicitor's Indemnity Fund Limited (SIFL), with the view that these are neither proportionate nor efficient relative to the volume and size of insurance claims. However, our understanding is that this analysis considers only future SIFL claims, whereas SIFL's ongoing running costs also reflect the cost of managing the 'back book' of existing claims. Hence, the £48,400 running cost per claim figure quoted in the consultation paper may be misleading.

From a practical viewpoint, we also suggest that if decisions about SIF's future are made later than 30 September 2022, then a further limited extension of PSYROC could be considered in the interim.

11.

2) Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

12.

3) Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

13.

4) Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

14.

5) Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

15. 6) Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

16. 7) Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

17. 8) Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an on-going basis?

18. 9) Do you have any further information relevant to our consideration of whether there should be regulatory

arrangements for PSYROC through an alternative model? In particular, do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

As mentioned in response to Q1, we suggest that extending the CF's scope to make discretionary payments for PSYROC may have some merit - if not already considered and discounted.

19. 10) Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

20. 11) If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

21. 12) Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

22. 13) Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

The consultation paper includes insights on the potential impact of PSYROC (cover) on demand for legal services. Consistent with our earlier point on the impact of a £16 levy on solicitors, it is unclear to us that the passing of this levy to consumers would have a noticeable impact on consumers' access to justice.

23. 14) Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

24. 15) Do you have information on impacts to inform our assessments?

Anonymous response

May I submit the following response to the Consultation (anonymously!, and which you are welcome to publish).

I think PSYROC through SIF should continue.

It is an arrangement which has worked perfectly well (with no need for additional funding to date) and based on the forecast commissioned by the SRA, can be continued at modest cost - why is terminating it even being considered?

The position in future may be better or worse than that forecast. If it is better, the cost will be less. If it is worse, the cost will be higher but the benefits for those affected will be greater and terminating the arrangement will be seen as a short-sighted mistake. History is littered with those. And reinstating it then would require unnecessary effort and funding which could have been avoided.

The consultation paper dismisses the sleep easy factor which the SRA considers is not something it should be concerned with. The SRA and its officers can, of course, sleep easy because they do not have any financial responsibility for decisions made - the bill is paid through pc fees. So that is a view it is easy for the SRA to take. But it is probably a minority view that people in that comfortable position should not properly be taking to the detriment of those they regulate and who are willing to pay for that benefit.