

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

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

impact that comparator option 2 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.

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. 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.

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.

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.. 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.

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.

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.

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

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.

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.

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, and the analysis of SIF claims indicates that the benefits of limited cover to solicitors and firms – both in terms of the

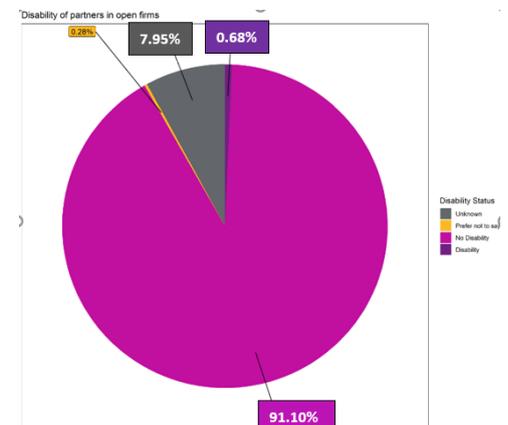
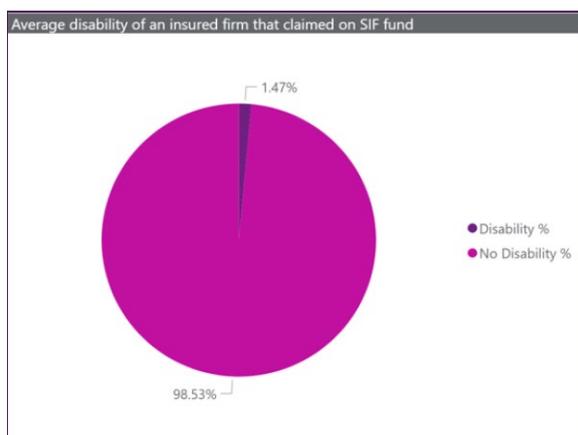
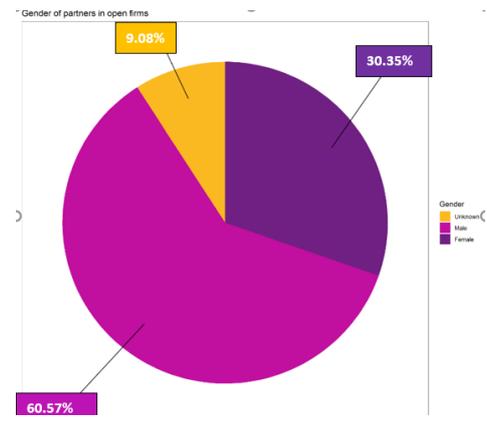
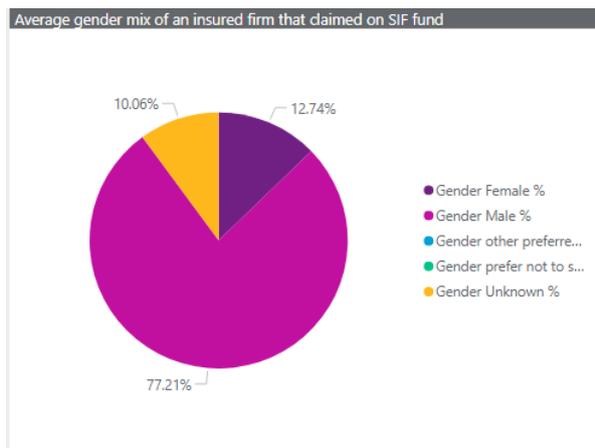
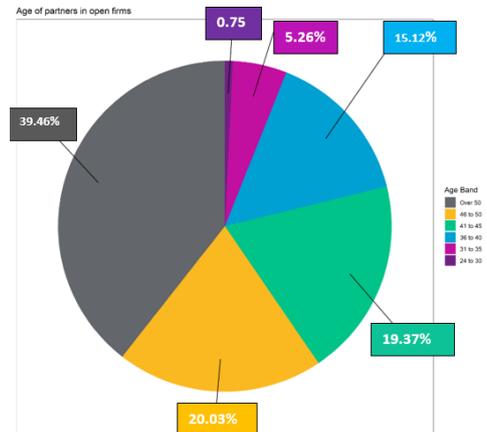
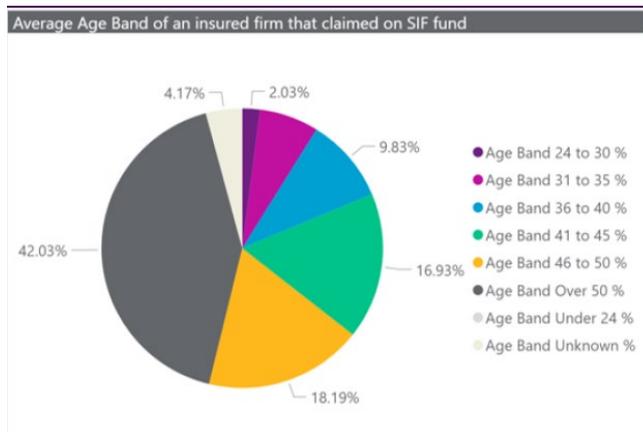
'sleep easy' factor and protection if a claim for personal negligence is raised – will be distributed in the same way as under comparator option 1.

Impact on other stakeholders

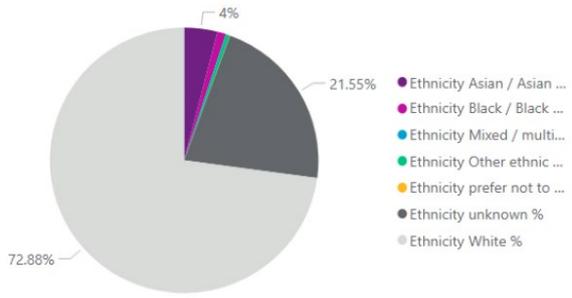
As with our preferred option and comparator option 1, we have not identified any equality considerations in terms of the impact of limited PSYROC on other stakeholders.

Annex 1 – EDI Characteristics: analysis of open firms

The below pie charts below show the average EDI characteristics (for the categories that we hold data) for the average SRA open practice. The WTW report that we have published alongside our consultation document includes the same analysis for all closed practices and the average profile of firms that have claimed on the SIF.



Average ethnicity profile of an insured firm that claimed on SIF fund



Ethnicity of partners in open firms

