

Closed Consultation

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

12 April 2022

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- The consultation period ended on **15 February 2022**

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About this 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. 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:
 1. Claims made during the period a firm was covered by the SIF (1 September 1987 to 31 August 2000).
 2. 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.
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

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.
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.
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:
 1. it provides continuity of client financial protection (which is principally a regulatory function)
 2. it provides security for retired solicitors (sometimes referred to as the 'sleep easy' factor, which is principally a representative function).
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.

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.
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.

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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.
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.
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.
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.
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. 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.

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.

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. Incremental and cumulative forecasts can be found on pages 13 and 14 of the WTW report.
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.
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.

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.
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.
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.
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.

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 PSYROCs 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?

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?

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?

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?

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?

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?

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?

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?

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?

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?

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 on-going 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)?

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:
1. 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.

2. 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?

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 ongoing 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.

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.

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?

Consultation questions

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?

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?

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?

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?

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?

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?

Downloads

- Analysis of responses to the consultation (PDF 20 pages, 255KB)
[globalassets/documents/sra/consultations/consultation-response---post-six-year-run-off-cover-and-the-solicitors-consultation-responses.pdf?version=498210]
- Consultation responses (PDF 797 pages, 7.5MB)
[globalassets/documents/sra/consultations/consultation-responses---post-six-year-run-off-cover-and-the-solicitors.pdf?version=4972af]
- Consultation paper - Solicitors Indemnity Fund (PDF 24 pages, 226KB)
[globalassets/documents/sra/consultations/sif---consultation.pdf?version=4ad40a]
- Annex 1 Summary of PII provisions (PDF 3 pages, 127KB)
[globalassets/documents/sra/consultations/annex-1---summary-of-pii-provisions.pdf?version=4ad48e]
- Annex 2 SIF accounts information (PDF 4 pages, 260KB)
[globalassets/documents/sra/consultations/annex-2---sif-accounts-information.pdf?version=4ad495]
- Annex 3 Framework table (PDF 8 pages, 127KB) [globalassets/documents/sra/consultations/annex-3--framework-table.pdf?version=4ad64a]
- Annex 4 PSYROC analysis of options (PDF 131 pages, 4.1MB)
[globalassets/documents/sra/consultations/annex-4---psyroc-analysis-of-options.pdf?version=4ad49f]
- Annex 5 Draft regulatory impact assessment (PDF 14 pages, 223KB)
[globalassets/documents/sra/consultations/annex-5---sif-consultation-regulatory-impact-assessment.pdf?version=4ad6ad]
- Annex 6 Equality Impact Assessment (PDF 9 pages, 378KB)
[globalassets/documents/sra/consultations/annex-6---sif-consultation-equality-impact-assessment-draft.pdf?version=4ad6b2]