

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

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Consultation questions

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 PSYROC (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.

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.

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.

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Where did you hear about this consultation?

From insurance (press) commentary