



BIRMINGHAM LAW SOCIETY
one profession • one region • one voice

**RESPONSE TO SRA CONSULTATION ON POST SIX YEAR RUN OFF
INSURANCE COVER & SIF – PSYROC**

February 2022

Q1: Do you have any views on our analysis in relation to continuing to provide PSYROC through the SIF on an on-going basis?

General comments

It is important to be clear that this consultation is about the run -off cover that is provided by the Solicitors Indemnity Fund (“SIF”) to firms that ceased on or after 01 September 2000 once their six-year run off cover has expired. As such, it is easier to think of it as supplementary run off cover. The cost is currently met out of the (diminishing) SIF surplus. In theory it therefore allows retired solicitors to sleep easier.

The SRA makes clear (page 8 at 25/26) that, as regulator, its job is to deliver an appropriate level of consumer protection rather than to eliminate risk for consumers. The SRA emphasises that it is perfectly clear that it is not its role to deliver any private benefit for individual solicitors and law firms. The SRA (page 9 at 29) makes clear that their proposal would remove the sleep easy factor for solicitors to retire but says it is for the representative body (TLS) not SRA to consider whether it wants to support its members.

On this we may reflect whether it is best serving client/consumer protection to create a risk that currently does not exist and which also gives clients of solicitors the sleep easy factor.

Those that have worked as professional indemnity lawyers and especially those who have worked for the insurance market, the SIF before that and the Master Policy before that, know that it is generally the residual claims that rest with the SIF that prove the most technical and challenging to resolve and as such, pro rata the more expensive.

The SRA at page 10 paragraph 36 says that 90% of claims relate to sole practitioners and small firms (under 6 partners). The sleep easy factor for those solicitors or indeed their families should not be underestimated.

Of some concern is that the SRA rather frankly pleads at paragraph 45 that no insurer has told them (presumably all the insurers relevant to the solicitors PII market have

been asked) that they have an alternative product. The SRA also says that it does not have an accurate picture of any policy conditions or of the premium.

At paragraph 52 the SRA say that if the PSYROC were to continue, it would be at an annual cost of £16 per solicitor or a firm fee of £240. The SRA conclude that such figures would be passed on to clients/consumers. It is unclear, if that did happen rather than being absorbed by the business, how much per client that would represent.

At paragraph 55 the SRA seems to describe the provision of PSYROC as a gold standard to which other legal and professional services do not meet. Rather than a negative, one might feel that is a positive strength for clients to continue using solicitors as distinct from other lawyers. The SRA hints at recognising the market detriment to solicitors at paragraph 57 if PSYROC was to end.

Response to Q1: 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.

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?

No

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?

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?

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?

No

Q5: Do you have any further information about the potential for PSYROC cover on the open market as a voluntary option?

No

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?

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).

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?

No

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?

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.

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?

No

Q10: 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.

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?

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.

Q12: Do you have any information relevant to our consideration of whether any arrangements for on-going PSYROC should be targeted?

No

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)?

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.

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?

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.

Q15: Do you have information on impacts to inform our assessments?

No

Birmingham Law Society Consultation Committee