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**Response to SRA Discussion paper – Next steps
on the Solicitors Indemnity Fund (SIF) and
consumer protection for negligence claims**

August 2022

Response of the Consultation Committee of the Birmingham Law Society to the SRA Consultation on the SRA Discussion paper – Next steps on SIF and consumer protection for negligence claims

This response has been prepared by the Consultation Committee of the Birmingham Law Society. The Society is the largest local law society with some 5,000 members. The response represents the collective view of the Consultation Committee whose members are specialist lawyers practising in all aspects of professional regulation and discipline.

Response

The SRA is seeking initial feedback from stakeholders on the options that it is considering for future arrangements for post six-year negligence claims. This is not a formal consultation paper so our views are set out below in numbered paragraphs as opposed to answering specific questions.

1. In our response to the SRA consultation paper in February 2022, BLS supported the retention of SIF on the basis that there was no other sensible alternative in the interests of consumer protection. We remain of that view.
2. The SRA appears to recognise the fact that provision needs to be made for consumer protection and that former clients with a post six-year negligence claim should not be left without a remedy. We welcome that realisation.
3. We also welcome the SRA's recognition that there is no suitable insurance product on the market.
4. We cannot identify any details of costings for providing the post 6-year cover. In the SRA's February 2022 consultation paper at paragraph 52, a cost of £16 per solicitor per annum (or £240 per firm) was estimated for continuing cover on an ongoing basis by Willis Towers & Watson on behalf of the SRA. This estimate was universally welcomed by the profession and regarded as "*excellent value*" both to maintain consumer protection and provide reassurance for retired members of the profession. We would encourage the SRA to cost the various options before its next consultation in Autumn 2022.

5. Although scant on detail, we question the SRA's latest proposal for what appears to be replacing SIF with the SRA Compensation Fund Mark Two. There is no definition of what the "new SRA arrangement" would look like. Would all claims be directed to the SRA or only those where the solicitor defendant is already bankrupt/without funds to meet the claim or only those where a judgment has been obtained first which is unenforceable as the defendant is impecunious? Would the new arrangement protect consumers but not solicitors and their staff? Who will represent the solicitor defendant in resisting the claim? The SRA cannot advocate for both sides and then make a final decision on the claim.
6. The SRA Compensation Fund is a wholly discretionary fund designed to replace losses from client account particularly where there has been an intervention. It has its own rules and there is no right of appeal against decisions made by in-house SRA staff. The legal rights of a consumer to make a claim for damages for negligence are very different to the claimants on the Compensation Fund. A professional negligence claim requires an adversarial approach to ensure fairness to both sides.
7. Our experience of dealing with long tail professional indemnity claims i.e., post six-year negligence claims made against solicitors is that they are rarely straightforward and are therefore often both technical and expensive (for both/all sides). The current arrangements at SIF provide specialist expertise and knowledge that could not with the greatest respect be replicated by the current SRA in-house staff. The SRA would need to recruit experienced staff at higher salaries in order to deal with such claims. In the long term, it seems to us to be more cost-effective to remain with SIF.
8. The SRA is only expressing concern as to the impact on consumers. It makes very little reference to individual solicitors, who may be long since retired and without funds nor does it refer to the staff from these practices who could also be in the firing line and may be even less likely to have funds to resist and/or meet claims.

9. Excluding businesses, charities, and trusts with turnover/assets/income of £2M or more would result in those businesses pursuing individual solicitors as being outside the proposed new SRA arrangement. This would be unattractive surely to all concerned, including those “corporate consumers”.

10. In relation to the Compensation Fund model of not covering costs for the claimant, this would appear to result in less protection for consumers and/or potentially huge exposure for the retired lawyer. The majority of consumers would be unable to afford the legal fees to establish a post six-year claim. A solicitor would not take on such a claim on a conditional fee agreement or similar. Such claims although few in number are notoriously complex and require specialist professional advice. In effect, consumers would be left to represent themselves and, in reality, be left without redress.

11. The SRA has been considering post six-year cover since 2012 and has considered a number of options, all of which have proved unsuitable. The only sensible option in our view is to retain SIF. Anything else is likely to prove to be a “false economy” and leave consumers without access to legal advice and as a result without access to consumer protection. Other responders to earlier papers have established that SIF benefits from investment income which helps to maintain its financial position despite paying out claims and associated costs. We would encourage the SRA to look again at the costs of running SIF and see how it can be made to work for the benefit of consumers and the profession alike.

Birmingham Law Society Consultation Committee

24 August 2022