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20 October 2021

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*This paper will be published*

**Solicitors Indemnity Fund - Provision of post six year run off cover**

**Purpose**

- 1 This paper reports on our proposal to consult on options for the future of post six year run off cover (PSYROC) and the Solicitors Indemnity Fund (SIF).

**Recommendations**

- 2 The Board is asked to:
  - (a) agree to consult on the options as set out in this paper, weighted towards:
    - i. not providing for on-going PSYROC through SIF (paragraphs 42 to 47)
    - ii. not providing for on-going PSYROC through another mechanism (paragraphs 48 to 76)
  - (b) agree the approach to consultation, with approval of the consultation document delegated to the Chair (paragraphs 30 to 33 and 84).

**If you have any questions about this paper please contact: Juliet Oliver, General Counsel, at [juliet.oliver@sra.org.uk](mailto:juliet.oliver@sra.org.uk)**

**Equality, Diversity and Inclusion considerations**

<b>Consideration</b>	<b>Paragraph nos</b>
<p>This paper is about a particular aspect of arrangements for clients to recover against solicitors in civil claims for professional negligence.</p> <p>It relates to proposals to consult on options for the future of post six year run off cover (PSYROC) and the Solicitors Indemnity Fund. Accordingly, this is relevant to those suffering loss – which may include people with vulnerabilities – and to firms which have closed with no successor practice, and the retired solicitors who worked within them.</p> <p>Assessing the equality impact of the options for change – which will affect only a small sub-set of the firms we regulate and their past clients – is not straightforward, and in some cases the data we have found to inform our assessment is of limited help. As part of the current consultation we are therefore asking stakeholders to provide evidence and feedback to inform our assessment. The responses we receive will inform the final</p>	

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<p>equality impact assessment and the SRA Board’s decision on the way forward.</p> <p>The consultation will invite feedback on the options including the impact of those options.</p> <p>In readiness for the consultation, we appointed Willis Towers Watson (WTW), actuaries and insurance experts familiar with SIF, to analyse claims patterns and assess impacts on consumers and on solicitors/firms of options to PSYROC provision through SIF. This includes a comparison between key equality-related characteristics of the firms involved in PSYROC claims to SIF (including average age, average ethnicity mix, disability profile, gender, and geographic location), and the equivalent characteristics of all closed firms. An extract from their independent report, produced in October 2021, is annexed to this paper. We have complemented this analysis by undertaking the same comparison against the general population of open firms.</p> <p>In summary, the analysis shows that the distribution of these characteristics across the firms involved in PSYROC claims is broadly similar to their distribution across all closed firms. The same can broadly be said in relation to all open firms, with the exception of gender as male partners are overrepresented in the PSYROC claims cohort.</p> <p>With regard to consumers, from the evidence gathered to date, we have not identified any specific groups who are likely to be disproportionately affected than others.</p> <p>A draft Equality Impact Assessment has been prepared in readiness for the consultation and is annexed to this paper. This has been informed by the WTW independent report and details the findings referenced above.</p>	
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**Solicitors Indemnity Fund - Provision of post six year run off cover**

**Background**

- 3 The Law Society 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.
- 4 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 six years 'run-off cover'.
- 5 The SIF is made up of funds formerly contributed by the profession. It is administered by a separate company, wholly owned by the Law Society, Solicitors Indemnity Fund Ltd (SIFL).
- 6 Following being placed in run-off, the SIF has remained liable for:
  - a. Claims made during the period a firm was covered by the SIF (1 September 1987 to 31 August 2000).
  - b. Claims made after 31 August 2000 by law firms that ceased without a successor practice on or before 31 August 2000. It is important to note that such run-off cover is not time-limited.
- 7 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 the Law Society and was to run initially until 30 September 2017. The cost of this cover is met out of the SIF surplus.
- 8 The Society's indemnification arrangements (along with its other regulatory functions) were subsequently delegated to the SRA following its establishment in 2006. The operation of the SIF is currently governed by the SRA Indemnity Rules 2012.
- 9 At the Law Society's request, the SRA has 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. The SRA 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 September 2022 in order to allow consultation to enable us to determine our long-term position regarding the role of the SIF and ongoing provision of PSYROC, whether provided by SIF or otherwise.

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- 10 The Board has previously seen advice provided by SIFL’s Chair in a confidential letter from May 2021, based on actuarial analysis from 2020, that confirms provision of PSYROC through SIF may not be affordable beyond 2022 while meeting SIF’s solvency policy and without any additional funding. SIFL has this month provided a new document explaining its funds and accounts to support our consultation see annex 1).
- 11 Within this SIFL again state 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”.
- 12 In his May 2021 letter, SIFL’s Chair also noted his view that “SIF is now well beyond the time when a conventional insurance company would have taken steps to bring its operations to a close. Quite simply, SIF’s continuing operation is not an efficient use of its capital. Even disregarding the cost of claims payments, SIF’s net assets are being eroded by unavoidable fixed costs of management and associated professional fees of around £700,000 each year. These costs are not realistically capable of further reduction, irrespective of annual volume of claims being assessed”.
- 13 In August 2021, we appointed Willis Towers Watson (WTW), actuaries and insurance experts familiar with SIF, to analyse claims patterns and assess impacts on consumers and on solicitors/firms of terminating PSYROC provision through SIF. Extracts from their independent report, produced in October 2021, which is being finalised in advance of the consultation, is at annex 2 and informs our analysis throughout this paper.
- 14 We have undertaken significant stakeholder engagement leading up to consultation, which is summarised later in this paper at paragraphs 24 to 33. Following the Board’s discussion we plan to consult on the proposed options for at least 10 weeks from November. We set out in this document and its annexes our analysis of options for consultation.

**Decision making criteria**

- 15 The Legal Services Act 2007 provides that the SRA must, so far as is reasonably practicable, act in a way that is compatible with 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.

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- 16 The Act also provides that the SRA must have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted, as well as any other principle appearing to it to represent the best regulatory practice.
- 17 The Legal Services Board grounds its decisions about whether, or not, to approve changes to a regulator's arrangements against the above criteria.
- 18 In our assessment of the future of PSYROC we have also considered the public interest in good administration of our regulatory functions and the use of resources. To that end, we have considered that any arrangements should deliver simplicity and certainty, as well as being affordable and efficient.
- 19 We must also ensure that all of our activities meet our charitable purposes (set out in the charitable objects in our Articles of Association), which are to promote the sound administration of law<sup>1</sup>. We must exercise these for the benefit of the public – and this aligns with the Regulatory Objectives above.
- 20 To this end, we exercise our regulatory functions for the wider benefit of the public, and any private benefits derived by individual solicitors and law firms from regulation by the SRA are incidental.
- 21 The Law Society (TLS) is the representative body for solicitors in England and Wales and as such the professional interests of solicitors are served by TLS. The Legal Services Act 2007 requires SRA's 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.
- 22 We are constrained by law from taking into account those matters outside our public interest regulatory remit, for example those matters which solely relate to the reputation of the profession, providing support for retired practitioners or those seeking to retire, or other steps such as supporting firms in getting "non mandatory" insurance or alternative asset protection measures. These are matters for the representative body to consider.
- 23 The table at annex 3 sets out analysis against the criteria above of the key considerations and evidence in relation to the future of PSYROC.

### Stakeholder Engagement and Communications

- 24 We have been engaging with a wide range of stakeholders to gather views and inform our options. This has included establishing a virtual reference group

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<sup>1</sup> As the Board is aware discussions are ongoing with the Charities Commission. One element of this is the proposal to change our charitable objects to include the promotion and maintenance of high ethical conduct amongst regulated person. We do not consider that this change would significant alter our decision making.

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(VRG) which now includes 29 representatives from various sections of the profession, including:

- TLS
  - local law societies
  - other representative organisations such as Sole Practitioners Group, City of London Law Society and Professional Negligence Lawyers Association
  - diversity groups
  - a range of insurance interests, both representative groups and providers
  - consumer groups.
- 25 The VRG has met twice to discuss views on whether PSYROC should continue, who this should be for and how it should be provided and funded. These meetings have been a good opportunity to explore the detail, which we also captured in a short survey to allow people to say more. We sent the same survey to larger firms across our regulatory management cohort, to ensure that their views were also captured.
- 26 The majority of the VRG, whose solicitor representation mainly comprises smaller firms, said that PSYROC is needed 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. Larger firms were more likely to suggest that PSYROC should not continue or should only continue for certain segments.
- 27 The most frequently cited reasons for PSYROC continuing related to the protection of solicitors, closely followed by consumer protection. Reasons relating to the reputation of the profession have also been raised during discussions with stakeholders.
- 28 From the survey results and our wider engagement with the profession, we know there is a misconception around how SIF was funded, with some solicitors incorrectly assuming that they pay into SIF as part of their annual practising fees. We will address this misconception in our ongoing communications and engagement, including in our suite of infographics.
- 29 In addition to the VRG, we have explored views on PSYROC with other stakeholders who have insights to share and/or may be impacted by any changes. This has included:
- discussions with representatives from regional law societies such as Swansea and District, Newcastle, Middlesex and four Yorkshire based law societies
  - meetings with other regulators, including the Royal Institution of Chartered Surveyors (RICS), Institute of Chartered Accountants of England and Wales (ICAEW), CILEx Regulation and the Council of Licensed Conveyancers (CLC), to better understand comparisons with other run off cover arrangements or alternatives.

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- discussions with UK and Welsh Government officials.
- 30 We have developed a detailed communications and engagement plan to support and promote the consultation. One of the key objectives of the plan is to encourage as wide a range of stakeholders to engage with our consultation in order to inform our decision on the best way forward. We will be targeting both current and former solicitors with messaging on what might change and why, as well as how they might be impacted by any changes.
  - 31 The plan is underpinned by thorough stakeholder analysis to make sure that interested parties are engaged and managed, and that we are using the most appropriate channels to reach our target audiences.
  - 32 Our planned approach is multi-channelled with a co-ordinated programme of activity to run throughout the full consultation period. We will communicate through channels such as SRA Update, media relations, social media campaigns, a suite of video content and infographics. We know that one of our challenges will be reaching former solicitors who may be most impacted by any changes. We have started exploring this issue with regional law societies that do maintain relationships with this group.
  - 33 We also have a continuing programme of engagement planned for the consultation period, including a webinar, roundtables with EDI groups and other regulators, further surveys and polls, a further virtual reference group meeting and an ongoing programme of speaking engagements.

**Contextual data and information**

- 34 The SRA sets 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 stated above, this includes the requirement for firms closing without a successor practice to purchase cover for negligence claims made within six years of them closing. This is known as 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 (see annex 4).
- 35 Historical analysis indicates that over 90% of run off claims are made within a six year period. Six years matches the primary limitation period within which negligence claims must be made. Limitation periods may extend beyond six years in some circumstances because, for example, the negligence comes to light at a later date. There is a further long-stop limitation period of fifteen years, that may be extended against a narrower set of criteria. Further information about limitation periods can be found at annex 4.
- 36 The purpose of PSYROC is to provide cover for claims over and above those which the open market will cover. The WTW analysis shows that these claims are small in number and value. [REDACTED]

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[REDACTED]

- 37 These forecasts are built on an incurred claim basis, which takes into account estimates relating to claims that will be notified by firms closing in a particular year rather than just claims made or claims paid. These claims may be notified at any point in the future, subject to limitation periods. This means that there would likely be more claims made but less claims paid (and certainly paid in full) than the forecast. It should also be noted that WTW forecast is on a “normalised” basis. This excludes claims that may be made by firms that are closed at the point that SIF stop receiving new claims, [REDACTED]

[REDACTED]

- 38 These claims are concentrated in the practice areas of conveyancing and wills, trusts and probate. Conveyancing has accounted for approximately 75% of claims by number and value since 2000, when 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.

- 39 Wills, trusts and probate accounts for approximately 12% by number and volume over the same time period. Most claims relate to sole practitioners and small firms, with only 10% relating to firms with six or more partners. Further information can be found in the WTW report extracts at annex 2.

**Options for consultation**

- 40 In the section below, we set out the main options that we have considered in relation to the future position of PSYROC. We have considered these options against the decision making criteria to propose their relative weighting for the purpose of consultation. The consultation will invite feedback on the options, the underpinning analysis and data. It will also invite the provision of any further information or evidence, including around the impact of any options. And to support any other options that we may not have considered.

- 41 We will return to the Board after the consultation to ask for decisions about which options to take forward having considered feedback and any evidence that is provided.

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**Continuation of PSYROC through the SIF**

- 42 Our preferred option is that we do not continue the provision of on-going PSYROC provided through the SIF.
- 43 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 reached this conclusion in its letter to the SRA of 27 May 2021, 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 has indicated in its 27 May letter 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 1.
- 44 SIFL’s management costs and insurance costs generally amount to around £1,500,000 a year. [REDACTED]
- 45 Further, certainty favours bringing PSYROC through SIF to an end and deciding the long term position now, rather than managing this through incremental extensions. In particular, SIFL has said that for it to carry on on an incremental or transitional basis without a new funding stream would require an actuarial affordability review every one to two years at a cost of circa [REDACTED] per review.
- 46 If new financing streams were introduced, by levying the profession, to provide for on-going PSYROC through 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 the cost to claim ratio would remain disproportionately high. Further, this would also give rise to the issues identified in paragraphs 63 to 64 below where we analyse the impacts of ongoing funding of PSYROC by contributions from the profession.
- 47 Should the Board decide, post-consultation, to close SIF for new PSYROC claims, the question remains about the best mechanism for meeting SIF’s

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historic liabilities. The Board has previously agreed to explore with SIFL transferring the SIF's outstanding liability to a third party insurer. SIFL has presented this to the Board as a more proportionate mechanism, given SIFL's view that its own continuing administration costs, given the level of the claims, will be disproportionate. [REDACTED]

### **PSYROC through another mechanism**

- 48 If PSYROC through [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] As stated above, these losses would fall primarily in the areas of conveyancing, and wills, trusts and probate work.
- 49 Without PSYROC, affected consumers would have the option of seeking redress through the courts. 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).
- 50 Law firms and solicitors may seek to get PSYROC on the open market. Discussions that we have had with the insurance sector indicates that there may be some firms and lawyers that would be able to obtain cover. However, this will not 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 minimum terms and conditions, provided they have paid their premiums. Availability would also be subject to the prospective insured presenting an acceptable risk profile to the prospective insurer. However, 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 get open market cover. Therefore, neither do we have an accurate picture of what conditions might be put on potential policies, nor what the premium cost might be. Therefore, while PSYROC on the open market may be an option for some solicitors and firms going forward, coverage is likely to be limited.
- 51 In addition to the potential direct impact on a number of consumers, we have also been provided with a case study example of where concerns around the termination of PSYROC through the SIF has affected an acquisition of a firm: the elderly 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

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practice). We know from our interventions that a cause of disorderly closure is solicitors carrying on solely because of perceived barriers to them exiting when they want to, which presents consumer protection issues.

- 52 We have therefore considered whether alternative options (other than SIF) may provide a more cost effective and therefore proportionate means of delivering consumer protection through PSYROC on an ongoing basis.

*Insurance through the open market*

- 53 We have highlighted in paragraph 50 above the position to date in relation to the availability of PSYROC on the open market. We have heard significant resistance from the insurance sector to any idea 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. The risk to reward ratio is such that this may result in a combination of insurers leaving the hard solicitor PII market, greater limitation on firms that would find insurance under our MTCs and increased premium across the board.
- 54 The position above is consistent with that reported by the Law Society in its discussions with the sector and has most recently been put forward to us by representatives of the insurance sector who are members of our VRG.
- 55 We do not consider that providing that our MTCs require the provision of PSYROC is a viable option for consultation as it will 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.

*A master insurance policy*

- 56 Another potential option might be to establish a partner insurer to provide ongoing PSYROC cover through a master policy.
- 57 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%.
- 58 Therefore, our initial analysis is that it will be challenging to find an insurance model that could offer a suitable proportionate, cost-effective and proportionate offering for the small number of consumers that are likely to benefit each year. We will invite further feedback on this option through the consultation, when the

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WTW report will be available for stakeholders, including those within the insurance sector, to review.

*An alternative indemnity fund*

- 59 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 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.
- 60 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 larger pool of resources, incoming funds and broader options for support in the event of a shortfall.
- 61 However, the process of dealing with PSYROC is inherently expensive to run. The claims are resource intensive because of e.g. absence of records, costs in locating the relevant solicitors and issues with establishing liability and limitation periods. This also means that claims remain open for a long period of time. SIFL has told us that it is not unusual for the claim life cycle to be four to five years. The risks around these claims are also uncertain, for the same reasons. All models will need to maintain a prudent approach to solvency and reserving, accepting that risk appetites may vary to some degree.
- 62 Our initial analysis indicates that although there may be improvements on the SIFL model in terms of overall cost, a fund for PSYROC is inherently unlikely to be cost effective, proportionate or efficient when considering the volume and value of claims. We will invite further feedback on option through the consultation. Organisations that may be interested in administering any Fund may provide evidence around operating models and costs when they have greater visibility of claims patterns through the WTW report.
- 63 An additional issue is that any such model for providing PSYROC on an ongoing basis would require additional funding by way of contributions from the profession. 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.
- 64 If funding was to be levied on a 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 for individual consumers to those that do. While firms may choose to pay for a scheme which benefits other members of the profession - or which enhances in

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their view the reputation of the profession - to mandate this can be seen as disproportionate, anti-competitive and not targeted. Alternatively, levying on a risk basis could see a significant cost burden for small firms working in certain practice areas, or those reaching retirement.

*Partial PSYROC*

- 65 A variation on the above option would be to consider providing 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 with 15 years of firm closing.
- 66 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 from firms closing between 2001 and 2016. Applying this pattern to WTW's forecast of the total annual value for all "normalised" claims would see total annual claims costs [REDACTED] compared to all claims.
- 67 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.
- 68 However, this would only deliver a comparatively small reduction in the call on the fund, at the expense of 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 and the low volume and value of claims of overall. This targeting would not improve transparency, simplicity or certainty for consumers or solicitors.
- 69 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 any material impact on the value of claims paid.

*No provision of on-going PSYROC through another mechanism*

- 70 Our preferred option is that, should PSYROC through the SIF be terminated, we do not arrange for the provision of on-going PSYROC through another mechanism.

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- 71 All of the options above depend on there being a cost-effective mechanism for delivering the cover described. We will invite feedback through the consultation, including from the insurance sector. However, on balance, our initial analysis is that regulatory arrangements for ongoing PSYROC are unlikely to be proportionate or an appropriately targeted intervention given the small number of consumers that would likely benefit each year.
- 72 For all options, there would need to be further funding from the profession; whether this be by way of a levy collected from the profession or a premium charged direct to the profession. WTW analysis suggests the cost of a flat universal fee of around £16 per member or £240 per firm. For reasons that we have set out above, we are not convinced that this is likely to be proportionate. Nor are we convinced that, given the small number and nature of the claims, the running cost per claim ratio is likely to be proportionate. Again we, will invite views on this hypothesis through the consultation.
- 73 The current position, whereby PSYROC is provided through the SIF, appears to be a consumer protection outlier compared to other legal, and broader professional services regulators, in England and Wales. This is particularly relevant given that the main claims areas (conveyancing and probate) are also regulated by organisations that do not provide PSYROC or require those they regulate to have PSYROC (Council of Licensed Conveyancers, Institute of Chartered Accountants of England and Wales, CILEX Regulation). Further, other areas may be carried out by unregulated providers (e.g. will-writing), without any insurance requirements or provision. Extracts of our comparison can be found within the Regulatory Impact Assessment at annex 6 and a complete table will be published alongside our consultation document.
- 74 We have not found evidence that the absence of PSYROC would likely lead to any significant decline of provision in services in the long-tail practice areas. Nor that these practice areas represent existing areas of significant supply shortage at the moment. Further analysis, as set out in the table at annex 3, suggests that these are focussed on the areas publicly funded work including community care, education, housing, immigration and asylum, and welfare. Further, research indicates that cost is a much more significant driver of whether a consumer will purchase a legal service than the provision of legal redress<sup>2</sup>.
- 75 From the evidence gathered to date, the only group that we have found that maybe disproportionately impacted when compared to the general population of open firms is men. Please see the equality impact assessment at annex 5 for further information. We suspect that this may be a result of the changing profile of firms in recent years, with potentially more female partners. However, we will seek views on the possible reasons for this disparity on consultation, as well as the information in the impact assessments more broadly.

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<sup>2</sup> Add reference

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76 In summary, for the reasons given above, we do not consider that the provision of on-going PSYROC would be a proportionate or appropriately targeted regulatory scheme, or the consequential obligation for funding from the profession, a proportionate or appropriately targeted regulatory intervention.

*Other mitigating actions*

77 Further, there are other steps that could be taken by the SRA, such as collaborating with TLS, in its representative function, to 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:

- 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.
- Ensuring that appropriate information is provided to clients at the time that a firm closes down 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.

**Use of Residual Funds should the Board decide to close SIF post consultation**

78 Without prejudging the outcome of the consultation, we consider that it would be of benefit to raise within the consultation document considerations around the use of any residual funds should a) the Board decide that the SIF should not provide on-going 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 as described at paragraph 47 above).

79 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'. Therefore, the Board would need to decide whether there is an indemnity purpose for using SIF's residual funds on closure. This purpose would need to align to our regulatory purpose and charitable articles. One such purpose might be the provision of on-going PSYROC through another

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mechanism than the SIF if the Board decide that to do so following consultation on the options, as above.

- 80 If the Board decides, post-consultation, that there is no case for ongoing PSYROC in our regulatory arrangements, it may consider it appropriate to use the residual funds to provide transitional cover following the termination of PSYROC. This would not require any further levying of the profession and could provide cover for firms that have closed prior to the termination of PSYROC, or be targeted further.
- 81 However, our initial analysis is that given the small number and value of claims and the inherently lengthy and resource intensive process for handling PSYROC, it is unlikely to provide a proportionate consumer protection, for the same reasons set out in the section above considering on-going PSYROC. And for the same reasons as described above, the likelihood of purchasing insurance cover to provide transitional protection is also limited; however we will use the consultation period to explore this option further.
- 82 As stated above therefore, if no indemnity purpose is considered appropriate, the funds are to be applied by TLS for the overall benefit of the profession. This may include helping to support the profession in developing an optional member benefit scheme for the profession to help with the “sleep easy factor” for retired solicitors. Options might include for example:
- a. The profession establishing a mutual fund, supported by TLS.
  - b. Establishing a hardship fund for solicitors facing personal liability.
- 83 We remain on hand to assist the TLS consider its options. If it wishes to develop a discretionary fund, then we would be open to discussing how we might assist. However, in light of our charitable purpose and regulatory objectives this scheme would have to be focussed on consumer protection and, we would suggest, be accessed by consumers seeking a grant of compensation where it has not been possible to litigate against the responsible solicitor or where litigation although successful has failed to secure redress. This is similar to the model adopted by the CLC (who authorise providers to carry out both conveyancing and probate work) in respect of any claims arising outside of the scope of their mandatory insurance requirements. CLC has told us that there have been very few claims made.

**Recommendation: the Board is asked to agree to consult on the options as set out in this paper, weighted towards:**

- (a) not providing for on-going PSYROC through SIF**
- (b) not providing for on-going PSYROC through another mechanism.**

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### **Next Steps**

- 84 Following the Board's decisions, we propose that signing off the consultation document itself and supporting material is delegated to the Chair. We have set out at paragraph 30 to 33 the approach we propose to take in order to ensure full engagement with interested and affected stakeholders during the consultation process. We propose to consult from end of October for twelve weeks, and return to the Board in February 2022 to agree the post-consultation period. We then propose a short further consultation on any rule changes that will be needed.

**Recommendation: the Board is asked to agree the approach to consultation, with approval of the consultation document delegated to the Chair.**

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**Supporting information**

**Links to the Corporate Strategy and/or Business Plan**

85 This paper relates to objective 1 in the corporate strategy:

*We will set and maintain high professional standards for solicitors and law firms as the public would expect and ensure we provide an equally high level of operational service.*

**How the issues support the regulatory objectives and best regulatory practice**

86 This paper discusses the provision of indemnity cover through the Solicitors Indemnity Fund. The purpose of indemnity arrangements is to support the regulatory objective to protect consumers of legal services by ensuring they are able to recover for loss suffered as a result of professional negligence.

87 In our assessment of the future of PSYROC and SIF, we have considered extensively how any future approach must be compatible with the regulatory objectives and best regulatory practice. We have also considered the public interest in good administration of our regulatory functions and the use of resources. To that end, we have considered that any arrangements should deliver simplicity and certainty, as well as being affordable and efficient.

88 In doing so we have sets out analysis of the key considerations and evidence in relation to the future of PSYROC, alongside the criteria, in a table included at annex 3 and prepared a Regulatory Impact Assessment at annex 6.

**Public/Consumer impact**

89 We have considered both EDI and regulatory impact considerations in more detail in the attached Impact Assessments (annexes 5 and 6), including how they relate to the public and consumers.

**What engagement approach has been used to inform the work and what further communication and engagement is needed**

90 We have been engaging with a wide range of stakeholders to gather views and inform our options. This has included establishing a virtual reference group (VRG) as well as carrying out other activities to explore wider views. This is set out in more detail at paragraphs 24 to 33.

**What equality and diversity considerations relate to this issue?**

91 We have set out EDI considerations in more detail in an Impact Assessment at annex 5, which will be published as part of the consultation exercise. We have summarised these in the table at the front of this paper.

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**How the work will be evaluated**

92 We will review and evaluate the feedback on our weighted options, post consultation. We will work with the Legal Services Board in reviewing the role of professional indemnity insurance in the sector over the coming years. This will likely touch on the role of PSYROC and the arrangements of different legal regulators.

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**Annexes**

**Annex 1** Explanation of SIFL Accounts  
**Annex 2** Extracts from October 2021 report from Willis Towers Watson  
**Annex 3** Table of key considerations and evidence against regulatory objectives and principles  
**Annex 4** Summary of provisions around indemnity insurance requirements and limitation periods  
**Annex 5** Draft Equality Impact Assessment  
**Annex 6** Draft Regulatory Impact Assessment

*NB: the annexes to this paper will not be published because they relate to emerging strategy or policy.*