Solicitors Regulation Authority

Closed Consultation

Consumer protection for post six-year negligence

15 February 2023

- The consultation period ended on **3 January 2023.**
- You can download the consultation paper [#download] or read it below [#respond]

Next steps

- Download analysis of responses to the consultation [https://higher-rights.sra.org.uk/sra/consultations/consultation-listing/post-six-year-consultation/#download]
- Download all consultation responses [https://higher-rights.sra.org.uk/sra/consultations/consultation-listing/post-six-year-consultation/#download]

About this consultation

We are consulting on the arrangements and rules for an SRA-run indemnity scheme to provide consumer protection for post six-year negligence.

This scheme protects consumers who suffer loss from the negligence of a solicitor but cannot claim under the law firm’s indemnity insurance. This is because the firm has been closed for more than six years and has no successor. These losses are currently covered by the Solicitors Indemnity Fund (SIF) which is due to close to new claims in September 2023.

Following responses to our previous consultation and recent discussion paper our Board has decided to:

- Maintain consumer protection for post six-year negligence as an SRA regulatory arrangement providing the same level of cover as the SIF.
- Provide this protection through an indemnity scheme operating under the direct control of the SRA. This will give us clear oversight of its operations and enable us to realise potential cost efficiencies. It also mean we can keep the costs and benefits of this protection under review.

This consultation on the arrangements and rules of the future indemnity scheme is running for 12 weeks from 6 October 2022 until 3 January 2023.

After this consultation closes we will analyse the responses and then confirm our plans for implementation.

Open all [#]

Background to this consultation

The SRA is the regulator of solicitors and law firms in England and Wales. We work to protect members of the public and support the rule of law and the administration of justice.

We are the largest regulator of legal services in England and Wales, covering around 90% of the regulated market. We oversee some 217,000 solicitors and around 10,000 law firms.

This consultation concerns our future regulatory arrangements where consumers suffer loss from the negligence of a solicitor but cannot claim under the law firm's indemnity insurance. This is because the firm has been closed for more than six years and has no successor. These 'post six-year negligence' losses are currently covered by the Solicitors Indemnity Fund (SIF) which is due to close to new claims in September 2023.

In September 2022 our Board decided that we should:

- Maintain consumer protection for post six-year negligence as an SRA regulatory arrangement providing the same level of cover as the SIF
- Provide this protection through an indemnity scheme operating under the direct control of the SRA. This will give us clear oversight of its operations and enable us to realise potential cost efficiencies. It also means we can keep the costs and benefits of this protection under review
- Consult on the arrangements and rules for the future indemnity scheme.

This consultation paper summarises recent developments and the reasons for these decisions. It invites views on the future arrangements and rules for consumer protection for post six-year negligence.

Recent developments

In 2021 we launched a public consultation [https://higher-rights.sra.org.uk/sra/consultations/consultation-listing/solicitors-indemnity-fund/] on the future of indemnity cover for loss where negligence comes to light more than six years after a firm closes with no successor.

We set out our preferred option that the SIF should cease to provide cover for post six-year claims after September 2022. And that our future

regulatory arrangements should not include post six-year protection. This was on the basis that the cost of delivering this was disproportionate, in light of the average cost and volume of claims paid.

In April 2022 the Board noted that the consultation showed that removing protection could have a greater impact on consumers than was suggested in our initial analysis. It also noted that solicitors appeared willing to fund the cost of ongoing protection via a levy. And did not expect material costs to be passed on to consumers as a result.

In view of this, the Board wished to explore further the options for proportionate consumer protection for post six-year negligence. They agreed [https://higher-rights.sra.org.uk/news/news/press/2022-press-releases/solicitors-indemnity-fund-extended/] to seek a 12 month extension to the deadline for new claims to be notified to the SIF - to 30 September 2023. This was approved by the Legal Services Board (LSB) on 1 September 2022.

In July 2022 the Board had an informal discussion about our ongoing work on options for post six-year consumer protection. It then agreed to issue a discussion paper [https://higher-rights.sra.org.uk/news/news/press/2022-press-releases/discussion-paper-post-six-year-options/] to update stakeholders. This was discussed with the Law Society, the Sole Practitioners Group, the Legal Services Consumer Panel (LSCP) and our post six-year virtual reference group.

We received 116 written responses to the paper and are grateful to all those who took the time to respond. You can see a summary of key themes from the responses and stakeholder views in Annex 1.

The case for future consumer protection

The reasoning behind our 2021 consultation proposals was:

- The post six-year cover provided by the SIF delivers relatively little consumer protection at a high operating cost.
- Maintaining this protection indefinitely would ultimately require further funding from the profession. And the costs involved could be passed on to consumers generally in the form of higher fees for legal services.
- Given the low level and high cost of this protection, it would not be proportionate to make it part of our ongoing regulatory arrangements.

Since the April 2022 Board meeting we have reviewed this analysis in the light of other available evidence including further consumer research commissioned by us and others.

We have also engaged with bodies whose members work in fields with long-tail risks to assess the impact such risks can have on consumers.

These fields included conveyancing, wills and probates and professional negligence.

This confirmed that negligence emerging more than six years after a firm closes can cause significant detriment to the small number of consumers affected. The 2021 consultation also confirmed that there is no prospect of a market solution to manage these risks in the foreseeable future.

We set out these emerging conclusions in the August 2022 discussion paper and responses to the paper supported this analysis.

In view of this our Board has decided there is a stronger argument than we set out in 2021 for an ongoing regulatory arrangement for consumer protection. They agreed that the SRA should make regulatory arrangements for post six-year consumer protection if it can be delivered in a way that:

- provides appropriate protection for consumers
- is appropriately governed and consistent with other regulatory arrangements
- is cost effective

And is therefore a proportionate regulatory arrangement.

The Board also noted responses to the 2021 consultation around the issue of cost-effectiveness and proportionality. These argued that the expected low cost of any new levy funding will not result in material costs being passed on to consumers generally. This is discussed further in the section below.

However, market conditions can change and at least some of the costs of protection may be passed on to consumers in future, particularly if the cost rises significantly. It is therefore important that the new arrangement is cost-effective, particularly in comparison to the current running costs of the SIF. And the Board took this into account in assessing the options for delivering future consumer protection.

To support the Board's consideration of the cost-effectiveness of the options we commissioned expert independent advice from the consultancy arm of Willis Towers Watson (WTW) whose report is in Annex 2.

Delivering future consumer protection

The August 2022 discussion paper explained that the options for delivering future consumer protection included:

- retaining the SIF with changes to reduce operating costs
- replacing the SIF with a new consumer protection arrangement within the SRA.

Our statutory powers enable us to set up either an indemnity scheme or a compensation fund.

An indemnity provides security for loss arising from negligence and is automatically triggered when a solicitor (or the scheme on their behalf) receives a valid claim.

The scheme essentially steps into the shoes of the solicitor, reviewing the claim against the terms of cover and deciding whether to accept the claim. And seeks to negotiate an early settlement for less than the full value of the claim, or to contest the claim, potentially through litigation. This approach to consumer protection is founded on the existence of a claim which could always potentially be determined in court.

In the case of a compensation fund, the consumer applies to the fund for a grant to compensate for an alleged loss. A grant is by its nature discretionary. The fund must decide whether the loss has arisen and whether the application fits the criteria of the fund. If so, a grant should be paid.

The current SRA Compensation Fund protects consumers in respect of losses caused by solicitors' ethical failings such as misuse of client money or failure to arrange indemnity insurance.

The majority of responses to the discussion paper supported retaining the SIF (with cost savings where feasible). This was on the basis that it provides appropriate protection for consumers and retired solicitors at a cost the profession is willing to fund. And the status quo is perceived by the profession to work well.

Others, including the Law Society, local law societies and the LSCP did not object in principle to an SRA-run scheme providing the same cover as the SIF. Respondents did not support the use of a compensation fund arrangement.

Decision not to use a compensation fund

Our Board decided in September 2022 that it would not be appropriate to set up a compensation fund to deliver consumer protection for post six-year negligence. The reasons for this decision are summarised below.

A new fund similar to the current SRA Compensation Fund, and applying additional criteria before grants may be paid, would provide significantly lower consumer protection than SIF. This might also include requiring claimants to exhaust other routes before making a claim

These additional criteria are likely to be less useful and relevant in the context of post six-year negligence. This is where the firm is closed and principals may have retired or passed away and alternative routes of redress may be hard to pursue.

The discussion paper invited views on three specific issues about the scope of future consumer protection for post six-year negligence:

- Whether claims from large corporate claimants should be covered.
- Whether the costs a claimant incurs in establishing a claim should be covered.
- What powers a future arrangement should have to recover claim payments.

These are all areas where the SIF and the SRA Compensation Fund take different approaches. We currently have little data on the nature and circumstances of claims made to the SIF. This makes it difficult to assess the impact a change to its terms of cover would have on consumers. In the light of stakeholder feedback on the discussion paper, our Board decided to retain the current approach of the SIF on each of these issues

This means that the future scheme will also be able to recover claims costs from solicitors up to the level of the excess in the preceding PII policy. This is the same as SIF.

However, the scope for recoveries on post six-year claims is often very limited and we intend that this right should only be exercised where:

- It is likely to succeed.
- It is fair in all the circumstances of the claim that the solicitor should pay the excess.

It would be possible to set up a new compensation fund with criteria mirroring the indemnity cover provided by the SIF. However, the arrangement is intended to provide protection on terms equivalent to the indemnity insurance cover provided under our Minimum Terms and Conditions. So it is arguably simpler and more transparent to deliver this via an indemnity scheme.

Further, WTW's analysis shows that using a compensation fund to provide consumer protection for post six-year negligence would be materially less cost-effective than using an indemnity scheme. For two reasons:

- The different claims handling requirements of a compensation fund and an indemnity scheme. The former could realise cost savings in claims handling (compared to the current costs of the SIF) of between £50,000 and £200,000 a year. While an indemnity fund run by the SRA could save between £300,000 and £400,000 a year.
- A compensation fund could face higher long-term funding costs than an indemnity scheme. This is because it would not be certain to benefit from access to the residual assets of the SIF. These assets could have an important part to play in enabling other cost savings as discussed below.

Decision to use an indemnity scheme under SRA control

After discounting the compensation fund the other options for delivering future consumer protection are to:

- Retain the SIF as an independent entity with changes to reduce operating costs.
- Replace the SIF as operated by SIF Limited (SIFL) with an indemnity arrangement within the SRA.

Discussion paper respondents generally supported retaining the SIF operated by SIFL. While some stakeholders including representative bodies had no objection in principle to an SRA-run scheme.

Our Board decided in September 2022 to provide consumer protection through an indemnity scheme controlled by the SRA. This was instead of retaining the SIF in its present form managed by SIFL as an independent entity.

This is because the SRA option offers greater scope for cost savings to ensure proportionality. And is more appropriate in terms of governance and consistency with our other regulatory arrangements, as explained below.

Cost-effectiveness and proportionality

SIFL is an independent entity with its own infrastructure and governance costs. This reflects its past role as the provider of professional indemnity insurance to the whole profession until 2000.

However, SIFL now delivers only a niche function, operating the SIF as a fund in run-off and handling only:

- claims relating to firms that closed before 2000
- post six-year claims

Consequently the SIF in its current form is not cost-effective as an open-ended consumer protection vehicle for post six-year negligence.

If we were to retain the SIF in its present form, managed by SIFL as an independent entity, we would seek to streamline its governance (discussed further below). And explore options for reducing its claims handling and infrastructure costs.

However, WTW's analysis indicates that even allowing for such changes an SRA-controlled scheme will be substantially more cost-effective than maintaining the SIF via an independent entity.

Potential annual cost savings compared to current SIF costs:

	Independent entity	SRA scheme
Claims handling costs - assessing, managing and settling claims (when claim volumes meet maturity)	£100,000 - £175,000	£300,000 - £400,000
Infrastructure costs - premises, staff, systems	Low impact saving - up to £48,000	High impact saving - from £120,000 upwards

WTW has advised that optimising the asset and liability management of a future scheme would be important in ensuring its cost-effectiveness. This would include revising SIFL's current investment strategy. Our view is that it will be simpler to do this if the scheme is under SRA control.

Respondents to the discussion paper raised concerns over the potentially significant cost of establishing a new arrangement to replace the SIF. The Board noted that since an SRA-controlled arrangement would use our staff (with outsourced expertise as appropriate) and infrastructure, we do not expect these transitional costs to be significant. Nor much if at all greater than the cost of updating SIFL's governance and systems and improving the cost-effectiveness of its operations.

The WTW report includes an assessment of the capability of the SRA in partnership with a suitable outsourced claims handler concludes that this partnership could provide a fit-for-purpose arrangement with only small changes to existing claims handling operations.

Respondents also expressed concern that the SIF's residual assets could be diverted to other purposes if transferred to a new arrangement under our control.

However, SIF rules [https://higher-rights.sra.org.uk/solicitors/standards-regulations/indemnity-fund-rules/#rule-21] require that all its assets must be applied for the purpose of an indemnity or otherwise for the overall benefit of the profession. (This is beyond those required to handle historic and existing claims to the SIF and new claims notified up to 30 September 2023). So the assets could not be applied for regulatory purposes other than an indemnity and will therefore be ring-fenced for this purpose within the SRA.

Governance and consistency with other arrangements

As noted above, the SIF's governance arrangements reflect its previous wider role. SIFL has a Board with an independent Chair and non-executive member, together with further non-executive members

representing both the SRA and the Law Society. These arrangements are not proportionate for the delivery of a narrow post six-year consumer protection arrangement.

Our Board considered that even with streamlined governance it would not be proportionate to maintain an independent entity solely to provide this post six-year cover.

It is important to note that SIFL's current operational capabilities, requirements and systems also mean that it collects and reports only a limited range of data about the claims it handles. For example, there is little information available about the problems that give rise to post six-year negligence claims or the characteristics of the consumers who suffer losses. This makes it difficult to assess in a detailed way and fully understand the regulatory costs and benefits of the consumer protection the SIF provides.

Bringing the future scheme under SRA control will enable us to collect and analyse much more information about the consumer protection provided by post six-year negligence cover. And to adjust the approach of the scheme if necessary.

Several discussion paper responses raised concerns that moving consumer protection within the SRA could cause difficulties if a matter leads both to a claim and a disciplinary case. We recognise that we will need to manage the handling of such events to ensure fair and effective processes and appropriate outcomes across our functions. This is as we already do with claims to the SRA Compensation Fund.

Given the issues outlined above, our Board has decided that the future indemnity scheme for post six-year negligence should be managed and controlled by the SRA. This arrangement will deliver the same protection as the existing SIF arrangements, while also:

- Providing us with clear oversight of the arrangement's operating costs and risk management decisions, and access to relevant management information about operations and claims.
- Enabling us to report transparently on, and keep under regular review, the costs and benefits of post-six year consumer protection.
- Ensuring that it is delivered in a way that is consistent with and works in parallel with our other consumer protection arrangements. This will be governed within and by the SRA as the regulator with responsibility for safeguarding consumer protection.

Scheme rules and arrangements

The future consumer protection arrangement is an indemnity scheme that is intended to deliver the same protection as the SIF. It will also fit together logically with our other consumer protection arrangements.

This includes the six years of run-off cover insurers provide to closed firms with no successor practice under our Minimum Terms and Conditions [https://higher-rights.sra.org.uk/solicitors/standards-regulations/indemnity-insurance-rules/#annex-1] of Professional Indemnity Insurance.

To bring the scheme under the control of the SRA we intend to use the mechanism in rule 4.5 of the existing SIF rules (SRA Indemnity Rules 2012 [https://higher-rights.sra.org.uk/solicitors/standards-regulations/indemnity-fund-rules/]).

These allow us to designate the SRA as the body responsible for holding, managing and administering the SIF. Where the rules reference the Society, this power has been delegated to the SRA pursuant to the delegation of responsibility for all regulatory matters. This includes those relating to professional indemnity. This means we will take over the existing SIF rather than establishing a new scheme.

In addition to this designation under rule 4.5 we propose to amend the existing SIF rules to reflect this change in control. And to bring the rules more into line with our other regulatory arrangements. The draft rules showing the proposed amendments are at Annex 3.

These will provide the same level and scope of indemnity cover as the SIF currently provides in response to qualifying claims after the expiry of six years run-off cover. The main differences are that the rules will reflect that the SRA will administer the scheme in place of SIFL. And so require claimants to notify potential claims to the SRA.

Claims notified to the SIF by 30 September 2023 and historic liabilities

The proposed mechanism means that the future scheme will continue to be responsible for the handling of those matters notified to SIFL up to and including 30 September 2023.

It will also provide certainty of coverage for the other liabilities that SIFL currently handles:

- Claims made during the period a firm was covered by the SIF (1 September 1987 to 31 August 2000).
- Claims made after 31 August 2000 by law firms that ceased without a successor practice on or before 31 August 2000.

We will then consider in due course how best to manage these crystallised and historic liabilities. This could include the scheme retaining responsibility for these liabilities or transferring them to another party such as a third party insurer.

Consultation question 1

Do you have any comments on the draft rules and arrangements for implementing the SRA-controlled post six year indemnity scheme?

Risk management and funding

The new WTW report identifies scope for any future scheme to realise cost savings by optimising its asset and liability management. This includes its approach to reserving against claims and reinsurance.

This will also involve consideration of the potential to use the SIF's assets to contribute to the running costs of the scheme. And/or to take a more targeted approach to future investment returns to help support the scheme.

The potential benefits of this, including the potential to reduce or defer the need for levy funding, were highlighted by the Sole Practitioners Group response to the 2021 consultation.

The question of how to balance the use of residual assets, investment income and new levy funding will be a key operational issue for the future scheme. We would consult on the structure and mechanics of any levy for post six-year consumer protection before collecting a levy for the first time.

We would then consult on the value of any levy on an annual basis as part of our Business Plan and Budget consultation. This will take into account our reserving policy and forecast of claims and associated costs. This will be in a similar way as we do when setting annual contributions for our Compensation Fund.

As discussed above, the consultation responses generally argued that, given the expected low cost of any levy, this will not result in costs being passed on to consumers.

In support of this, many responses referred to analysis in a report by WTW's actuarial arm, published alongside the 2021 consultation. This indicated that a regulatory arrangement for indefinite post six-year consumer protection could carry an annual cost of up to £2.4m. And would require a levy estimated as a flat fee of around £16 per individual or around £240 per firm.

Some responses argued for a flat fee levy on firms, on the grounds that small firms are more likely to close with no successor and be at risk of post six-year claims. Then large firms would not pay more, through the contributions made by the larger numbers of solicitors they employ, than small ones.

The 2021 WTW estimates were based on a range of illustrative assumptions including a change to the current SIF approach to

provisioning. These did not take account of the potential for investment income to contribute to the running and claims costs of a post six-year arrangement. Nor did the estimates reflect the full range of potential cost savings identified by recent WTW analysis.

The new WTW report report published with this consultation identifies opportunities to run a future scheme on a lower-cost basis. Our Board's decision takes those opportunities into account, so in real terms the future scheme should cost less (and certainly no more) than the SIF. However, this is subject to caveats including the potential for significant increases in the level of future claims for post six-year negligence, and wider economic uncertainty.

The SIF's current rules [https://higher-rights.sra.org.uk/solicitors/standards-regulations/indemnity-fund-rules/#rule-16] include a power to collect contributions to the fund from the 'principals' of firms and the future scheme rules maintain these provisions. If we conclude when developing proposals for any future levy that this power should be changed, for instance to enable the collection of contributions from individual practitioners. Then we will consult on the necessary rule changes as part of the consultation on the proposed levy structure.

Impact assessments

Our 2021 consultation included draft regulatory and equality impact assessments. These set out our initial view of the implications of our then proposal that future regulatory arrangements should not include post six-year protection. Responses to the consultation generally disagreed with our assessment.

Revised draft regulatory and equality impact assessments on an indemnity scheme controlled by the SRA are in Annex 4.

We welcome views on these revised assessments.

Consultation question 2

Do you have any views on our revised draft regulatory and equality impact assessments?

Draft equality impact assessment

This draft Equality Impact Assessment replaces the previous assessment published as part of our consultation in 2021 [https://higher-rights.sra.org.uk/sra/consultations/consultation-listing/solicitors-indemnity-fund/?s=c#download]

Stakeholders have raised concerns that reducing or removing consumer protection provided by the Solicitors Indemnity Fund (SIF) could indirectly disadvantage people with certain protected characteristics. This could be

older solicitors and those from a Black, Asian and minority ethnic background.

This was because of the profile of solicitors in smaller firms, which are more likely than large firms to close without a successor business. Or are firms at risk of claims arising after the expiry of six years run-off cover.

In view of this feedback, our Board agreed that there is a stronger argument for an ongoing regulatory arrangement for consumer protection for post six-year negligence. We will, therefore, maintain the same of consumer protection as is currently provided by the SIF and the concerns previously raised no longer apply.

By maintaining consumer protection via an SRA run indemnity scheme, we have not identified any likely equality impacts on specific groups of regulated individuals or consumers.

The use of the SIF's current assets, any investment income and new levy funding will be a key operational issue for the new scheme. As we do now for contributions to the SRA Compensation Fund, we will consult on the structure and mechanics of any levy. This will be before we decide to collect a levy from the profession. That consultation would then set out an assessment of any equality impacts that we identify and seek views from stakeholders.

While we have not identified any disproportionate impacts on solicitors, consumers or other stakeholder groups, we will review any issues that are because of the consultation.

Draft regulatory impact assessment

Introduction

This draft impact assessment looks at the likely regulatory impact of an SRA run indemnity scheme and rules changes which we are consulting on. We would like feedback on our assessment, including any evidence of material impacts that we have not identified as part of the consultation.

Both assessments replace those that were published alongside our 2021 consultation [https://higher-rights.sra.org.uk/sra/consultations/consultation-listing/solicitors-indemnity-fund/?s=c#download] . Those are now redundant because they assessed the impact of making no regulatory arrangement for post six-year negligence.

We have decided to maintain an indemnity scheme to provide the same level of post six-year consumer protection as the Solicitors Indemnity Fund (SIF). Therefore, there will be no change in the scope of protection

that is offered to consumers. As a result, we have identified no significant impacts.

Impact on all consumers of legal services

All consumers of legal services provided by SRA-authorised firms benefit from our minimum requirements and provisions for consumer protection. This includes requirements that a firm has indemnity insurance cover in place and gives consumers information about the regulatory protections.

The previous assessment set out our initial analysis of the impact of closing the SIF and making no alternative regulatory arrangements. It also included a comparison of schemes that operated in other professional sectors.

We noted that the protection currently provided through the SIF is narrow in scope and covers a very small number of claims each year. We said that in the absence of the SIF, consumers with a potential claim would have to find other routes of redress. And that some consumers who may otherwise have been able to establish a claim to the SIF would be unable to obtain any redress.

Responses to our 2021 consultation said that although the volume of claims made was small, the SIF was an important consumer protection. This was because of the nature of the claims and the relative benefit to consumers of the sums paid out. And the severity of detriment that affected individuals would suffer if there was no cover which could be significant in individual cases.

Following that consultation, we carried out further research to explore attitudes to consumer protection against 'long tail' problems and surveyed 1,500 consumers. 90% said it was important to be able to make a claim if they find they had suffered loss because their solicitor made a mistake. This include where the law firm had closed.

Previous consumer research showed that consumers do not spontaneously put a high value on consumer protection but will say they value it highly when prompted. The Sole Practitioners Group response included one such report conducted by IRN Research. This showed a significant proportion were concerned that negligence claims made more than six years after a law firm has closed would not be covered.

The Legal Services Board also published research in March 2022 which covered professional indemnity insurance in legal services. They found that:

- Consumers had low awareness of the existing arrangements in place to protect them when using legal services.
- Once informed about the consumer protection arrangements consumers were supportive of them.

Following the discussion paper [https://higher-rights.sra.org.uk/sra/consultations/discussion-papers/solicitors-indemnity-fund-sif-consumer-protection-negligence-claims/] in August 2022, we reviewed the responses and options for continued protections. We acknowledged that making no regulatory arrangements for post six-year negligence could have a more severe impact on consumer protection than we initially suggested.

This is partly because of the damaging impact that long-tail loss caused by negligence could have on some individual consumers. In addition, the number of such losses could rise significantly in future because of developments in the legal market and in society more widely.

The nature of the work that solicitors carry on suggests that it is important for consumers to have the confidence of long-term protection even if a firm closes. Continuing with an SRA-run indemnity scheme to provide consumer protection for post six-year negligence will mean that consumers will have that confidence.

As discussed in this consultation paper, any future regulatory arrangement will need to be cost-effective and proportionate. Responses to the 2021 consultation indicated that, given the expected low cost of any new levy, these will not be passed on to consumers. However, market conditions can change and some of the costs of protection may be passed on in future, particularly if the cost rises significantly.

The Willis Towers Watson (WTW) report published alongside the consultation indicates that the costs of a SRA-run indemnity scheme should be lower than previous estimates. Our decision to bring the scheme under our control will mean better information about the cost, value, and effectiveness of post six-year consumer protection.

Impact on consumers with a potential claim

The current post six-year run-off cover arrangement through the SIF is relatively narrow in scope and covers a very small number of claims each year. Claims mainly arise out of conveyancing, wills, trusts and probate work. Other SIF claims relate to personal injury, litigation, commercial work and possibly to other work, including criminal law, immigration, bankruptcy and insolvency, and mental health.

Consumers will be able to access the scheme and make a claim:

- If they have a potential claim against a firm that closed without a successor practice.
- Where the mandatory run-off cover has expired.

We are consulting on some technical amendments to the existing rules of the SIF to reflect the change and bring the rules more in line with our

other regulatory arrangements. The amended scheme rules provide the same level and scope of indemnity as the SIF currently provides.

As we have done for the SRA Compensation Fund, we will consider developing online resources to help consumers. This will be so they understand the protection available to them and how to bring a claim where appropriate.

Impact on solicitors, RELs and RFLs and SRA-authorised firms

Our Board decided to maintain an indemnity scheme for post six-year negligence as a regulatory arrangement for the purpose of consumer protection.

We recognise that the SIF indemnity has also provided solicitors with reassurance that they would not be pursued as individuals in respect of a negligence claim. This is where that solicitor's firm has closed with no successor practice confirmed. Our Board's decision will maintain this reassurance, and we therefore think it will have no negative impact on individual solicitors.

Any regulatory arrangement for ongoing consumer protection may have a financial impact on regulated firms and individuals. If we decide to impose a levy on the profession in future to help fund post six-year consumer protection, we will consult on its structure and level. We will consider the regulatory implications for regulated individuals and firms then.

Impact on the wider public interest

We do not think that maintaining the current level of protection for consumers will have any wider impact. There is unlikely to be any impact on a consumer's ability to access legal services. Or the number of firms providing those legal services most likely to give rise to post six-year negligence claims.

Statement in respect of the regulatory objectives and better regulation principles

In the light of feedback and further analysis we think that this decision best balances our regulatory objectives to protect and promote the interests of consumers and the public. The SRA run-indemnity scheme will continue to protect the interests of those consumers who suffer loss from post six-year negligence claim.

We consider that the decision fulfils our obligation under section 28 of the Legal Services Act to have regard to the Better Regulation Principles. The SRA-run indemnity scheme will:

- Support proportionate and targeted regulation.
- Provide an appropriate level of protection to consumers.

...while ensuring that the cover is provided on a more cost-effective basis.

We are consulting publicly and will take account of the views of stakeholders. We are accountable to all our stakeholders in relation to client protection/indemnity arrangements. These stakeholders include consumers, the profession and representative groups.

We must provide arrangements that are effective and sustainable. Ineffective indemnity arrangements will impact on all these stakeholders and the wider public interest.

Next steps

We will continue to work with stakeholders to explore any issues identified during the consultation period as well as analysing the responses to the consultation.

Consultation questions in full

We welcome your views and comments on the issues raised in this consultation - by responding to these questions:

Question 1

Do you have any comments on the draft rules and arrangements for implementing the SRA-controlled post six year indemnity scheme?

Question 2

Do you have any views on our revised draft regulatory and equality impact assessments?

Downloads

- Annex 1 Summary of discussion paper responses (PDF 2 pages, 87Kb) [https://higher-rights.sra.org.uk/contentassets/183ab26cbb9749e9a2c2e670d140e3b6/annex-1-summary-of-discussion-paper-responses.pdf]
- Annex 2 WTW Comparison of options for future provision (50 page PPT) [https://higher-rights.sra.org.uk/contentassets/183ab26cbb9749e9a2c2e670d140e3b6/wtw_sra---psyroc-draft-report-final_06_10_22.pdf]
- Annex 3a Proposed SRA indemnity fund rules (PDF 15 pages, 151Kb) [https://higher-

rights.sra.org.uk/contentassets/183ab26cbb9749e9a2c2e670d140e3b6/annex-3a-proposed-sra-indemnity-fund-rules.pdf]

- Annex 3b Proposed SRA indemnity fund rules showing changes from existing rules (PDF 20 pages, 168Kb) [https://higher-rights.sra.org.uk/contentassets/183ab26cbb9749e9a2c2e670d140e3b6/annex-3b-proposed-sra-indemnity-fund-rules---shows-changes-from-existing-rules.pdf]
- Consultation: Consumer protection for post six-year negligence (PDF 15 pages, 202Kb) [https://higher-rights.sra.org.uk/contentassets/183ab26cbb9749e9a2c2e670d140e3b6/consumer-protection-for-post-six-year-negligence-consultation.pdf]
- Draft impact assessments (PDF 4 pages, 104Kb) [https://higher-rights.sra.org.uk/contentassets/183ab26cbb9749e9a2c2e670d140e3b6/draft-impact-assessments.pdf]
- Response to consultation - Consumer protection for post six-year negligence (PDF 28 pages, 257KB) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/2023/sra-consultation-response---consumer-potection-for-six-year-negligence.pdf]
- Consultation Responses - Consumer protection for six-year negligence (PDF 1.97MB, 76 pages) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/2023/consultation-responses---consumer-potection-for-six-year-negligence.pdf]
- Amended SRA Indemnity Fund Rules (PDF 20 pages, 157KB) [https://higher-rights.sra.org.uk/globalassets/documents/sra/consultations/2023/amended-sra-indemnity-fund-rules.pdf]

Back to closed consultations [https://higher-rights.sra.org.uk/sra/consultations/consultations-closed/]