



Policy Department  
Solicitors Regulation Authority  
The Cube, 199 Wharfside Street  
Birmingham B1 1RN

Sent by email only to [postsixyear@sra.org.uk](mailto:postsixyear@sra.org.uk)

15 February 2022

Dear Sir/Madam,

The Legal Services Consumer panel (Panel) welcomes the opportunity to respond to the Solicitors Regulation Authority's (SRA) consultation on its post six-year run-off cover (PSYROC) and the Solicitors Indemnity Fund (SIF).

The Panel strongly disagrees with the SRA's preferred option which is to discontinue PSYROC without putting in place any alternative consumer protection.

We commend the SRA for gathering some pertinent information and data which give commentators a better insight into the factors that must be balanced. However, the Panel finds the analysis of the data wanting and beneath the standards we would expect from a modern regulator.

The SRA has not given due regard to the statutory objectives of promoting and protecting the interests of consumers, the public or access to justice. Where these are mentioned, the analysis is staggeringly subjective and distorted to support the SRA's preferred position. Equally perturbing is the prominence throughout the consultation document on the costs of maintaining PSYROC, without a fair and balanced analysis of the benefits or even the hardship that would ensue if this protection were removed. This is perhaps the aspect of the consultation that the Panel finds most objectionable; the lack of empathy or understanding that behind every 'low value' claim, irrespective of the numbers, are real human stories of financial loss directly attributable to a solicitor's negligence. There seems to have been no research or effective engagement with consumers to establish their views on the importance of the current levels of protection and the proposal to dispense with it. Where is the analysis that the £16 year cost per solicitor (or £240 per firm) would make any material impact on solicitors' fees, and what clients would feel about this?

We also note that little is mentioned in the consultation document about the asymmetry of information in legal services, and that this imbalance of information puts consumers at such a disadvantage to necessitate a higher level of consumer protection.

The SRA purports to remove PSYROC on the strength of a decision that was made over twenty years ago, at a time when the decision makers assumed that the open market would fill the void through the insurance route. This has not happened and is unlikely to happen. Consideration must now be given to the environment under which the SRA wants to enforce a decision made twenty years ago in a very different context. We are still in a pandemic that may lead to more claims in the future, and the cladding crisis in housing may also lead to more claims. None of this is referenced in relation to the number of claims currently observed.

There is at least one viable option going forward, which is to allow PSYROC to continue within the SRA's regulatory arrangement. By your own calculations this option will require only a small annual levy on firms (£240) or on individual solicitors (£16), which the Law Society has said that solicitors are willing to pay. We are not satisfied with the reasons the SRA give for rejecting this option.

## **Reflection on the consultation questions**

### **Questions 1 and 2**

**Do you have any view on our analysis in relation to continuing to provide PSYROC through the SIF on an ongoing basis? Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an ongoing basis?**

### **The SRA's analysis disregards consumer protection**

The Panel does not agree with the SRA's analysis. In our view, the SRA has not given due consideration to the consequences of removing PSYROC for consumers, the public and the profession.

From the Panel's standpoint, the crux of the matter is that there is currently protection against the long-tail negligence of a solicitor. This protection means that consumers have recourse to redress should anything go wrong years after they have procured the service of a solicitor eg when they discover an error with the deeds of sale of a property. This is not a gold-plated protection. It merely recognises that in some circumstances, consumers are not in a position to discover the mistake until years have elapsed, given the nature of legal services and the limited information available to consumers of legal services.

The data provided by the SRA highlights that conveyancing is the main area of law where consumers make a claim, followed by wills and probate. We note that these are also areas of law where practitioners' negligence may not be discovered until many years after the procurement of the service. And perhaps more importantly, many years after the current six year run-off cover, which the SRA is implying is adequate. Indeed, the SRA's data shows that around 11% of post-closure claims arise more than six years after a firm has ceased to operate.

We agree that it is appropriate that a regulator should consider the feasibility, proportionality and sustainability of financial matters or responsibilities. However, it is the Panel's strong contention that where these obligations exist to protect consumers, the evidence and or rationale for removal of existing protection must meet a high threshold, or offer corresponding benefits to those affected and the wider public. The SRA's proposals do not meet this threshold in our view.

The SRA has downplayed the consumer protection element of PSYROC and amplified the 'sleep easy' protection it offers Solicitors. We do not consider it problematic that PSYROC exists to protect both consumers and solicitors.

The SRA dismisses claims from consumers as being small and low value without respectfully considering the impact of loss on consumers, both financially and emotionally. Many individuals who own properties often have significant life savings tied into their property. Regardless of how small these numbers may seem to the SRA, the impact is likely to be significant. To remove this protection, retrospectively and without any corresponding benefit, is a position the Panel cannot support.

### **The Panel disagrees with the SRA's analysis of regulatory cost and access to justice**

The SRA asserts that:

*“future funding of PSYROC will increase the cost of regulation and is likely to increase cost for consumers and therefore, potentially, barriers to accessing legal services”*

We do not agree with this analysis on the strength of the SRA's own submitted evidence. The SRA shows that a levy per firm for PSYROC will cost £240 per annum and provides no evidence that this would lead to a material rise in cost for consumers. We are far from convinced that such a trivial sum would be passed on to consumers. And it is certainly not at the level that would create or exacerbate access to justice. On the other hand, we are convinced that, if asked, solicitors would be content to pay such modest sums to enable this protection to continue, as this will continue to bolster the profession's reputation, preserve the value of using a solicitor and maintain public trust.

We agree with commentators who say that it will be much more costly for solicitors to organise their own financial affairs post the six-year run-off cover, by either finding insurance on the open market, or by establishing a safety pot for such claims. Indeed, this is what is likely to lead to significant costs being passed on to consumers and discourage providers from entering areas that are more susceptible to claims post the six-year run-off.

### **The Panel does not agree with the comparison being made with other regulators**

The Panel does not agree that PSYROC should be dispensed with on the grounds that it does not exist amongst other legal services regulators eg the Council of Licensed Conveyancers or CILEx Regulation. On the contrary, on the strength of the

evidence presented by the SRA, there is an argument that PSYROC should be applied across the sector, in Conveyancing, Wills and Probate, given that 11% of claims are brought after six years of run-off cover. The argument to lower the bar because others do not offer similar protection is not one we can support.

It should also be noted that consumers may choose to procure the services of a solicitor precisely because of the higher protection that is offered. Consumers may be willing to pay a higher price for solicitors in the knowledge that should anything go wrong there will be redress. It can also be argued that removing this protection, even if it comes at a fractionally higher cost to consumers, is tantamount to removing consumers' choice, namely the ability to choose the provider that offers the most appropriate protection or risk they are willing to take. Moreover, as noted above, the consultation document does not demonstrate the link between the annual cost of providing protection with the impact (if any) on fees, nor does it balance cost against benefits. There is plenty of evidence showing that consumers do not choose based on price alone, but also on quality of advice, service and protection. This consultation is silent on the consumer voice because the SRA has not engaged with them, while purporting to remove protection that affects them.

### **Question 3 and 4**

**Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?**

We agree with the SRA's analysis here. We agree that given the hardening of the insurance market and the number of insurers who have exited the market, it is highly unlikely that anything more than six-year run-off cover will be attractive to insurers.

### **Question 5**

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

The Panel does not have any further information on the potential for insurers to provide PSYROC on the open market, though it appears that it is unlikely to happen given that options haven't materialised over the years. Moreover, the Panel is not in favour of any option that would be optional or voluntary for providers.

### **Question 6 and 7**

**Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an ongoing basis?**

**Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?**

Our response to question 5 applies to this question. We simply do not think that the market will meet the need under consideration in this manner.

### **Question 8 and 9**

**Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an ongoing basis?**

**Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? Do you have any information around the potential operating models for and costs of establishing and maintaining an alternative indemnity fund?**

The Panel's preferred option is to maintain SIF for the whole market. We are therefore in support of a levy on the profession to cover this cost. The Panel is also of the view that the current administrative cost to manage the fund seems excessive and would urge the SRA to conduct an independent review with the aim of reducing the cost along the lines discussed in the consultation document eg transferring the management of the fund and claims to a larger organisation.

### **Question 10 and 11**

**Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC**

**If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted. If so on what basis.**

The Panel is convinced by the analysis and argument made in the consultation document that limiting the scope of PSYROC will achieve very little by way of costings and it would build added uncertainty and complexity into the process.

We consider that PSYROC should continue for the whole market but with a review designed to reduce the administrative cost.

### **Question 12**

**Do you have any information relevant to our consideration of whether any arrangements for ongoing PSYROC should be targeted.**

The Panel has no additional information relevant to the SRA's consideration of whether any arrangements for ongoing PSYROC should be targeted.

### Question 13

**Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so Please give your reasons as to why and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?**

The Panel is of the strong view that PSYROC should continue under the SRA's regulatory arrangement. We believe the option of a small levy on firms or individuals is a feasible and appropriate way to fund the cost.

Our answers to question 1 and 2 above explain why we disagree with the SRA's analysis and its preferred option. To reiterate, we believe that the levy on firms or individual solicitors for the consumer protection offered is proportionate and reasonable. We believe that access to justice and fair competition is enhanced with PSYROC as explained above. We believe the cost of regulation passed on to consumers will be higher if solicitors have to make their own arrangements. Although much has been said about the areas of law with higher claims eg conveyancing, wills and probate, we note that this is a sector wide protection and no area of law is immune from claims.

### Question 14

**Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there other steps that we should consider?**

The Panel is not convinced that providing information to clients when a firm closes, including information on taking out insurance, is realistic or reasonable. This suggestion assumes that firms will have the current contact details of all past clients. It also assumes that insurance would be available for consumers, and that they would know precisely what that insurance should cover. Moreover, it fails to acknowledge that this comes at an extra cost to consumers.

Please contact Lola Bello, Consumer Panel Manager, ([Lola.bello@legalservicesconsumerpanel.org.uk](mailto:Lola.bello@legalservicesconsumerpanel.org.uk)) with any questions pertaining to this response.

Yours sincerely,



Sarah Chambers  
Chair  
Legal Services Consumer Panel