Response to SRA consultation on PSYROC and SIF
from
The Association of South Western Law Societies (ASWLS)

This response is submitted on behalf of ASWLS. The members of the association are the following six local law societies located across the south-west region:

- Monmouthshire Incorporated Law Society
- Bristol Law Society
- Gloucestershire & Wiltshire incorporated Law Society (GWILS)
- Devon & Somerset Law Society (DASLS)
- Plymouth Law Society
- Cornwall Law Society

The ASWLS webpage for more information on the Association can be found at http://www.aswls.org.uk

This response is in four parts:

I. **Summary of our position**
II. **Our submissions**
III. **Detailed responses to paragraphs in the SRA consultation paper**
IV. **Replies to the questionnaire**

PART I

Summary of our position

- In order to protect consumers of legal services, and to maintain public confidence, PSYROC (post six year run off cover) should and can be continued indefinitely in its current form through SIF.

- SIF can be financed by a small annual levy imposed on the practising profession with the PC fee. This could be an individual levy of £16 or a flat firm levy of £240. We favour a flat firm levy. This is a simple and obvious solution. It is a solution suggested by WTW in their actuarial analysis. We commend the SRA for commissioning this actuarial report.

- To close SIF would put the SRA in breach of its regulatory objectives and its obligations under The Legal Services Act (2007). If SIF is closed there will be long-reaching and damaging consequences for consumer protection, the reputation of the profession, public confidence, diversity in the profession, and access to legal services.

- A decision by the SRA to close SIF would at best be a perverse, irrational and unreasonable exercise of its discretion. At its worst, some might even consider a decision to close SIF as an abuse of the SRA's power.

- A decision to keep SIF going would be a proportionate and wholly justified course of action. The solution to keeping SIF continuing indefinitely is obvious and straightforward. No other solution is available for the provision of PSYROC.

PART II

Our submissions

Please note that more detail on some of the following submissions can be found in Part III below

1. SIF should continue. PSYROC should and can be continued indefinitely through SIF.

2. Consumer protection. SIF should continue in order to protect consumers of legal services, our clients, from being unable to gain redress for long-tail claims. The SRA makes clear that it recognises the problems there will be for consumers trying to pursue claims against solicitors who have retired, disappeared or died. Consumers will have to pursue claims in the courts, and could well find that any judgement they obtain is worthless because it cannot be satisfied. We do not need to spell out those potential problems. They are obvious. (We do not accept the suggestion that no win no fee agreements could provide any help to affected clients.)

3. A levy is the solution. There is a substantial sum of money in the SIF pot which could last a number of years hence. But we accept that the fund will need regular topping up. We say it can be funded with a small compulsory annual levy on the practising profession, conveniently and efficiently collected by the SRA with the practising certificate fees. This levy solution is suggested by WTW in their actuarial analysis. The levy could be either £16 per solicitor, or a flat firm levy of £240. We favour a flat firm levy. It is a very straightforward and obvious solution. We accept that the amount of the levy might need adjustment from year to year.

4. The regulatory objectives. A decision to close SIF would put the SRA in breach of its obligations under The Legal Services Act (2007). The SRA would be failing to comply with its regulatory objectives set out in Clause 1 of the Act. In particular, it would be in breach of the first regulatory objective which is ***protecting and promoting the public interest.***

A decision by the SRA to close SIF would at best be perverse, and an irrational and unreasonable exercise of its discretion. Putting it at its highest, we say that a decision to close SIF in the face of a readily available solution could be seen as an abuse of power. Because there exists a readily available and obvious solution to the problem, a solution which will be widely welcomed, we can only conclude that the SRA have their own agenda, and will close SIF because SIF is just an inconvenience, and simply because they can.

5. What is proportionate? The SRA bases its arguments in favour of closing SIF on its own idea of what is proportionate. They say that the risks are small and the costs of covering those risks are disproportionate. But proportionality is a subjective concept. We say that to continue SIF is indeed a proportionate course of action, and will ensure that the SRA meets the SRA's regulatory objectives. The SRA Board have chosen, for their own unfathomable reasons, to view the continuation of SIF as disproportionate. We say unfathomable reasons, because a simple, cheap and acceptable solution to a very serious problem is there, available, for all to see. All the SRA has to do is implement a levy.

6. Every claimant is important. The number of consumers who will potentially lose out, according to the WTW analysis, cannot be dismissed as "small". Every single one of them is important. The forecast number of likely claims from 2023 onwards will peak at 45 in 2023 and level off to 31 from 2029.

Moreover, it should be noted that "*the claim notification counts exclude nil claims where there will not be any payments".* Thus it seems that the actual number of claims notified could range from 62 to 90.

Those historical claims with no pay-outs will have been successfully defended, for reasons such as lacking merit to being time-barred. The results would have been disappointing to claimants, but at least they were given closure. They were saved from years of wasted time and money spent on pursuing spurious claims. That in itself is a worthy purpose for SIF, and is in the public interest.

Neither can the amount of the average claim (£34,600) be regarded as insignificant. To an individual claimant, losses of those sorts of amounts can be life-changing. (The SRA acknowledges that two of the highest recorded claims paid out have been as high as £400,000.)

SIF is of course there to pay out to clients who have suffered loss through solicitors' negligence for long-tail work. But in reality it is also underwriting what must be millions of transactions going on every year. Given the vagaries of life in the law, any one of those transactions could cause problems in the long term.

7. The costs are proportionate. The costs of running SIF are not disproportionate to the enormous benefits SIF provides. However, we think there is undoubtedly scope for introducing efficiencies and reducing running costs in the future. The quoted defence costs are probably not out of line with litigation costs generally although again, we think there are economies that could be made in claims management.

8. Damage to the reputation of the profession and public confidence. To close SIF would cause serious and irreparable damage to the reputation of the profession, and of its regulator, and undermine public confidence, all of which would be exacerbated by bad publicity. One of the hallmarks of our profession is the excellent protection we give our clients.

It is worrying and confusing that the SRA as the profession's regulator does not seem to be concerned about that. What will the SRA do when distressed clients are ringing and emailing them to ask for help in making claims? What advice will they be giving to clients who cannot trace their solicitor and cannot get any redress? How will the SRA deal with the headlines in the *Daily Mail* and the outrage expressed by disaffected clients when they contact *Money Box* on Radio 4. The story will be that we have abandoned our clients, and that the SRA has caused it.

9. The cost of a small levy would NOT be passed on to consumers. The SRA's contention that an annual levy of £16 per solicitor or £240 per firm would increase costs to consumers and therefore disadvantage them is frankly absurd. The SRA has not produced any evidence for this assertion. Do the SRA really imagine that a firm would add fractions of pence to the charging rates of their fee-earners? And if a firm rendered 1,000 invoices per annum would they really add a massive 24 pence added to each bill? It would be easier to start ordering cheaper biscuits for the office or, for a healthier workforce, cut out the biscuits altogether.

10. There is nothing wrong with cross-subsidisation. The argument that a levy would cause cross-subsidisation between sizes and of firms and types of work is, on the face of it correct. But the notion that this is somehow unfair or that the profession would object to this is misguided. Indeed, cross-subsidisation already exists. And it is there to protect consumers, the reputation of the profession, and public confidence. The practising certificate fee itself involves cross-subsidisation. For example, much of the PC income is spent on disciplinary matters, which involve a minority of the profession. The Compensation Fund levy in simple terms is another example of cross-subsidisation from the majority of the profession to the minority that commit fraud.

Cross subsidisation is a good thing and exists widely within the structure of our democracy. Taxpayers pay to support services they might never use, and social security benefits they might never need – but one never knows. Insurance premiums across the board cross-subsidise between those who have claims and those who never have a claim. The point is that nobody knows whether their house might burn down or whether they will have a car accident.

Thus we favour a flat firm levy. We believe that the big firms, whose clients are far less likely to need SIF, will not mind paying what for them is a drop in the ocean. They will know that the reputation of the profession, which we believe is of great importance to them, is maintained. Small firms and sole practitioners who have most to gain by the continuation of SIF will be thankful for a positive outcome which will provide security for their clients and their retirement. They will not feel at all disadvantaged by the payment of a levy of £240 per annum, or thereabouts.

11. Being an outlier is a good thing. Just because some other professions and other providers of legal services do not have PSYROC does not mean that the solicitors profession has to drop its standards of client protection and become like them. Being an "outlier" is a good thing. Excellent client protection is one of the hallmarks of our profession.

The nature and range of work done by solicitors is different from other providers. Limitation legislation in other jurisdictions is variable. And let's compare doctors and dentists who have indefinite cover. (Whether that cover is imposed by regulators or employers is beside the point.) And for the SRA to hold up unregulated will-writers as a shining example is incomprehensible.

12. Threat to diversity, client choice, and access to justice. To close SIF would create barriers to setting up small solicitors' firms, and barriers to solicitors firms undertaking what are fundamental and crucial areas of work. To close SIF would mean the long term erosion of a diverse profession, and a steady reduction in client choice and the ready availability of legal services in the high street where people most need them.

The SRA is supposed to be ***improving access to justice***, and ***encouraging an independent, strong, diverse and effective legal profession.*** (Regulatory objectives c and f.)

The SRA say there is no evidence for what we say. Well of course there isn't - not yet anyway. But the prospect would seem to be self-evident. To put it bluntly, if SIF is closed, who in their right mind would want to set up as a sole practitioner or a small firm? There will be a race to the bottom for mergers which, as a retirement option, do not exist.

13. The clients of all sizes of firms can be affected. It is no surprise that the majority of long-tail claims come from sole practitioners and small firms. They are of course the firms most likely to close with no successor practice. This is not a reflection on those small firms. The practising big firms have long tail claims too, but those claims are covered by their insurer. (Statistics on the level of long-tail claims in all sizes of practising firms are not available from the insurance industry. That is simply because it would be a time-consuming and complex exercise for those statistics to be produced.)

Having said that, big firms are not immune from closure, as recent cases have shown. Furthermore, key partners or employees in big firms who were previously working in small firms that went into run off could find themselves at the end of a claim which will bankrupt them or place them, and thus their present firm, in a very awkward position, financially and reputationally. Bottom line, the health of the legal system for the public is closely aligned with the working conditions and concerns of the profession.

14. No other insurance solution exists. There is no open market insurance solution available, nor is there ever likely to be. This has been explored at length by The Law Society, and also it seems by the SRA. And the insurance industry would never be interested in operating a master policy, nor being involved in any "alternative indemnity scheme". The SRA acknowledges this.

15. Targeted solutions won't work. "Targeted solutions" such as a scheme that is restricted to certain sizes of firm or certain types of work, would be far too complicated and costly to administer. And there will inevitably be gaps in cover and confusion for consumers.

16. Successor practice problems. The SRA recognise the current problems faced by small firms in trying to find a successor practice. This is largely driven by the insurers who are understandably not allowing the acquiring firm to take on the small firm's potential liabilities. Thus small firms are forced to take run off cover in order for their businesses to be taken over.

When the successor rules changed some years ago, the new rules were a welcome innovation. But now that we have an increasingly hardening insurance market and the prospect of SIF closing, this changes everything. More and more firms will be closing with no successor practices, with no protection for clients with long-tail claims. In recent months there have been large firms going into forced closure. A change in the successor practice rules is not the cure. The answer lies in making sure that SIF is on a secure financial footing so that it can be maintained indefinitely.

Without SIF there will be sole practitioners and partners in small firms struggling on when they really should be retiring. Mistakes can be made, closures can be forced upon them and, in extremis, bankruptcies and premiums for PII and run-off not paid. This has consequences for their clients and the insurance industry, and will lead to further rises in insurance premiums generally and potentially more claims on the Compensation Fund. The present situation also causes problems for the larger firms keen to expand and increase their scope of operation.

PART III

1. Detailed responses to paragraphs in the SRA consultation paper of November 2021

Sleeping Easy - Para 14. Yes of course SIF provides security for retired solicitors, but that is simplistic. It provides protections for principals and partners of closed firms, including their employees – all of whom, by the way, could still be working in other firms. It also provides protection for employed solicitors who may wish to set up firms of their own. The term *"sleep easy factor"* is one that seems to have been coined by the SRA, and it is faintly insulting. It demonstrates that the SRA appears to have no understanding of what it's like to be at "the sharp end", which is disappointing. We are well aware however that the protection of solicitors is a representative function and that the SRA can only be concerned with client protection.

Plugging the gap - Para 17. SIF Ltd reports that due to its solvency policy the continuation of PSYROC through SIF is not prudent without any additional funding. The answer to the need for further funding is a levy on the profession, as discussed elsewhere in this response.

Unexpected events - Para 18. Yes, SIF Ltd operates as if it were an insurer, in economic terms. And yes its surplus can be eroded by significant large events which are hard to forecast. This is no different to the issues that PII insurers face in setting premiums. However, the WTW analysis states that their forecast, based on historical data, is that the predicted annual claims will peak at 45 in 2023 and level off to a consistent norm of 31 from 2029 with an average claim value of £34,800. We note that the claims notification counts exclude claims where no payments out will be made. This will undoubtedly be where claims are not pursued, or are successfully weeded out as being without merit or time-barred. Does this mean therefore that we are really looking at the number of claims made being anything from 62 to 90 each year? We make the point here and elsewhere that all claims have to be defended to avoid judgements in default.

The SRA regards the predicted number and value of claims as small. The SRA is concerned about "significant large events" , and so they should be, especially in the current climate of firms of all sizes closing with no successor practices able to take them over. And the SRA is well aware of the current problems in that regard. Therefore the SRA should consider it is prudent, for the sake of affected clients, to keep SIF continuing for PSYROC. The SRA cannot have the argument both ways.

"Small" is not small - Para 20. We say that the costs of maintaining PSYROC through SIF are indeed proportionate to the level of predicted claims. We say that the level of predicted claims cannot be regarded as small especially from the point of view of an affected consumer. And we refer to our comments on Para 18 above, that if the SRA is concerned about unpredicted "significant large events" then it cannot at the same time say that the protection provided is disproportionate.

Upholding the regulatory objectives - Paras 22 and 23. We have no argument of course with the SRA's obligations to comply with the regulatory objectives set out in the Legal Services Act 2007 ("the Act"). Our argument is with the SRA's view on the way in which those objectives should be complied with. It is worth setting out the relevant provisions of the Act below. We do so below for other parties who may be reading this response.

We disagree with the way the SRA proposes to exercise its powers in relation to those regulatory objectives. We say the SRA is not taking into account factors that it should be taking into account. The SRA is not exercising its discretion reasonably. Clause 28(2) states that the regulator (the SRA) "*must ….so far as is reasonably practicable act in a way which is compatible with the regulatory objectives."* We say the SRA is not acting in a reasonably practicable way if it decides to discontinue the provision of PSYROC through SIF. The solution is available and convenient, but the SRA is choosing to dismiss this solution for reasons which are not transparent, based on no discernible evidence, and its own idea of what is "proportionate".

Legal Services Act 2007

1 The regulatory objectives

(1) In this Act a reference to "the regulatory objectives" is a reference to the objectives of—

(a) protecting and promoting the public interest;

(b) supporting the constitutional principle of the rule of law;

(c) improving access to justice;

(d) protecting and promoting the interests of consumers;

(e) promoting competition in the provision of services within subsection (2);

(f) encouraging an independent, strong, diverse and effective legal profession;

(g) increasing public understanding of the citizen's legal rights and duties;

(h) promoting and maintaining adherence to the professional principles.

28 Approved regulator's duty to promote the regulatory objectives etc

(1) In discharging its regulatory functions (whether in connection with a reserved legal activity or otherwise) an approved regulator must comply with the requirements of this section.

(2) The approved regulator must, so far as is reasonably practicable, act in a way—

(a) which is compatible with the regulatory objectives, and

(b) which the approved regulator considers most appropriate for the purpose of meeting those objectives.

(3) The approved regulator must have regard to—

(a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and

(b) any other principle appearing to it to represent the best regulatory practice.

It's simple - Para 24. The SRA considers that any arrangements should deliver simplicity and certainty. That is exactly what SIF does deliver. And with a straightforward financial adjustment, as discussed further on, SIF is affordable and efficient in providing client protection.

The Law Society cannot help - Para 29. We are entirely cognisant of the fact that the wellbeing and protection of solicitors cannot be of concern to the SRA. This is the role of The Law Society as the representative body. But as will be discussed further, The Law Society is extremely limited in what it can do remedy the damage caused by the closure of SIF. And we are all well aware that The Law Society has no regulatory power and cannot provide an indemnity scheme, as indemnity is a regulatory matter.

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The claims with no pay-outs - Para 31. We note that the forecast number of likely claims from 2023 onwards will peak at 45 in 2023 and level off to 31 from 2029. However we also note that "*the claim notification counts exclude nil claims where there will not be any payments" .* Thus the actual number of claims notified could range from 62 to 90.

Those historical claims with no pay-outs were successfully defended, no doubt for reasons such as lacking merit or being time-barred. The results would have been disappointing to claimants, but at least they were given closure. They were saved from years of wasted time and money spent on pursuing spurious claims. That in itself is a worthy purpose for SIF, and is in the public interest.

Proportionality - Para 32. We believe the level of the costs of claims is proportionate, and the relative proportion of costs to pay-outs to claimants is probably not much different to litigation costs generally, or costs experienced by PII insurers. But we also believe there is room for reducing running costs and increasing efficiencies within SIF in the future. We are not going into any detail on that particular point, because we say the present level of costs is proportionate.

No surprise about small firms - Para 36. Yes the majority of claims dealt with by SIF relate to firms with under six partners, including sole practitioners. But that is wholly to be expected because the small firms are the most likely to close without a successor practice. That situation is changing with bigger firms closing as well. Firms in practice have long-tail claims but those of course are covered by their PII insurers.

Rocky road for consumers - Para 43. We entirely agree that without SIF consumers will have a rocky road trying to first make a claim and secondly, obtain redress. We are glad to note that the SRA at least recognises the problems.

No insurance options available - Paras 44 and 45. There is absolutely no possibility of PSYROC being available in the insurance market. Insurers have made that clear. Furthermore, our understanding that is that the Prudential rules prohibit insurers from offering cover to commence some years ahead of when the cover would be due to start. To begin with the insurer may not even be in the market by then. In any event no insurer would engage in that as a business model if it wanted to stay solvent. Not even firms "with an existing relationship" with their insurer would be able to get PSYROC.

No successor practices - Para 47. The current position is that smaller firms are finding it nigh impossible to find a successor practice. The insurers of acquiring firms are insisting that the smaller firm go into run-off for the whole or part of their business. When the successor practice rules changed to allow firms to take voluntary run off cover when they were acquired by a successor practice, this worked well for small firms and helped them find successor practices. But with the threat of SIF closing, and the significant hardening of the insurance market, the position has changed. This is not due to the successor practice rules, but the insurers understandably protecting their businesses, and the acquiring firms fearing unsustainable increases in their PII premiums.

The barriers to small firms closing with no successor practice are not perceived, but real. If SIF closes we agree that there are likely to be partners/principals of small firms carrying on longer than they should to try to put off the inevitable.

Para 49. Already dealt with above.

SIF is there to deal with these claims - Para 50. We say that the particular issues in dealing with claims made to SIF are to be expected. That is what SIF is meant to deal with. Claims remaining open for a long period of time is no different to claims in the open market. And the fact that claims might lie dormant for a while before files can finally be closed, is pretty standard stuff and should not be a cause for concern.

A levy is no problem; we'll just buy cheaper biscuits for the office - Para 52. We accept that there would need to be additional funding for the long-term security of PSYROC through SIF. The WTW analysis and forecast of additional funding needed specifically relates to keeping SIF going - not any other means of providing PSYROC (as this paragraph seems to suggest). WTW would surely have difficulty with any other kind of forecast.

The SRA suggests that a levy of £16 per practising solicitor or a flat £240 per firm would be passed on to consumers. But it's pocket money. The idea that this is unaffordable and would be passed on to consumers is an absurd proposition. The SRA has no evidence for this. No firm in their right mind would even consider passing that cost to their clients. The suggestion is ludicrous, bearing in mind other substantial overheads such as PII, PC fees, staff, rent, mortgages, utilities etc. It is ridiculous to think that say a £240 firm levy would be added to say an average of 1,000 invoices per annum. This works out at 24 pence per invoice. Would firms really pass on the cost of an individual levy by adding fractions of pence to the charging rates of their fee-earners?

Cross-subsidisation is fair, and targeting won't work - Para 53. It is correct that a levy imposed on a universal basis would in theory mean cross-subsidisation in terms of firm size and work type. But we entirely disagree that this is a bad thing. It is not disproportionate, nor anti-competitive, and it is actually more efficient for PSYROC ***not*** to be targeted.

The practising certificate fee itself involves cross-subsidisation. For example, much of the PC income is spent on disciplinary matters, which involve a minority of the profession. The Compensation Fund levy in simple terms is another example of cross-subsidisation from the majority of the profession to the minority that commit fraud.

But the point is that the profession as a whole has an interest in maintaining the PC fee and the Compensation Fund because (a) clients should be protected and (b) the reputation of solicitors as a profession that protects its clients from loss and harm has to be maintained and (c) in order to maintain public confidence in our profession and in the rule of law.

The SRA's apparent assertion that being concerned about the reputational damage to the profession is a bad thing is not only insulting but very worrying. The SRA should try that one out on doctors. The GMC and the BMA would not take that view.

We absolutely agree, however, that applying a levy on a risk basis would indeed be extremely complex and well-nigh impossible to administer, and lead to cost increases and consequent increases in the PC fee.

Proportionality is a subjective concept - Para 54. The main thrust of the SRA argument is based on what they consider to be proportionate. As we have stated above, the number of consumers who will potentially lose out cannot be regarded as "small". Nor can the amount of the average claim be regarded as insignificant. Proportionality is a subjective concept, and the SRA have conveniently chosen for their own unfathomable reasons to view the continuation of SIF as disproportionate. That view is objectively unreasonable.

***It's good to be an outlier - Para 55*.** The SRA contends that being an "outlier" as a profession in terms of client protection is a bad thing, and that we as a profession should lower ourselves to the lowest common denominator. We strongly disagree. For a start, the kind of work done is different, limitation legislation in other jurisdictions is variable. And compare doctors and dentists who have indefinite cover. (Whether that cover is imposed by regulators or employers is beside the point.) And to hold up unregulated will-writers as a shining example is absolutely ludicrous.

Being an "outlier" is a good thing. Excellent client protection is what puts solicitors head and shoulders above other providers of legal services who provide a limited range of services at that.

The High Street will disappear - Para 56. The SRA claim there will be no impact on the provision of areas of work subject to long-tail claims (conveyancing, wills, trusts, probate etc). But they have missed the point. The long-term impact will be that many smaller and high street firms will stop doing that kind of work and client choice will be reduced.

Diversity and choice will disappear - Para 57. It is not surprising that the SRA have not found evidence of effects on the setting up of small firms or uptake of particular areas of work. It is far too early. We say that if SIF closes the predictable result will be a gradual erosion of small and high street firms willing to take on areas of work vulnerable to long-tail claims. And because this work is a mainstay for many small and high street firms, it will mean fewer small and high street firms in the legal landscape. This will reduce diversity and have a detrimental effect on client choice and availability of fundamental legal services. All of this are predictions of course, but predictions based on a common sense view of consequences, and the provisions of the Limitation Act.

We disagree that the continuation of PSYROC through SIF will lead to an increase in the cost of regulation. How? Closure of SIF will probably have that effect, including increasing claims to the Compensation Fund, many of which might be rejected, but all the same have to be dealt with.

Foregone conclusion? - Para 59. The SRA declare their preferred option which is to close SIF. Doubt could be cast on this as being an open and objective consultation because the SRA has already clearly made up its mind. We worry that proper regard might not be paid to responses which are opposed to the SRA's proposed course of action. We are fully aware that a previous decision was made to close SIF, and that we are now in "extra time". But we say that the original decision was wholly wrong, and any confirmation of that decision is equally wholly wrong – especially given the changed market conditions and what we know now.

Costs are proportionate - Para 60. We say that the costs of running SIF are proportionate in the light of the volume and value of claims. And within those costs are costs of successfully defending unmeritorious claims. (We don't appear to be given those as a separate costs element.) The quoted defence costs for the average case appear to be in line with costs in litigation, and defence costs incurred by PII insurers. There is possibly room for a reduction in administrative costs in the future, but all the same, we say that present costs are proportionate.

Investment income - Para 61. We note the figures for running costs and the costs of re-insurance. What does not seem to be taken account of is the offsetting effect of a substantial amount of annual investment income.

A levy to the rescue - Para 62. We fail to understand this point which rather begs the question. If SIFL say that without a new funding stream they would require an expensive actuarial review every one or two years, then the problem is solved by a funding stream of a small annual levy on the profession – as suggested in the WTW analysis. By the way, many of us had already looked at the SIFL accounts and the number of practising solicitors and the number of firms and made that same calculation on the back of an envelope. It is heartening to have that backed up by experts.

Costs are proportionate- Para 63. See our comments above. We regard the fixed management and running costs as proportionate (but with room for greater efficiencies and reductions in costs in the future). We agree that a levy on the profession would indeed mitigate the risks of unexpected very large claims and could allow for a reduction in re-insurance costs.

MTC amendments are not the cure - Paras 66 and 67. We agree with the view that to amend the MTCs to require insurers to provide PSYROC would lead to huge increases in PII premiums, forced firm closures, and insurers exiting the market.

A Master Policy a non-starter - Paras 69 and 70. We agree that a master insurance policy is not a feasible option. It's basically a non-starter. And we recall that a master policy was tried and failed before SIF was set up in September 1987.

An alternative indemnity fund is no answer - Paras 72, 73, 74 and 75. We agree that an alternative indemnity fund is not a feasible, nor a sensible option – and again a non-starter. The solution to PSYROC already exists in the form of SIF, and there is no reason to change that.

Targeting would be counter-productive - Paras 76, 77, 78 and 79. We agree with the SRA analysis that targeted PSYROC would be counterproductive. A potentially small savings in costs would be offset by increased administration and its associated costs, and uncertainty and confusion for affected consumers, and a lower level of protection. This would not be a sensible solution.

Caps are pointless - Para 80. We agree that capping the maximum pay-out per claim would achieve nothing since the data shows that historically claims have been well below the current limit.

Conclusions are wrong - Para 81. This paragraph summarises the SRA's conclusion. As can be seen from our arguments above we disagree entirely with the conclusion they have reached.

Continuing SIF is proportionate - Para 82. We disagree that a continuation of SIF would be a disproportionate course of action. We agree that a "targeted" scheme would not work for reasons previously stated.

Detriment to diversity and choice awaits - Para 83. The SRA would be hard put to find evidence of supply shortages in areas of work subject to long-tail claims. There is no evidence because those effects are long-term, not presently seen whilst SIF is still in place. But as we have already said, the main effects of closing SIF are entirely predictable: diversity in the profession will be negatively impacted, as fewer and fewer sole practitioners and small firms set up, and the availability of services in the high streets all over England and Wales will significantly diminish – to the detriment of consumers' choice and access.

Consumers just want the job done - Para 84. We disagree with the SRA's conclusion on market impacts. Whilst we agree that costs are a major factor in consumer choice, this is because the average consumer does not consciously consider the possibility of things going wrong – not until they find out maybe years later that things have gone wrong. It's simply not on their radar. They just want the job done and assume it will be done properly.

We should be leaders not followers - Para 85. As we have indicated above, achieving consistency with other regulators is not a desirable approach. Consistency for consistency's sake is not an outcome that should be sought. The solicitors profession should be market and regulatory leaders – not followers.

For the SRA to make "clear decisions now" to close SIF and put an end to PSYROC will indeed bring a kind of certainty, a very bad kind of certainty. The consequences will soon start to bite. A decision to keep SIF going as it is will also bring certainty – and end the current misery.

Mitigation is not realistic - Para 87. The suggestions made for possible mitigating actions are simply not realistic, nor proportionate to the risks to the public and the damage to public confidence if SIF is closed.

The suggestion that the SRA and/or TLS could provide *"support to firms to help them understand their options when they close and how to attract a successor practice"* is faintly patronising, and a bit like offering a band aid and an aspirin to fix a broken leg.

Successor practice rule changes are not the answer - Para 87 The SRA has already noted the problems for firms in finding successor practices. This is largely being driven by the insurance industry. The SRA changed the successor practice rules some years ago to make it easier for firms to close. At the time, this was welcomed as a very helpful innovation, because the closing firm could go into run off and have the advantages of another firm taking over client files, possibly staff, and all the worry and upheaval. For the acquiring firm wanting to expand, this gave the advantage of taking on another firm but without the potential liabilities. Indeed small firms were actively encouraged to take this route to closure. Retiring principals/partners and their employees thought that they and their clients would be protected by SIF.

Little did anybody imagine then that SIF might close and leave solicitors and their clients in the lurch. Messing around with the successor practice rules is hardly likely to improve the worsening situation for firms seeking successor practices. It is difficult to imagine changes which would go any way to solving the problem.

Guidance for clients will make things worse – Para 87 The notion of the SRA *"ensuring appropriate information is provided to clients at the time a firm closes"* is appalling. Is the SRA truly suggesting making it compulsory for retiring solicitors to tell their clients, past and present, how to sue them if they have been negligent? This is simply not credible. And the same applies to developing guidance to consumers when they have a claim. The mitigation factor is minimal. Added to this will be the additional costs of the SRA setting up a whole department to deal with consumers' queries and concerns.

No point in looking at possible next steps now - Paras 88, 89, 90, 91 92 and 93. If SIF is closed then the matter of what happens with the fund will of course have to be dealt with at that stage. But there is little room for that discussion in this consultation, although it is probably useful to give the information now in order to answer any questions there may be on the point.

In any event, the answer lies primarily in the ***Memorandum of Association of Solicitors Indemnity Fund Limited dated 22 June 1987*** which can be searched at Companies House. The relevant part of ***Article 6*** states:

"If upon the winding up or dissolution of the company there remains……..any property whatsoever, the same……..shall be given or transferred to The Law Society for the benefit of the solicitors' profession as a whole in such manner as The Law Society shall decide. "

But if SIF is closed, there will be a considerable reduction in the fund to be handed over after the requirement for further reserves, staff redundancies and winding up costs are taken into account.

Impact assessment - Paras 94 and 95 and Annex 5. As for the impact assessments, we refer to our submissions and comments above. However we would add a couple of comments here:

a) the SRA argues that being an LLP gives firms protection against long-tail claims after closure. While the entity has the benefit of limited liability, there remains the risk of a claim against an individual (principal or employee) based on negligence.

b) We have not elsewhere seen suggestions by stakeholders that the closure of SIF would impact on the number of entrants to the solicitors profession. Nevertheless we do not discount that possibility by any means. It could certainly impact on the number of solicitors wanting to practise in the areas of work that generate long-tail claims. Our main concern is the impact on qualified solicitors wanting to set up as small firms.

It is predictable that the fear of forced closure or retirement in an era where there is no PSYROC will be a barrier.

PART IV

Replies to the questionnaire

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

A: We have examined the SRA's analysis above in our submissions and comments.

Q2: Do you have any further information relevant to our consideration of whether it is proportionate to consider providing PSYROC through the SIF on an on-going basis?

A: See our submissions and comments above. We say the SRA's view of what is proportionate is wrong.

Q3: Do you have any views on our analysis in relation to amending our MTCs to require the provision of PSYROC on an on-going basis?

A: See our comments above. Basically amending the MTCs would lead to hugely increased and unsustainable PII premiums and departures of insurers from the market. The insurance industry are making that very clear.

Q4: Do you have any further information relevant to our consideration of the benefits and disbenefits of amending our MTCs to require the provision of PSYROC on an on-going basis?

A: Apart from what we have already said, no**.** This question is one for the insurance industry.

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

A: This is not a feasible option. No insurance would be available. The insurance industry has already confirmed that. See our submissions and comments above.

Q6: Do you have any views on our analysis in relation to establishing a master insurance policy for the provision of PSYROC on an on-going basis?

A: We agree with the SRA analysis that this is not a feasible option.

Q7: Do you have any further information relevant to our consideration of whether PSYROC should be provided on an on-going basis through a master policy? In particular, is there likely to be a suitable and cost-effective master policy available in the market?

A: PSYROC should not, and could not be provided through a master policy. A suitable vehicle, SIF, is already in place. SIF works and is viable into the indefinite future with extra funding by way of a compulsory levy on the profession. There is absolutely no point in trying to reinvent the wheel. In any event is highly unlikely that there will ever be a master policy available in the market, at any cost. The insurance industry have said as much.

Q8: Do you have any views on our analysis in relation to regulatory arrangements for an alternative model for the provision of PSYROC on an ongoing basis?

A: See our comments above. An alternative indemnity model is not feasible.

Q9: Do you have any further information relevant to our consideration of whether there should be regulatory arrangements for PSYROC through an alternative model? In particular, do you have any information around the

potential operating models for and costs of establishing and maintaining an alternative indemnity fund?

A: No. This is a question for insurers.

Q10: Do you have any views on our analysis in relation to options for regulatory arrangements that involve targeted on-going provision of PSYROC?

A: See our submissions and comments above. Targeted PSYROC would be far too complex and costly to administer and create uncertainty and confusion for consumers.

Q11: If you consider that there should be regulatory arrangements for PSYROC on an on-going basis, do you think that this should be targeted? If so, on what basis?

A: Regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle, SIF. No, it should not be targeted for reasons stated above and in our submissions and comments.

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

A: See above.

Q13: Do you consider that PSYROC should continue to be provided for within our regulatory arrangements? If so please give your reasons as to why, and through what mechanism (the SIF, an alternative indemnity scheme, a market insurance solution or other)?

A: As stated above, regulatory arrangements for the provision of PSYROC should continue on an ongoing basis through the existing vehicle SIF, financially supported by an annual levy on the practising profession. Reasons are stated above and in our submissions and comments.

Q14: Do you have any views on the actions that we propose to mitigate the risks to clients of closed firms not having PSYROC should that be the outcome of this consultation? Are there any other steps that we should consider?

A: See our submissions and comments above. We do not think these proposed mitigations are helpful or effective. They will certainly not mitigate the damage that will be caused to public protection, the reputation of the profession, and public confidence in the profession.

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

A: See our submissions and comments above.

6th February 2022

The author of this response is:

Janis Purdy, SRA No 115220, Hon Secretary and Treasurer of ASWLS.

Our submissions are the culmination of gathering views and examining the issues during the course of numerous discussions in meetings and in email exchanges with member societies over the course of the last two years.

This response is approved by the six local society members of ASWLS:

- Monmouthshire Incorporated Law Society
- Bristol Law Society
- Gloucestershire & Wiltshire incorporated Law Society (GWILS)
- Devon & Somerset Law Society (DASLS)
- Plymouth Law Society
- Cornwall Law Society

ASWLS GIVES CONSENT FOR, AND REQUESTS, THE PUBLICATION OF THIS RESPONSE.

END OF RESPONSE