DEVON & SOMERSET
LAW SOCIETY

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Devon and Somerset Law Society

Response to the SRA Consultation on Post Six Year run-off cover and the Solicitors Indemnity Fund

Question 1

Do you have any views on our Analysis in relation to continuing to provide PSYROC through the SIF on an ongoing basis?

The Society does not believe that the SRA have conducted a fair and objective analysis of their own evidence disclosed in support of the options put forward by them but have elected to interpret the evidence to support its overriding objective which is to end the provision of PSYROC through the Solicitors Indemnity Fund.

The Society does not believe that the SRA has adequately considered measures to support and promote its regulatory objectives and regulatory principles through adjustments to the current arrangements as identified within their own expert reports. Further the SRA have not adequately considered how proportionality, affordability and efficiency could be achieved through reducing the costs associated with providing PSYROC through SIF.

The SRA's primary aim is that of protecting consumers of legal services, supporting the rule of law and the proper administration of justice. In advancing their position that the provision of ongoing protection for consumers of legal services through SIF should end the Society considers that the SRA are failing to uphold that primary aim and that the position advanced by them that the costs associated with maintaining SIF are disproportionate to the number of successful claims brought against it fails to uphold their primary aim and further to recognise the significant and potentially life changing impact upon those consumers who will lose the ability to seek redress through it.

The Society does not consider that the SRA has sufficiently identified any viable alternative to SIF and we consider that the preferred option must be for the SIF to continue with future funding introduced through a proportionate annual levy on firms. However this must be coupled with a review of the costs of operating the fund which through analysis of the SRA's own evidence appears excessive and disproportionate to the number of claims being processed. The SRA's analysis completely fails to take into account the income generated by the funds held within and invested for SIF which offsets these costs in part. The Society does not agree that the introduction of a levy "may have a negative impact on a larger number of consumers" nor that a firm wide levy 'could be seen as disproportionate, anti-competitive and not targeted". The amount of the levy proposed at approximately £240 per firm would be de minimis and would not have any effect on the cost of legal services to the consumer.

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The Society considers that this option meets the regulatory objectives by maintaining continued consumer protection, protecting and promoting the wider public interest, supporting and improving access to justice, maintaining an independent, strong, diverse and effective profession, and ensuring that the reputation of the profession is protected. It also supports the regulatory principles in relation to transparency (to consumers and to the profession), accountability, proportionality and consistency.

The Society does not consider that cost is the primary point of consideration for the consumer. Consumers take several factors into account before selecting legal services. Factors such as the level of service offered, the quality of that service, the reputation of both the profession and the firm in question and the protection afforded are all important factors. The removal of the key element of that protection cannot, we maintain be in the consumers interest.

Question 2

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?

The Society does not have anything further to add to the points put forward in response to question 1.

Question 3

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?

The Society is concerned that amending the MTCs to require the provision of PSYROC on an ongoing basis would act as a barrier to further insurers entering the solicitors' PII market resulting in reduced choice and inevitably resulting in a further hardening of the Solicitors PII market. The inevitably significant increases in premiums that would result (unlike a levy of £240 per firm) would be passed onto the consumer and it is likely that this would have a significant impact on the cost of legal services to the consumer.

Question 4

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 ongoing basis?

The Society does not have any further information relevant to your consideration.

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Question 5

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

The Society does not consider that placing PSYROC onto the open market is a viable option as the ability to secure cover would be limited to those firms who could demonstrate the lowest risk profile and cover would in the Society's view fall short of the MTCs. It is likely that he cost of cover for retired solicitors would be prohibitive.

Question 6

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?

The Society does not consider that establishing a master policy will be a viable option as it is unlikely to be an attractive proposition to insurers and we doubt that such a policy (if issued in the short term) would become viable in the medium to long term. The master policy model has already been tried by the profession and failed.

Question 7

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

The Society does not have any further information save that it considers it unlikely that there will be appetite within the open market for the provision of a suitable and cost effective master policy .

Question 8

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?

The Society does not consider that the SRA has sufficiently identified any viable alternative to SIF and consider that the preferred option must be for the SIF to continue with future funding introduced through a proportionate levy contribution made by firms. However this must be coupled with a review of the costs of operating the fund which through analysis of the SRA's own evidence appears excessive based upon the number of claims being processed. The Society does not consider that its members are

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opposed to a firmwide levy and would take issue with the SRA that a sum in the region of £240 per firm would be a cost that would be passed onto the consumer.

Question 9

Do you have any further information relevant to our consideration of whether there should e 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?

The Society does not have any further information relevant to your consideration.

Question 10

Do you have any views on our analysis in relation to options for regulatory arrangement's that involve targeted on-going provision of PSYROC?

The Society agrees that limiting cover to specific areas of work would achieve any significant reduction in cost and goes fundamentally against the protection of the consumer which should be available to them whatever legal services they are purchasing from a member of the profession.

Question 11

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

The Society does not have any further information relevant to your consideration.

Question 12

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

The Society does not have any further information relevant to your consideration.

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)?

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The Society considers that PSYROC should continue to be provided within the SRAs regulatory arrangement.

The Society considers that:

- *A firmwide levy of £240 per annum is a proportionate to the ongoing consumer protection that SIF provides. The benefit afforded to the consumer though maintaining SIF involves only a modest cost to the profession and one which we do not believe will be passed onto the consumer or in any way impact on the cost of providing legal services to the consumer.*
- *The removal of PSYROC could have a detrimental impact upon the legal market as a whole particularly in relation to successor practices.*
- *The removal of PSYROC could prove to be a barrier to entry into the legal profession and new start-ups in view of uninsurable liability post closure, particularly for entrants from more disadvantaged backgrounds.*
- *The withdrawal of PSYROC leaves former clients of closed solicitors' practices without redress for possible negligent activity except by engaging in uncertain, expensive and potentially protracted litigation. Not only will this deter those with a genuine grievance but we are concerned that this will create a new market for 'claims farmers' who will seek to profit from those consumers' disadvantage.*

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 an outcome of this consultation? Are there any other steps that we should consider?

The Society considers that the two options proposed by the SRA to mitigate the risks to clients are ill considered and fail to take into account the practicalities associated with undertaking the proposed tasks.

a) Providing support to firms to help them understand their options when they close and how to attract a successor practice.

Information and support in relation to the options available are already widely available across the legal market. Firms engaged in merging with or acquiring firms are well versed in the risks associated with the process. However, the Society fears that the removal of PSYROC will directly impact the progression on mergers and acquisitions within the legal market when firms are faced with an

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uninsurable risk after the six year elective run off has expired. The Society considers that changes would be required to the successor practice rules if PSYROC through SIF was withdrawn.

It is not possible or appropriate to comment on what changes to the successor practice rules would achieve without any indication in the consultation as to what they would or could propose.

b) Providing information to clients when a firm closes including information on taking insurance cover themselves.

The Society considers that this would have a profound and detrimental affect upon the legal profession as a whole and could only result in confusion and stress being caused to clients.

The practicalities associated with the distribution of such information has not been considered nor has the availability of appropriate insurance products and the ability of clients to meet such a cost.

Question 15

Do you have information on impacts to inform our assessments?

The Society believes that the preferred option must be for the SIF to continue with proportionate funding from the profession based on a levy contribution made by firms, coupled with efforts to reduce the cost of operating the Fund. This option meets the regulatory objectives by securing continued consumer protection, protecting and promoting the wider public interest, supporting and improving access to justice, maintaining an independent, strong, diverse and effective profession, and ensuring that the reputation of the profession is protected. It also supports the regulatory principles in relation to transparency (to consumers and to the profession), accountability, proportionality and consistency.

Adrian Richards

Vice President, Devon & Somerset Law Society

9 February 2022