

Draft Equality Impact Assessment

This draft Equality Impact Assessment replaces the previous assessment published as part of our [consultation in 2021](#).

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](#). 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-authorized 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 includes 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](#) 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 an 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-authorized 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, and
- 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.