

Post six year run-off cover and the Solicitors Indemnity Fund

Consultation response

April 2022

Contents

Executive Summary	3
Overall feedback on our proposals	5
Our response and next steps	6
Analysis of responses	7

Executive Summary

In this report we present the responses to our consultation on post six year run-off cover (PSYROC) and the Solicitors Indemnity Fund (SIF). The consultation closed on 15 February 2022.

There was a high level of engagement with the consultation, including 333 formal responses. The large majority of respondents disagreed with our initial analysis that regulatory arrangements to provide for PSYROC in future are unlikely to be a proportionate or appropriately targeted intervention given the small number of consumers expected to benefit each year and the level of consumer redress provided.

Our Board has carefully considered the arguments and evidence provided by respondents to the consultation and has agreed to seek a further 12 month extension to the SIF to September 2023, to enable detailed consideration of key points raised in feedback.

Background

We undertook a [public consultation](#) from November 2021 to February 2022 on the future of PSYROC for losses arising from negligence where a law firm has closed with no successor. The background to the SIF and the provision of PSYROC is set out in the consultation paper. In summary, the SIF provides run-off cover to firms that ceased on or after 1 September 2000 once the six-year run-off cover required under our Professional Indemnity Insurance Minimum Terms and Conditions has expired. The cost of this cover is met by the SIF surplus.

This arrangement was put in place by the Law Society and was to run initially until 30 September 2017. We have extended the provision of PSYROC on three occasions, most recently to cover claims notified until 30 September 2022. This was to allow for a consultation on whether our regulatory arrangements should include PSYROC, looking at the SIF's ongoing costs and alternative methods and models of providing PSYROC to consider whether a more proportionate option might be viable.

We appointed Willis Towers Watson (WTW), actuaries and insurance experts familiar with the SIF, to analyse claims patterns and assess the options for providing PSYROC through the SIF. Their independent report was published as part of the consultation and offered analysis of the future number of claims and the estimated levy funding required to ensure ongoing provision of PSYROC through the SIF.

The consultation explored options including:

- Continuing to provide PSYROC through the SIF
- Setting up an alternative indemnity fund on a more cost-effective basis
- Targeting PSYROC by limiting claims eligibility, for example to particular practice areas or firms of a particular size
- Moving to an open market insurance model or a master policy model
- Making no regulatory arrangements for PSYROC, and exploring options to mitigate the impact of withdrawing cover on consumers and the sector.

The consultation paper set out our initial analysis that regulatory arrangements for ongoing PSYROC were unlikely to be proportionate in consumer protection terms. This was because of the low level and value of claims projected by WTW to be paid going forward, and the inherently high cost of PSYROC cover, which would require ongoing funding by legal services providers. We considered that the cost of this funding would likely be passed on to consumers, only a small number of whom would benefit.

The consultation paper explained that the SIF's ongoing management costs and insurance costs are likely to amount to around £1.5 million a year. The WTW analysis projected around 30 new PSYROC claims a year going forward, which suggests that running costs under the current SIF operating model would be around £48,000 per claim paid. The average amount paid out per claim (including defence costs) is projected to be around £35,000 per claim. This means that over time, it will cost more to run each claim that results in a payment than each claim is likely to pay out to the affected consumer. When analysed in this way, the costs appear to be disproportionate to the benefits.

We said this funding would have likely knock-on impacts on the market as a flat annual fee (forecast by WTW to be in the region of £16 per solicitor and £240 per firm) would involve cross subsidisation from firms that would be unlikely to benefit from the provision to those that would, and would perpetuate an inconsistency with other non-SRA regulated legal providers in relevant sections of the market. We therefore stated in the consultation paper that our preferred option was not to continue to provide for PSYROC within our regulatory arrangements.

Who did we hear from?

We received 333 responses from stakeholders. 270 were submitted by individual respondents and 63 were submitted on behalf of organisations.

We received these numbers of individual responses from these types of stakeholders.

Practising solicitor	Retired solicitor	Other legal professional	Non-legally qualified, working in legal services	Member of the public	Did not state
194	58	2	6	7	3

We received these numbers of organisation responses from these types of stakeholders.

Law firm or other legal services provider	Local Law Society	Representative group	Insurance sector	Other
21	26	7	6	3

In addition to the formal responses to the consultation, we engaged with around 3,200 people during the consultation, through channels including 27 meetings and events, a webinar and social media content.

Overall feedback on our proposals

Nearly all respondents took the view that the cost of maintaining PSYROC was proportionate to the benefits received by affected consumers. The option favoured by most respondents was to maintain PSYROC through the SIF, while exploring scope to reduce its operating costs.

Key points made in consultation responses included:

- Although the volume of claims is small, PSYROC is an important consumer protection because of the nature of the claims and severity of detriment that affected individuals would suffer if cover was not in place, and the relative benefit to them of the sums paid out. This detriment can be significant in individual cases.
- Some respondents, particularly from the insurance sector, disagreed with the analysis that the future number of claims would remain low. They noted recent high levels of claims for conveyancing and wills, trust and probate. Other respondents added that the increasing costs of property and increasing level of property purchases could lead to increased numbers of claims, and claims of higher value
- Since the SIF already exists, removing PSYROC now would materially reduce consumer protection with no corresponding benefit
- It would be unfair to end protection for long-tail claims “retrospectively”, since clients would have assumed the existence of guaranteed indefinite protection against losses caused by negligence at the time when they bought the legal service
- While the operating costs of the SIF are substantial, they could be reduced - and with ongoing funding from the profession it may not be necessary to incur insurance costs or maintain the same level of reserves as at present
- the cost to solicitors of continuing with PSYROC through an indemnity fund would be modest. Representative bodies and many of the individual solicitors who responded asserted forcefully that solicitors and firms would be willing to pay a moderate levy to cover the cost of ongoing PSYROC, and that this would not result in a material increase in costs to consumers.

Post six year run-off cover and the Solicitors Consultation responses 2

Our response and next steps

The SRA Board considered the outcome of the consultation and next steps at a meeting on 5 April 2022.

The Board noted that arguments and evidence put forward in response to the consultation have highlighted significant new insights and information in two areas. These are:

- the firm view expressed by respondents who are, or who represent, solicitors and firms that the profession is willing to fund the ongoing provision of consumer protection through the imposition of a compulsory levy. And the assertion that the level of fee is such that it would likely not be passed on to consumers - and if it were, the impact is likely to be so small that it would not affect consumers' willingness to purchase the service and indeed they would likely consider this to be proportionate to the benefit.
- concerns from a wide range of respondents that making no regulatory arrangement for ongoing PSYROC could have a more severe impact on consumer protection than was suggested in our initial analysis. This is partly because of the damaging impact that long-tail loss caused by negligence can have on some individual consumers, and partly because the number of such losses could rise significantly in future because of developments in the market and in society more widely.

The Board recognised the strength of feedback that consumer protection in this area should not be removed, but still had serious concerns that the current costs of running the SIF are higher than they should be for the benefit delivered.

The Board has not made a decision on the future of PSYROC at this stage, but has asked for further policy work to be done to assess what level of protection is appropriate for those consumers who are most impacted by problems that come to light long after a firm closes, and whether there are options for providing consumer protection in a more proportionate way. These potential options may include:

- ongoing PSYROC through the SIF, exploring funding arrangements and modifications to the existing model to reduce operating costs and overall costs
- alternative arrangements for a new consumer protection fund, or a modification to the SRA Compensation Fund, to provide compensation to consumers for loss that arises more than six years after a firm closes with no successor.

This further work will include working closely with stakeholders, including particularly the Law Society, to explore the options. The results of this work will be brought back to the Board before the end of the summer. If a new arrangement were to be proposed, a further public consultation would be carried out on the detail.

To allow time for this further work to be carried out, the Board has agreed to seek a further 12 month extension to the SIF to September 2023. This extension will be subject to formal approval by the Legal Services Board. Before then, the SRA will also need to obtain formal confirmation from Solicitors Indemnity Fund Limited (SIFL) that this extension is affordable without an additional levy.

Analysis of responses

This report provides an analysis of stakeholders' responses to our consultation on post six year run off cover.

Respondents

We received 333 responses from stakeholders. 270 were submitted by individual respondents and 63 were submitted on behalf of organisations.

We received these numbers of individual responses from these types of stakeholders.

Practising solicitor	Retired solicitor	Other legal professional	Non-legally qualified, working in legal services	Member of the public	Did not state
194	58	2	6	7	3

We received these numbers of organisation responses from these types of stakeholders.

Law firm or other legal services provider	Local Law Society	Representative group	Insurance sector	Other
21	26	7	6	3

Their responses to our questions were as follows.

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

Yes	No	Other response	No response
316	6	3	8

Almost all respondents gave views on this. One insurance body stated "We continue to support almost all of the SRA's portrayal of the existing insurance market position and agree with the SRA that an insurance market solution to provide PSYROC beyond September 2022 is not a viable option."

However, the Law Society stated "Only when adequate analysis of all three options has been carried out against the decision-making framework can a preferred option properly be identified, based on that analysis. Instead, a subjective and unbalanced, or imbalanced, analysis has been produced, under which the SRA has systematically analysed only Option 1 against the decision-making framework..."

Almost all respondents' views were negative about the SRA analysis, some saying that they agreed with the Law Society's view. Some stated they after reading the analysis they did not understand the SRA's approach or conclusions – for example "I fail to understand the SRA Board's rationale or decision-making." (individual solicitor)

Typical comments from respondents were “Your analysis is rather biased towards mitigating the costs of administering PSYROC, it does not take into account the non-monetary benefits this provides for both solicitors and consumers.” (individual solicitor); “We do not agree the suggestion that the cost of maintaining PSYROC is disproportionate to the benefits to which successful claimants are entitled.” (representative body); “We reject the SRA’s position that the costs associated with maintaining SIF are disproportionate to the number of successful claims brought against it.” (local law society)

The Sole Practitioners Group had commissioned research, which stated “A large majority of consumers have some concerns about the lack of any insurance cover for professional negligence claims made more than six years after a firm has closed and they would be willing to pay the nominal extra fee of £1 to maintain cover via the Solicitors Indemnity Fund.”

The Law Society also stated “The SRA’s ‘preferred option’ does not identify or offer any viable alternative to provide equivalent protection, or any corresponding benefit for consumers (or the public) that would justify the removal of this protection. While its consultation purports to address the question of maintaining protection through the SIF ‘chiefly in terms of proportionality in light of ongoing costs’, it gives no evidence that removal of this protection would lead to any meaningful reduction in the cost of legal services for consumers or that the cost of maintaining the SIF would inflate the cost of legal services.”

A local law society stated “The proposal to close the fund would remove a layer of protection from losses suffered by reason of negligence without any warning to all the consumers that may be affected by such change. No assessment of this size and nature of this impact is provided by this Consultation.”

Many respondents mentioned the Legal Services Act regulatory objectives. A typical comment was “this Consultation... takes a narrow view with no proper account of all of the regulator’s responsibilities under the Legal Services Act 2007.” (individual solicitor) A local law society stated ““by effectively seeking to end PSYROC, the SRA would be in breach of these very [regulatory] objectives.”

The Legal Services Consumer Panel was strongly critical of the SRA analysis. “We commend the SRA for gathering some pertinent information and data... 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.”

This issue was also mentioned by a number of individual solicitors – one said “Your Willis Tower Watson report identifies the levels of claim and, I agree, the sums paid are low. However, given that the average income in the UK was £31,285 in 2021 the level of claims is still life-changing for the average person if the claim cannot be met. You should not concentrate on the number and level of claims but on the distress and misery that would result from even one claimant failing to obtain compensation.” A member of the public stated

“...research showing that the average claim is £48K, why does the SRA consider this a modest amount? To someone like me this is big money. Therefore, the suggestion of an annual levy per solicitor or per firm seems sensible to me even if likely to be passed onto consumers. It will be cheaper in the long run in the event of a claim.”

Howden Insurance Brokers stated “We consider the issue of consumer protection has been dismissed too quickly in the consultation document. The claims data confirms that conveyancing is the main area of work where PSYROC is providing redress. This is an important detail in the debate. For most consumers, their home will usually be the most significant life asset and the absence of available redress will be potentially life-changing in the event they suffer loss...” They went on to state “The SRA should not under-estimate the potential impact the removal of PSYROC could have on the future of the profession. It could present a disincentive for solicitors to set up as sole practitioners or traditional partnerships to offer legal services. If there is a barrier to entry then there should be a concern that this would also reduce competition, leading to increased costs to consumers, again impacting access to justice.”

The Black Solicitors Network agreed with this point, stating “the focus of any analysis must stem from the Legal Services Act 2007, in particular, that of protecting and promoting the interests of consumers and protecting and promoting the public interest. We consider that any proposal that entirely removes PSYROC and makes it more difficult for small general practise firms and solicitors to survive and thrive, a disproportionately high number of which are Black Asian and minority ethnic lawyers in 1 to 5 partner firms, risks undermining the promotion of competition in regulated services and improving access to justice but also undermines the requirement to encourage an independent strong, diverse and effective profession.”

A member of the public stated “I would think that this is going to stifle growth in the solicitors’ profession. The young ones will not want to set up as sole practitioners or in small partnerships.” A solicitor stated ... individuals will be deterred from entering our profession as a consequence of these uncertainties; and individuals, who otherwise might be able and willing to provide access to legal services to the 'man in the street' will be deterred from doing so.”

Many solicitor respondents argued that their interests and those of consumers were aligned on this issue, some of them including details of their personal situation, for example a retired solicitor stated “My partners & I looked after many disadvantaged people who could not afford to pay proper fees. We now live on state pensions, as we could not afford to put sufficient funds away to purchase a private pension. It really is unfair that it is now proposed to cease insurance cover.” Another retired solicitor stated “I have seen reference by the SRA of ‘the sleep easy factor’ when referring to retired solicitors and I find this very insulting. Tell me why, after a lifetime of working, should I not be able to sleep easy? In fact since the closure of SIF has been in the headlines I have had many sleepless nights worrying about the possible claim that might come out of the blue. But more importantly than my sleep pattern what about the protection of the consumer who may have a valid claim but finds his solicitor has retired and has no assets or perhaps has disappeared?”

This view was echoed by LawNet who stated “We note your separation of regulatory (clients) and representative (retired solicitors) protections, but we aver that the latter also protects the former as retired solicitors may not in the absence of PSYROC have the means to meet claims made by affected clients.”

A retired solicitor stated “The assumption that the volume and value of PSYROC claims will not increase isn’t backed up with any clear evidence. Take for instance conveyancing, which is said by the SRA to comprise 74% by value and 76% by number of claims since 2000

when SIF went into run-off (paragraph 35). In the next 15 years (the period of limitation specified in the Limitation Act) and beyond, property values may increase substantially. During Covid, property purchases have increased considerably and so have property prices gone up... This is still going on and is just one area in which PSYROC may well be called upon by consumers." An individual solicitor stated "the SRA's analysis overlooks the probability of areas of claims in the post-six-year run-off period expanding. The analysis emphasises conveyancing as a source of claims but other areas of work are also increasingly becoming the subject of claims which may be made outside that period."

A retired solicitor stated "I carried out a small informal survey of the PII costs of retired and still practising solicitors. At the upper end, in 2021 one sole practitioner paid £15,000 and a 5 partner firm (no other solicitor fee earners) paid £40,250 equating to £8,050 per solicitor. These figures bear no relation to WTW's proposed levy. Thus the SRA's argument that such a levy would have a disproportionate effect on the cost of legal services is wrong."

Another common comment was in relation to the continuation of the current arrangements. As with many responses, this respondent set out their own situation. "The PSYROC has been provided for a considerable number of years. I myself am coming to the end of my legal career and this security for the public and for retiring solicitors has been in place throughout my career. On the basis that it has been affordable throughout this time and that considerable funds are still held in the financial accounts for this purpose it seems substantially unfair to those of us who might otherwise be in a position to finally benefit for it now to be withdrawn. It leaves a considerable hole in the protections also for clients. It is entirely appropriate for the SIF to continue to provide PSYROC to the profession for the benefit of the solicitors it regulates and the public it seeks to protect." (individual solicitor)

Another common comment was "To require individuals to purchase private cover for post-run off insurance would be inequitable and effectively a retrospective imposition, particularly for those sole practitioners that are nearing retirement and for various reasons may not be in a position to secure a successor practice." (law firm)

An insurance body stated "having no regulatory arrangements for on-going PSYROC is not an option that would be of benefit to the legal community and to the ongoing provision of legal services. We would therefore in principle be supportive of a continuation of the scheme to ensure that solicitors receive the protections they require and that allow consumers, should the need arise, to seek (non-litigation) redress outside of the six-year run off that insurers are already required under the MTC to provide."

The Law Society stated "If the SRA is concerned that the cost of a levy to fund the ongoing operation of the SIF might be passed on to consumers, then they should also be concerned about the prospect of additional disorderly closures leading to an increase in the demands on the Compensation Fund and the cost of contributions to it."

A representative body made a suggestion in addition to the options we consulted on. "...the SRA has sought to balance its regulatory objectives/ relevant principles, with the aim of providing a regulatory system that delivers the best possible outcomes in the public interest... we recognise that the SRA is aiming for an appropriate level of consumer protection, rather than a framework that guarantees no risk for consumers. Furthermore, the reference in the consultation paper to the SRA carrying out its regulatory function primarily in the public interest (rather than a focus on the interests of individual law firms/ solicitors) provides helpful context... We note that the SRA have not put forward the option of merging the SIF and the Compensation Fund (CF)... although the CF does not ordinarily make payments for incidents of negligence, we understand that there is a limited provision for it to do so. We therefore wonder whether it would be possible to extend the CF's scope to make payments for PSYROC an option. Such a change might open up the option for a transfer of

PYSROC claims to the CF enabling the SRA to continue to provide compensation for consumers.”

A point was made by a local law society in relation to engagement with relevant stakeholders who might be able to inform the debate. “One of the challenges is making direct contact with retired members. Sadly, neither TLS nor the SRA have data for membership going back more than about six or seven years. Trying to make contact with firms and members who closed down their practices since 2000 has been extremely challenging.”

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?

Yes	No	Other response	No response
166	54	0	113

Many respondents gave views which echoed their responses to Q1, for example “Proportionality of the provision of PSYROC through the SIF on an ongoing basis needs to be balanced against the ongoing risk of claims being made by consumers. There continue to be a number of consumer claims made against the SIF totalling over £1m. In the event PSYROC was not provided such consumers would have no effective recourse against firms other than former sole practitioners or limited partnerships.” (individual solicitor)

A retired solicitor stated “Other professions mentioned in paragraph 87 of the SRA’s consultation document do not carry out comparable volumes of conveyancing transactions as solicitors handle. The purchase of a home by the public is a hugely important investment for them and they deserve and should have proper protection if things go wrong.”

A member of the public stated “if either of the firms I have consulted closes with no successor practice, I might end up suffering loss if they have been negligent. Apparently I would have to find my solicitors, if they can be found at all, and sue them personally for negligence. That sounds as though I would have to spend a lot of time and money which I do not have, and probably end up getting nowhere.” Another solicitor made a comparison with the medical profession. “Patients are insured against claims against Doctors under the Medical Defence Union who give indefinite run off cover to retired Doctors who can suffer claims decades after the Doctors retirement as can Solicitors.”

One solicitor commented on the phrase “consumer protection outlier” in the SRA analysis. “Not even the Licensed Conveyancers, nor the Bar, nor Chartered Surveyors nor Chartered Accountants have [SIF’s PSYROC]. There is nothing wrong in our being an ‘outlier’, it is something to commend us, and to close SIF down would be against the public interest...”

The Law Society stated, regarding competition in the provision of legal services:

- “[the SRA] proposes a levelling-down in consumer protection to secure competition, which is problematic where the protection, as we have argued above, is necessary in the market for legal services;

- introduces inconsistency and uncertainty compared to the other areas in which higher levels of protection are required by the solicitor profession (e.g. professional indemnity insurance);
- fails to acknowledge the additional choice that is afforded by this protection for consumers to differentiate between solicitors and other providers of legal services; and
- fails to acknowledge the adverse impact on competition where some solicitors are more affected than others.”

The Law Society went on to say, regarding the better regulation principle of consistency: “Given that the SRA is the regulator for solicitors and not for other providers of legal services, it is appropriate that the consistency the SRA seeks to maintain should apply across the standards and protections applicable to the solicitor profession, rather than between the profession and other providers... Were it thought appropriate for the SRA to seek to achieve consistency between different types of provider of legal services, the removal of necessary consumer protections is not the appropriate way of doing so.”

A local law society stated “In comparing solicitors’ PII cover with the position in respect of other professionals, the analysis ignores the fact that solicitors are exposed to significantly more long-tail claims. Unlike licensed conveyancers and accountants, solicitors are exposed to future claims by children for whom they act. Solicitors also have significant exposure to trust claims and/or claims for equitable enforcement of undertakings under the court’s supervisory jurisdiction.”

One retired solicitor gave details of potentially common types of claim that might fall outside the six year limitation period.

- “Undersettled infant personal injury claims, where time starts running for limitation purposes when the infant attains majority...
- Mistakes in will drafting. Here the negligence will only become apparent when the testator dies and the will ‘speaks’... the practical point is that in most cases errors would be rectified by family agreement. However, there will be residual cases where a beneficiary has been negligently denied a share of the estate and there is no recourse other than pursuing a claim against the solicitor.
- Conveyancing negligence. The most likely scenario is something that only comes to light when a property is sold and thus time starts running for limitation purposes from the date of knowledge.”

This was echoed by other respondents, for example one retired solicitor stated “Any mistakes made in the conveyancing on a home purchase might not come to light until the buyer attempts to sell the home, which can be very many years after the purchase. Mistakes in a will might not come to light until the client passes away.”

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?

Yes	No	Other response	No response
200	2	0	131

Respondents' views were divided on this question. Some favoured this option – for example “Yes, the MTCs should include 'perpetual run off' equivalent to PSYROC for closing firms. It's not right that only 6 years of cover is provided when liability can extend far beyond that period. As the SRA explains most claims are statute barred after 6 years and then 15 so the cover will hopefully not be too expensive.” (in house individual solicitor)

A local law society stated “Extension of the Post Six Year Run Off Cover (PSYROC) beyond six years by amending the MTC's may be the only option, provided premiums are affordable... it is in the public interest to be able to have recompense for wrongdoing: not to have this lifeline would mean that the profession is in danger of being brought in to disrepute.”

Others agreed with the SRA's analysis, for example an insurance company stated “We agree that changes to the MTC would likely have a significant negative impact on the availability and cost of insurance.” An insurance body stated “The SRA MTCs are already too onerous and should be restricted not extended. Insurers already struggle to account for the 12-month policy period plus the 84 months run-off period, which can inhibit them from making commercial decisions on their portfolio.”

Howden Insurance Brokers agreed, stating “The existing requirement to provide 6 years run-off cover is one of the more unattractive aspects of solicitors' PII from the perspective of the open market. In Howden's view, if the SRA were to move to a scenario whereby the market is required to offer cover for more than 6 years, this could compromise the appetite of open market insurers to engage in solicitors' PII at all.”

A law firm stated “There seems little doubt that this step would result in a significant reduction in providers of insurance services in the market resulting in an acceleration in the number of firms forced to close on run off terms and the resultant damage to consumer protection as outlined in 1 above. Higher levels of risk and a reduction in the number of firms able to offer legal services will of course result in higher costs for the consumer.”

The Legal Services Consumer Panel stated “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.”

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 on-going basis?

Yes	No	Other response	No response
102	87	2	142

Respondents expressed a number of views and comments, for example “Reference has been made to an anticipated 31 successful claims annually with an average payout of £34,500 including defence costs. I did not see any reference to the average annual number of historic claims notified which turned out to be unsuccessful. I submit that claims fielded by experienced insurance-backed defence solicitors result (a) in valid claims being settled quickly, and (b) in worthless claims being weeded out before the complainant client has

incurred much in the way of costs...The public is better served if retired solicitors are resourced to deal with claims properly and minimise distress to those claimants with a valid claim.” (retired solicitor)

Most respondents who gave views echoed their answers to Q1.

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

Yes	No	Other response	No response
168	43	0	122

A large number of respondents gave views which echoed their responses to Q1. Some gave details of their situation, for example “I recently contacted AON the insurers who provided my run off cover - it expired in 2014. I have not had a response from them. I add that I was in practice on my own account from 1994 until 2008 with the same insurer. I had no claims of any kind in that time. I am also of the view that it would be very difficult for me to provide the sort of detailed information underwriters may require some 14 years after I closed. The only evidence you have strongly indicates that it is highly unlikely that there is any insurer interested in providing cover for such a scheme.” (retired solicitor)

Howdens Insurance Brokers stated “While some insurers might indicate that they would be prepared to offer cover in some instances, we expect that this would be very limited and restricted in the following ways: - Cover would only be offered to closed firms with the very best risk profiles - Firms that have already been closed for some time might have difficulties accessing the information required by underwriters - Long term policies are unlikely and ongoing renewals would be required - Cost is likely to be difficult if not prohibitive for retired practitioners - It is likely that cover would be more restricted than the MTCs. Given the above issues we do not consider that PSYROC on the open market is a realistic solution.”

The Law Society stated “The Society agrees with [the SRA’s] analysis of the extent to which most of the alternatives identified would not be viable (e.g. insurance through the open market; a master policy; alternative models of operating an indemnity fund; or more targeted on-going PSYROC). However, the Society does not believe that the SRA has adequately considered the statutory regulatory objective to support and promote the regulatory objectives and regulatory principles through adjustments to the current arrangements as identified by its expert report.”

6. 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?

Yes	No	Other response	No response
153	53	0	127

Many respondents agreed with the SRA’s analysis, for example “We agree that it would likely be challenging to interest market insurers in the risk of a master PSYROC policy. We feel the same statement applies to the open market alternatives that law firm principals would need to secure for the protection of their clients if their firm should closed without a successor practice. The SRA’s inability to secure a master policy will only trickle down to firms who may also be unable to secure PSYROC if left to the open market.” (law firm)

Less respondents disagreed – one who did stated “I would have thought that if a master policy could be taken out with a partner insurer then the funds remaining in SIF (after making a suitable reserve for SIF liabilities) could be made available to that insurer under the partnership agreement as initial funding. The ex-SIF funds could be ringfenced so as not to form part of the insurer's money but be available to help meet claims. This would I suggest make the proposal more attractive to an insurer and also help keep down premiums.” (retired solicitor)

7. 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?

Yes	No	Other response	No response
124	72	1	136

Most respondents who gave information echoed their views in Q1, and some gave additional arguments in favour of the master policy option. “I have no knowledge of the matter but it seems to me that regulator or other public body is more likely to be able to establish a master policy than attempting provision on a case by case basis in respect of closed firms. It also strikes me that the analysis of the small number of claims arising more than six years after the advice date has a greater resonance as a generality than it might in respect of the former clients of a particular closed practice.” (individual solicitor)

Howdens Insurance Brokers disagreed, stating “We do not consider there is appetite in the open market to participate in a master policy. Even if there were, the same limitations and restrictions noted in our response to question 5 above would also apply. The SRA should also be concerned about the longevity of a master policy option. It has previously failed as a solution to solicitors' PII leading to the formation of SIF.”

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 on-going basis?

Yes	No	Other response	No response
156	36	0	141

Many respondents gave the views in favour of supporting a continuation of PSYROC via SIF, for example “Simply keep SIF subject to a levy.” (individual solicitor) and “PSYROC must continue in its present form. It will be a gross injustice to the public and to Solicitors who were previously Partners if it does not. The cost of continuing is said to be in the region of £16 per solicitor or £240 per firm and seems a very reasonable price to pay. I am happy to pay it indefinitely.” (individual solicitor)

The Legal Services Consumer Panel stated “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 e.g. transferring the management of the fund and claims to a larger organisation.”

The Black Solicitors Network stated “We would be very concerned if operation of an indemnity fund was outsourced to a third party. Any third party handler would be motivated by profit rather than protection of the consumer. There is also risk they decide that the undertaking is not sufficiently cost effective, does not make sufficient profit and therefore cease the operation, again leaving the consumer unprotected. There would be no regulatory oversight and the third party would be able to change the nature and types of claims that they handle.”

9. 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?

Yes	No	Other response	No response
52	138	0	143

A number of respondents gave views which reflected their response to Q8.

The insurer QBE stated “Whilst as a commercial Insurer, our answer is no to this question, we do have knowledge and experience of the Irish Special Purpose Fund which has many similarities with SIF. As commented earlier, QBE believe that employing a Third-Party Agent to facilitate SIF would be the best solution.”

A retired solicitor commented that all the analysis showed a lack of alternatives. “In the absence of any realistic options it really comes to a binary proposition, namely continue with SIF for the benefit of the profession and clients or, make a marginal saving and leave clients uncovered by insurance and forced to make claims against retired solicitors.”

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

Yes	No	Other response	No response
129	62	0	142

Of those who gave views, many opposed targeting. A typical comment was “I believe this would be misguided. The simple fact is that all areas of law can attract long tail issues, problems, disputes, 'circumstances' and claims. By selecting out certain legal disciplines from protection, clients will be left vulnerable.” (retired solicitor)

The Legal Services Consumer Panel stated “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.”

A local law society stated “We think it is important that all consumers of legal services benefit from the provision and not simply those in specific practise areas or those consumers who are dealing with certain size firms. This is primarily to protect consumers of legal services, who would have an expectation that they would be afforded a level protection, irrespective of the practise area they were using.”

11. 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?

Yes	No	Other response	No response
12	146	16	159

Most respondents were opposed to targeting. A typical comment was “We do not consider that a targeted approach to PSYROC would be appropriate given: - the limited savings that would be achieved - the cost of the added administrative burden, - the mismatch with the MTCs that would be created - the potential for confusion and uncertainty - the inconsistency between the regulatory prohibition on limiting liability and a the regulatory-based solution that does not ensure the availability of matching cover.” (law firm)

A few respondents supported targeting, for example “There should be ongoing cover, Funded by current solicitors, with a weighted contribution to reflect the risk of each area, in line with current private insurance It is cheaper to insure an employment Lawyer compared to a conveyancer and it is right for the areas with higher negligence claims to pay accordingly.” (retired solicitor)

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

Yes	No	Other response	No response
31	144	1	157

Not many respondents gave information or views. One solicitor who responded stated “There should be no removal of the existing consumer safeguards. If the proposal with regard to the continuation of the SIF with all firms paying an annual levy is implemented there should be no need to impose any limitation of cover as to time or practice area. To

ensure adequate protection claims should be capped at £3million subject to review and increase every 5 years by reference to an appropriate indexation.”

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)?

Yes	No	Other response	No response
294	1	1	37

A non-legally qualified individual working in legal services stated “I agree with the proposal to cease providing PSYROC at the expiry of the current SIF contract, as it covers a vanishingly small group of consumers, at a large cost to qualified professionals.”

However, a large majority of respondents stated that PSYROC should continue. Most responses were very similar, for example “I think it should continue through SIF with an annual levy on practising solicitors” (individual solicitor); “I believe the SRA's regulatory objectives and the regulatory principles would be better served through a continuation of SIF, funded through an annual levy on law firms.” (individual solicitor); “A decision to keep SIF going would be a proportionate and wholly justified course of action. No other solution is available for the provision of PSYROC.” (Association of South-Western Law Societies)

An individual solicitor stated, in support of continuing SIF and with reference to a case where they had acted as executor to a sole practitioner “...even when run off cover is arranged, there can be cases where it goes wrong and the SIF would have been the safeguard for the consumer and for the widow and the estate. The SIF should remain in existence not only to protect the consumer but also those practitioners/employees who have tried to arrange run off but for some reason failed.”

A local law society stated “Were the scheme to be cancelled:

- there would be extreme adverse effects on vulnerable clients
- this would be on those least able to afford representation/unable to represent themselves
- such clients should not be put through the ordeal of trying to prove their case, seeking and failing to enforce and then prove hardship
- the areas affected with long tails are predominantly private clients- probate/trusts/wills, residential conveyancing, and infant settlements
- the most efficient and fairest way of funding would be a levy on individual firms (we understand in the region of £240) which would lead to no increased cost of services to consumers.”

An insurance body stated “This [question 13] is more for law firms and practitioners to opine upon but we see value in the current arrangements and feel a levy approach would be proportionate. Our main focus is to emphasise the lack of open market insurer appetite for widespread insurer or MTC mandated involvement in the provision of PSYROC.”

A retired solicitor stated “PSYROC should continue to be provided for within the SRA's regulatory arrangements through SIF, funded by an annual levy on the profession, for the following reasons:-

- to maintain consumer protection;
- to maintain the reputation of the solicitors' profession;
- to encourage the orderly closure of firms wishing to close or merge, who are increasingly unable to find successor practices;
- the only option to provide PSYROC is a funded SIF.

A response sent by email (unclear as whether from a member of the public or a solicitor) stated “if you were to proceed then to go ahead with abrupt closure is an abdication of your responsibilities rather than consistent with them.”

The Law Society stated “The SRA expresses a concern that ‘at least some of any additional cost [of continuing the regulatory arrangements] is likely to eventually be passed on to consumers (potentially more quickly by less well capitalised firms)’, implying that this would undermine the regulatory objective related to access to justice. However, it provides no evidence to support this assertion, and we are confident that a levy of around £240 per firm would have little to no effect on the prices consumers pay for solicitors’ services.”

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 any other steps that we should consider?

Yes	No	Other response	No response
158	42	0	133

A large number of respondents gave views that PSYROC should continue. Some gave details of their situation, for example “...all the evidence available to you indicates that what you propose will have no practical value. It ignores the problem that may already arise for those who closed from 2000 to the present with no successor. I was well known in my locality but there was no interest in taking on my practice as I provided a specialist service at much lower fee rates than offered by larger firm. Your other idea to contact all clients and former clients is quite impractical.” (retired solicitor)

The Legal Services Consumer Panel also commented regarding clients / former clients. “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.”

15. Do you have information* on impacts to inform our assessments?

Yes	No	Other response	No response
79	111	0	143

Of those who gave information and views, many echoed their responses to Q1 and Q13. One retired solicitor stated “The removal of SIF will inevitably restrict on the ability to open practices which will have a disproportionate impact on women, ethnic minorities and the transgender community which will at the same time impact on consumer choice and protection.”

A law firm stated “This would bring arrangements to an end which give protection particularly to the consumer from risk relating to purchased legal services, most commonly in property related matters, wills and probate but also as well as for children and those under a disability including in personal injury matters. In each of these categories a number of those affected will be vulnerable including by reason of age, infirmity and/or disability.”

* Respondents provided information in the form of views and accounts of personal experiences. They did not provide data or analytical information.