

Annex 3: Table of key considerations and evidence against regulatory objectives and principles

Regulatory objectives  Principles	Consumer interest	Access to justice	Competition	Strong diverse and effective profession	Public interest
Proportionate	<p>A small number of consumers benefit from PSYROC. WTW analysis predicts 45 notified claims in 2023 levelling to a norm of 31 a year from 2029.</p> <p>SIFL report that these are almost exclusively individual consumers and not businesses</p> <p>Claims since 2000 have been dominated by conveyancing estimated at approximately 75% by count and value.</p> <p>There were 1,044,250 residential property transactions in the UK in 2020</p> <p>Wills, probate and trusts are the next highest claim category estimated at approximately 12 % by count and value since 2000.</p>	<p>Conveyancing and wills / trusts / probate are often considered as being among the most competitive of consumer legal services.</p> <p>The main practice areas affected are not ones that are associated with legal advice deserts. Analysis of these usually focus on legal aid areas for vulnerable people. TLS legal advice desert heat map highlights community care, education, housing,</p>	<p>The profession would need to be levied to fund any permanent PSYROC scheme.</p> <p>Setting regulatory burdens above those required by professionals regulated by different bodies for the same work (CLC, ICAEW) are likely to have a negative impact on competition.</p> <p>Cross subsidies that could potentially have a negative impact on competition would be created by any uniform charging structure where solicitors and firms</p>	<p>As set out in the access to justice column we have not found any evidence that the availability of redress for long-tail claims impacts on the practice areas solicitors choose to work in.</p> <p>Analysis of SIF claims data against all closed firms does not obviously indicate any group with protected characteristics is disproportionately benefitted from PSYROC compared to the general solicitor population.</p>	<p>This favours against adopting a regulatory model for on-going PSYROC that leaves significant unfunded liabilities or which delivers false economies</p> <p>Residual SIF funds may be able to be used more effectively in the public interest than providing on-going PSYROC provided through regulatory arrangements.</p>

	<p>This is followed by personal injury at approximately 2% by count and 1% value.</p> <p>Litigation is estimated at 0.4% by count and 0.1% by value.</p> <p>Other has been recorded at approximately 10% by count and 14% by value.</p> <p>WTW project an average value of £34.6k per claim going forward (including costs for defending claims) looking at a 10 year period from 2023. This increases going forward largely as a result of inflation.</p> <p>WTW estimate the costs of the notifications in 2023 will be around £1.7m (45 claims notified at an average cost of £36.8K) which reduces to around £1.1m by 2029 (31 claims at an average cost of £34.8k). This then increases over time, including as a result of inflation forecast at 3% a year to £2m in 2052 (31 claims at an average cost of £45.3k) These figures include defence costs.</p> <p>In 2020 SIFL reported that their management and professional fees</p>	<p>immigration and asylum, welfare.</p> <p>We have not found evidence that shows that protection for long-tail negligence claims is a driver for entry to the legal profession or specific areas of practice. Other regulators of professionals working in long-tail areas that we have spoken to, do not have PSYROC requirements.</p> <p>Although the CLC's Compensation Fund can cover PSY negligence on a discretionary basis and as last resort (with litigation pursued where considered appropriate). We do not have claims data but CLC inform us that negligence claims (as opposed to claims relating to</p>	<p>who are unlikely to benefit from the additional protection will contribute in the same way as those that do.</p> <p>The Law Society (as well as the SRA) have highlighted concerns around cross-subsidisation in response to the Government's proposals that small firms should be excluded from the economic crime levy.</p> <p>Any funding structure that targets risk or those that are more likely to benefit from cover, will be more costly to administer. It will be less simple, clear and certain for the solicitor and the consumer. For example, it may be challenging and costly to disaggregate the extent firms are working in high risk</p>	<p>When compared to open firms, male and white partners are overrepresented within SIF claims.</p> <p>We know from our own data that BAME partners are disproportionately found in small firms who, may also be less able to absorb costs of any additional new levy, especially if it is targeted at the risk based areas without cross-subsidisation.</p> <p>It would be logical to presume that older lawyers are more likely to be impacted by loss. This is not obviously borne out by analysis of SIF claims data</p> <p>Solutions which help to prevent disorderly closures will contribute towards a</p>	<p>It may be in the public interest to focus some resource on trying reduce the call for PSYROC by, for example, supporting firms to find a successor practice when they are looking to close in conjunction with the professional body. This would not do anything to help firms that have already closed.</p> <p>The SRA Compensation Fund is designed to provide for redress loss caused by the unethical activities of legal services providers where this is not covered by insurance (last resort).</p> <p>The reasons why limitation periods can be extended, mean that there may be claims that carry a particular public</p>
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	<p>totalled £700k operating costs with £800k insurance costs.</p> <p>Cheaper centrally managed PSYROC models are likely to be possible (currently un-costed). For example, operating a Fund on a cheaper operating model by outsourcing less of the claims handling process to professional panels.</p> <p>SIFL has reported that long-tail claim schemes are inherently expensive to run because of, for example absence of records, costs in locating the solicitor and issues with establishing limitation periods.</p> <p>WTW estimate that future levy of the profession could need to be in the region of £2,4000,000 per year. This includes the total value of expected claims claim handling and administration costs</p> <p>On a flat fee basis this would amount to approximately £16 per practising solicitor or £240 per firm.</p> <p>WTW analysis shows that a majority of claims originate from firms with less than 5 partners, with 27% coming from sole practitioners. Only 10%</p>	<p>dishonesty or failure to account for client money) relating to practices that closed more than 6 years ago generally relate to title, boundary or non-removal of restrictions or covenants linked to negligence. These do not occur very frequently and the resolution when necessary would usually involve getting a conveyancer to put things right at the Fund's expense.</p> <p>Personal liability protection does not feature in survey findings around talent acquisition and retention that we have found.</p> <p>There is little evidence to suggest that availability of financial redress has significant impact on consumer choices</p>	<p>practices areas (which may change over time)</p> <p>If the costs are targeted at smaller firms or closing firms the costs could be high and potentially affect those less able to pay and from minority groups who are over- represented in small firms.</p> <p>Providers in the main reserved practice areas affected, conveyancing and will, trusts and probate can be authorised by a number of regulators, without mandatory PSYROC. For example, ICAEW regulate probate and mandate 2 years run-off with best efforts to secure a further four only. CILEX regulate probate and mandate 6 years run off only. CLC regulate</p>	<p>strong, effective profession.</p>	<p>interest consideration e.g. there have been 6 personal injury claims in relation to firms that have closed since 2000. It is possible that one or more may relate to a minor and has impacted on their care. We do not have disaggregated data to provide a clear picture of consumer characteristics.</p>
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	<p>claims came from firms recorded as having 6 or more partners. The average number of partners is 2</p> <p>If a flat fee per solicitor was applied to the top 20 (by number of solicitors) 200 law firms, the levy would range from approximately £8,250 to £20,500.</p> <p>At least some of any additional cost is likely to eventually be passed on to consumers (potentially more quickly by less well capitalised firms)</p> <p>Without PSYROC the main remaining option for consumers would be to litigate through the courts. This would provide redress for some but is a more costly and less accessible process with less certainty of result.</p> <p>There are professionals that specialise in making claims against solicitors with no win, no fee arrangement.</p> <p>We do not have data on the number of cases where the solicitor is not able to be found, is deceased or cannot meet the liability.</p> <p>There has been a shift towards business models that limit the personal liability of its directors. This</p>	<p>about whether or not to purchase legal services.</p> <p>Research into how consumers value regulation indicates that many consumers view financial redress as mechanism to protect lawyers from their own errors, rather than a consumer protection that improves quality.</p> <p>Various LSB research indicates that the cost (or perceived cost) of legal services is a cause of unmet legal need.</p>	<p>conveyancing probate. They mandate 6 years run-off cover. CLC's Compensation Fund does include negligence within scope.</p> <p>Will-writing and estate administration (apart from preparing the probate application) can be carried out without any sector specific regulatory oversight.</p>		
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<p>will likely reduce the number of recoverable claims over time. For example, the number of incorporated companies has more than doubled in the past decade now make up over half of all regulated legal practitioners, compared to a little over one in five (22%) in 2011.</p> <p>Law firms and solicitors may seek to get PSYROC on the open market. We have heard from insurers and brokers that there may be some firms and lawyers that would be able to get this insurance. This will not be universal and is more likely to be available for those with an existing relationship with an insurer as they are still open or are with the six-year run off period and have an acceptable risk profile.</p> <p>No insurer has told us that they have yet developed policies for PSYROC and we do not know likely conditions or cost.</p> <p>There may be a risk of delayed retirement if solicitors are concerned about personal liability on long-tail claims. This may lead to increased risk of disorderly closure and resultant poor outcomes for consumers and SRA administrative costs (funded by the profession). We are aware that</p>				
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	<p>this is a concern over the cost of six year run-off cover.</p> <p>There may be other more proportionate mitigations such as supporting firms to find successor businesses when they close and information remedies</p>				
Transparent	<p>Transparency will be best served by providing clarity over the cover that will be available into the future, in steady state, at the earliest opportunity. This favours no further incremental extensions to PSYROC.</p> <p>SIFL has said that for it to carry on an incremental or transitional basis without a new funding stream would require an actuarial affordability review every 1 – 2 years at a significant cost.</p> <p>Transparency favours any transitional arrangements having a clear and understandable cut off. This is as opposed to developing on the basis that it should continue until the residual funds are exhausted.</p> <p>Information remedies might play a role. SRA Transparency surveys indicate that active consumers do want information on protections and</p>		<p>Competition can operate most effectively on the foundation of a transparent, consistent, stable and easily understood basis. This favours setting a rational baseline for redress protections now with clarity of forward looking position.</p>	<p>Transparency favours setting a clear forward looking position to allow solicitors to understand their potential liabilities and regulatory protections at the point that they make career choices (although note that we have not found evidence to suggest that this a key factor influencing choices at the moment).</p> <p>This also applies to providing clarity of the forward looking position at the point that decisions about when and how to close a firm are made.</p>	<p>The expectations of stakeholders vary by type. For example, polling that we have undertaken indicates that small firms expect for regulatory arrangements to provide mandatory PSYROC at a cost to all profession. Larger firms are more likely to feel that optional protections are more appropriate.</p> <p>The Legal Services Consumer Panel are of the view that PSYROC is an essential consumer protection that should be mandated. There is research that shows</p>

	are able to make informed decisions about the trade-offs between e.g. protections and cost (although other research shows most do not seek out this information)				that some consumers see financial redress as protection for lawyers rather than a consumer protection.  Therefore, whatever option is chosen, the public interest will be best served by a clear way forward.
Consistent	We are not consistent with the regulatory approach to consumer taken by other regulators, particularly those in same market and serving same potential pool of consumers.  We have not identified any legal regulators with mandatory PSYROC.				
Targeted	We have data on the highest risk areas in terms of unrecoverable loss over 6 years and also what type of firms is most likely to be involved. Targeting would favour an approach based around risk factors and where there is most likely to be significant consumer detriment.	Evidence that absence of PSYROC influences whether practitioners operate in areas of practice because of fear of personal liability, may favour targeting areas (practice areas plus geographical) where there may be adverse impact if drop in supply. However, we have not found evidence	Targeting favours a risk based funding model for any on-going arrangements to reduce cross-subsidies		

		to support this hypothesis.			
Accountable	Carrying out this exercise, setting out the rationale for different options, with public consultation and reaching a clear decision that will be communicated will make us accountable for the outcome. And how we approach our consumer protection role in this context.				
Deliver simplicity and certainty	<p>Certainty may favour bringing SIF to an end and deciding long term position now, rather than incremental extensions.</p> <p>This may also favour any further scheme being simple and certain in terms of recovery – this could be via a voluntary scheme (i.e. you pay in and you get out) or a transitional one (i.e. pay all claims from x firms up to 15 years). This is as opposed to a bespoke discretionary or hardship scheme as a regulatory model. In terms of ongoing costs, simplicity and certainty may also favour against targeted models</p>				
Affordable	SIFL adopts a cautious risk approach to solvency, maintaining the same principles that apply to an insurer under prudential regulation. There may be alternative models whose characteristics allow them to adopt a less prudent reserving policy, especially if there are incoming funds. There may also be options that may because of e.g. size and internal expertise may be able to operate with a lower claim handling cost model. We do not have any costings, largely because recent SIF claims data is not currently in the public domain.				
Efficient	Information provided by SIFL indicate that long-tail claims are very time and resource intensive. This is caused by, for example - absence of records and facts to establish eligibility, costs in locating the solicitor, potential bankruptcy as reason for closing without successor and issues with establishing limitation periods. SIFL have has told us that it is not unusual for the life cycle of a claim to be four or five years.				