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Private and Confidential
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Mr Paul Philip
Chief Executive
Solicitors Regulation Authority
The Cube
199 Wharfside Street
Birmingham
B1 1RN

Date: 2 December 2022

Dear Sir

**Consumer protection for post six-year negligence
Solicitors Indemnity Fund Ltd (SIF)**

1. This letter is written on behalf of the Law Societies of Birmingham, Bristol, Leeds, Liverpool and Manchester, known collectively as the Joint V.
2. We request that the SRA reverses the decision made at its Board meeting on 13 September 2022 to transfer the arrangements for Post Six Year Run Off Cover (PSYROC) from SIF to the SRA.
3. We are deeply concerned that the SRA has failed to consult on the options that it considered at its Board meeting and that, as a result, has made a hasty decision that could be regretted both by consumers and the profession alike.
4. We propose instead that further, more detailed information and costings should be obtained on both (a) the proposed arrangement for transfer from SIF to the SRA, and (b) the alternative proposal of a reconfigured SIF to operate at a lower expense level, so that a full consultation can take place with the profession and other stakeholders before the Board makes a decision.

5. Our reasons are set out below.

Summary

6. The decision was predicated on anticipated savings of £300,000-£400,000 apparently referred to in an unpublished analysis by Willis Towers Watson (WTW), which we assume is broadly reflected in the subsequent WTW report dated October 2022 (the October WTW Report).
7. We believe that the basis of the decision is flawed for the reasons identified in paragraph 9, and that this may result in significant additional and avoidable costs being passed on to the profession.
8. The current SIF arrangements have been in place for 22 years; new arrangements should be made in the expectation that they may be sustainable for a substantial period of time.
9. The flaws we identify, which are explained further below, are –
 - a) The anticipated saving is calculated by reference to the costs of the Assigned Risks Pool (ARP), which do not form a realistic comparable;
 - b) The SRA is unlikely to have the required expertise in professional liability claims, which bear no comparison with Compensation Fund claims, lack of which contributed to the collapse of numerous insurers;
 - c) Consideration of the handling of residual liabilities within SIF, including pre 2000 firm closures and existing notified claims, was excluded from the October WTW Report and there is no indication of the potential scale of these;
 - d) The October WTW Report, replete as it is with warnings that it is based on limited data in a compressed timeframe, cannot provide the evidential basis for a decision which may have substantial financial consequences for the profession;
 - e) Either no or inadequate consideration appears to have been given to investigating the alternative of achieving costs savings within SIF;
 - f) The transfer from SIF to the SRA was raised in neither the November 2021 consultation nor the Discussion paper dated 3 August 2022.
10. The decision is not therefore compliant with section 28 of the Legal Services Act 2007 which requires that the SRA acts in a way which is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

Explanation of reasons

The anticipated saving is calculated by reference to the costs of the ARP, which do not form a realistic comparable

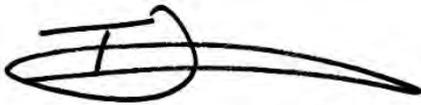
11. The ARP provided cover for firms unable to obtain insurance in the open market. Comparison of SIF's costs with the ARP is flawed, because the cost of defending ARP claims as a proportion of the whole would have been closer to those of open market insurers; SIF's costs will be disproportionately higher as a high proportion of claims are statute barred (meaning there will be no claims payment), or pursued by litigants in person where much of the costs burden falls on those defending claims.
12. A simple comparison of the proportion of defence costs to claims payments between the ARP and SIF is therefore fundamentally flawed. Higher defence costs are to be expected and are justified.
13. It is always possible, if undesirable, to adjust the balance by paying claims for which there is a good defence available rather than defending them. As the WTW report dated 19 November 2021, published with the November 2021 consultation, noted, '...costs must be viewed in the context of value-add as there can be false economies if processes become inferior in quality because of cost-cutting which can lead to increases in claim costs for example'.

The SRA is unlikely to have the required expertise in professional liability claims, which bear no comparison with Compensation Fund claims, lack of which contributed to the collapse of numerous insurers;

14. The costs savings are predicated on claims being handled by the SRA's Client Protection Team. This Team's expertise is in the administration of a rules-based Compensation Fund.
15. The claims against SIF often involve complex issues of law, particularly in relation to limitation periods and trusts, and we understand that many are made by litigants in person which may require extensive investigation by SIF.
16. Professional liability claims handling involves a very different skillset acquired through years of experience which will require recruitment and ongoing cost, yet the Willis report on which the SRA's proposals are predicated envisages the SRA utilising or reallocating existing resources.

17. After the global financial crisis, a large number of insurers entered the market without experience of solicitors' professional indemnity risks, including Alpha, Balva, Elite, Enterprise, ERIC, Lemma and Quinn among others, all of which became insolvent, the SRA should be cautious about assuming similar risks.
18. We strongly encourage the SRA to reconsider its position, to seek further analysis and to consult fully in order to ensure that a fully informed decision is made.

Yours sincerely

A handwritten signature in black ink, appearing to be 'T McDaid', written in a cursive style with a large loop at the end.

Tony McDaid

President – Birmingham Law Society

On behalf of the Joint V Law Societies – Birmingham, Manchester, Liverpool, Leeds & Bristol