



PSYROC – Response to SRA Discussion Paper (3 August 2022)

The SRA has accepted that there is no viable market solution for PSYROC. This means that as a broker Howden is no longer directly affected by the ongoing PSYROC debate and its final resolution – but our clients are. For this reason we are keen to remain involved in the discussion and give our views based on extensive experience of the solicitors’ PII market.

A. Indemnity Scheme vs Compensation Fund

In Howden’s view an indemnity scheme remains the appropriate and preferred option.

The Compensation Fund is a fund of last resort to compensate a claimant. It responds on those rare occasions where there is no cover under a MTC policy to respond to a claim. However a claimant is not obliged to resort to the Compensation Fund and cannot be prevented from issuing proceedings.

This could occur if there were limitations on the recovery available under a Fund (for example no cover for certain claimants or no cover for claimant costs). It could also arise if a claimant were dissatisfied with a decision by the Compensation Fund to reject their claim. Even if the claim were without merit, the retired practitioner could then find themselves in a situation where they need to defend proceedings with no indemnity cover for defence costs.

Such a scenario could also have further consequences. Information provided in the earlier consultation confirmed that a number of PSYROC claims are brought against traditional partnerships and sole practitioners. A Compensation Fund arrangement where there are gaps in cover as described above, could present a disincentive for solicitors to establish these small practices to offer legal services. This potential barrier to entry is a concern as it would also reduce competition, leading to increased costs to consumers, and failing the regulatory objectives under the Legal Services Act 2007 to:

- i) promote competition in regulated services,
- ii) improve access to justice; and
- iii) encourage an independent strong, diverse and effective profession.

The indemnity model for PSYROC has been working perfectly satisfactorily for many years. The model is not broken. The profession have indicated a willingness to fund the current arrangements and the risk of unintended consequences in changing the model should be avoided.

B. Retain SIF vs new model within the SRA

In our view the preferred option is to retain SIF, but to focus on the current operating model to ensure that costs are reduced. It is widely considered that savings on the operating model can (and in our view should) be achieved. Notwithstanding this, projections regarding the level of funding likely to be required have already been independently forecast at a level that is considered to be acceptable by the majority of the profession responding to the consultation earlier this year.

We also have a concern regarding the potential for a conflict of interest to arise if PSYROC arrangements are brought within the SRA. This could occur where there is an SRA investigation or SDT proceeding in relation to the same matter that is also the subject of a civil claim under PSYROC arrangements. The SRA would be acting as prosecutor/investigator and also determining the issue of indemnity for the claim, claimant costs and the solicitor's defence costs.

C. Removal of protection for large claimants

We would caution against any restriction in relation to the claimants who should be covered under future PSYROC arrangements. This would inevitably result in a gap in cover given that the SRA:

- A) does not allow solicitors to limit their liability below the MTC limit of indemnity; and
- B) has accepted in its response to the consultation on PSYROC that there is no viable option for this cover in the open market.

This potential gap in cover is an untenable result from the perspective of the profession. It could lead to those firms most susceptible to PSYROC claims (sole practitioners and small firms) withdrawing services to clients in the excluded group, or those clients adopting a policy whereby they do not instruct such firms. Once again, this fails the regulatory objectives under the Legal Services Act 2007 listed in paragraph A above.

The link between large corporate clients and domestic consumers should likewise not be ignored. For example, the SRA will be familiar with the significant number of lender claims brought following historic property recessions. Lenders pursued solicitors to recover the shortfall on a sale following repossession, usually based on shortcomings in the information provided to the lender at the point of purchase. If future lender claims were excluded from cover the purchaser would remain indebted to the lender for the shortfall. Such an outcome is inconsistent with the overriding objective of public protection.

D. No cover for claimant costs

This has been proposed on the basis that claimant costs represent circa 20% of the total value of claims paid by SIF. We would caution against removing cover for claimant costs from future PSYROC arrangements for the following reasons:

- a) It could act as a disincentive for consumers who have suffered loss to pursue redress, which is inconsistent with the overriding objective of client protection.
- b) It would inevitably increase the number of self-represented claimants with the potential that claims could become more protracted and costly to deal with. We therefore challenge it would achieve a 20% saving on the overall spend.



E. Recovery of self-insured excess

It would be useful to see the SIF data regarding recovery of the self-insured excess applicable in the preceding policy. We would expect that in many instances recovery is impractical and costly, and is abandoned on this basis. More information is needed regarding the approach taken by SIF to this issue and the recoveries achieved before commenting further.

Howden Insurance Brokers Limited
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