**SRA Closure of the Solicitors Indemnity Fund (SIF)**

Before I start, I declare an interest as a former sole practitioner. I closed my practice in 2010 after 23 enjoyable years, with no successor practice. If I had known, then what was going to happen I would probably have done things differently.

The SRA has decided to close the Solicitors Indemnity Fund (SIF). Well, so what, you might ask? Bear with me and please keep reading - because this has the potential to affect not just solicitors like me, but every one of you, whether you are a partner, sole principal, or an employee, whether past or present.

Last year the SRA, following representations from The Law Society, extended the closure date for SIF by one year. The date for closure is now **30 September 2021**. The reason given for the extension at the time was the covid pandemic, and the difficulties in the insurance market, and to give The Law Society time to find a solution such as an alternative insurance product. Nothing has changed since then.

No solution has been found. There is no insurance product available in the market. We are now approaching the cliff edge.

I am aware that many of you won’t have heard of SIF or know very much about it – especially those of you who qualified after 2000, and those of you who have never had to deal with applications for your firm’s professional indemnity insurance. But it is important that all solicitors know what is going on.

For a bit of background see the recent statement by the SRA:

<https://www.sra.org.uk/solicitors/resources/indemnity/solicitors-indemnity-fund/>

There is also background information on The Law Society website, an extract of which is as follows:

*Originally, SIF was the statutory fund that used to provide cover to solicitors in England and Wales.*

*When the profession voted to move from a statutory fund system to purchasing professional indemnity insurance (PII) on the open market, a portion of SIF was retained to provide ongoing run-off cover for firms that had already closed. Later, its scope was extended to cover other closed firms once their mandatory six-year run-off cover had expired.*

*After a law firm closes, run-off cover must be purchased to protect solicitors and their clients in the event of any civil claims that arise because of negligence. This mandatory run-off cover is purchased as part of the firm’s professional indemnity insurance (PII) and lasts for six years.*

*Coverage after this six-year period is called supplementary run-off cover and is currently provided by SIF by way of indemnity, at no additional cost to the former principals of a closed firm. However, for firms that closed on or after 1 September 2000, this cover will end on 30 September 2021.*

*Unless alternative arrangements are made, the former principals of firms that closed from September 2000 onwards, their estates, and even individual employees, may be personally liable for losses from any claims that are made.*

Please also see a recent article in the Gazette:

<https://www.lawgazette.co.uk/news/dont-close-the-sif-in-this-tough-insurance-market-sra-urged/5108591.article>

There is a very large amount of money in the SIF pot. Despite the SRA’s claims that the pot had been going down over the last few years, the reality is different. The accounts show that reserves have remained steady over at least the last four years. Once the Fund is closed that money will be handed over to The Law Society. This is recorded in the SRA Board minutes of last year. But unfortunately for us, The Law Society has no regulatory powers so it cannot use the money for indemnity purposes. See below extracts of SRA Board minutes of 3rd March 2020. (This Board meeting was before the decision taken later in 2020 to extend SIF. The highlighting is mine).

*The Board had received an update on the ongoing activity of the SIF at its January 2020 meeting. The Board had noted that the costs of operating the SIF were becoming increasingly disproportionate as the number and value of new notifications and claims that it deals with continue to reduce over time…….*

*If the Board did not consider that there is an indemnity purpose to which the residual funds could be put, then as these were originally monies collected from the profession they must, by the SRA Indemnity Rules, be used for the overall benefit of the profession. Such purposes were for the Law Society in its representative role, rather than for us and would not include making any alternative indemnity provision for the profession.*

The Law Society are fully engaged in continuing discussions and correspondence with the SRA and the Legal Services Board (LSB). The Law Society and the LSB Consumer Panel recently wrote a joint letter to the SRA. (See the Gazette article above.) This is an extraordinary move. Nobody within The Law Society can remember this kind of thing ever happening before. That is an indication of how serious the situation is, both for solicitors and their clients.

The LSB has to approve the closure of SIF. Note that the LSB recently sent a warning to the SRA regarding its proposals for reducing the client protection provided by the Compensation Fund. See link to the LSB’s letter.

<https://legalservicesboard.org.uk/wp-content/uploads/2021/04/20210407-SRA-Warning-notice.pdf>

The key to it is the protection of the public. The SRA’s regulatory remit is “consumer” protection. The SRA is not concerned at all with the protection of the interests of solicitors.

And by way of a side note: the fact that the SRA only recently tried (unsuccessfully) to reduce the compulsory six years’ run off cover to three years somewhat beggar’s belief in the light of their intention to close SIF.

For those who are as fascinated by all of this as I am, here is the link to archived papers and minutes of SRA Board meetings. Look out for the papers on SIF, and SIF items in the minutes.

<https://www.sra.org.uk/sra/how-we-work/our-board/public-meetings/archive/>

**The Problem:**

1. Partners and sole principals of firms which have closed, or will close in the future, without a successor practice, will no longer have professional indemnity cover after the compulsory six-year run off period has expired. Furthermore, firms which elected to go into run off as a condition of being taken over by another firm will have no cover after their six years’ compulsory run off has expired.
2. Claims for certain types of work e.g., conveyancing, wills and trusts, child personal injury, can arise long after those first six years, potentially decades later.
3. The problem is not confined to small firms. Bigger firms may also close with no successor practice. Mergers will be more difficult in a hardening insurance market, because the insurer will need to approve the merger.
4. It is important to note that this exposure to long tail claims extends to the employees of these firms. There are many solicitors out there who no idea of the risks will have they could be facing, now and in the future.
5. Many of these affected retired solicitors will be of advanced years, possibly frail, and without the resources even to defend claims (including claims which could well be unmeritorious). It is one thing asking your insurer to provide you with extended run off cover at the time of closure. It is quite another to ask for that years later, particularly when you have destroyed all your indemnity records because you felt secure in the knowledge that SIF would be covering you. Expectations have been dashed. Moreover, thousands of retired solicitors will have no idea of what is about to hit them, as they no longer have practising certificates, no longer get the Gazette, nor have any contact with The Law Society.
6. It will be impossible for closed firms to obtain extended run off cover. I have been in touch with a number of former sole practitioners who have tried but not been able to secure cover. That has also been my personal experience. The indemnity insurance market has hardened considerably during the pandemic. But it’s more than that. Insurers resent having to provide six years compulsory run off cover, and certainly will not contemplate venturing into products offering extended run off cover. The fact is that the insurance market is simply not interested, not even if closed firms have had exemplary claims records. And many of the insurers who provided the six years compulsory run off cover are no longer even in the market.

1. Given that the sole remit of the SRA is to ensure protection of the public, they don’t care about the effect of the SIF closure on solicitors, and nor are they obliged to care. The only arguments they will listen to concern the effect on clients. And clients will certainly be affected. They will be left without the certainty of knowing that if something has gone wrong with their case, they will have a means of redress. Former principals/partners (and their employees) may well not have the assets to meet any client claims.
2. The fact that solicitors have compulsory indemnity insurance is one of the hallmarks of our profession and the reason we can say we are a better bet than other “advisers”. If SIF is closed as planned there will be huge reputational damage for the profession. The lack of protection of the public in these circumstances brings the whole of the solicitors’ profession into disrepute and undermines trust and confidence in the regulatory system. (Anecdotally, I have tested this prediction on friends and acquaintances, and they are alarmed and horrified at the prospect that solicitors might be uninsured.)
3. The SRA already recognises that many small and sole practitioner firms are, and have been, run by solicitors with a black, Asian, and ethnic minority background. These firms have a higher representation of clients from black, Asian, and ethnic minority communities. Depriving those clients of a remedy (because the ex-partner/principal/employee is uninsured) surely constitutes direct discrimination. It is fairly well documented, as I understand it, on government figures alone, that people from these communities are most likely to have limited resources to bring a claim, let alone pursue a claim to judgment and enforcement (only to find there are no assets to enforce against). Thus, the SRA decision to close SIF has not taken sufficient account of equality and diversity factors.
4. The fact that there will be no cover for closed firms post compulsory six year run off cover, will dissuade many solicitors from setting up their own firms. This in itself has equality and diversity implications. With the current pandemic situation creating financial pressure on firms, there is an increased likelihood of redundancies. In the past, solicitors made redundant have been able to set up their own firms, without the worry that if they are forced into closure for any reason, they will have ongoing insurance cover. But with the closure of SIF, the risks of setting up a firm may be too great for solicitors in this situation. Out of small firms, larger firms often grow. And with small firms no longer setting up, client choice will be limited.
5. It might be of marginal interest to note that the biggest professional indemnity provider for doctors is the Medical Defence Union (MDU). The majority of doctors insure with the MDU, and for good reason. They give indefinite run off cover to retired doctors. The scheme operates on a claims occurrence basis, rather than a claims made basis like ours. The MDU recognise that claims can and do hit doctors decades after retirement.

**The Solution**

The SRA Board will be looking at the SIF issue at their next meeting on **8th June**. But if the SRA Board are thinking that maybe another extension of another year would give The Law Society more time to explore possible solutions, they need to understand that this is not going to solve anything. This would simply be kicking the can down the road. We will be faced with another cliff edge this time next year.

The solution is already there. The money is in the pot. Keep SIF going.

The Law Society needs your help. Please write to the SRA and the LSB if you possibly can. The weight of numbers in their email inboxes or post-boxes will make a difference. Make sure you mention the reputational damage for the profession, and the consequences for the protection of the public. That is the key.

***Janis Purdy***

***Past Chair of the Sole Practitioners Group (SPG)***

***Member and Past Chair of SPG Indemnity Committee 1999 – 2011***

***Hon Secretary/Treasurer Association of South Western Law Societies***

***25 May 2021***