

# Annex 1 - Summary of responses to August 2022 discussion paper

---

## Overview of responses

We received 116 responses to our 'Next steps on the Solicitors Indemnity Fund (SIF) and consumer protection for negligence claims' discussion paper. We thank all those who responded and they included:

- solicitors and retired solicitors
- law firms
- the Law Society
- local law societies
- the insurance industry
- the Legal Services Consumer Panel.

The vast majority of respondents welcomed the prospect of ongoing consumer protection for post six-year negligence. And favoured a solution which would provide the same consumer protection as the SIF. Some respondents also noted the need for any solution to be cost-effective and proportionate.

Many respondents, including a large majority of individual solicitors and retired solicitors, strongly favoured retaining the SIF. Some of these said that moving consumer protection within the SRA was unnecessary. They felt it would lead to additional costs and could cause difficulties if a matter leads both to a claim and a disciplinary case.

Some respondents, including representative bodies, were open to the idea of a new arrangement within the SRA. This was as long as it provides the same level of protection as the SIF and can be shown to be more cost-effective.

Many of these respondents said that consumer protection for post six-year negligence should take the form of an indemnity like the SIF. This was because a compensation fund would offer less certainty for consumers and solicitors.

The discussion paper invited views on three specific issues. The first was whether large corporate clients should be included in the scope of any future arrangement. The large majority of respondents who commented felt that they should be, because the SIF currently covers them and removing this cover could have unforeseen consequences.

We also asked whether a future consumer protection arrangement should cover costs involved in establishing a claim. Again, most of those who commented said it should. The SIF covers such costs, and since it can be difficult to establish a negligence claim long after the event, removing this cover would cause consumer detriment.

We also invited views on the powers a future scheme should have to recover claim payments. The SIF can seek to recover costs up to the level of the excess in the preceding insurance policy. Many of those who responded noted that recovering costs for post six-year negligence claims may often be impractical and costly, and some said it is not appropriate to recover costs where a claim arises from negligence rather than ethical failure.

## Key points from representative bodies

The Law Society (TLS) said the primary focus must be on a continuation of post six-year cover, with the full range of protections that are currently provided. Therefore TLS has no objection in principle to supporting an indemnity scheme managed by the SRA. This was provided it is established with transparent governance to provide the same protection as the SIF. If the SRA could provide strong evidence that such a scheme would cost less or enable long-tail risks to be better managed, that would be all the better. Any reduction of the protection provided by the SIF could only be justified by strong evidence of the benefits of doing so. Read [TLS's full response to the discussion paper](#).

The Sole Practitioners Group (SPG) said there can be no justification to limit consumer protection to a discretionary compensation fund. That leaves a choice between the SIF and an indemnity scheme within the SRA, which will depend on the cost of funding. The current arrangements should not be changed on the basis of an assumption, without the best possible assessment of the benefits and disadvantages of a change. Read the [SPG's full response to the discussion paper](#).

Following the announcement of our Board's decision to establish an SRA-run indemnity scheme, the SPG has added that it is important that the scheme be independently administered. And that the SPG has not yet seen evidence of significant cost savings if the scheme is administered by the SRA.

The Legal Services Consumer Panel (LSCP) said it will support any option that does not materially reduce consumer protection. This is as long as it is based on evidence of the likely impact on consumers. The LSCP agreed that any new process should be efficient, effective and proportionate. The LSCP also said that a future arrangement for post six-year cover should prioritise the collation of robust data on the scheme and ensure the data is transparent. This includes the cost of claims, which claims are accepted and denied and the reasons why. Read the [LSCP's full response to the discussion paper](#).

The City of London Law Society (CLLS) noted that the discussion paper referred to responses to the 2021 consultation. These had indicated that the legal profession would, in principle, be willing to fund the cost of ongoing consumer protection. This would be via a levy of the nature and at the cost consulted on in 2021. The profession would not expect this cost to be passed on to consumers of legal services generally. The CLLS said that support for post six-year cover is not unqualified. And that when considering any levy, the SRA must be proportionate and take all relevant factors into account. It encouraged the SRA to consult on ideas to provide consumer protection in the most efficient and cost-effective way.