

Statement in support of the Motion:

“This Society abhors the decision by the Solicitors Regulation Authority to close down the Solicitors Indemnity Fund.”

The S R A has decided to close the SIF down. This must surely be a bad decision.

There is no insurance product in the commercial insurance market to replace the protection that we and our clients have from SIF after expiry of our 6-year run-off policy, following closure of our practice. And there isn't going to be, either. We know that because The Law Society has tried its hardest to persuade the industry to create one for us, but they have refused to do so. They are just not interested in doing so.

There are 3 main categories to consider and these are, in order of importance:

1) The general public – our clients

The SRA is there to protect the public, our clientele. We all know that sometimes, something goes wrong and our clients need to be compensated for that. Before 2000 the vehicle was the SIF, but from 1st October 2000 new business for ongoing work has had to be placed on the commercial indemnity market. After closure of a practice, the 6-years run-off cover has also had to be placed commercially. SIF has remained to cover the 11 per cent of claims that are made after expiry of the 6-year period.

The Limitation Act 1980, Sections 14 and 32 set out the circumstances where claims can come in well after 6 years after the work was done.

- The categories of work that are the most likely to generate a post-6 year claim are: (1) personal Injury cases settled for minors at an undervalue (when the minor attains 18); (2) pre-nuptial agreements (when the relationship is ended); (3) conveyancing (when the property is sold on); (4) wills (when the testator dies – limitation only starts to run at the time of death, not the date of execution).

Each and every case in which a claimant is justified in making a claim, ought to be satisfied by us in some way. That is what professional indemnity is there for. If our clients cannot obtain the recompense that they deserve, it will lead to 2 below :

2) Bad publicity

Some Claimants are indeed entitled to be recompensed (whether with or without litigation). Without the SIF in place, they may be unable to acquire it. They may then go to the Press. It does not take much imagination to realize where this will lead: “ [Mr. Smith] can’t find the solicitor responsible for the mess, because his ex-solicitor has retired and run away, possibly to the Far East”; or “The Judge said the original solicitor had let Mr. Smith down very badly, had even behaved abominably, but Mr. Smith still can’t get his compensation that the Judge said he should have, because the solicitor can’t be found and the SRA had closed the SIF down.”

This bad publicity will do enormous damage to the profession.

3) Ourselves

The group most affected by closure is solicitors (and their ex-clients) whose practices were put into run-off and the 6-years run-off cover has expired. It is not just those who were in sole practice or in partnership who will be affected. This group also includes those who were employed as assistants in firms which have closed down. ALL firms – however large and wherever located, can be affected.

The important point here is – we do not have to have been negligent to generate a negligence action! Many cases have been brought based on unmeritorious facts, and caused solicitors huge anxiety. For these, we need an indemnifier who will fund a competent legal team to defend those cases. This defence might include an Application to Strike Out. We cannot run these defences ourselves in our retirement – to do so, we need to be competent litigators AND up to date with the latest court rules of procedure. Once we have gone into retirement, and especially after 6 years, it is very difficult to do this (even if we were ever litigators in the first place).

If we don't have indemnity after 6 years run-off, we will be very much exposed to claims, meritorious or not. A successful claim could bankrupt us in our retirement. The mere thought of a possible claim could make our retirement become a time of misery and worry.

BUT THERE IS A SOLUTION:

Although we are told that SIF is becoming uneconomic to run (that is, it is running out of money), in fact there is around £23million in it (in addition to the £10 million set aside for pre 2000 claims). We could keep it going quite easily by making a call each year on solicitors who apply for Practising Certificates. There are currently over 150,000 holding PC's, so a call of say only £10 in one year would generate roughly £1.5m for SIF. If more was needed, that could be increased to say £15 or £20, and if less was needed the sum could be reduced. The money would be collected by the SRA at the same time as the PC fee, in the same way the Compensation Fund contributions are. With the large number of PC holders, it would be easy to keep SIF in existence, for our benefit and the public's.

Please therefore vote in favour of this Motion.