



Decision notice

Issued by the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007

The Solicitors Regulation Authority's application for approval of changes to its regulatory arrangements for the level of contributions to the Compensation Fund

The Legal Services Board (LSB) has granted an application from the Solicitors Regulation Authority (SRA) approving alterations to the regulatory arrangements for Compensation Fund contributions. The Law Society is an approved regulator and the SRA is the regulatory arm to which The Law Society has delegated its regulatory functions.

This decision notice sets out the decision taken, including a brief description of the changes. The notes at the end of this notice explain the statutory basis for the decision. The chronology for the LSB's handling of this application is set out at the end of this decision notice.

Proposed changes

1. Each year the SRA considers the level of contribution to the Compensation Fund required from the individuals and firms that it authorises. The LSB must approve the level. For 2014/15, the SRA has determined that the contributions will be £32 from individuals and £548 from firms. This is a reduction from 2013/2014 when the contributions were £56 and £836 respectively.

Key issues considered in the assessment of the application

Intervention costs

2. In our assessment of the application, the LSB noted the significant decrease in the figure for the cost of intervention from £12.3m for 47 cases in 2013/14 to an estimated £7.93m for 52 cases in 2014/15. We welcome the reduction and note that changes to file archiving arrangements and in the type of firms requiring intervention have both had a positive impact on this cost. These seem to indicate both improvements in regulatory practice and growing economic confidence, both of which are welcome.

Provision for uninsured firms

3. We asked for more detail on the provision and forecast for grants related to uninsured firms, which had been increased from £0.5m to £2.5m, despite being £0.5m for the previous two years and only one claim of £750 being paid out in that time. In particular, we asked the SRA about what it considers may have caused the increase and also provide, on a confidential basis, information about the number and value of current claims.

4. The SRA explained that the higher figure is based on the expected payments for current open cases and the fact that it expects the number of claims and their complexity to increase following the closure of the Assigned Risk Pool. Having considered the number of open cases and the original and revised amounts claimed for these cases, the LSB is satisfied that the SRA has assured itself that the level is appropriate.

Contentious matters

5. There are a number of cases in which there is an ongoing dispute about whether indemnity insurers are liable to pay claims to clients. If insurers are not liable, then these claims may fall on the Compensation Fund. One case has over £30m of claims attached to it. However, the SRA has confirmed that even if the insurers are successful, this is unlikely to lead to many successful claims in total, and even these would in any event be unlikely to fall into the next SRA financial year (which starts in November 2014).
6. We sought further information, on a confidential basis, about contentious claims which were not in the public domain. We note from the information provided by the SRA that the immediate potential exposure to the Fund is limited. However, the figures demonstrate the potential future exposure and we will therefore seek an update on contentious cases later on in the year.

Consultation

7. We were pleased to see the extensive communications activity that the SRA undertook about the Compensation Fund level (which took place alongside communications about the practising fee). This work included updates in the SRA's newsletter and promotion of an online calculator about the fees. In particular, we note that a short survey about the level of the practising fee for 2014/15 was undertaken by The Law Society. However, this did not specifically cover the Compensation Fund.

Compensation Fund balance

8. We note the plan to manage the level of the Compensation Fund balance over the next three years so as to achieve the position of the balance being equal to the minimum reserve. This is forecast to be £24.6m for the practice year 2016/17.

Other work related to the compensation fund

9. We welcome the fact that the SRA is undertaking a wider-ranging, in-depth review of compensation arrangements. We would encourage the SRA to consider within the scope of this work how it can be more transparent about how the Compensation Fund is managed, for example by showing fee payers what proportion of the Fund is spent where, what claims are made, what grants are paid from the Fund and the value and the reasons for claims. The SRA should also consider how it communicates and consults on the impact of its changes in policy to the Compensation Fund, both on an annual basis about the level of contributions and incremental changes in approach as well as engagement with the regulated community and other stakeholders about more substantial changes.

10. We also note that SRA have not in the context of this application made any assessment of the possible budgetary impact in 2015 of changes to eligibility criteria for applications and of any changes flowing from Professional Indemnity Insurance rules. It is clearly important that the wider work referred to above makes such a budgetary assessment to enable accurate forecasting for 2016 and beyond and that proposals for implementation of any changes assess any more immediate financial consequences in 2015 and identify the means of addressing them.

Decision

11. The LSB has considered the SRA's application against the criteria in paragraph 25(3) of Schedule 4 to the Legal Services Act 2007 (the Act). It considers that there is no reason to refuse this application; accordingly, the application is granted.

12. The Annexes to this decision notice contain the draft determinations of Compensation Fund contributions for 2014 rule changes approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from the SRA on 14 July 2014.
- The 28 day initial decision period for considering the application ended on Sunday 10 August 2014.
- An extension notice was issued with respect to the application on Friday 8 August.
- This decision notice is effective from 11 August 2014.
- The decision notice will be published on our website on 12 August 2014.

Chris Kenny, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
11 August 2014

Notes:

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that
 - (a) granting the application would be prejudicial to the regulatory objectives
 - (b) granting the application would be contrary to any provision made by or by virtue of this Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
 - (c) granting the application would be contrary to the public interest

- (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
 - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or
 - (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are
- (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
 - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
 - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules¹ about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

¹ Rules for Rule Change Applications – Version 2 (November 2010)

Annex A

Draft Determination of Compensation Fund contributions 2014

This determination is made by the Solicitors Regulation Authority Board under rule 2.3 of the SRA Compensation Fund Rules 2011, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

(1) Every person who applies for a practising certificate to commence on or after 1 November 2014, or who applies for initial registration or renewal of registration as a registered European lawyer or registered foreign lawyer to commence on or after 1 November 2014, shall pay with the fee payable in respect of that application, a contribution of £32 to the Fund.

(2) Every recognised sole practitioner that:

(a) applies for renewal of authorisation as a recognised sole practitioner to commence on or after 1 November 2014; and

(b) has held or received client money (as defined in the SRA Accounts Rules 2011) during the period 1 November 2013 to 31 October 2014 shall pay with the fee payable in respect of that application, a contribution of £548 to the Fund.

(3) Every recognised body that has held or received client money (as defined in the SRA Accounts Rules 2011) during the period 1 November 2013 to 31 October 2014, shall pay with the annual periodical fee, a contribution of £548 to the Fund.

(4) Every person that:

(a) applies for initial authorisation as a recognised sole practitioner or initial recognition as a recognised body to commence during the period 1 November 2014 to 31 October 2015; and

(b) intends to hold or receive client money (as defined in the SRA Accounts Rules 2011) at any time during the period 1 November 2014 to 31 October 2015

shall pay with the fee payable in respect of that application, a contribution to the Fund as follows:

i. £548 on applying for initial recognition to commence in the period 1 November 2014 to 31 December 2014;

ii. £411 on applying for initial recognition to commence in the period 1 January 2015 to 31 March 2015;

iii. £274 on applying for initial recognition to commence in the period 1 April 2015 to 30 June 2015;

iv. £137 on applying for initial recognition to commence in the period 1 July 2015 to 31 October 2015.

(5) The SRA may waive the contribution payable under paragraph (4) above in circumstances where the initial application is made by a body which is changing its legal status or is succeeding to the practice of another recognised body or recognised sole practitioner and the predecessor body or practitioner has already paid a contribution to the Fund.

(6) In this determination:

Fund means the Solicitors' Compensation Fund established and maintained under rule 2.1 of the SRA Compensation Fund Rules 2011; and
All other terms are to be interpreted in accordance with the Practising Certificate Fee Determination 2014.

(7) This determination shall come into force on 1 November 2014.

Annex B

Draft Determination of Compensation Fund contributions for Licensed Bodies 2014

This determination is made by the Solicitors Regulation Authority Board under rule 2.3 of the SRA Compensation Fund Rules 2011, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

(1) Every licensed body that held or received client money (as defined in the SRA Accounts Rules 2011) at any time during the period 1 November 2013 to 31 October 2014, shall pay, with the annual periodical fee, a contribution of £548 to the Fund.

(2) Every licensed body that intends to hold or receive client money (as defined in the SRA Accounts Rules 2011) at any time from the date on which the body is authorised to 31 October 2015, shall pay, with the initial periodical fee, a contribution to the Fund as follows:

- i. £548 on being authorised in the period to 31 December 2014;
- ii. £411 on being authorised in the period 1 January 2015 to 31 March 2015;
- iii. £274 on being authorised in the period 1 April 2015 to 30 June 2015;
- iv. £137 on being authorised in the period 1 July 2015 to 31 October 2015.

(3) The SRA may waive the contribution payable under paragraph (2) above in circumstances where the initial application is made by a body which is changing its legal status or is succeeding to the practice of a recognised body or recognised sole practitioner and the predecessor body or practitioner has already paid a contribution to the Fund.

(4) In this determination:

Fund means the Solicitors' Compensation Fund established and maintained under rule 2.1 of the SRA Compensation Fund Rules 2011; and
All other terms are to be interpreted in accordance with the Licensed Body Fee Determination 2014.

(5) This determination shall come into force on 1 November 2014.