



Legal Services Board – Decision Notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

The Solicitors Regulation Authority’s application for approval of its Determination of Compensation Fund Contributions 2011 and Determination of Compensation Fund Contributions for Licensed Bodies 2011

The Legal Services Board (LSB) has approved the application by the Solicitors Regulation Authority (SRA) for its Determination of Compensation Fund Contributions 2011 and Determination of Compensation Fund Contributions for Licensed Bodies 2011. This Notice sets out the basis for the LSB approval and the decision taken, including a brief description of the changes.

Introduction

1. The LSB is required by Part 3 of Schedule 4 of the Legal Services Act 2007 (the Act) to review and approve (in whole or part) or reject alterations to the Regulatory Arrangements of the Approved Regulators. The SRA is an Approved Regulator.
2. Paragraph 25 of Schedule 4 explains that the LSB must approve a proposed change to the Regulatory Arrangements unless we are “...satisfied that...” the approval would fall within one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹). If the LSB is not satisfied that one or more of the criteria are met, then it must approve the application in whole, or at least the parts of it that can be approved when only part of the application meets the criteria.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules about how the application to alter the Regulatory Arrangements must be made including the contents of that application. The rules highlight the applicant’s obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) requires that each proposed alteration has been made or is likely to be made in accordance with the procedures which apply in relation to making of the alteration. This includes the LSB’s rules.

¹ The Board may refuse the application 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 the 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 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.

4. The LSB will approve Regulatory Arrangements in so far that they appear to achieve their intended outcome and satisfy the sub paragraph 25(3) criteria. Most notably there must be no adverse impact on the Regulatory Objectives overall and the alterations and the process by which they have been produced must be consistent with Better Regulation Principles.
5. We confirmed receipt of the SRA's application for approval of its Determination of Compensation Fund Contributions 2011 and the Determination of Compensation Fund Contributions for Licensed Bodies 2011 on 15 July 2011. This is the Decision Notice in relation to that application. The chronology for handling of this application can be found towards the end of this Decision Notice.

Decision

6. The LSB has approved the application by the SRA for its Determination of Compensation Fund Contributions 2011 (refer Annex 1) and Determination of Compensation Fund Contributions for Licensed Bodies 2011 (refer Annex 2).

Compensation Fund levels

7. In July 2010, the LSB approved changes to the compensation fund structure. From 2010, 50 per cent of the total requirement for the compensation fund will be collected from individuals and 50 per cent from firms. The 2011 compensation fee levels have been calculated on this basis.
8. For the 2011-12 practising year, the proposed compensation contributions for individuals will be £60 (£10 in 2010-11) and £772 for entities (£120 in 2010-11). In anticipation of the Law Society becoming a Licensing Authority, the proposed compensation fund contributions for Licensed Bodies will also be set at £772.
9. The SRA is also proposing that if a new firm is set up during the practising year, then that firm will pay a pro rata compensation fund contribution according to the quarter in which the firm set up. For example, a firm setting up in July 2012 will pay a quarter of £772.
10. As the 2011-12 compensation fund contribution levels are calculated using the same methodology that we approved last year, we have no concerns regarding the approach the SRA has taken this year. Although the individual and firm contributions have increased from last year, we are satisfied that this is unlikely to have a negative impact on individuals and firms, as this increase is offset by the proposed reduction in the 2011-12 practising certificate fee levels (see below).
11. The SRA has also confirmed that the compensation fund contributions for 2011-12 would not be affected by any delay in the Law Society becoming a Licensing Authority. This is because no assumption was included on a number of newly created (rather than converting Recognised Bodies) contributing towards the fund. Any Recognised Body applying to become a Licensed Body after 31 October 2011 would have already contributed at renewal of recognition towards the compensation fund and would not be expected to do so again within that year.

Composition of the Compensation Fund

12. The SRA has calculated that it needs to collect £13.5 million in contributions for the Compensation Fund in 2011-12 (£2.1 million in 2010-11). This amount will fund only the costs of claims, reserves and the cost of handling the claims. We consider that this is a positive step in providing greater transparency in the composition of the costs of the Compensation Fund.
13. The SRA has explained that the lower fees in 2010-11 were due to a plan to reduce the Compensation Fund's reserves to a level close to the prudent minimum level. The decision to collect £13.5 million in 2011-12 is part of a plan to provide a more stable level for the contribution fees over the next three years. The plan is based on the SRA's claims experience and the forecasting of claims for the next year.
14. Although the individual and firm contributions will increase in 2011-12, the SRA has decided not to provide a discount this year and that this should not have a negative impact on competition or on encouraging a strong, diverse and effective legal profession.
15. We are satisfied that this approach is reasonable, especially given that the increase in the compensation fund contributions will be more than offset by the decrease in the proposed 2011-12 practising certificate fees (the SRA has proposed that the practising certificate fee for individuals should be £328 (£428 in 2010-11) and the total practising certificate fee to be collected from firms should be £56.9 million (£73.0 million in 2010-11)).

Communication with stakeholders

16. For the 2010-11 practising year, the SRA made public statements about the unusually low compensation fund contribution and that it would be higher in 2011-12. Letters were sent to key stakeholder groups in March 2011 that explained that while the practising certificate fee may reduce, that the Compensation Fund contributions would increase. The SRA advised that no responses were received about the proposed increase in the Compensation Fund contributions.
17. In addition, in May 2011, the SRA wrote to all firms informing them that an online calculator was available on its website, which included realistic indicators of the likely contributions.
18. We are content that the SRA has adequately informed its regulated community, and has made available information, of the likely increase in the 2011-12 Compensation Fund contributions.

Chronology

- The LSB confirmed receipt of an application from the SRA on 18 July 2011.
- The 28-day decision period for considering the application will end on 14 August 2011.
- This Decision Notice will be issued to the SRA on 5 August 2011.
- This Decision Notice will be published on the LSB's website on 10 August 2011.

Chris Kenny, Chief Executive

**Acting under delegated authority granted by the Board of the Legal Services Board
5 August 2011**

Annex 1

Determination of Compensation Fund contributions [2011]

This determination is made by the Solicitors Regulation Authority Board under rule 2(2) of the Solicitors' Compensation Fund Rules 2009 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 2011, 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 2011, shall pay with the fee payable in respect of that application, a contribution of £60 to the Fund.
- (2) Every recognised sole practitioner or recognised body that:
 - (a) applies for renewal of authorisation as a recognised sole practitioner or renewal of recognition as a recognised body to commence on or after 1 November 2011; and
 - (b) has held or received client money (as defined in the Solicitors Accounts Rules 1998) during the period 1 November 2010 to 31 October 2011 shall pay with the fee payable in respect of that application, a contribution of £772 to the Fund.
- (3) 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 2011 to 31 October 2012; and
 - (b) intends to hold or receive client money (as defined in the Solicitors Accounts Rules 1998) at any time during the period 1 November 2011 to 31 October 2012 shall pay with the fee payable in respect of that application, a contribution to the Fund as follows:
 - i. £772 on applying for initial recognition to commence in the period 1 November 2011 to 31 December 2011;
 - ii. £579 on applying for initial recognition to commence in the period 1 January 2012 to 31 March 2012;
 - iii. £386 on applying for initial recognition to commence in the period 1 April 2012 to 30 June 2012;
 - iv. £193 on applying for initial recognition to commence in the period 1 July 2012 to 31 October 2012.
- (4) The SRA may waive the contribution payable under paragraph (3) 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 Compensation Fund.
- (5) In this determination:

Fund means the Solicitors' Compensation Fund established and maintained under rule 2(1) of the Solicitors' Compensation Fund Rules 2009;

All other terms are to be interpreted in accordance with the Practising Certificate Fee Determination [2011].
- (6) This determination shall come into force on 1 November 2011.

Annex 2

Determination of Compensation Fund contributions for Licensed Bodies [2011]

This determination is made by the Solicitors Regulation Authority Board under rule 2(2) of the Solicitors' 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 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 2012 shall pay, with the initial periodical fee, a contribution to the Fund as follows:
 - i. £772 on being authorised in the period to 31 December 2011 ;
 - ii. £579 on being authorised in the period 1 January 2012 to 31 March 2012;
 - iii. £386 on being authorised in the period 1 April 2012 to 30 June 2012;
 - iv. £193 on being authorised in the period 1 July 2012 to 31 October 2012.

- (2) The SRA may waive the contribution payable under paragraph (1) 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.

- (3) In this determination:

Fund means the Solicitors' Compensation Fund established and maintained under rule 2(1) of the SRA Compensation Fund Rules [2011];

All other terms are to be interpreted in accordance with the Licensed Body Fee Determination [2011].

- (5) This determination shall come into force on [the date on which the SRA is designated as a licensing authority].