



Decision notice

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

The Solicitors Regulation Authority application for approval of changes to its regulatory arrangements relating to the Compensation Fund eligibility criteria

The Legal Services Board (LSB) has granted an application from the Solicitors Regulation Authority (SRA) approving the SRA Amendments to Regulatory Arrangements (Compensation Fund Eligibility) Rules 2014. 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. The change proposed by the SRA in their application is to introduce eligibility criteria limiting all applications to the SRA's Compensation Fund to the following categories:
 - individuals;
 - micro-enterprises – businesses with turnover not exceeding £2,000,000;
 - charities with annual income of less than £2,000,000;
 - trustees of a trust with a net asset value of less than £2,000,000.
2. Under the SRA's current regulatory arrangements there is no restriction on who can apply for and be paid a grant out of the Compensation Fund. Anyone can make an application free of charge. A claim can be made by an individual consumer, company, charity or other entity irrespective of the wealth and means of the applicant.
3. The SRA's rationale for the introduction of eligibility criteria is the need to focus on consumers who are not well placed to manage risks themselves and hence require regulatory protection. The eligibility criteria are also expected to provide a framework for how the SRA will manage claims made to the Compensation Fund which should inform good practice and robust decision making in the long term when dealing with applications for a grant to be paid from the Compensation Fund.
4. The eligibility criteria will be introduced through a new set of rules, the SRA Amendment to Regulatory Arrangements (Compensation Fund Eligibility) Rules 2014, and will come into effect on 1 April 2015.

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5. The introduction of the eligibility criteria is not expected to have a significant impact on the number of grants that are paid from the SRA's Compensation Fund nor their value. The effect of the change will be that those who would not be eligible to make a claim in the future would largely be unsuccessful in making a claim now as they would not pass the hardship test. The change will therefore result in administrative savings to the SRA as it will not have to process claims that will not succeed. The introduction of the eligibility criteria also does not automatically assume that those eligible to apply for a grant from the Compensation Fund will be successful: as now, each case will be considered on its own merits.
6. The LSB has considered the SRA 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.
7. The Annex to this decision notice contains the rule changes approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from the SRA on 25 September 2014.
- The 28 day initial decision period for considering the application ends on 22 October 2014.
- This decision notice is effective from 17 October 2014.
- The decision notice will be published on our website on 20 October 2014.

Chris Kenny, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
17 October 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

SRA Amendments to Regulatory Arrangements (Compensation Fund Eligibility) Rules [2014]

Preamble

Rules dated [date of approval by LSB] made by the Solicitors Regulation Authority Board under sections 36, 36A, 79 and 80 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985, section 83(5)(e) of, and paragraph 19 of Schedule 11 to, the Legal Services Act 2007, and the relevant provisions of an Order made under section 69 of the Legal Services Act 2007, SI No 2011/1716, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

Rule 1

The SRA Compensation Fund Rules 2011 shall be amended as follows:

(a) replace rule 3.4 with:

“3.4 For any grant to be made out of the Fund, an *applicant* must satisfy the SRA that the *applicant* is eligible in accordance with rule 3.7, 3.8, 3.9 or 3.10 and (save in respect of a grant made under rule 5) that:

(a) he has suffered or is likely to suffer loss in consequence of the dishonesty of a *defaulting practitioner* or the *employee* or *manager* or *owner* of a *defaulting practitioner*, or

(b) he has suffered or is likely to suffer loss and hardship in consequence of a failure to account for money which has come into the hands of a *defaulting practitioner* or the *employee* or *manager* or *owner* of a *defaulting practitioner*, which may include the failure by a *defaulting practitioner* to complete work for which he was paid;

in the course of an activity of a kind which is part of the usual business of a *defaulting practitioner* and, in the case of a *defaulting licensed body*, the act or default arose in the course of performance of a *regulated activity*.”

(b) insert rules 3.7 to 3.12 as follows:

“3.7 A *person* is eligible under this rule to apply for a grant out of the Fund where the *person*:

(a) is an individual; or

(b) at the time the application is made, is a sole trader, *partnership*, *body corporate*, unincorporated association or mutual association with an annual *turnover* of less than £2 million;

and does not fall within rule 3.8, 3.9(a) or 3.10(a).

3.8 A *person* is eligible under this rule to apply for a grant in the circumstances set out in rule 3.4(a) if at the time the application is made the *person* falls within one or more of the following categories:

(a) a *charity* with annual income net of tax in the most recent financial year of less than £2 million; or

(b) a *trustee* of a trust with an asset value of less than £2 million.

3.9 A *person* is eligible under this rule to apply for a grant in the circumstances set out in rule 3.4(b) if the *person*:

(a) at the time the application is made falls within one or more of the following categories:

(i) a *charity* with annual income net of tax in the most recent financial year of less than £2 million; or

(ii) a *trustee* of a trust with an asset value of less than £2 million;

and

(b) has satisfied the SRA that its beneficiaries have suffered, or are likely to suffer, hardship if a grant is not made.

3.10 A *person* is eligible under this rule to apply for a grant in the circumstances set out in rule 3.4(a) or (b) if the *person*:

(a) at the time the application is made falls within one or more of the following categories:

- (i) a *charity* with annual income net of tax in the most recent financial year of £2 million or more; or
- (ii) a *trustee* of a trust with an asset value of £2 million or more;

and

- (b) has satisfied the SRA that its beneficiaries have suffered, or are likely to suffer, hardship if a grant is not made.

3.11 Having regard to the discretionary nature of the Fund, the *SRA* may take into account such evidence as it sees fit when determining eligibility under rules 3.7 to 3.10 and may make a broad estimate of any relevant amount.

3.12 The *SRA* may summarily determine whether a *person* is eligible to apply for a grant.”

Rule 2

The SRA Handbook Glossary 2012 shall be amended as follows:

- (a) after the definition of “**trustee**” insert:

“**turnover**

in the *SRA Compensation Fund Rules* means the amounts derived from the provision of goods and services in the most recent financial year, after deduction of:

- (a) trade discounts,
- (b) value added tax, and
- (c) any other taxes based on the amounts so derived.”

Rule 3

These amendment rules shall come into force on 1 April 2015.