



Summary of decision

The purpose of this summary document is to provide a high level and accessible synopsis of the LSB's decision. Readers are recommended to read the formal decision notice itself for further detail. **This summary is not and should not be taken as a formal part of the LSB's decision notice under the Legal Services Act 2007 ("the Act").**

The LSB's decision is to grant in full the application from the Solicitors Regulation Authority ("**SRA**"), in which it applied for approval of changes to its regulatory arrangements relating to its Compensation Fund and professional indemnity insurance ("**PII**") requirements.

The changes would implement policy decisions which were assessed as part of the LSB's consideration of the SRA's Looking to the Future rule change application, which was approved on 5 November 2018¹. These include changes to the ways that a solicitor may practise.

In particular this application proposes to make provision for the new ways in which solicitors can work, including:

- extending access to the Compensation Fund to clients of self-employed solicitors providing reserved legal activities
- confirming which acts or omissions by solicitors can give rise to a claim by consumers on the Compensation Fund
- requiring self-employed solicitors who are entitled to undertake reserved legal services to have PII at a level which is considered to be adequate and appropriate
- mandating that all solicitors that are required to have PII that covers past as well as current practice.

The LSB concluded that the changes do not meet the refusal criteria in the Act. Consequently, the LSB considers that there is no reason to refuse this application.

¹ https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/FINAL_Revised_LttF_Decision_with_Full_Annex_.pdf

Decision notice

The Solicitors Regulation Authority application for approval of new regulatory arrangements to carry out its Looking to the Future reform programme

1. The Legal Services Board (“**LSB**”) has granted an application from the Solicitors Regulation Authority (“**SRA**”) for approval of changes to its regulatory arrangements relating to its Compensation Fund and professional indemnity insurance (“**PII**”) requirements.
2. This decision notice sets out the basis for the LSB granting the application and the decision taken, including a brief description of the changes.
3. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (“**the Act**”) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Law Society (“**TLS**”) is an approved regulator and the SRA is the regulatory arm to which TLS has delegated its regulatory functions. The notes at page 9 of this notice explain the statutory basis for the decision.

Chronology

- The LSB confirmed receipt of an application from the SRA on 5 March 2019.
- The 28 day initial decision period for considering the application ended on 1 April 2019.
- On 29 March 2019 the LSB issued an extension notice, which extended the initial decision period to 2 June 2019.
- This decision notice is effective from 31 May 2019.
- The decision notice will be published on the LSB’s website by 4 June 2019.

Background

4. On 5 November 2018 the LSB approved a rule change application from the SRA for new regulatory arrangements implementing its Looking to the Future (“**LTTF**”) reform programme.
5. Within the rules approved were changes to how solicitors can practise. These changes were to allow:
 - a. self-employed solicitors to provide reserved legal services to the public, subject to certain restrictions
 - b. solicitors to provide non-reserved legal services to the public as a self-employed solicitor or from businesses that are not authorised by any approved regulator for legal services.
6. The SRA’s LTTF application set out its high level policy on the PII and compensation fund arrangements that would apply to solicitors wishing to practise in the new ways that would be permitted. In order to implement this policy the SRA needs to introduce new Compensation Fund Rules (“**CFRs**”) and SRA Indemnity Insurance Rules (“**SIIRs**”). It also needs to amend the new SRA Code of Conduct for Solicitors, Registered European Lawyers (“**RELS**”) and Registered Foreign Lawyers (“**RFLs**”) (“**Solicitors Code**”) and the new SRA Authorisation of Individuals Regulations (“**AI Regulations**”), both of which

were approved by the LSB in November 2018 (but are not yet in force), along with a related Glossary.

7. These regulatory arrangements are intended to form part of the SRA's new Standards and Regulations, which will replace in its entirety the current SRA Handbook. The Standards and Regulations include all changes approved by the LSB in November 2018 and are intended by the SRA to come into force from 25 November 2019.

Proposed Changes

Compensation Fund

8. The Compensation Fund is a discretionary fund for making grants to people whose money has been stolen, misappropriated or has not been accounted for by a regulated person, or those who have suffered a loss against which a regulated person should have been insured under the SRA's rules for PII. It is funded by contributions from individuals and bodies regulated by the SRA.
9. In the current rules, the term *defaulting practitioner* refers to those solicitors or bodies whose act or default results in an application to the Compensation Fund. The term is to be redefined in rule 5 of the proposed CFRs to reflect the new ways solicitors are able to practise under the SRA's new Standards and Regulations. The proposed changes will implement policy set out in the LTTF application and will provide that:
 - a. Clients of solicitors who work in businesses that are not authorised by an approved regulator of legal services will not be able to claim on the Compensation Fund
 - b. Clients of self-employed solicitors entitled to provide reserved legal services will have access to the Compensation Fund. Clients for the purposes of this provision will include those who satisfy the SRA that they were unaware a solicitor did not in fact have a valid practising certificate to provide reserved legal activities.
10. Rule 3.1 of the CFRs confirms that clients of self-employed solicitors as set out in paragraph 9(b) above, will have access to the Compensation Fund only where the losses relate to solicitor dishonesty or a failure to account for money the solicitor has received and held. They will not have access to the Compensation Fund in relation to any civil liability losses. In contrast, clients of solicitors in SRA authorised bodies may have access to the compensation fund for civil liability losses, if the authorised body was required to have PII to the SRA's minimum terms but did not have it.

Professional Indemnity Insurance

11. The current application proposes to amend the Solicitors Code, the AI Regulations and put in place new SIIRs, primarily to implement the policy positions set out in the SRA's LTTF application. The changes include:
 - a. Amending the new Solicitors Code (approved by the LSB in November 2018) to state that solicitors providing reserved legal services in a non-commercial body must make sure the body takes out and maintains adequate and

appropriate PII to cover both the reserved and non-reserved legal services the individual provides. This restates existing requirements for non-commercial bodies in the current SRA Handbook.

- b. Amending the new AI Regulations (approved by the LSB in November 2018) to provide that self-employed solicitors that are entitled to provide reserved legal services must take out and maintain adequate and appropriate PII and to cover both the reserved and non-reserved legal services the individual provides.
- c. Clarifying that PII must cover past as well as present practise, for all solicitors and authorised bodies that are required to take out PII.

12. Under the proposed regulatory arrangements, only SRA authorised bodies and their principals will need to hold PII that meets the SRA's PII minimum terms and conditions ("**MTCs**").

13. There is no requirement in the proposed regulatory arrangements for solicitors who provide only unreserved legal activities, whether self-employed or who work for businesses that are not authorised by any legal services regulator, to hold any PII.

Other amendments

14. Both the CFRs and SIIRs have been simplified with the intention of making them more accessible and for consistency with the drafting of the new SRA Standards and Regulations.

15. Amendments to the SRA's MTCs are intended to simplify them and reflect wording used in the new SRA Standards and Regulations.

16. The Glossary for SIIRs (including the MTC) and CFRs has been updated to include terms used in the regulatory arrangements proposed.

Key issues considered in the assessment of the application

17. As set out above, this application primarily presents for approval regulatory arrangements that would implement policy positions that were included in the LSB's assessment of the SRA's LTTF application in November 2018. During the LSB's assessment of the LTTF application, it considered the SRA's handling and reporting of the consultation process relating to the policy proposals being implemented in this application. However, as part of its assessment of this application, the LSB did request additional information from the SRA on any responses to its March 2018 consultation on the changes proposed for PII and Compensation Fund access that specifically commented on the drafting of the proposed rules. The SRA provided the LSB with the comments it had received, which were mainly concerned with drafting and points of clarification rather than substantive issues. The SRA also provided the LSB with evidence of the SRA's consideration of the comments received.

Compensation Fund

18. The LSB sought clarification from the SRA on the rationale for excluding clients of self-employed solicitors entitled to provide reserved legal services, from accessing the Compensation Fund, in relation to losses resulting from civil liability. The SRA explained that this exclusion is consistent with existing rules for those solicitors who are not currently required to have PII on MTCs, such as solicitors currently practising outside of authorised bodies (for example solicitors practising from law centres). The SRA further confirmed that there are very few claims in this area. The SRA has provided assurance that it will keep this issue under close review under the new arrangements.
19. Proposed rule 3.2 of the CFRs in the application set out that where a defaulting practitioner is a self-employed solicitor entitled to provide reserved legal services, a grant from the Compensation Fund may only be made in respect of money they were permitted to hold. As a result the LSB sought clarification on the rationale and impact on consumers of this proposed rule. Subsequently the SRA made the decision to delete proposed rule 3.2 (as originally submitted with this application) and make consequential changes, as set out in paragraph 34 below.

Professional Indemnity Insurance

20. Current outcome 1.8 of the Code of Conduct and proposed rule 3.2 of the SIIRs (applying to authorised bodies) set out that authorised bodies must not attempt to exclude liability below the SRA's MTCs. However, the new rules do not propose an equivalent for self-employed solicitors entitled to provide reserved legal services or for solicitors in non-commercial bodies. The LSB asked the SRA why it was not extending the prohibition in proposed rule 3.2 to these solicitors. The SRA explained that the PII requirement for these solicitors is "adequate and appropriate insurance" taking into account any other arrangements made with the client. This approach carries over existing requirements for solicitors required to hold PII other than on MTCs i.e. those who work for non-commercial bodies. It also confirmed that clients are protected by both general consumer law on unfair terms and the regulatory obligations that already apply to solicitors to act in the best interest of their clients. Finally the SRA confirmed it is developing specific guidance on adequate and appropriate insurance for solicitors that will address any cap on liability. The LSB has had sight of the draft guidance and acknowledges that it will provide more clarity to solicitors who are unsure about what will constitute adequate and appropriate insurance for their practice. The LSB expects the SRA to publish its guidance in advance of implementing its new Standards and Regulations.
21. The LSB has also borne in mind that the SRA will require self-employed solicitors entitled to provide reserved legal services to notify it of their status and that their status will be listed on the SRA register. The SRA will therefore be able to monitor those solicitors and take individual action as necessary, whilst monitoring general impact and trends.

Consideration of representations received during the assessment period

22. During the assessment period, the LSB received correspondence from TLS and the Legal Services Consumer Panel (“**the Panel**”) raising concerns about the application.
23. While there is no formal public consultation requirement under Part 3 of Schedule 4 to the Act in considering this application, the LSB considered the issues raised in the correspondence it received during the assessment period, to the extent that they were relevant to the decision. In particular, the correspondence was reviewed to establish whether issues had been raised that had not previously been identified through the SRA’s public consultation process, or which were not addressed in the application.
24. For the purposes of transparency, the representations from TLS and the Panel were published alongside the application on the LSB’s website. The correspondence from TLS and the Panel was also sent by the LSB to the SRA. The SRA provided a response to the correspondence which has also been published alongside this decision on the LSB’s website.
25. There were three main issues raised in this correspondence that were included in the LSB’s assessment. These are explained below.
 - (a) Concern that the SRA was reversing a previous policy position on a requirement for different classes of solicitor to hold PII
26. Both TLS and the Panel expressed concern that the SRA was amending its prior policy positions by not requiring compulsory PII for those self-employed solicitors only providing non-reserved legal services to the public. They contended that such “freelance” solicitors providing only non-reserved legal services should have PII and were of the view that this was the position the SRA had adopted in its post-consultation report that was published in June 2018².
27. It is different interpretations of what is meant by the word “freelancer” that appear to be behind this concern. This is a word which has been used in SRA consultations, and its LTTF application as well as the current application. The term was used by the SRA to describe one of the new ways of working allowed under the LTTF reforms. The word is not contained in the regulatory arrangements themselves.
28. In response to the concerns raised, the SRA has clarified that its references to “freelancers” are meant to refer to self-employed solicitors entitled to provide reserved legal services (and registered with the SRA as such). It is this category of solicitors to which it was referring in its post-consultation report of June 2018 when it stated that it was extending the requirement for PII so that it applied to all work conducted, and not just to reserved legal services.
29. A self-employed solicitor providing only non-reserved legal services to the public falls within the category of solicitors providing non-reserved legal services from businesses

² <https://www.sra.org.uk/sra/consultations/lttf-phase-two-handbook-reform.page#headingTwo>

not authorised by any legal services regulator (often referred to as solicitors in unregulated firms). As a result they are not required to hold any PII.

30. This was the proposal as understood and approved by the LSB in November 2018 when it assessed the LTTF application. The LSB is therefore satisfied that this does not represent a change in the SRA's policy position. However, the LSB does expect the SRA to review its regulatory arrangements and particularly the associated guidance, to ensure that its expectations are clear and that if there are any references in its guidance to freelancers that it is clear what category of solicitors this applies to.

(b) Concern over perceived uncertainty over what would constitute adequate and appropriate insurance

31. As set out above in paragraph 20, the SRA will be publishing guidance on what will constitute adequate and appropriate insurance and the LSB has had sight of a draft of this guidance.

(c) Concern around the lack of access to the Compensation Fund for civil liability losses for clients of self-employed solicitors entitled to provide reserved legal services

32. As set out above in paragraph 18, the LSB sought clarification from the SRA on its rationale for this and the SRA confirmed that this exclusion is consistent with existing rules for solicitors who are not required to have PII on the MTCs.

33. Overall, the LSB is satisfied that the SRA has satisfactorily addressed the three main concerns raised by TLS and the Panel in their correspondence.

SRA changes to the proposed regulatory arrangements during the LSB assessment

34. During the course of the LSB's assessment the SRA proposed an amendment to the CFRs. This was to remove rule 3.2 as originally submitted with the application. This rule would have meant there was no access to the Compensation Fund for clients of self-employed solicitors entitled to provide reserved legal services where the solicitor failed to account for funds they handled or received but were not permitted to hold. While the SRA considered that this restriction posed a low risk to consumers, the SRA has taken the decision to delete this proposed rule and confirmed that clients of self-employed solicitors entitled to provide reserved legal services will have access to the Compensation Fund in circumstances where the solicitor fails to account for funds they are permitted to receive, as well as in relation to funds which they were not permitted to hold. The approved CFRs (original and subsequent SRA amendment to it) are annexed to this decision.

Decision

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

36. **Annex A** to this decision notice contains the amendments to the regulatory arrangements approved by the LSB.

Legal Services Board
31 May 2019

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 rules³ 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.

³ [Rules for Rule Change Applications – Version 2 \(November 2010\)](#)

Annex A
Glossary for SRA Indemnity Insurance Rules (including the MTC) and SRA Compensation Fund Rules

Glossary terms	Definition
<i>applicant</i>	means for the purposes of the SRA Compensation Fund Rules a <i>person</i> applying for a grant out of the Compensation Fund.
<i>authorised insurer</i>	<p>means:</p> <ul style="list-style-type: none"> (a) a <i>person</i> who has permission under Part 4A of <i>FSMA</i> to effect or carry out contracts of insurance of a relevant class; (b) a <i>person</i> who carries on an insurance market activity, within the meaning of section 316(3) of <i>FSMA</i>; (c) an <i>EEA</i> firm of the kind mentioned in paragraph 5(d) of Schedule 3 to <i>FSMA</i>, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance of a relevant class; or (d) a <i>person</i> who does not fall within paragraph (i), (ii) or (iii) and who may lawfully effect or carry out contracts of insurance of a relevant class in a member state other than the <i>UK</i>, <p>where "relevant class" has the meaning set out in section 87(1B) of the <i>SA</i> provided that this definition must be read with section 22 of <i>FSMA</i>, any relevant order under that section, and Schedule 2 to <i>FSMA</i></p>
<i>cessation</i>	means where the <i>insured firm's practice</i> ceases during the <i>period of insurance</i> or after the <i>period of insurance</i> in circumstances where the <i>insured firm</i> has not obtained insurance complying with the <i>MTC</i> and incepting on and with effect from the day immediately following the expiry of the <i>policy period</i>

<p>cessation period</p>	<p>means the period commencing on the expiry of the extended policy period where, during the extended policy period the relevant authorised body has not ceased practice or obtained a policy of qualifying insurance incepting with effect on and from the day immediately following expiration of the policy period, and ending on the date which is the earlier to occur of:</p> <p>(a) the date, if any, on which the authorised body obtains a policy of qualifying insurance incepting with effect on and from the day immediately following expiration of the policy period;</p> <p>(b) the date which is 90 days after the commencement of the extended policy period; or</p> <p>(c) the date on which the insured firm's practice ceases</p>
<p>charity</p>	<p>has the meaning given in section 1 of the Charities Act 2011</p>
<p>circumstances</p>	<p>means an incident, occurrence, fact, matter, act or omission which may give rise to a claim in respect of civil liability</p>
<p>claim</p>	<p>means a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages. For these purposes, an obligation on an insured firm and/or any insured to remedy a breach of the SRA Accounts Rules, or any rules which replace them in whole or in part, shall be treated as a claim, and the obligation to remedy such breach shall be treated as a civil liability for the purposes of clause 1 of the MTC, whether or not any person makes a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages as a result of such breach, except where any such obligation may arise as a result of the insolvency of a bank (as defined in section 87 of the SA) or a building society which holds client money in a client account of the insured firm or the failure of such bank or building society generally to repay monies on demand</p>
<p>claimant</p>	<p>means:</p>

	<p>(a) a person making a claim to statutory trust monies; and</p> <p>(b) in the SRA Indemnity Insurance Rules and the MTC, a person or entity which has made or may make a claim including a claim for contribution or indemnity</p>
defaulting practitioner	has the meaning given in rule 5 of the SRA Compensation Fund Rules
defence costs	<p>means legal costs and disbursements and investigative and related expenses reasonably and necessarily incurred with the consent of the insurer in:</p> <p>(a) defending any proceedings relating to a claim; or</p> <p>(b) conducting any proceedings for indemnity, contribution or recovery relating to a claim; or</p> <p>(c) investigating, reducing, avoiding or compromising any actual or potential claim; or</p> <p>(d) acting for any insured in connection with any investigation, inquiry or disciplinary proceeding (save in respect of any disciplinary proceeding under the authority of the SRA or the Tribunal),</p> <p>and does not include any internal or overhead expenses of the insured firm or the insurer or the cost of any insured's time</p>
employee	<p>for the purposes of the SRA Indemnity Insurance Rules and the MTC, means any person other than a principal:</p> <p>(a) employed or otherwise engaged in the insured firm's practice (including under a contract for services) including, without limitation, as a solicitor, lawyer, trainee solicitor or trainee lawyer, consultant, associate, locum tenens, agent, appointed person, office or clerical staff member or otherwise;</p>

	<p>(b) seconded to work in the <i>insured firm's practice</i>; or</p> <p>(c) seconded by the <i>insured firm</i> to work elsewhere,</p> <p>but does not include any <i>person</i> who is engaged by the <i>insured firm</i> under a contract for services in respect of any work where that <i>person</i> is required, whether under the <i>SRA Indemnity Insurance Rules</i> or under the rules of any other professional body, to take out or to be insured under separate professional indemnity insurance in respect of that work</p>
excess	<p>means the first amount of a <i>claim</i> which is not covered by the <i>insurance</i></p>
existing instructions	<p>means instructions to carry out <i>legal activities as defined in section 12 of the LSA</i> received by an <i>authorised body</i> from a client, which the body has accepted, on terms that have been agreed by the client, prior to the body becoming subject to cover under the <i>cessation period</i></p>
extended policy period	<p>means the period commencing at the end of the <i>policy period</i> and ending on the date which is the earlier to occur of:</p> <ul style="list-style-type: none"> (a) the date, if any, on which the firm obtains a <i>policy</i> of <i>qualifying insurance</i> incepting on and with effect from the day immediately following the expiration of the <i>policy period</i>; (b) the date which is 30 days after the end of the <i>policy period</i>; or (c) the date on which the <i>insured firm's practice</i> ceases
Fund	<p>means the fund established and maintained under rule 1.1 of the SRA Compensation Fund Rules</p>
indemnity period	<p>means in the SRA Indemnity Insurance Rules and the <i>MTC</i>, the period of one year starting on 1 September 2000, 2001 or 2002,</p>

	the period of 13 calendar months starting on 1 September 2003, or the period of one year starting on 1 October in any subsequent calendar year
<i>insolvency event</i>	<p>means in relation to a <i>participating insurer</i>:</p> <ul style="list-style-type: none"> (a) the appointment of a provisional liquidator, administrator, receiver or an administrative receiver; (b) the approval of a voluntary arrangement under Part I of the Insolvency Act 1986 or the making of any other form of arrangement, composition or compounding with its creditors generally; (c) the passing of a resolution for voluntary winding up where the winding up is or becomes a creditors' voluntary winding up under Part IV of the Insolvency Act 1986; (d) the making of a winding up order by the court; (e) the making of an order by the court reducing the value of one or more of the <i>participating insurer's</i> contracts under section 377 of <i>FSMA</i>; or (f) the occurrence of any event analogous to any of the foregoing insolvency events in any jurisdiction outside England and Wales.
<i>insured</i>	means each <i>person</i> and entity named or described as a <i>person</i> to whom the insurance extends and includes, without limitation, those referred to in clause 1.3 in the <i>MTC</i>
<i>insured firm</i>	means the <i>authorised body</i> which contracted with the <i>insurer</i> to provide the insurance

<i>insured firm's practice</i>	<p>means:</p> <ul style="list-style-type: none"> (a) the legal <i>practice</i> carried on by the <i>insured firm</i> as at the commencement of the <i>period of insurance</i>; and (b) the continuous legal <i>practice</i> preceding and succeeding the <i>practice</i> referred to in paragraph (i) (irrespective of changes in ownership of the <i>practice</i>)
<i>insurer</i>	<p>means:</p> <ul style="list-style-type: none"> (a) for the purposes of the SRA Financial Services (Conduct of Business) Rules 2001 a firm with permission to effect or carry out <i>contracts of insurance</i> (other than a bank); and (b) for the purposes of the <i>SRA Indemnity Insurance Rules</i> and the <i>MTC</i> the underwriter(s) of the insurance
<i>lead insurer</i>	<p>means the insurer named as such in the contract of insurance in accordance with clause 2.6 of the <i>MTC</i></p>
<i>MTC</i>	<p>means the minimum terms and conditions with which a <i>policy of qualifying insurance</i> is required by the <i>SRA Indemnity Insurance Rules</i> to comply, as at annex 1 to those rules</p>
<i>non-SRA firm</i>	<p>means a <i>sole practitioner, partnership, LLP or company</i> which is not authorised to practise by the <i>SRA</i>, and which is either:</p> <ul style="list-style-type: none"> (a) authorised or capable of being authorised to practise by another <i>approved regulator</i>; or (b) not capable of being authorised to practise by any <i>approved regulator</i>
<i>participating insurer</i>	<p>means an <i>authorised insurer</i> which has entered into a <i>participating insurer's agreement</i> with the <i>SRA</i> which remains in force for the purposes of underwriting new business at the date on which the relevant contract of <i>qualifying insurance</i> is made</p>
<i>participating insurer's agreement</i>	<p>means an agreement in such terms as the <i>SRA</i> may prescribe setting out the terms and conditions on which a <i>participating insurer</i> may provide professional indemnity insurance to</p>

	<i>solicitors</i> and others in <i>private legal practice</i> in England and Wales
<i>Partial Home State Cover</i>	has the meaning given in annex 2 to the SRA Indemnity Insurance Rules
<i>period of insurance</i>	means the period for which the insurance operates
<i>policy</i>	means a contract of professional indemnity insurance made between one or more <i>persons</i> , each of which is a <i>participating insurer</i> , and an <i>authorised body</i>
<i>policy period</i>	means the <i>period of insurance</i> in respect of which risks may attach under a <i>policy</i> , but excluding the <i>extended policy period</i> and the <i>cessation period</i>
<i>practice</i>	means the whole or such part of the <i>private legal practice</i> of an <i>authorised body</i> as is carried on from one or more offices in England and Wales
<i>principal</i>	means: <ul style="list-style-type: none"> (a) where the <i>authorised body</i> is or was: <ul style="list-style-type: none"> (i) a <i>recognised sole practice</i> – the <i>sole practitioner</i>; (ii) a <i>partnership</i> - each <i>partner</i>; (iii) a <i>company</i> with a share capital - each <i>director</i> of that <i>company</i> and any <i>person</i> who: <ul style="list-style-type: none"> (A) is held out as a <i>director</i>; or (B) beneficially owns the whole or any part of a share in the <i>company</i>; or

	<p>(C) is the ultimate beneficial owner of the whole or any part of a share in the company;</p> <p>(iv) a company without a share capital - each director of that company and any person who:</p> <p>(A) is held out as a director; or</p> <p>(B) is a member of the company; or</p> <p>(C) is the ultimate owner of the whole or any part of a body corporate or other legal person which is a member of the company;</p> <p>(v) an LLP - each member of that LLP, and any person who is the ultimate owner of the whole or any part of a body corporate or other legal person which is a member of the LLP;</p> <p>(b) where a body corporate or other legal person is a partner in the authorised body, any person who is within paragraph (a)(iii) of this definition (including sub-paragraphs (A) and (C)), paragraph (a)(iv) of this definition (including sub-paragraphs (A) and (C)), or paragraph (a)(v) of this definition</p>
<p>prior practice</p>	<p>means each practice to which the insured firm's practice is ultimately a successor practice by way of one or more mergers, acquisitions, absorptions or other transitions, but does not include any such practice which has elected to be insured under run-off cover in accordance with clause 5.5 of the MTC</p>
<p>private legal practice</p>	<p>means the provision of services in private practice as a solicitor or REL in an authorised body including, without limitation:</p> <p>(a) providing such services in England, Wales or anywhere in the world in a recognised sole practice, a recognised body or a licensed body (in respect of its regulated activities);</p>

	<p>(b) the provision of such services as a secondee of the <i>insured firm</i>;</p> <p>(c) any insured acting as a personal representative, <i>trustee</i>, attorney, notary, insolvency practitioner or in any other role in conjunction with a <i>practice</i>;</p> <p>(d) the provision of such services by any <i>employee</i>; and</p> <p>(e) the provision of such services pro bono;</p> <p>but does not include:</p> <p>(f) discharging the functions of any of the following offices or appointments:</p> <p>(i) judicial office;</p> <p>(ii) Under Sheriffs;</p> <p>(iii) members and clerks of such tribunals, committees, panels and boards as the Council may from time to time designate but including those subject to the Tribunals and Inquiries Act 1992, the Competition Commission, Legal Services Commission Review Panels, Legal Aid Agency Review Panels and Parole Boards;</p> <p>(iv) Justices' Clerks; or</p> <p>(v) Superintendent Registrars and Deputy Superintendent Registrars of Births, Marriages and Deaths and Registrars of Local Crematoria</p>
<p><i>SIF</i></p>	<p>means the Solicitors Indemnity Fund</p>
<p><i>solicitor</i></p>	<p>means a <i>person</i> who has been admitted as a solicitor of the Senior Courts of England and Wales and whose name is on the roll, save that in the SRA Indemnity Insurance Rules and the <i>MTC</i> this includes a <i>person</i> who practises as a solicitor whether or not the <i>person</i> has in force a practising certificate, and also includes</p>

	<p>practice under home title of a former <i>REL</i> who has become a solicitor</p>
<p><i>successor practice</i></p>	<p>(a) means a <i>practice</i> identified in this definition as 'B', where:</p> <ul style="list-style-type: none"> (i) 'A' is the <i>practice</i> to which B succeeds; and (ii) 'A's owner' is the owner of A immediately prior to transition; and (iii) 'B's owner' is the owner of B immediately following transition; and (iv) 'transition' means merger, acquisition, absorption or other transition which results in A no longer being carried on as a discrete legal <i>practice</i>. <p>(b) B is a successor practice to A where:</p> <ul style="list-style-type: none"> (i) B is or was held out, expressly or by implication, by B's owner as being the successor of A or as incorporating A, whether such holding out is contained in notepaper, business cards, form of electronic communications, publications, promotional material or otherwise, or is contained in any statement or declaration by B's owner to any regulatory or taxation authority; and/or (ii) (where A's owner was a <i>sole practitioner</i> and the transition occurred on or before 31 August 2000) - the <i>sole practitioner</i> is a <i>principal</i> of B's owner; and/or (iii) (where A's owner was a <i>sole practitioner</i> and the transition occurred on or after 1 September 2000) - the <i>sole practitioner</i> is a <i>principal</i> or <i>employee</i> of B's owner; and/or (iv) (where A's owner was a <i>recognised body</i> or a <i>licensed body</i> (in respect of its

	<p><i>regulated activities</i>)) - that body is a <i>principal</i> of B's owner; and/or</p> <p>(v) (where A's owner was a <i>partnership</i>) - the majority of the <i>principals</i> of A's owner have become <i>principals</i> of B's owner; and/or</p> <p>(vi) (where A's owner was a <i>partnership</i> and the majority of <i>principals</i> of A's owner did not become <i>principals</i> of the owner of another legal <i>practice</i> as a result of the transition) - one or more of the <i>principals</i> of A's owner have become <i>principals</i> of B's owner and:</p> <p>(A) B is carried on under the same name as A or a name which substantially incorporates the name of A (or a substantial part of the name of A); and/or</p> <p>(B) B is carried on from the same premises as A; and/or</p> <p>(C) the owner of B acquired the goodwill and/or <i>assets</i> of A; and/or</p> <p>(D) the owner of B assumed the liabilities of A; and/or</p> <p>(E) the majority of staff employed by A's owner became <i>employees</i> of B's owner.</p> <p>(c) notwithstanding the foregoing, B is not a successor practice to A under paragraph (b) (ii), (iii), (iv), (v) or (vi) if another <i>practice</i> is or was held out by the owner of that other <i>practice</i> as the successor of A or as incorporating A, provided that there is insurance complying with the <i>MTC</i> in relation to that other <i>practice</i></p>
<p><i>sum insured</i></p>	<p>means the <i>insurer's</i> limit of liability under a <i>policy</i> in respect of any one <i>claim</i> (exclusive of <i>defence costs</i>)</p>

<i>supplementary run-off cover</i>	means run-off cover provided by the Solicitors Indemnity Fund following the expiry of run-off cover provided to an <i>authorised body</i> in accordance with the <i>SRA Indemnity Insurance Rules</i> or otherwise under a <i>policy</i> (but subject to compliance with the <i>MTC</i>)
<i>trustee</i>	includes a personal representative, and "trust" includes the duties of a personal representative
<i>turnover</i>	<p>means the amounts derived from the provision of goods and services in the most recent financial year, after deduction of:</p> <ul style="list-style-type: none"> (a) trade discounts; (b) value added tax; and (c) any other taxes based on the amounts so derived

To note: other defined terms in these draft rules are set out in the SRA Glossary that was made by the SRA Board in May 2018.

SRA Regulatory Arrangements (Indemnity Insurance) (Amendment) Rules 2018

Rules made by the Solicitors Regulation Authority Board on 5 December 2018.

Made under sections 2, 13, 28, 31 and 32 of the Solicitors Act 1974, section 89 of, and paragraphs 2 and 3 of Schedule 14 to, the Courts and Legal Services Act 1990 and section 57(2) and (8) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Rule 1

The SRA Code of Conduct for Solicitors, RELs and RFLs shall be amended by replacing paragraph 5.6 with the following:

“5.6 If you are a *solicitor* or an *REL* carrying on *reserved legal activities* in a *non-commercial body*, you must ensure that:

- (a) the body takes out and maintains indemnity insurance; and
- (b) this insurance provides adequate and appropriate cover in respect of the services that you provide or have provided, whether or not they comprise *reserved legal activities*, taking into account any alternative arrangements the body or its *clients* may make.”

Rule 2

The SRA Authorisation of Individuals Regulations shall be amended by replacing regulation 10.2(b)(vi) with the following:

“(vi) take out and maintain indemnity insurance that provides adequate and appropriate cover in respect of the services that you provide or have provided, whether or not they comprise *reserved legal activities*, taking into account any alternative arrangements you or your *clients* may make; and”

Rule 3

These amendment rules come into force on 5 December 2018.

SRA Indemnity Insurance Rules

Introduction

These rules require firms that are authorised by the SRA to take out and maintain professional indemnity insurance. They do not apply to solicitors, RELs and RFLs that practise outside SRA authorised firms.

Part 1: General

Application

1.1 These rules apply to *authorised bodies* and their *principals*.

Part 2: Responsibility and monitoring

Obligation to effect insurance

2.1 An *authorised body* carrying on a *practice* during any *indemnity period* beginning on or after [commencement date] must take out and maintain *qualifying insurance* under these rules with a *participating insurer*.

2.2 In respect of its obligation under rule 2.1, an *authorised body* must obtain a *policy* of *qualifying insurance* prior to the expiry of the *policy period*, that provides cover incepting on and with effect from the expiry of the *policy period*.

2.3 If the *authorised body* has been unable to comply with rule 2.2, the *authorised body* must obtain a *policy* of *qualifying insurance* during or prior to the expiry of the *extended policy period* that provides cover incepting on and with effect from the expiry of the *policy period*.

2.4 If the *authorised body* has been unable to comply with either rule 2.2 or rule 2.3, the *authorised body* must cease *practice* promptly, and by no later than the expiry of the *cessation period*, unless the *authorised body* obtains a *policy* of *qualifying insurance* during or prior to the expiry of the *cessation period* that provides cover incepting on and with effect from the expiry of the *policy period* and covers all activities in connection with *private legal practice* carried out by the *authorised body* including, without limitation, any carried out in breach of rule 4.2.

Adequate and appropriate insurance

3.1 Notwithstanding rule 2.1 above, an *authorised body* must take out and maintain professional indemnity insurance that provides adequate and appropriate cover in respect of current or past practice taking into account any alternative arrangements the body or its *clients* may make.

3.2 An *authorised body* must ensure that its *clients* have the benefit of the indemnity insurance required under these rules and must not exclude or attempt to exclude liability below the minimum level of cover required under these rules.

Responsibility

- 4.1 Each *authorised body*, and any *principal* of such a body, must ensure that the *authorised body* complies with these rules.
- 4.2 Each *authorised body* that has been unable to obtain a *policy* of *qualifying insurance* prior to the expiration of the *extended policy period*, and any *principal* of such a body, must ensure that the *authorised body*, and each *principal* or *employee* of the body, undertakes no activities in connection with *private legal practice* and accepts no instructions in respect of any such activities during the *cessation period* save to the extent that the activity is necessary in connection with the discharge of its obligations within the scope of the *authorised body's existing instructions*.

Insolvency of participating insurer

- 5.1 If an *authorised body* is carrying on a *practice* which is being provided with *qualifying insurance* by a *participating insurer* (whether alone or together with another *participating insurer*) and that *participating insurer* is the subject of an *insolvency event* then the *authorised body* and any *principal* of the body must ensure that the *authorised body* has in place *qualifying insurance* with another *participating insurer* as soon as may be reasonably practicable and in any event within four weeks of such *insolvency event*.

Monitoring

- 6.1 The *SRA* may require from an *authorised body* or any *principal* in an *authorised body*, information and evidence it may reasonably require to satisfy itself that the body has complied with these rules.

RELS

- 7.1 The provisions contained in annex 2 to these rules apply to an *authorised body* that has at least one *principal* who is an *REL*.

Part 3: Reporting

Use of information

- 8.1 Each *authorised body* must notify the *SRA* (or such *person* as the *SRA* may notify to the *authorised body* from time to time) and its *participating insurer* in writing as soon as reasonably practicable and in any event no later than five business days after the date on which:
- (a) the *authorised body* enters an *extended policy period*;
 - (b) the *authorised body* has entered the *cessation period*; and
 - (c) where the *authorised body* is in the *extended policy period* or the *cessation period*, the *authorised body* has obtained a *policy* of *qualifying insurance*, and in such case the notification must include the name of the

participating insurer who has issued the *policy* of *qualifying insurance* and the *policy* number.

- 8.2 The *SRA* may, without limitation and in its absolute discretion, disclose and make available for public inspection the identity of an *authorised body's participating insurer*.

Details of participating insurer

- 9.1 This rule is in addition to any obligations imposed on the *authorised body* under the Provision of Services Regulations 2009.

- 9.2 If a *claimant* asserts a *claim* against an *authorised body* or any person insured under that *authorised body's policy*, and the *claim* relates to any matter within the scope of cover of the *MTC*, the *authorised body*, and any person who is at the relevant time a *principal* in that *authorised body* must, upon request by that *claimant*, by any person insured under that *authorised body's policy*, or by any other person with a legitimate interest, provide the following details in relation to that *authorised body's policy*:

- (a) the name of the *participating insurer* who issued the *policy*;
- (b) the *policy* number; and
- (c) the address and contact details of the *participating insurer* for the purpose of making a *claim* under the *policy*,

in each case in respect of the *policy* which it is reasonably believed to be the relevant *policy* to respond to the *claim*, or, if applicable, the fact that the *authorised body* or person against whom the *claim* is asserted is covered by *supplementary run-off cover*.

- 9.3 In the case of an *authorised body* which has ceased *practice*, any person who was a *principal* in that *authorised body* immediately before that body ceased *practice* must comply with rule 9.2.

Part 4: Transitionals

Transitionals and savings

- 10.1 For the purposes of the *SA* (including without limitation section 10 of that Act), any person who is in breach of any rule or part of any rule under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011 to 2013 will be deemed, for so long as that person remains in breach, not to be complying with these rules.

Supplemental notes

Made by the SRA Board on 5 December 2018.

Made under sections 31 and 37 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985, and section 83 of, and paragraph 19 of Schedule 11 to the Legal Services Act 2007.

The SRA Indemnity Insurance Rules 2013 do not apply in respect of any *indemnity period* beginning on or after [commencement date] but they remain in force in respect of the *indemnity period* from 1 October 2013 to [day before commencement date] inclusive.

Annex 1

SRA Minimum Terms and Conditions of Professional Indemnity Insurance

1 Scope of cover

1.1 Civil liability

Subject to the limits in clause 2, the insurance must indemnify each *insured* against civil liability to the extent that it arises from *private legal practice* in connection with the *insured firm's practice*, (including its *prior practice* and (unless run-off cover is provided in accordance with clause 5.3) any *successor practice*) provided that a *claim* in respect of such liability:

- (a) is first made against an *insured* during the *period of insurance*; or
- (b) is made against an *insured* during or after the *period of insurance* and arising from *circumstances* first notified to the *insurer* during the *period of insurance*.

1.2 Defence costs

The insurance must also indemnify the *insured* against *defence costs* in relation to:

- (a) any *claim* referred to in clause 1.1; or
- (b) any *circumstances* first notified to the *insurer* during the *period of insurance*; or
- (c) any investigation or inquiry (save in respect of any disciplinary proceeding under the authority of the *SRA* and/or the *Tribunal*) during or after the *period of insurance* arising from any *claim* referred to in clause 1.1 or from *circumstances* first notified to the *insurer* during the *period of insurance*.

1.3 The insured

For the purposes of the cover contemplated by clause 1.1, the *insured* must include:

- (a) the *insured firm*; and
- (b) each service, administration, trustee or nominee *company* owned as at the date of occurrence of relevant *circumstances* by the *insured firm* and/or the *principals* of the *insured firm*; and
- (c) each *principal*, each former *principal* and each *person* who becomes a *principal* during the *period of insurance* of the *insured firm* or a *company* referred to in paragraph (b); and
- (d) each *employee*, each former *employee* and each *person* who becomes during the *period of insurance* an *employee* of the *insured firm* or a *company* referred to in paragraph (b); and
- (e) the estate or legal personal representative of any deceased or legally incapacitated *person* referred to in paragraph (c) or (d).

1.4 *Award by regulatory authority*

The insurance must indemnify each *insured* against any amount paid or payable in accordance with the recommendation of the Office for Legal Complaints (including the *Legal Ombudsman* pursuant to section 137(2)(c) and section 137(4)(b) of the *LSA*) or any other regulatory authority to the same extent as it indemnifies the *insured* against civil liability provided that the *insurer* will have no liability in respect of any determination by the *Legal Ombudsman* pursuant to section 137(2)(b) of the *LSA* to refund any fees paid to the *insured*.

2 **Limit of insurance cover**

2.1 *Any one claim*

The *sum insured* for any one *claim* (exclusive of *defence costs*) must be, where the *insured firm* is a *recognised body* or a *licensed body* (in respect of activities regulated by the *SRA* in accordance with the terms of the body's licence) at least £3 million, and in all other cases, at least £2 million.

2.2 *Defence costs*

There must be no monetary limit on the cover for *defence costs*.

2.3 *Proportionate limit on defence costs*

Notwithstanding clauses 0 and 0, the insurance may provide that liability for *defence costs* in relation to a *claim* which exceeds the *sum insured* is limited to the proportion that the *sum insured* bears to the total amount paid or payable to dispose of the *claim*.

2.4 *No other limit*

The insurance must not limit liability to any monetary amount (whether by way of an aggregate limit or otherwise) except as contemplated by clauses 0 to 0 (inclusive).

2.5 *One claim*

The insurance may provide that, when considering what may be regarded as one *claim* for the purposes of the limits contemplated by clauses 0 to 0 (inclusive):

- (a) all *claims* against any one or more *insured* arising from:
 - (i) one act or omission;
 - (ii) one series of related acts or omissions;
 - (iii) the same act or omission, in a series of related matters or transactions;
 - (iv) similar acts or omissions, in a series of related matters or transactions, and
- (b) all *claims* against one or more *insured* arising from one matter or transaction will be regarded as one *claim*.

2.6 *Multiple underwriters*

- 2.6.1 The insurance may be underwritten by more than one *insurer*, each of which must be a *participating insurer*, provided that the insurance is fully underwritten.
- 2.6.2 Where the insurance is underwritten jointly by more than one *insurer*, the insurance:
- (a) must state which *participating insurer* shall be the *lead insurer*;
 - (b) may provide that each *insurer* shall be severally liable only for its respective proportion of liability in accordance with the terms of the insurance; and
 - (c) (in addition to any proportionate limit on *defence costs* in accordance with clause 0), may provide that each *insurer's* liability for *defence costs* is further limited to the extent or the proportion of that *insurer's* liability (if any) in relation to the relevant *claim*.
- 2.6.3 The *insurer* stated to be the *lead insurer* shall act as such including without limitation being responsible for the conduct of *claims*, advancing *defence costs* (subject to clause 2.6.2(c)) and compromising and arranging the payment of *claims*. The liability of any *insurer* shall not be increased by virtue only of the fact that it is acting as *lead insurer*.

3 **Excesses**

- 3.1 The insurance may be subject to an *excess* of such monetary amount and on such terms as the *insurer* and the *insured firm* agree. Subject to clause 3.4, the *excess* may be 'self-insured' or partly or wholly insured without regard to these *MTC*.
- 3.2 The insurance must provide that the *excess* deductible does not reduce the limit of liability contemplated by clause 0.
- 3.3 The insurance may provide that an *excess* applies to *defence costs*.
- 3.4 The insurance must provide that, if an *insured* fails to pay to a *claimant* any amount which is within the *excess* within 30 days of it becoming due for payment, the *claimant* may give notice of the *insured's* default to the *insurer*, whereupon the *insurer* is liable to remedy the default on the *insured's* behalf. The insurance may provide that any amount paid by the *insurer* to remedy such a default erodes the *sum insured*.
- 3.5 The insurance may provide for multiple *claims* to be treated as one *claim* for the purposes of an *excess* contemplated by clause 3.1 on such terms as the *insured firm* and the *insurer* agree.

4 **Special conditions**

4.1 *No avoidance or repudiation*

The insurance must provide that the *insurer* is not entitled to avoid or repudiate the insurance on any grounds whatsoever including, without limitation, any breach of the duty to make a fair presentation of the risk, or any misrepresentation, in each case whether fraudulent or not.

4.2 *No adjustment or denial*

The insurance must provide that the *insurer* is not entitled to reduce or deny its liability under the insurance on any grounds whatsoever including, without limitation, any breach of any term or condition of the insurance, except to the extent that one of the exclusions contemplated by clause 0 applies.

4.3 *No cancellation*

The insurance must provide that it cannot be cancelled except (in the case of (a), (b) or (c) below) by the agreement of both the *insured firm* and the *insurer*, and in any event only in circumstances where:

- (a) the *insured firm's practice* is merged into a *successor practice*, provided that there is insurance complying with these *MTC* in relation to that *successor practice*, in which case cancellation shall have effect no earlier than the date of such merger; or
- (b) replacement insurance, complying with the *MTC* in effect at its commencement, commences, in which case cancellation shall have effect no earlier than the date on which such replacement insurance commences; or
- (c) it subsequently transpires that the *insured firm* is not required under the SRA Indemnity Insurance Rules to effect a *policy* of *qualifying insurance*, in which case cancellation shall have effect from the later of (a) the start of the relevant *policy period* and (b) the date on which the *insured firm* ceased to be required to effect a *policy* of *qualifying insurance*, or such later date as the *insured firm* and the *insurer* may agree.

Cancellation must not affect the rights and obligations of the parties accrued under the insurance prior to the date from which cancellation has effect.

4.4 *No set-off*

The insurance must provide that any amount payable by the *insurer* to indemnify an *insured* against civil liability to a *claimant* will be paid only to the *claimant*, or at the *claimant's* direction, and that the *insurer* is not entitled to set-off against any such amount any payment due to it by any *insured* including, without limitation, any payment of premium or to reimburse the *insurer*.

4.5 *No 'other insurance' provision*

The insurance must not provide that the liability of the *insurer* is reduced or excluded by reason of the existence or availability of any other insurance other than: (i) as contemplated by clause 0; or (ii) where the *insured*, having entered the *extended policy period* or *cessation period*, obtains a *policy* of *qualifying insurance* that incepts from and with effect from the expiration of the *policy period*. For the avoidance of doubt and subject to the provisions of the *participating insurer's agreement*, this requirement is not intended to affect any right of the *insurer* to claim contribution from any other *insurer* which is also liable to indemnify any *insured*.

4.6 *No retroactive date*

The insurance must not exclude or limit the liability of the *insurer* in respect of *claims* arising from incidents, occurrences, facts, matters, acts and/or omissions which occurred prior to a specified date.

4.7 *Successor practice - 'double insurance'*

The insurance may provide that, if the *insured firm's practice* is succeeded during the *period of insurance* and, as a result, a situation of 'double insurance' exists between two or more *insurers* of the *successor practice*, contribution between *insurers* is to be determined in accordance with the relative numbers of *principals* of the owners of the constituent *practices* immediately prior to succession.

4.8 *Resolution of disputes as to insurer of successor practice*

The insurance must provide that, if there is a dispute as to whether a *practice* is a *successor practice* for the purposes of clauses 1.1 or 0, the *insured* and the *insurer* will take all reasonable steps (including, if appropriate, referring the dispute to arbitration) to resolve the dispute in conjunction with any related dispute between any other party which has insurance complying with these *MTC* and that party's *insurer*.

4.9 *Advancement of defence costs*

The insurance must provide that the *insurer* will meet *defence costs* as and when they are incurred, including *defence costs* incurred on behalf of an *insured* who is alleged to have committed or condoned dishonesty or a fraudulent act or omission, provided that the *insurer* is not liable for *defence costs* incurred on behalf of that *insured* after the earlier of:

- (a) that *insured* admitting to the *insurer* the commission or condoning of such dishonesty, act or omission; or
- (b) a court or other judicial body finding that that *insured* was in fact guilty of such dishonesty, act or omission.

4.10 *Variation of insurance terms*

The terms of the insurance must provide that the *insurer* shall vary the terms of the insurance to give effect to any variation to the SRA Indemnity Insurance Rules, the Glossary and the *MTC*, such variation to be implemented by the *insurer*:

- (a) on the date of any renewal or replacement of the insurance or any extension to the *period of insurance* occurring in that *indemnity period*; or
- (b) on each date falling in 18 month intervals from the commencement of the *policy period* where no variation has occurred by reason of clause 4.10(a) within the immediately preceding 18 month period.

save that no variation shall be required under clause 4.10(b) where the date on which variation would have been required is a date within the *extended policy period* or the *cessation period*.

4.11 *MTC to prevail*

The insurance must provide that:

- (a) the insurance is to be construed or rectified so as to comply with the requirements of these *MTC* (including any amendment pursuant to clause 4.10); and
- (b) any provision which is inconsistent with these *MTC* (including any amendment pursuant to clause 4.10) is to be severed or rectified to comply.

5 **Extended policy period and run-off cover**

5.1 *Extended policy period*

The insurance must provide cover complying with the *MTC* for the duration of the *extended policy period* where an *insured firm* has not, prior to the expiration of the *policy period*, obtained insurance complying with the *MTC* and incepting on and with effect from the day immediately following the expiration of the *policy period*.

5.2 *Cessation period*

The insurance must provide cover complying with the *MTC* for the duration of the *cessation period* where an *insured firm* has not, prior to the expiration of the *extended policy period*, obtained insurance complying with the *MTC* and incepting on and with effect from the day immediately following the expiration of the *policy period*.

5.3 *Run-off cover*

Subject to clause 5.7 the insurance must provide run-off cover:

- (a) in the event of a *cessation* that occurs during or on expiration of the *policy period*;
- (b) in the event of a *cessation* that occurs during the *extended policy period* or the *cessation period*; or
- (c) from the expiration of the *cessation period*;

and for the purposes of this clause 5.3 and clause 5.7, an *insured firm's practice* shall (without limitation) be regarded as ceasing if (and with effect from the date upon which) the *insured firm* becomes a *non-SRA firm*.

5.4 *Scope of run-off cover*

The run-off cover referred to in clause 5.3 must:

- (a) indemnify each *insured* in accordance with clauses 0 to 1.4;
- (b) provide a minimum level of insurance cover in accordance with clauses 2.1 and 2.3;
- (c) be subject to the exclusions and conditions of the insurance applicable in accordance with the *MTC*; and
- (d) extend the *period of insurance* for an additional six years (ending on the sixth anniversary of the date upon which, but for this requirement, it would have ended, and for the avoidance of doubt, including the *extended policy period*

and **cessation period**,) save that in respect of run-off cover provided under clause 5.3(c), such run-off cover shall not operate to indemnify any regulated **insured** for civil liability arising from acts or omissions of such **insured** occurring after the expiration of the **cessation period**.

5.5 Succession

The insurance must provide that, if there is a **successor practice** to the ceased **practice**, the **insured firm** may elect before its **cessation**, whether it wishes the ceased **practice**:

- (a) to be insured under the run-off cover referred to in clause 5.3(a) or
- (b) provided that there is insurance complying with these **MTC** in relation to that **successor practice**, to be insured as a **prior practice** under such insurance.

If the **insured firm** fails to make an election and/or fails to pay any premium due under the terms of the **policy**, before its **cessation**, clause 5.50 above shall apply.

5.6 Suspended practices

The insurance must provide that, where run-off cover has been activated in accordance with this clause 0, but where the **insured firm's practice** restarts, the **insurer** may (but shall not be obliged to) cancel such run-off cover, on such terms as may be agreed, provided that:

- (a) there is insurance complying with these **MTC** in relation to that **insured firm** in force on the date of cancellation;
- (b) the **participating insurer** providing such insurance confirms in writing to the **insured firm** and the **insurer** (if different) that:
 - (i) it is providing insurance complying with these **MTC** in relation to that **insured firm** for the then current **indemnity period**; and
 - (ii) it is doing so on the basis that the **insured firm's practice** is regarded as being a continuation of the **insured firm's practice** prior to **cessation** and that accordingly it is liable for **claims** against the **insured firm** arising from incidents, occurrences, facts, matters, acts and/or omissions which occurred prior to **cessation**.

5.7 Transfer to another approved regulator

Clause 5.3 above does not apply where the **insured firm** becomes an **authorised non-SRA firm** provided that the **approved regulator**, with which the **authorised non-SRA firm** is authorised, is a signatory to a protocol on terms agreed by the **SRA** which relates to switching between **approved regulators**.

6 Exclusions

The insurance must not exclude or limit the liability of the **insurer** except to the extent that any **claim** or related **defence costs** arise from the matters set out in this clause 0.

6.1 Prior cover

Any **claim** in respect of which the **insured** is entitled to be indemnified under a professional indemnity insurance contract for a period earlier than the **period of**

insurance, whether by reason of notification of *circumstances* under the earlier contract or otherwise.

6.2 *Death or bodily injury*

Any liability of any *insured* for causing or contributing to death or bodily injury, except that the insurance must nonetheless cover liability for psychological injury or emotional distress which arises from a breach of duty in the performance of (or failure to perform) legal work.

6.3 *Property damage*

Any liability of any *insured* for causing or contributing to damage to, or destruction or physical loss of, any property (other than property in the care, custody or control of any *insured* in connection with the *insured firm's practice* and not occupied or used in the course of the *insured firm's practice*), except that the insurance must nonetheless cover liability for such damage, destruction or loss which arises from breach of duty in the performance of (or failure to perform) legal work.

6.4 *Partnership disputes*

Any actual or alleged breach of the *insured firm's partnership* or shareholder agreement or arrangements, including any equivalent agreement or arrangement where the *insured firm* is an *LLP* or a *company* without a share capital.

6.5 *Employment breaches, discrimination, etc.*

Wrongful dismissal, repudiation or breach of an employment contract or arrangement, termination of a training contract, harassment, discrimination or like conduct in relation to any *partnership* or shareholder agreement or arrangement or the equivalent where the *insured firm* is an *LLP* or a *company* without a share capital, or in relation to any employment or training agreement or arrangement.

6.6 *Debts, trading liabilities and funding arrangements*

Any:

- (a) trading or personal debt of any *insured*; or
- (b) legal liability assumed or accepted by an *insured* or an *insured firm* under any contract or agreement for the supply to, or use by, the *insured* or *insured firm* of goods or services in the course of the *insured firm's practice*, save that this exclusion 6.6(b) will not apply to any legal liability arising in the course of an *insured firm's practice* in connection with its or any *insured's* use of or access to the HM Land Registry network (including, without limitation, access under a Network Access Agreement made under the Land Registration (Network Access) Rules and the Land Registration (Electronic Communications) Order 2007) other than an obligation to pay search fees or other charges for searches or services provided by HM Land Registry to the *insured firm*; or
- (c) guarantee indemnity or undertaking by any particular *insured* in connection with the provision of finance, property, assistance or other benefit or advantage directly or indirectly to that *insured*.

6.7 *Fines, penalties, etc*

Any:

- (a) fine or penalty; or
- (b) award of punitive, exemplary or like damages under the law of the United States of America or Canada, other than in respect of defamation; or
- (c) order or agreement to pay the costs of a complainant, regulator, investigator or prosecutor of any professional conduct complaint against, or investigation into the professional conduct of, any *insured*.

6.8 *Fraud or dishonesty*

The insurance may exclude liability of the *insurer* to indemnify any particular *person* to the extent that any civil liability or related *defence costs* arise from dishonesty or a fraudulent act or omission committed or condoned by that *person*, except that:

- (a) the insurance must nonetheless cover each other *insured*; and
- (b) the insurance must provide that no dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a *company*, all *directors* of that *company*, or in the case of an *LLP*, all *members* of that *LLP*.

6.9 *Directors' or officers' liability*

The insurance may exclude liability of the *insurer* to indemnify any natural person in their capacity as a *member* of an *LLP* or *director* or officer of a body corporate (other than a *recognised body, licensed body* (in relation to the activities regulated by the *SRA* in accordance with the terms of the body's licence) or a service, administration, trustee or nominee *company* referred to in clause 1.3(b) except that:

- (a) the insurance must nonetheless cover any liability of that *person* which arises from a breach of duty in the performance of (or failure to perform) legal work; and
- (b) the insurance must nonetheless cover each other *insured* against any vicarious or joint liability.

6.10 *War and terrorism, and asbestos*

The insurance may exclude, by way of an exclusion or endorsement, liability of the *insurer* to indemnify any *insured* in respect of, or in any way in connection with:

- (a) terrorism, war or other hostilities; and/or
- (b) asbestos, or any actual or alleged asbestos-related injury or damage involving the use, presence, existence, detection, removal, elimination or avoidance of asbestos or exposure to asbestos,

provided that any such exclusion or endorsement does not exclude or limit any liability of the *insurer* to indemnify any *insured* against civil liability or related *defence costs* arising from any actual or alleged breach of duty in the performance of (or failure to perform) legal work or failure to discharge or fulfil any duty incidental to the *insured firm's practice* or to the conduct of *private legal practice*.

6.11 *International trade sanctions*

The *insurer* shall be deemed not to provide cover and shall not be liable to pay any *claim* or provide any benefit under the insurance to the extent that the provision of such cover, payment of such *claim* or provision of such benefit would expose the *insurer* to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, Australia or United States of America.

7 **General conditions**

7.1 *As agreed*

The insurance may contain such general conditions as are agreed between the *insurer* and the *insured firm*, but the insurance must provide that the special conditions required by clause 4 prevail to the extent of any inconsistency.

7.2 *Reimbursement*

The insurance may provide that each *insured* who:

- (a) committed or condoned (whether knowingly or recklessly):
 - (i) any breach of the duty to make a fair presentation of the risk, or misrepresentation; or
 - (ii) any breach of the terms or conditions of the insurance; or
 - (iii) dishonesty or any fraudulent act or omission; or
- (b) undertakes, either itself or by any of its *principals*, *employees*, consultants or agents or any *person* on its behalf, any activity during the *cessation period* in connection with *private legal practice* save to the extent that the activity is undertaken to discharge any of its obligations within the scope of its *existing instructions* or is necessary in connection with the discharge of any such obligation,

will reimburse the *insurer* to the extent that is just and equitable having regard to the prejudice caused to the *insurer's* interests by such failure to make a fair presentation of the risk, misrepresentation, breach, dishonesty, act or omission, provided that no *insured* shall be required to make any such reimbursement to the extent that any such breach of the terms or conditions of the insurance was in order to comply with any applicable *regulatory arrangements* of the *SRA*.

The insurance must provide that no failure to make a fair presentation of the risk, misrepresentation, breach, dishonesty, act or omission will be imputed to a body corporate unless it was committed or condoned by, in the case of a *company*, all *directors* of that *company*, or in the case of an *LLP*, all *members* of that *LLP*.

The insurance must provide further that any right of reimbursement contemplated by this clause 0 against any *person* referred to in clause 1.3(d) (or against the estate or legal personal representative of any such *person* if they die or become legally incapacitated) is limited to the extent that is just and equitable having regard to the prejudice caused to the *insurer's* interests by that *person* having committed or condoned (whether knowingly or recklessly) the failure to make a fair presentation of the risk, misrepresentation, breach, dishonesty, act or omission.

7.3 *Reimbursement of defence costs*

The insurance may provide that each *insured* will reimburse the *insurer* for *defence costs* advanced on that *insured's* behalf which the *insurer* is not ultimately liable to pay.

7.4 *Reimbursement of the excess*

The insurance may provide for those *persons* who are at any time during the *period of insurance principals* of the *insured firm*, together with, in relation to a *sole practitioner*, any *person* held out as a *partner* of that practitioner, to reimburse the *insurer* for any *excess* paid by the *insurer* on an *insured's* behalf. The *sum insured* must be reinstated to the extent of reimbursement of any amount which eroded it as contemplated by clause 3.4.

7.5 *Reimbursement of moneys paid pending dispute resolution*

The insurance may provide that each *insured* will reimburse the *insurer* following resolution of any coverage dispute for any amount paid by the *insurer* on that *insured's* behalf which, on the basis of the resolution of the dispute, the *insurer* is not ultimately liable to pay.

7.6 *Withholding assets or entitlements*

The insurance may require the *insured firm* to account to the *insurer* for any asset or entitlement of any *person* who committed or condoned any dishonesty or fraudulent act or omission, provided that the *insured firm* is legally entitled to withhold that asset or entitlement from that *person*.

7.7 *Premium*

The premium may be calculated on such basis as the *insurer* determines and the *insured firm* accepts including, without limitation, a basis which recognises *claims* history, categories of work performed by the *insured firm*, numbers of *principals* and *employees*, revenue derived from the *insured firm's practice* and other risk factors determined by the *insurer*.

8 **Law and Jurisdiction**

These *MTC* and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales and subject to the jurisdiction of the courts of England and Wales.

Annex 2

Special provisions for RELs

- 1 If:
- (a) one or more of the *principals* of an *insured firm* are *RELs* who claim that professional indemnity insurance, or a professional indemnity fund, under their home professional rules provides the *insured firm's practice* with professional indemnity cover in all respects equivalent in its conditions and extent to that which would be provided under the *MTC (Full Home State Cover)*;
 - (b) no more than 25% of the *principals* of the *insured firm* are *solicitors*; and
 - (c) the *SRA* is so satisfied, (including, without limitation, by reason of any provider of the Full Home State Cover entering into such agreement as the *SRA* may require from time to time),

the *insured firm* and its *principals* shall for so long as such cover continues (and, where the *SRA* has required such agreement, for so long as such agreement remains in force and its requirements are complied with by the provider(s) of the Full Home State Cover that are party to it) be exempted from the obligation to take out and maintain *qualifying insurance*.

- 2 If on an application by one or more *RELs* who are *principals* in an *insured firm*, the *SRA* is satisfied that the *insured firm's practice* has professional indemnity cover under home professional rules but that the equivalence is only partial (**Partial Home State Cover**) (including, without limitation, by reason of the provider of the Partial Home State Cover entering into such agreement as the *SRA* may require from time to time), the *insured firm* and its *principals* shall for so long as such cover continues (and, where the *SRA* has required such agreement, for so long as such agreement remains in force and its requirements are complied with by the provider(s) of the Partial Home State Cover that are party to it) be exempted from the obligation to take out and maintain *qualifying insurance*, on condition that they take out and maintain a *difference in conditions policy*, which shall provide cover including the *MTC* as modified by the following changes (but not otherwise):

- (a) Clause 4.5 shall be deleted and replaced with the following:

4.5 No 'other insurance' provision

The insurance must not provide that the liability of the *insurer* is reduced or excluded by reason of the existence or availability of any other insurance other than as contemplated by clauses 6.1 or 6.12. For the avoidance of doubt, this requirement is not intended to affect any right of the *insurer* to claim contribution from any other *insurer* which is also liable to indemnify any *insured*.

- (b) Clause 4.9 shall be deleted and replaced with the following:

4.9 Resolution of disputes

The insurance must provide that, if there is a dispute as to whether a *practice* is a *successor practice* for the purposes of clauses 1.1, or 5.5, the *insured* and the *insurer* will take all reasonable steps to resolve the

dispute in conjunction with any related dispute between any other party which has insurance complying with these *MTC* and that party's insurer, and in conjunction with the provider of the *Partial Home State Cover*.

- (c) Clause 4.12 shall be added:

4.12 Period of insurance

The *period of insurance* must not expire prior to the date with effect on which the *Partial Home State Cover* expires or is avoided.

- (d) The following clause shall be added:

6.12 Partial Home State Cover

The insurance may exclude any liability of the *insurer* to the extent that any such liability is covered under the terms of the *Partial Home State Cover* irrespective of whether recovery is actually made in respect of such liability.

- 3 In the event of an *insured firm* which has the benefit of an exemption under paragraph 1 or paragraph 2 of this annex ceasing for whatever reason to enjoy that exemption but continuing to carry on a practice it shall be treated for all the purposes of these rules as though it had commenced the practice on the date when such exemption ceased.
- 4 Rule 5 (Insolvency of Participating Insurer) shall apply to an *insured firm* which has the benefit of an exemption under paragraph 1 or paragraph 2 of this annex in like manner as though the insurance company or entity or fund providing professional indemnity cover under its home professional rules, on the basis of which exemption or partial exemption was granted, was a *participating insurer*.
- 5 In the case of an *insured firm* which has the benefit of an exemption under paragraph 2 of this annex all the provisions of these rules shall apply to the additional professional indemnity insurance required under that paragraph to be taken out with a *participating insurer*.

SRA Compensation Fund Rules

Introduction

These rules govern the way that we operate the SRA Compensation Fund. This is a discretionary fund of last resort for making grants to people whose money has been stolen, or has not been accounted for, as a result of the acts or omissions of those regulated by us, and to relieve losses for which firms authorised by us should have had, but did not have, insurance.

It is funded by contributions from individuals and firms authorised by us.

We have provided guidance on the way we operate the fund [[link to guidance](#)].

Part 1: The Fund

Maintenance of and contributions to the Fund

- 1.1 The **SRA** shall establish and maintain a fund for making grants in respect of claims made in accordance with these rules.
- 1.2 **Solicitors, RELs, RFLs, recognised bodies** and **licensed bodies** must make contributions to the **Fund** in such amounts and at such times as may be **prescribed**.
- 1.3 Any unpaid contributions may be recovered as a debt due to the **SRA**.
- 1.4 The **SRA** may at any time:
 - (a) borrow for the purposes of the **Fund**;
 - (b) charge investments which form part of the **Fund** as security for borrowing by the **SRA** for the purposes of the **Fund**.

The object of the Fund

- 2.1 The **Fund** is a discretionary fund of last resort and no **person** has a right to a grant enforceable at law.
- 2.2 The primary objects of the **Fund** are:
 - (a) to replace money which a **defaulting practitioner** or a **defaulting practitioner's** employee or **manager** has misappropriated or otherwise failed to account for; and
 - (b) to relieve losses arising from the civil liability on the part of a **defaulting practitioner** or a **defaulting practitioner's** employee or **manager** who in accordance with the SRA Indemnity Insurance Rules should have had, but did not have, in place a **policy of qualifying insurance**.

Part 2: Payment of grants from the Fund

Grants which may be made from the Fund

- 3.1 Subject to rule 3.2, 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 4 and (save in respect of a grant made under rule 3.5) has suffered or is likely to suffer:
- (a) loss in consequence of the dishonesty of a *defaulting practitioner* or the employee or *manager* or *owner* of a *defaulting practitioner*; or
 - (b) 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 the *defaulting practitioner* 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 an activity regulated by the *SRA* in accordance with the terms of the body's licence.
- 3.2 Where the *defaulting practitioner* is a *solicitor* or *REL* who falls within rule 5.2(b), a grant may only be made under rule 3.1(b) in respect of money which the *defaulting practitioner* was permitted to hold under regulation 10.2(b)(vii) of the SRA Authorisation of Individuals Regulations.
- 3.3 For the purposes of rule 3.1(b):
- (a) an individual whose dealings have been in a personal capacity with the *defaulting practitioner* and who has suffered or is likely to suffer loss due to a failure to account shall be deemed to have suffered hardship; and
 - (b) a body corporate, or an individual whose dealings have been in a business capacity with the *defaulting practitioner* and who has suffered or is likely to suffer loss due to a failure to account must provide evidence to satisfy the *SRA* that it, he or she (the body or individual) has suffered or is likely to suffer hardship.
- 3.4 The *SRA* may make a grant as an interim measure.

- 3.5 The **SRA** may make a grant to alleviate direct losses suffered as a result of the civil liability of a **defaulting practitioner** (other than a **solicitor** or **REL** who falls within rule 5.2(b)) or a **defaulting practitioner's** employee, **manager** or **owner** in circumstances where:
- (a) the **defaulting practitioner** in accordance with the SRA Indemnity Insurance Rules should have had, but did not have, in place a **policy** of **qualifying insurance**;
 - (b) the liability of the **defaulting practitioner** or the **defaulting practitioner's** employee or **manager** would have been covered by a **policy** of **qualifying insurance**; and
 - (c) the loss is not covered by the **SIF**.

Eligibility for a grant

- 4.1 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 4.2, 4.3(a) or 4.4(a).
- 4.2 A **person** is eligible under this rule to apply for a grant in the circumstances set out in rule 3.1(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.
- 4.3 A **person** is eligible under this rule to apply for a grant in the circumstances set out in rule 3.1(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.
- 4.4 A **person** is eligible under this rule to apply for a grant in the circumstances set out in rule 3.1(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.

4.5 The **SRA** may take into account such evidence as it sees fit when determining eligibility under rules 4.1 to 4.4 and may make a broad estimate of any relevant amount.

Defaulting practitioners

5.1 The SRA may only make a grant in respect of acts or omissions of a **defaulting practitioner**, or of a **defaulting practitioner's** employee, **owner** or **manager** as appropriate, which fall within rule 3.

5.2 A **defaulting practitioner** means:

- (a) a **solicitor** or an **REL** who at the date of the relevant act or omission was:
 - (i) practising in an **authorised body**; or
 - (ii) practising in a **non-commercial body**;
- (b) a **solicitor** or an **REL** who at the date of the relevant act or omission:
 - (i) was self-employed and practising in their own name, and not through a trading name or service company;
 - (ii) did not employ anyone in connection with the services they provided; and
 - (iii) was engaged directly by their clients with their fees payable directly to them;
- (c) an **RFL** who is a manager or owner of an authorised body;
- (d) a **recognised body**; or
- (e) a **licensed body**,

and the expressions "defaulting solicitor", "defaulting REL", "defaulting recognised body", "defaulting RFL" and "defaulting licensed body" shall be construed accordingly.

5.3 A grant may be made where, at the date of the relevant act or omission:

- (a) a **defaulting solicitor** had no practising certificate in force;

- (b) the registration of a *defaulting REL* or *defaulting RFL* had expired or been revoked;
- (c) the authorisation of a *defaulting recognised body* or *defaulting licensed body* had been suspended or revoked;

provided that the *SRA* is satisfied that the *applicant* was unaware of the absence of a valid practising certificate or the relevant expiry, suspension or revocation (as the case may be).

Grants to defaulting practitioners

6.1 The *SRA* may make a grant to a *defaulting practitioner* who or which has suffered or is likely to suffer loss by reason of their liability to any client in direct consequence of an act or omission of:

- (a) in the case of a *defaulting solicitor*, *defaulting REL* or *defaulting RFL*, any of their employees or any fellow *manager*;
- (b) in the case of a *defaulting recognised body*, any of its employees or *managers* or *owners*;
- (c) in the case of a *defaulting licensed body*, any of its employees or *managers* or *owners*, provided that such act or omission arose in the course of performance of an activity regulated by the *SRA* in accordance with the terms of the body's licence,

in circumstances where, but for the liability of the *defaulting practitioner*, a grant might have been made from the *Fund*

6.2 The *SRA* may make a grant under this rule by way of a loan upon such terms as the *SRA* specifies.

6.3 In the case of a *defaulting recognised body* or a *defaulting licensed body*, the *SRA* may make such grant payable to one or more of the *managers* or *owners* of the *defaulting recognised body* or *defaulting licensed body*. If a loan is made to more than one *person*, they shall be jointly and severally liable for the repayment of the loan.

Grants in respect of statutory trusts

7.1 The *SRA* may make a grant to alleviate a deficiency in a *statutory trust* held by the *SRA*.

7.2 The *SRA* may make a grant to a *person* where the money would have been due to that *person* but for their claim having been extinguished under rule 8.2 of the *SRA* Statutory Trust Rules.

Interest

8.1 In respect of any grants made under rules 3, 6 or 7 the *SRA* may make a supplementary grant by way of a sum in lieu of lost interest on the loss underlying the

principal grant. Such interest will be calculated by the **SRA** in accordance with **prescribed** rates.

- 8.2 Where the application for the principal grant is in respect of a failure to redeem a mortgage, the **SRA** may also make a grant in respect of the additional interest accrued to the mortgage account as a result of the **defaulting practitioner's** failure to redeem.

Maximum grant

- 9.1 Unless the **SRA** is satisfied that there are exceptional circumstances in the public interest that justify a higher sum, the maximum grant that may be made is £2 million.

Conduct of the applicant and contribution to loss

- 10.1 A grant may be refused or reduced to take account of any act or omission by the **applicant** or anyone acting on their behalf that has contributed to or has failed to mitigate the loss.

Losses outside the remit of the Fund

- 11.1 For the avoidance of doubt, the **SRA** shall not make a grant in respect of losses that:
- (a) arise solely by reason of professional negligence by a **defaulting practitioner**, or the employee or **manager** of a **defaulting practitioner**, save as provided for in rule 3.5;
 - (b) comprise legal costs incurred by, or ordered against, the **applicant** in actual or potential proceedings brought to recover the loss;
 - (c) are indirect or consequential, save where a claim is made under rule 3.5, or a claim for costs of completing or remedying work for which the **defaulting practitioner** has been paid;
 - (d) are, or result from, the trading debts or liabilities of the **defaulting practitioner**, including claims for fees payable to the **applicant** for which the **defaulting practitioner** is liable;
 - (e) are for interest payable to the **applicant**, save where the discretion to make a grant under rule 8 is exercised;
 - (f) are suffered by the Legal Aid Agency as a result of making regular payments under the Agency's contracting schemes for civil or criminal work;
 - (g) are where the **applicant**:
 - (i) has been made bankrupt and any grant would vest in the trustee in bankruptcy;
 - (ii) has entered into a voluntary arrangement with their creditors and any grant would vest in the administrator of the arrangement; or
 - (iii) is in liquidation.

Foreign lawyers

- 12.1 The **SRA** shall not make a grant in respect of any act or omission of an **REL**, or the employee of an **REL**, where such act or omission took place outside the **UK**, unless the **SRA** is satisfied that the act or omission was, or was closely connected with, the act or omission of a **solicitor** or the employee of a **solicitor**, or that the act or omission was closely connected with the **REL's** practice in the **UK**.
- 12.2 The **SRA** shall not make a grant in respect of the act or omission of an **RFL**, or the employee of an **RFL**, where such act or omission took place outside England and Wales, unless the **SRA** is satisfied that the act or omission was, or was closely connected with, the act or omission of a **solicitor** or the employee of a **solicitor**, or that the act or omission was closely connected with practice in England and Wales.

Fund of last resort

- 13.1 The **SRA** may refuse or reduce a grant where the loss or part of the loss is, or was, capable of being made good by some other means.

Deduction from grants

- 14.1 The **SRA** may deduct from any grant such amount as it sees fit so that the **applicant** will not be in a better position by reason of a grant than the **applicant** would have been in if no loss had been sustained.
- 14.2 The **SRA** may deduct from any grant such amount as it sees fit to represent monies already recovered, or which will or should have been recovered, by the **applicant** through other means in respect of the loss.

Apportionment and multi-party issues

- 15.1 Where the loss has been sustained as a result of the act or omission of more than one party, the **SRA** will consider the role of each party in contributing to the **applicant's** loss in deciding whether to make a grant and, if so, the amount of any grant.
- 15.2 In the case of a **defaulting licensed body**, the **SRA** will consider the extent to which the loss is attributable to an act or omission which falls outside the performance of an activity regulated by the **SRA** in accordance with the terms of the body's licence in deciding whether to make a grant and, if so, the amount of any grant.

Part 3: Applications and procedures

Application and time limit

- 16.1 An **applicant** must make an application for a grant in the **prescribed** form, and within 12 months of the date they first became aware, or should reasonably have become aware, of the loss.
- 16.2 The **SRA** may extend the 12 month period in rule 16.1 if satisfied that there are circumstances which justify the extension of the time limit.

- 16.3 The **applicant** must provide information, documents and evidence requested by the **SRA**, which may include verification of matters by statement of truth or affidavit. Failure to provide such documentation or to co-operate with the **SRA** will be taken into account when determining the merits of the application.

Notice to defaulting practitioner

- 17.1 The **SRA** may not make a grant unless it has given not less than 8 days' notice to the **defaulting practitioner** informing them of the nature and value of the application, unless it appears to the **SRA** that it would not be reasonably practicable to give such notice, or the grant should be made urgently.
- 17.2 Where the **SRA** has made a grant urgently in accordance with rule 17.1, the **SRA** shall as soon as, and so long as, it is practicable to do so, give notice to the **defaulting practitioner** in the terms set out in rule 17.1 and may (insofar as any failure to give notice before the making of the grant has prejudiced the **defaulting practitioner**) waive in whole or in part the **Fund's** right of recovery under rule 18 against the **defaulting practitioner**.

Recovery and subrogation

- 18.1 Where the **SRA** makes a grant otherwise than by way of loan or if by way of loan repayments of the loan is waived or otherwise the borrower has failed to repay part or all of the loan, the **SRA** shall be subrogated to the rights and remedies of the **person** to whom or on whose behalf the grant is made to the extent of the amount of the grant.
- 18.2 Where rule 18.1 applies, the recipient must if required by the **SRA** whether before or after the grant has been made and upon the **SRA** giving the recipient a sufficient indemnity against costs, prove in any insolvency or winding up of the **defaulting practitioner** and sue for recovery of the loss in the name of the recipient but on behalf of the **SRA**.
- 18.3 The recipient of a grant must comply with all proper and reasonable requirements of the **SRA** for the purpose of giving effect to the **SRA's** rights under this rule, and shall permit the **SRA** to have conduct of any proceedings brought on its behalf.

Refusal of an application

- 19.1 If the **SRA** refuses to make a grant of either the whole or part of the amount applied for, the **applicant** will be informed in writing of the reasons for the decision.
- 19.2 The fact that an application has been rejected does not prevent a further application being submitted provided that material new relevant evidence or information is produced in support of the new application.

Supplemental notes

Made by the SRA Board on 5 December 2018.

Made under sections 36 and 36A of the Solicitors Act 1974, section 9 of, and paragraph 6 of Schedule 2 to, the Administration of Justice Act 1985, section 83 of, and paragraph 19 of Schedule 11 to, the Legal Services Act 2007 and the Legal Services Act 2007 (The Law Society and The Council of Licensed Conveyancers) (Modification of Functions) Order 2011.

SRA Compensation Fund Rules (Amendment) Rules 2019

Rules made by the Solicitors Regulation Authority Board on 24 May 2019.

Made under sections 36 and 36A of the Solicitors Act 1974, section 9 of, and paragraph 6 of Schedule 2 to, the Administration of Justice Act 1985, section 83 of, and paragraph 19 of Schedule 11 to, the Legal Services Act 2007 and the Legal Services Act 2007 (The Law Society and The Council of Licensed Conveyancers) (Modification of Functions) Order 2011.

Rule 1

The SRA Compensation Fund Rules shall be amended as follows:

- (a) in rule 3.1,
 - (i) delete “Subject to rule 3.2, for” and replace with “For”; and
 - (ii) delete “3.5” and replace with “3.4”;
- (b) delete rule 3.2 and renumber rules 3.3 to 3.5 accordingly; and
- (c) in rule 11.1, delete “3.5” and replace with “3.4” in both places.

Rule 2

These amendment rules come into force on a date to be determined by the SRA Board.