



Summary of decision

The purpose of this summary sheet is to provide a high level and accessible synopsis of the Legal Services Board's ("the LSB") decision. Readers are recommended to read the formal decision notice below 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) approving alterations to its regulatory arrangements in respect of its Compensation Fund. The application proposes that the contribution level is to reduce to £17.5m. This will mean an individual contribution of £60 (2018/19: £90) and a firm contribution of £1,150 (2018/19: £1,680).

Following the assessment of the SRA's application, the LSB has concluded that the changes do not meet the refusal criteria in the Act.

Decision notice

The Solicitors Regulation Authority (SRA) rule change application for approval of alterations to the regulatory arrangements relating to Compensation Fund contributions for 2019/20

1. The Legal Services Board (“**LSB**”) has granted an application from the Solicitors Regulation Authority (“**SRA**”) for approval of Compensation Fund Determinations for 2019/20 which set the level of contribution to the SRA Compensation Fund for individual solicitors, recognised sole practitioners, recognised bodies and licensed bodies authorised by the SRA.
2. This decision notice sets out 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 is an approved regulator and the SRA is the regulatory arm to which the Law Society has delegated its regulatory functions. The notes at page 6 of this notice explain the statutory basis for the decision.
4. The chronology for the LSB’s handling of this application is also set out below.

Chronology

- The LSB confirmed receipt of an application from the SRA on 19 July 2019.
- The 28 day initial decision period for considering the application ends on 15 August 2019.
- This decision notice is effective from 14 August 2019.
- The decision notice will be published on the LSB’s website by 16 August 2019.

Background

5. On 19 July 2019, the SRA submitted an application to the LSB for approval of changes to its regulatory arrangements relating to Compensation Fund contributions.
6. Each year the SRA considers the level of contributions required for the Compensation Fund from the individuals and firms that it authorises.
7. The established methodology for allocating the cost of the Compensation Fund is that 50% of the cost is contributed by regulated individuals and 50% is contributed by regulated firms holding client money. The SRA sets the proposed level of contribution by assessing expected pay outs and levels of claims against historic trends on claims numbers, amounts and timings.
8. Last year the SRA made the decision to take steps to increase the level of reserve of the Compensation Fund. This decision was made in order to take account of a

number of high value exceptional cases arising largely from solicitor involvement in investment schemes where clients have potentially suffered significant losses. This approach remains in place, this year being the second of a three year period in which the intention is to increase the appropriate level of reserve to accumulate a fund of £30m.

9. Over the last year there has been a decline in the number and complexity of interventions. The impact of this decline has resulted in a lower level of claims. As a result, lower “business as usual” funds are needed to satisfy the minimum reserve requirements set by the SRA.

Proposed changes

10. A contribution level of £17.5m has been proposed for 2019/20 compared to £25.6m for 2018/19. The SRA has therefore determined that the contributions required are £60 from individuals and £1,150 from firms. Contributions for 2018/19 were £90 and £1,680 respectively.

Key issues considered in the assessment

11. The LSB welcomes the fact the SRA has been able to propose a reduction in contributions whilst continuing to build reserves for high value exceptional cases.
12. Having considered the SRA’s application and supporting documents, the LSB makes the following key points in relation to the application.

Waivers

13. The application from the SRA states that contributions are required from individuals and firms holding client money. The SRA has explained that the ability for firms to apply for waivers is clearly documented on its website¹.
14. The SRA should consider taking steps to make it clearer to firms that they will not be liable to pay a contribution to the fund if they do not hold client money. This would reduce the risk of firms who do not need to contribute to the fund making unnecessary payments.

Consultation

15. The LSB commented in its 2017 decision² that some form of consultation with the regulated community would be appropriate. The SRA has taken the view that its communication plan is sufficient. We asked the SRA to explain its rationale behind this.

¹ <https://www.sra.org.uk/solicitors/guidance/waivers/apply-waiver.page>

²

https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/2017/20170811_SRA_Comp_Fund_2017_Decision_Notice.pdf

16. The SRA confirmed that the information upon which it basis its estimates for the Compensation Fund contribution includes commercially sensitive information that could impact upon ongoing investigations. As a result it does not consider consulting on the contribution to be appropriate.
17. The LSB expects the SRA to explain in future applications the reasoning behind decisions not to consult.

Methodology

18. The SRA is continuing to use its established methodology for assessing expected pay outs and levels of claims. This is alongside the current three year plan to increase the appropriate reserve to take account of a number of high value exceptional cases.
19. Last year the LSB carefully considered this justification for the significant increase in contributions. Whilst the SRA is proposing a decrease this year, the contributions are still above the level required in years other than 2018/19. The LSB notes the justification for the level of contribution remains aligned with last year.
20. The LSB also notes that the SRA has consulted on whether the existing methodology remains the fairest and most appropriate way to calculate contributions³. The SRA has identified that the current methodology is likely to have a greater impact on sole practitioners and firms with 2-4 partners. It has also identified that this means there is a greater impact on BAME (Black, Asian and Minority Ethnic) solicitors who are disproportionately represented in this cohort.
21. The LSB further notes the commitment of the SRA to consider the equality and diversity implications of any changes to the Compensation Fund rules and funding as part of wider reforms to the compensation rules.
22. The LSB has taken into consideration that the SRA must maintain a properly funded Compensation Fund to protect consumers. The LSB is re-assured that the SRA is applying consistent reasoning and is still able to increase the Compensation Fund's appropriate reserve despite determining that a decrease in contributions is appropriate.

Decision

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

³ The SRA consulted on changes to the rules on Professional Indemnity Insurance and the Compensation Fund in June 2018 :<https://www.sra.org.uk/sra/consultations/access-legal-services.page>

24. **Annex A** to this decision notice contains the Determination of Compensation Fund contributions approved by the LSB.

Neil Buckley, Chief Executive

Acting under delegated authority granted by the Board of the Legal Services Board

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 the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
 - (c) granting the application would be contrary to the public interest
 - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
 - (e) the alteration would enable the approved regulator to license persons under Part 5 [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 rules⁴ 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.

⁴ LSB's Rules for applications to alter regulatory arrangements – Version 2 April 2018
[https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20\(2\)/FINAL_Rules_for_applications_to_alter_regulatory_arrangements.pdf](https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20(2)/FINAL_Rules_for_applications_to_alter_regulatory_arrangements.pdf)

Annex A – SRA Fee Determinations

Determination of Compensation Fund contributions 2019

This determination is made by the Solicitors Regulation Authority Board under rule 2.3 of the SRA Compensation Fund Rules 2011 and rule 1.2 of the SRA Compensation Fund Rules, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

- (1) Every person who applies for a practising certificate to commence on or after 1 November 2019, or who applies for initial registration or renewal of registration as a registered European lawyer or registered foreign lawyer to commence on or after 1 November 2019, shall pay with the fee payable in respect of that application, a contribution of £60 to the Fund.
- (2) Every recognised body or recognised sole practice that has held or received client money (as defined in the SRA Accounts Rules 2011) during the period 1 November 2018 to 31 October 2019, shall pay with the annual periodical fee, a contribution of £1,150 to the Fund.
- (3) Every person that:
 - (a) applies for initial recognition as a recognised body or initial recognition as a recognised sole practice to commence during the period 1 November 2019 to 31 October 2020; and
 - (b) intends to hold or receive client money (as defined in the SRA Accounts Rules 2011 or, after 25 November 2019, the SRA Accounts Rules) at any time during the period 1 November 2019 to 31 October 2020.

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

- i. £1,150 on applying for initial recognition to commence in the period 1 November 2019 to 31 December 2019;
 - ii. £863 on applying for initial recognition to commence in the period 1 January 2020 to 31 March 2020;
 - iii. £575 on applying for initial recognition to commence in the period 1 April 2020 to 30 June 2020;
 - iv. £288 on applying for initial recognition to commence in the period 1 July 2020 to 31 October 2020.
- (4) The SRA may waive the contribution payable under paragraph (3) above in circumstances where the initial application is made by a body which is changing its legal status or is succeeding to the practice of another authorised body and the predecessor body or practitioner has already paid a contribution to the Fund.
 - (5) In this determination:

Fund means the Solicitors' Compensation Fund established and maintained under rule 2.1 of the SRA Compensation Fund Rules 2011 or, after 25 November 2019, rule 1.1 of the SRA Compensation Fund Rules;

All other terms are to be interpreted in accordance with the Practising Certificate Fee Determination 2019.

- (6) This determination shall come into force on 1 November 2019.

Determination of Compensation Fund contributions for Licensed Bodies 2019

This determination is made by the Solicitors Regulation Authority Board under rule 2.3 of the SRA Compensation Fund Rules 2011 and rule 1.2 of the SRA Compensation Fund Rules, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

- (1) Every licensed body that held or received client money (as defined in the SRA Accounts Rules 2011) at any time during the period 1 November 2018 to 31 October 2019, shall pay, with the annual periodical fee, a contribution of £1,150 to the Fund.
- (2) Every licensed body that intends to hold or receive client money (as defined in the SRA Accounts Rules 2011 or, after 25 November 2019, the SRA Accounts Rules) at any time from the date on which the body is authorised to 31 October 2020, shall pay, with the initial periodical fee, a contribution to the Fund as follows:
- i. £1,150 on applying for initial recognition to commence in the period 1 November 2019 to 31 December 2019;
 - ii. £863 on applying for initial recognition to commence in the period 1 January 2020 to 31 March 2020;
 - iii. £575 on applying for initial recognition to commence in the period 1 April 2020 to 30 June 2020;
 - iv. £288 on applying for initial recognition to commence in the period 1 July 2020 to 31 October 2020.
- (3) The SRA may waive the contribution payable under paragraph (2) above in circumstances where the initial application is made by a body which is changing its legal status or is succeeding to the practice of a recognised body or recognised sole practitioner and the predecessor body or practitioner has already paid a contribution to the Fund.
- (4) In this determination:

Fund means the Solicitors' Compensation Fund established and maintained under rule 2.1 of the SRA Compensation Fund Rules 2011 or, after 25 November 2019, rule 1.1 of the SRA Compensation Fund Rules;

All other terms are to be interpreted in accordance with the Licensed Body Fee Determination 2019.

- (5) This determination shall come into force on 1 November 2019.