

Draft SRA Compensation Fund Rules

Introduction

These rules govern the way that we operate the SRA Compensation Fund.

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

We have developed a statement setting out the purpose of the fund [link to statement] and 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 applications 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**.

Residual discretion and fund of last resort

- 2.1 The **Fund** is a discretionary fund of last resort and no **person** has a right to a grant enforceable at law. The **SRA** retains a discretion to refuse to consider an application or to make a grant notwithstanding that the conditions in these rules for making a grant are satisfied.
- 2.2 The circumstances in which the residual discretion in rule 2.1 may be exercised include, but are not limited to, circumstances in which we consider that the loss suffered is not material in all the circumstances or has been to a material degree compensated through another means.
- 2.3 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, including another compensation scheme.

Part 2: Payment of grants from the Fund

Grants which may be made from the Fund

- 3.1 An **applicant** may only apply for a grant out of the **Fund** if the loss referred to in rule 3.2 relates to services provided:
- (a) by the **defaulting practitioner** for the **applicant**; or
 - (b) to, or as, a **trustee** where the **applicant** is a beneficiary of the estate or trust.
- 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 3.3) has suffered or is likely to suffer financial loss directly resulting from:
- (a) the dishonesty of a **defaulting practitioner** or the employee or **manager** or **owner** of a **defaulting practitioner**; or
 - (b) 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.
- 3.3 The **SRA** may make a grant to alleviate direct losses suffered as a result of the civil liability of a **defaulting practitioner** 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**.
- 3.4 No grant will be made under rule 3.3 where due to the insolvency or cessation of the **insurer** the **defaulting practitioner's policy** of **qualifying insurance** has been disclaimed or otherwise ceases.

3.5 The **SRA** may make a grant as an interim measure in relation to part of an application before the application has been fully assessed.

Eligibility for a grant

4.1 A **person** is eligible to apply for a grant out of the **Fund** if, at the time the application is made, they are:

- (a) an individual;
- (b) a sole trader, **partnership**, **body corporate**, unincorporated association or mutual association with an annual **turnover** or **assets** of less than £2 million;
- (c) a **charity** with annual income net of tax in the most recent financial year of less than £2 million; or
- (d) a **trustee** of a trust with an asset value of less than £2 million.

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

Defaulting practitioners

5.1 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.

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

- (a) the *defaulting solicitor* had no practising certificate in force;
- (b) the registration of the *defaulting REL* or *defaulting RFL* had expired or been revoked;
- (c) the authorisation of the *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 resulting from 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 9.2 of the SRA Intervention Powers (Statutory Trust) Rules 2011 or 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 for a single claim is [£500,000].
- 9.2 For the purposes of this rule, a single claim is an application or applications for the loss incurred by an eligible person, arising from a single event or underlying set of circumstances.

Capping payments of multiple applications

- 10.1 Where multiple applications are made to the **Fund**:
- (a) that relate to the same or connected underlying circumstances; and
 - (b) the **SRA** is satisfied that the total amount of the grants made from the **Fund** in respect of such applications is likely to exceed £5 million,
- the **SRA** may impose a limit on the total amount to be paid in respect of those applications of £5 million.
- 10.2 Where the **SRA** imposes a limit under rule 10.1, the amount paid may be apportioned between the *applicants* to whom the **SRA** is satisfied a grant is payable, in such of the following ways as the **SRA** considers appropriate in the circumstances:
- (a) the amount to be apportioned equally between all those who have made an application within such reasonable time period for the purpose as shall be published by the **SRA**; or
 - (b) such percentage of loss or amount to be paid, as the **SRA** considers appropriate in all the circumstances.

Conduct of the applicant and contribution to loss

- 11.1 A grant may be refused or reduced to take account of:
- (a) dishonest, improper or unreasonable conduct by the *applicant* or anyone acting on their behalf:

- (i) in the circumstances that gave rise to the application;
 - (ii) in relation to the application itself; or
 - (b) failure to pursue the application promptly, co-operatively and in good faith.
- 11.2 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

- 12.1 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 3.3;
 - (b) are indirect or consequential, save where the **SRA** exercises its discretion to make a grant:
 - (i) under rule 8;
 - (iii) for costs of completing or remedying work for which the **defaulting practitioner** has been paid; or
 - (iv) for loss where a client of a **defaulting practitioner** has been made personally liable for loss suffered by a third party as a result of the act or omission of that **defaulting practitioner**.
 - (c) 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;
 - (d) comprise legal or other professional costs incurred by the **applicant** in making an application to the **Fund**;
 - (e) are for costs of proceedings instituted by the **applicant** for recovery of their loss, save in exceptional circumstances;
 - (f) are for interest payable to the **applicant**, save where the **SRA** exercises its discretion to make a grant under rule 8;
 - (g) 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; or
 - (h) are in circumstances 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

- 13.1 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**.
- 13.2 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.

Apportionment and multi-party issues

- 14.1 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.
- 14.2 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

- 15.1 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.
- 15.2 The **SRA** may extend the 12 month period in rule 15.1 if satisfied that there are circumstances which justify the extension of the time limit.
- 15.3 The **applicant** must provide any 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

- 16.1 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.

- 16.2 Where the **SRA** has made a grant urgently in accordance with rule 16.1, 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 16.1 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 17 against the **defaulting practitioner**.

Recovery and subrogation

- 17.1 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.
- 17.2 Where rule 17.1 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**.
- 17.3 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

- 18.1 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.
- 18.2 The fact that an application has been rejected does not prevent a further application being submitted provided that material, new and relevant evidence or information is produced in support of the new application.

Supplemental notes

Made by the SRA Board on [].

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.