

Equality impact assessment for the prioritisation of applications to the SRA Compensation Fund with regard to Axiom Ince

Equality impact assessment

1 December 2023

The SRA Compensation Fund (the fund) protects consumers of legal services by helping those who have lost money due to fundamental ethical failures by those we regulate. This can be, for example, dishonesty or a failure to account to clients. The fund therefore helps to uphold trust in the integrity of the legal profession. The fund is financed by contributions from solicitors and law firms that we regulate and is a discretionary fund of last resort.

The fund is receiving high volumes of applications from recent interventions, including the intervention into Axiom Ince Limited (Axiom). It is expected that the volume of applications will be the largest that we have seen from one intervention. In addition to planning how to deal with the anticipated applications from Axiom clients, we need to consider and maintain the viability of the fund for all applicants who are eligible to apply.

We recognise that if we take no specific action to deal with the expected Axiom applications, there will be an impact on our ability to consider other applications received that do not relate to Axiom. By way of illustration, we have already been contacted by more than 300 potential applicants on Axiom whose applications total around £33 million. We expect to receive thousands of further applications relating to Axiom. For comparison, in the past three years the fund received an average of 1,857 applications across the whole of each year, totalling £84,622,746.10.

Due to the anticipated increase in the volume of applications, we are creating a team that will deal specifically with applications from clients of Axiom. This will help to streamline our response and ensure that the applications are triaged and considered in a timely manner. However, even with additional recruitment, the fund has limited numbers of personnel which necessarily means that we cannot deal with all applications received immediately.

Therefore, we have developed guidance setting out how we will prioritise our response to applications we receive from Axiom clients for the benefit of all those affected, while prioritising protection of those most

acutely affected. We will continue to monitor and review the guidance for as long as it is necessary.

This impact assessment sets out the potential impacts, both positive and negative, of the criteria for emergency payments and the prioritisation of how we will consider applications made to the fund. This relates only to applications relating to Axiom not to applications received by the fund more generally.

Emergency payments for Axiom

In certain circumstances we can make a payment more quickly under our emergency process. We only do this where the applicant is particularly vulnerable and facing serious or irreparable financial harm. For example, there may be clients who are due to complete on a house purchase where we have closed their law firm and their money is frozen in the firm's accounts. We will use our emergency process to make a payment to them so that they can complete their house purchase. As part of this process, we take steps to confirm the applicant's eligibility for a payment to be made, as well as reviewing evidence of the loss to ensure that the fund's rules are satisfied.

The expected unprecedented volume of applications and the scale of losses means that we have to consider an approach beyond the normal emergency payment process. We also recognise that there may be applications from Axiom clients who may by reason of protected characteristics potentially be exposed to additional disadvantage. We have therefore decided to apply an additional prioritisation process to applications.

From the applications already received and our assessment of the circumstances of this intervention, we recognised it was necessary to develop and publish a policy on the Axiom applications to ensure consistency and transparency. The guidance is the culmination of the initial evaluation of applications received and has been developed as the scale and character of applications has become clearer. The process for dealing with emergency applications is intended to provide protection for applications who may suffer irreparable financial harms and/or heightened economic and social vulnerability. Possible indicators of this that are likely to be given particular weight in determining the making of emergency payments include (but are not limited to):

- Risk of homelessness
- Under contractual obligation to complete on private domestic residence (as opposed to a buy to let or investment property)
- Imminent insolvency
- There are no alternative sources of finance or recourse available to resolve the matter within the required timeframe.

We have set out the criteria to allow applicants to understand how we will consider urgent applications. When considering the emergency criteria and its impact on applicants we also considered our regulatory obligations and Better Regulation Principles.

We have taken into account the need to provide consumer protection where the need is most acute while looking to ensure the viability of the fund. This should mean that customers are confident to continue to access the services of a solicitor while ensuring the fund will continue to benefit those who need it.

The emergency criteria are the means by which applications can be assessed for prioritisation and urgent payment where applicants face heightened vulnerability and long-lasting harm. For example, we will consider applications from clients who are moving into a primary residential property where there is a contractual obligation to complete the transaction, or where the extension of a lease would potentially be time barred for 12 months due to the inability of the applicant to complete.

From the information received, the fund has identified some factors which have the potential to increase these difficulties. These include protected characteristics under the Equality Act 2010. Others indicate that the applicant is or may be in a position of heightened vulnerability. There is no immediately identifiable cohort of applicants indicating a prevalence of one form of protected characteristic over another, but we continue to collate and evaluate data.

We have now developed guidance which is proposed for adoption to assist in the prioritisation of applications from those who face such difficulties. This EIA is intended to assist in the assessment of the appropriateness of the proposed guidance.

We will ask applicants for evidence if they believe that their application should be considered on an emergency basis. If an application does not satisfy the criteria, we will explain this to the applicant and set out next steps.

We will review each application to see if it should be considered urgently. We also know from other interventions that applicants will flag urgent applications with us. We will consider the status of the transaction, the value, the deadline that has been imposed on the applicant and the effect if we do not make a payment.

Applications that do not meet the emergency criteria will be considered in line with our prioritisation process below.

Impact of this approach

We collect diversity data from all applicants to the fund. Currently we are unable to use the data for specific interventions or types of application, including those that have been considered urgently. We are to review this immediately and will then reconsider this assessment with the data for Axiom. We currently have around 250 applications from Axiom clients, so there is a relatively small data set to consider.

We have reviewed the diversity profile of all applications made to the fund in 2023. This shows that most applicants are white, male and over 55. The second largest category is white, female and over 55.

From reviewing the client balances, Axiom operated in several different areas of law and had a diverse client base. We believe that the emergency payments criteria will help the most vulnerable applicants and assist those who are impacted most significantly by not receiving the funds that they paid to Axiom. We believe that small businesses, investors and individuals investing from overseas will be most negatively affected as they will be unlikely to satisfy the emergency criteria and so there will be a delay in dealing with their application. However, we have to consider how we best use our finite resources efficiently and fairly to ensure that our approach prioritises the people who are most vulnerable.

We will regularly update affected applicants so that they understand what is happening and the expected timeframes for their applications to be considered.

Prioritisation of future applications

Several factors have triggered the need for a specific approach for dealing with applications from Axiom clients. They include:

- The volume of applications expected (around 250 to date but likely to see several thousand).
- The level of funds misappropriated and the unprecedented scale of the loss to applicants.
- The extensive legal and investigatory process required to identify alternative forms of recovery.
- The irreparable harm and/or loss to which these applicants might otherwise be exposed.
- The significant number of applicants likely to experience heightened financial hardship on account of subjective vulnerabilities such as age, race, financial dependency, nationality or social disadvantage and absence of alternative resources pending investigation of their application.

Our usual approach to allocating applications received by the fund is by date order. We have different teams that consider the different types of applications and so the oldest application is allocated first, unless we

have identified that the matter should be considered on an emergency basis.

Continuing with this approach would impact all the applications that we receive both for Axiom clients and other clients. We are unable to prioritise all applications to the fund as this would create difficulties in allocations and would delay all applications unnecessarily due to the additional administrative work needed before allocating a file to a caseworker.

We therefore intend to consider applications to the fund in relation to Axiom in the following order:

- Emergency applications (as explained above)
- Individuals purchasing a property to live in as their primary residence
- Individuals who have paid for legal services that have not been completed – such as divorce proceedings, immigration and litigation
- Individuals selling properties and individuals buying investment properties
- Trusts and probate matters
- Commercial transactions

This approach prioritises private individuals over applications from businesses or trusts. The intention is to prioritise those who are most likely to be significantly affected by the impact of their loss. This includes those who are purchasing properties to live in and those clients whose transactions have not been completed and are unable to finance instructing a new firm without the funds being returned to them.

Impact of the new approach

There is no deadline in the fund's rules for the determination of applications made to it. In normal circumstance we would allocate a matter within eight weeks and then on average a decision is made in 4-6 months. There are some more complex applications that take longer. The prioritisation scheme acknowledges that due to the anticipated volume of applications we will be unable to work to these timescales for clients of Axiom.

The impact of continuing with our usual approach would be that all applications to the fund would be delayed and it would be more likely to have a negative impact on those applicants who are vulnerable or have suffered due to their losses. For this reason, we are proposing that it would be appropriate to prioritise the order in which we handle the Axiom applications.

This proposed approach to prioritisation would affect clients of Axiom as it would mean that some clients will receive their payment (if eligible)

later than our usual timescales for considering applications.

A process of prioritising applications is intended to allow for identification of cases where the applicant may face heightened vulnerability and to pre-empt incidents of long lasting or irreparable harms to those who do not have the means to mitigate their position. The categories proposed for prioritisation are those where we believe the applicants will most likely face greater vulnerability and risk, but we will consider the individual circumstances of each application regardless of the priority category it appears to fit.

From analysing applications from other interventions, we see that the applications that we receive shortly after the intervention and pay swiftly are those that relate to payment for legal services and property transactions. This is because the applicants are expecting work to be completed imminently on their behalf.

We have found that applications for trusts and probate matters are not made as quickly. The executor needs to make sure that they have the relevant documents to make the application (such as the grant of probate) as well as review the position of the estate.

The prioritisation criteria do not preclude us from considering applications that relate to probate and trust matters (for example) where there are individual circumstances that require us to progress the application.

From reviewing the client balances, it is clear that some clients of Axiom are not eligible under the Compensation Fund Rules, such as corporate organisations with assets or turnover in excess of £2 million. We believe that small businesses, estates and beneficiaries to those estates will be most affected by our prioritisation scheme.

The impact on small businesses and investors may be reduced by taking other action to find relief in respect of their losses. This may include tax relief for businesses or purchasing alternative investment properties for investors.

Summary of impacts

Our commitment through the proposed prioritisation process is to prioritise those applications where the applicants are exposed to the greatest hardship and who lack alternative means of financial redress. We acknowledge that applicants who are not within the immediate priority categories would be impacted by a delay in processing their application but we think the main disadvantage they face is on of timing only.

We will publish our approach in a fair and transparent way and this will assist applicants to better understand how they are protected and the factors we are considering when receiving a high volume of applications to the fund.

We will continue to support and advise applicants on what they can expect while waiting for their application to be considered.

We will review our approach when we obtain further information about the Axiom clients as well as the other applicants to the fund. Our next review will be at the end of December. We will update our approach where necessary if the intended benefits are not achieved. We will monitor this by analysing the applications that have been considered and those that we have advised to wait in line with the prioritisation.

Given the unprecedented scale of losses on Axiom, the fund has had to consider an alternative approach to dealing with applications to that which it normally follows. The proposed prioritisation approach would allow the fund to identify and deal with applications from those applicants facing the most significant hardship and impact in the most effective way.