

Legal Services Board – decision notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

The Solicitors Regulation Authority (SRA) rule change application for approval of alterations to the regulatory arrangements relating to Compensation Fund contributions for 2013/14

The Legal Services Board (LSB) has granted an application from the SRA for approval of Compensation Fund Determinations for 2013 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.

This decision notice sets out the basis for the LSB granting the application and the decision taken, including a brief description of the changes.

Introduction

1. 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.
2. Paragraph 25 of Schedule 4 to the Act explains that the LSB may only refuse an application setting out a proposed change to the regulatory arrangements if it is satisfied that by granting the application one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹) will be met. For example, the LSB's granting of the application to alter the regulatory arrangements must not be prejudicial to the regulatory objectives overall. Accordingly, 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. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules² about how the application to alter the regulatory arrangements must be made including the contents of that application. The rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) of Schedule 4 to the Act requires that each proposed alteration has been made or is likely to be made in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration. This therefore includes the LSB's rules.

¹ The Board may refuse the application 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 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.

² Rules for Rule Change Applications – Version 2 (November 2010)

4. The chronology for the LSB's handling of this application can be found towards the end of this decision notice.

Proposed changes

5. Each year the SRA considers the level of contribution required to the Compensation Fund from the individuals and firms that it authorises. For 2013/14 it has determined that the contributions are £56 from individuals and £836 from firms. This is a reduction from 2012/2013 when the contributions were £92 and £1340 respectively.

Issues raised in the assessment

6. During its consideration of the application, the LSB queried how the funding requirement for 2013/14 was calculated; this was because there appeared to be a significant inconsistency in the numbers used in this application and those referred to in previous SRA Board papers.
7. In May 2013, the SRA issued a consultation paper setting out its proposal to charge the costs of interventions to the Compensation Fund. In its paper to the Board recommending that the proposal be implemented, the SRA included some information on its assumptions about the cost of interventions. The "best case scenario" (i.e. that which was the most likely to occur) was that the annual cost of interventions was approximately £9.9m. This application stated that the funding requirement for 2013/14 is £13.4m. We asked the SRA to explain the difference.
8. The SRA has confirmed that the increased number results from the addition of VAT which was not included in the earlier paper and the impact on reserves of the increased recharge of the intervention costs to the Fund. The increased funding requirement does not result from any changes in the assumptions about the number and average cost of interventions.
9. We are satisfied with this explanation but would encourage the SRA to be more transparent about the full cost of interventions going forward.

Decision

10. The LSB has considered the SRA's application against the criteria in paragraph 25(3) of Schedule 4 to the Act, and considers that there is no reason to refuse this application; accordingly, the LSB grants this application.
11. The Annex 1 to this decision notice contains the Determination of Compensation Fund contributions approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from the SRA on 29 July 2013.
- The 28 day initial decision period for considering the application ends on 22 August 2013
- This decision notice is effective from 20 August 2013
- The decision notice will be published on our website on 21 August 2013.

Chris Kenny, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
20 August 2013

Draft Determination of Compensation Fund contributions 2013

This determination is made by the Solicitors Regulation Authority Board under rule 2.3 of the SRA Compensation Fund Rules 2011, 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 2013, 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 2013, shall pay with the fee payable in respect of that application, a contribution of £56 to the Fund.
- (2) Every recognised sole practitioner that:
 - (a) applies for renewal of authorisation as a recognised sole practitioner to commence on or after 1 November 2013; and
 - (b) has held or received client money (as defined in the SRA Accounts Rules 2011) during the period 1 November 2012 to 31 October 2013 shall pay with the fee payable in respect of that application, a contribution of £836 to the Fund.
- (3) Every recognised body that has held or received client money (as defined in the SRA Accounts Rules 2011) during the period 1 November 2012 to 31 October 2013, shall pay with the annual periodical fee, a contribution of £836 to the Fund.
- (4) Every person that:
 - (a) applies for initial authorisation as a recognised sole practitioner or initial recognition as a recognised body to commence during the period 1 November 2013 to 31 October 2014; and
 - (b) intends to hold or receive client money (as defined in the SRA Accounts Rules 2011) at any time during the period 1 November 2013 to 31 October 2014shall pay with the fee payable in respect of that application, a contribution to the Fund as follows:
 - i. £836 on applying for initial recognition to commence in the period 1 November 2013 to 31 December 2013;
 - ii. £627 on applying for initial recognition to commence in the period 1 January 2014 to 31 March 2014;
 - iii. £418 on applying for initial recognition to commence in the period 1 April 2014 to 30 June 2014;
 - iv. £209 on applying for initial recognition to commence in the period 1 July 2014 to 31 October 2014.
- (5) The SRA may waive the contribution payable under paragraph (4) 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 recognised body or recognised sole practitioner and the predecessor body or practitioner has already paid a contribution to the Fund.
- (6) In this determination:

Fund means the Solicitors' Compensation Fund established and maintained under rule 2.1 of the SRA Compensation Fund Rules 2011; and

All other terms are to be interpreted in accordance with the Practising Certificate Fee Determination 2013.

- (7) This determination shall come into force on 1 November 2013.

Draft Determination of Compensation Fund contributions for Licensed Bodies 2013

This determination is made by the Solicitors Regulation Authority Board under rule 2.3 of the SRA Compensation Fund Rules 2011, 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 2012 to 31 October 2013, shall pay, with the annual periodical fee, a contribution of £836 to the Fund.
- (2) Every licensed body that intends to hold or receive client money (as defined in the SRA Accounts Rules 2011) at any time from the date on which the body is authorised to 31 October 2014, shall pay, with the initial periodical fee, a contribution to the Fund as follows:
 - i. £836 on being authorised in the period to 31 December 2013;
 - ii. £627 on being authorised in the period 1 January 2014 to 31 March 2014;
 - iii. £418 on being authorised in the period 1 April 2014 to 30 June 2014;
 - iv. £209 on being authorised in the period 1 July 2014 to 31 October 2014.
- (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; and

All other terms are to be interpreted in accordance with the Licensed Body Fee Determination 2013.
- (5) This determination shall come into force on 1 November 2013.