

# **Protecting users of legal services - prioritising payments from the Compensation Fund**

## **Impact Assessment**

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July 2020

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# Background

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1. 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 lack of integrity. 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.
2. In recent years by increasing contributions from the profession, we have built up substantial reserves to cover the potential liabilities on the fund including from new and evolving high value connected claims such as those relating to dubious or high-risk investment schemes. We have estimated that contributions to date from the profession are double what they would have otherwise been without the need to build these reserves.
3. This impact assessment explores the potential impacts, both positive and negative, of changes to how we operate the fund. This reflects our final decisions following two consultations on proposed reforms and it should be read together with our [responses document](#).
4. The changes are designed to provide a proportionate level of consumer protection, making sure that we prioritise payments transparently and fairly and the fund remains viable in the future. We are making the following changes:

## Eligibility

- Exclude claims from large charities and trusts from eligibility in line with our approach to large businesses.
- Remove any financial or hardship tests for eligible applicants beyond a discretion to refuse or reduce payments when we consider the loss to be disproportionately low or appropriately compensated elsewhere.

## Prioritisation

- Limit claims to people for whom the legal service has been provided and in certain circumstances the party on the other side of a legal matter.
- Clarify our expectations around the conduct and behaviour of applicants and how we take this into account when deciding whether to refuse or reduce a payment.

- Be clearer about the circumstances where we make payments where insurance is not in place.

### **Payment limits**

- Reduce the maximum payment for a single grant from £2m per claim to £500,000 per claim (paying higher only in exceptional circumstances).
- Introduce a capping mechanism for multiple high-value connected claims above a £5m threshold and fix the cap at £5m, apportioning it across the claims taking into account the specific circumstances of each case.

### **Costs**

- Not make payments for costs associated with making an application to the fund.
- Pay litigation costs only in exceptional circumstances.

### *How have we assessed the impacts?*

5. We published with our consultation supporting [evidence and analysis](#) that helped us understand the impacts of the proposals. This included:
  - analysis of the reason for, pattern and value of claims/payments over the period 2014-19
  - an explanation of the future risks that could result in applications for a payment from the fund
  - trends in the pattern and contribution levels from the profession, and
  - a comparative analysis of the fund's eligibility, prioritisation and scheme limits compared with other professional services regulators' schemes.
6. We also asked specific questions in the two consultations about the impacts of the proposals and had useful feedback. In response to this feedback we have updated, where relevant, our analysis to better understand the impacts. This analysis is included at appendix 1. We have also provided our response to the feedback we received specifically about EDI impacts in the table at paragraph 66 of this impact assessment.
7. We have analysed our proposals against the regulatory objectives and the Principles of Better Regulation.

# Summary of Impacts

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8. Our analysis has highlighted the following impacts:

- Overall, the level of consumer protection provided is proportionate when considered against other comparable schemes and the pattern and nature of past and expected payments – it will provide full protection for an overwhelming majority of eligible applicants.
- We are fair and transparent through our purpose statement, guidance, and decision-making about how we prioritise payments from a limited fund. This means consumers are better able to understand how they are protected by the fund and it remains viable in the future with contributions from the profession as manageable as possible.
- More manageable contributions will be of particular benefit to small firms who have less financial resilience to manage the impact of increased and unpredictable contributions. More than half the firms we regulate meet our definition of a small firm<sup>1</sup>. This will benefit BAME and older lawyers who are more highly represented amongst lawyers practising in small firms<sup>2</sup>.
- The fund is targeted at consumers of legal services (and in certain circumstances the party on the other side of a legal matter), that are least able to protect themselves. The removal of hardship tests means we treat all applicants consistently and there is a reduced burden for small businesses and charities to demonstrate they are eligible to claim.
- There will be some applicants such as large charities and trusts and third parties such as barristers and expert witnesses who will no longer be eligible to make a claim on the fund. Our proposal recognises that these individuals and organisations are better able to protect themselves against the risk of losing money when engaging with a solicitor or law firm and to take action to recover any losses.
- Some individuals will need to provide us with evidence of the impact of their loss because we may refuse claims when we consider the loss to be disproportionately low or appropriately compensated elsewhere. The evidence on the financial resilience of most UK households suggests that we will use this discretion in very rare circumstances because

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<sup>1</sup> a sole practitioner or a firm with no more than four partners, members, or directors, which has an annual turnover of no more than £400,000.

<sup>2</sup> <https://www.sra.org.uk/sra/equality-diversity/key-findings/diverse-legal-profession/>

losses would likely be material to most applicants. We will provide guidance on the circumstances of a claims that may mean we ask for additional information to assess the impact of the loss on the applicant.

- A very small number of consumers (of principally probate and conveyancing services) may see a reduced level of protection because we are reducing the single claims limit. We have not found evidence of a disproportionate impact on people with protected characteristics because of this change. We may pay higher in exceptional circumstances including where the loss has a potentially catastrophic impact on the claimant's quality of life.
- Some consumers might see a reduced level of protection if they lose money in circumstances where their claim is connected to other claims because of the new cap of £5m we will apply across multiple claims that meet this threshold. People that lose money in these circumstances will continue to receive a level of compensation, but it will be capped. Our assessment is that this is proportionate to make sure the fund remains viable, providing redress for those it is there to protect and keeping contributions from the profession as manageable as possible. We will review the £5m cap to take into account any changes in the pattern and value of application to the fund.
- Our change to target payments from the fund on direct financial losses means that:
  - applicants will no longer receive financial support from the fund to cover the cost of applying to the fund. We have set out how we will make the application process as simple as possible, provide guidance to help applicants submit the information we need to assess the application and provide targeted support to help applicants through the application process. Our approach will be to help the applicant to present the facts that we need to make a fair and robust decision. We will make sure our teams have the appropriate tools to help, for example, those applicants with disabilities and where reasonable adjustments might be needed.
  - some applicants will need to finance the costs of pursuing other remedies through the litigation process. We already take into account peoples' ability to taken alternative action when deciding to refuse or process an application. We will advise applicants on our expectations which will be proportionate to their circumstances as we process their application. We reserve the right to pay litigation costs if we consider it to be in the public interest in exceptional circumstances and we will provide guidance explaining this.

- We received feedback that any reduction in the ability of the fund to provide redress would have greatest impact on sole practitioners and small firms. This is because the fund is most likely to be used by the clients of smaller firms. This could impact on the viability of small firms if it means people are put off using them. Older solicitors and BAME solicitors are overrepresented amongst solicitors in small firms<sup>3</sup> when compared to the wider profession. It is therefore possible that our reforms may impact more solicitors in these groups.
  - We provide evidence suggesting that the likelihood that small firms will be doing work that could result in a claim above the limit is low. We are of the view that the overall level of consumer protection provided is proportionate and will provide full protection for the overwhelming majority of eligible applicants. This suggests that small firms can continue to provide assurance to clients and lenders about the level of protection that is in place.
9. We have set out the reasons for our final position in our [consultation response document](#).
10. We think that the impacts are justified and that the fund provides a proportionate and transparent level of protection, prioritising those that need most protection and it remains viable in the future with contributions from the profession as manageable as possible.

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<sup>3</sup> <https://www.sra.org.uk/sra/equality-diversity/key-findings/diverse-legal-profession/>

# Eligibility criteria

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## Exclusion of large charities and trusts

11. Large charities with an income and trusts with assets over £2m will no longer be able to make an application for payment.
12. This is likely to impact on charities and trusts above this size who lose money at the hands of a solicitor or law firm, who cannot obtain redress through other means and who would have made a claim in the fund under the current arrangements. This might have a subsequent impact on the beneficiaries of the charity or trust if they cannot mitigate the loss.
13. According to the latest figures published by the Charities Register<sup>4</sup>, 86.7% of charities have an annual income under £500k. 5.6% of charities have an annual income between £500,000 and £5m and 1.3% of more than £5m.
14. We do not have data on the number of charities and trusts within this category. We do know that we have made payments to large charities such as Cancer Research and the NSPCC for missing legacies in the past when they have made a claim to the fund as the 'residual' beneficiary of the estate. These payments have ranged from £126 to £146,000.
15. These examples show that it is possible that the beneficiaries of large charities could include children, those with disabilities, mental or physical health concerns and others with protected characteristics under the Equality Act.
16. Our data shows most of the claims we have received from charities are where they are a beneficiary of an estate and they have not received the of a legacy gift.
17. As set out in our consultation response document, our view is that large charities and trusts will operate in a similar manner to large businesses who are excluded from eligibility to the fund. They are likely to have strong governance. They are likely to be regular users of legal services and be in a position to make sophisticated purchasing decisions, understand the risks involved and be able to put safeguards and controls in place.

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<sup>4</sup> <https://www.gov.uk/government/statistics/charity-register-statistics>

18. The risk and impact of money going missing is something that charities and trusts are expected to consider as part of their overall financial management arrangements. The Charity Commission's guidance on 'charity reserves: building resilience'<sup>5</sup> sets out what a charity can do to demonstrate among other things the charity's resilience and capacity to manage risks and unforeseen financial difficulties to give confidence to funders by demonstrating good stewardship and active financial management. Trustees of large charities are often experienced professionals who are expected to publish, implement, and monitor their charity's reserves policy so they can comply with their legal duties.
19. We therefore would expect many larger charities and trusts to be able to bear the impact of loss of money caused by a solicitor or regulated law firm providing them with professional services or a stolen legacy.
20. They are also more likely to have the knowledge and resources to actively pursue other avenues of redress to recover any missing money. The charity or trust will also be able to for example, take legal action themselves to recover any missing money from the defaulting solicitor or firm. Insurance may also cover the loss. And a lay executor of a will leaving a legacy to the charity or trust may still be able to claim from fund.

#### **Remove hardwired hardship tests**

21. At present our rules require certain categories of eligible applicant to show hardship in order to receive a payment from the fund, for example small businesses and charities where a solicitor has failed to account for money. For other categories such as individuals, we deem hardship to have been suffered. We consider the current position lacks consistency and is hard to understand. Going forward we have decided to remove the necessity for eligible applicants to show hardship.
22. Under the current criteria less than 10% of applicants<sup>6</sup> are required to demonstrate hardship. We most often ask applicants for a financial statement for matters relating to counsels' fees and business conveyancing transactions that relate to, for example, a buy to let purchase. In around 80% of these types of applications, when we write to request financial information, we do not receive a response and we close the application. The requirement to submit financial information, therefore, may act as a deterrent to pursuing an application for payment.

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<sup>5</sup> <https://www.gov.uk/government/publications/charities-and-reserves-cc19>

23. Therefore, for eligible businesses, charities, and trusts, we may see an increase in applicants proceeding with their application because we are removing hardship criteria.
24. We will use our residual discretion to not pay or reduce payment where we have evidence that the impact of the loss is disproportionately low or has been appropriately compensated through another means. We consider that this power will be used in very rare circumstances because losses would likely be material to most applicants. We presented analysis in the second consultation of the general financial position of UK households<sup>7</sup> to emphasise this point.

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<sup>7</sup> <https://www.sra.org.uk/sra/consultations/consultation-listing/comp-fund-reform-2020/?s=c>

# Prioritisation

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## **Limit claims to consumers of legal services and in certain circumstances the party on the other side of a legal matter**

25. This focuses protection on client and beneficiaries who have received a legal service directly. We have also decided to continue to allow claims from a party on the other side of a legal matter where the solicitor had failed to use funds for the purpose intended to complete a transaction for their benefit, or to make a settlement or other payment to them.
26. We would expect to continue to not pay some of these claims where we think that the other party should explore an alternative remedy for example, against insurers or directly against the other party in the proceedings or transaction.
27. We have excluded applications from:
  - Barristers and experts where a solicitor has received payment to cover the cost of professional services but the money is lost, and the barrister/expert is not paid.
  - Businesses such as credit hire or vehicle repair companies used in personal injury matters where the solicitor has not paid their costs out of damages received because they have been lost.
28. Over the period 2014-2019 there were 89 payments relating to barristers' and experts' fees totalling £2.1m. The average payment was around £24,000.
29. We do not consider that the fund should be used as a substitute for normal business practices around payment of fees including debt recovery and claim for breach of contract processes where this becomes necessary.
30. It has been suggested that small firms and sole practitioners might be impacted by the exclusion of barristers and experts from making a claim on the fund because they might choose to only work for larger firms that can provide greater certainty that they will be paid. We have not seen evidence that this is likely to be the case.
31. Barristers and other professionals will likely to be able to protect themselves through the commercial arrangements they agree with the solicitor/law firm. They are open to make choices on which solicitors/law firms they will engage with and payment history may be a consideration in this. This is normal business practice.

32. Businesses and experts that have been engaged by the solicitor on behalf the client will also be able to take steps to protect themselves through for example, tailored agreements or seeking payment in advance.
33. The SRA Code of Conduct for solicitors makes it a requirement that solicitors (and law firms) must safeguard money that has been entrusted to them which might include money received for paying barristers, experts and others that provide services to them on behalf of their client. All law firms should therefore be able to give an assurance that they will pay fees that become due.

**Being clearer about the circumstances where we make payments where insurance is not in place**

34. If a regulated firm's insurer is insolvent it is inevitable that some people that have a claim might need to engage with another person to progress it. Those that might have a claim in the future will need to consider the alternative avenues of redress that might be available. This will also depend on whether or not the administrators of the insolvent insurer decide to disclaim insurance policies or confirm that future claims will continue to be dealt with. The impact of an insurer becoming insolvent could impact law firms of any size.
35. Our experience is that where claims have already been notified to the insolvent insurer that they will continue to be managed by the appointed administrators. Often information is made available to persons with a claim confirming that they do not need to do anything. In cases where the appointed administrators are considering disclaiming live or run-off insurance policies they will often make this known as soon as possible so that those considering making a claim do so.
36. Law firms that have paid premiums and persons that have a claim against that firm may seek redress from the Financial Services Compensation Scheme (FSCS) for example, if the affected firm meets the schemes eligibility criteria.
37. If firms (or their clients) are not eligible to make a claim against the FSCS or against the insolvent insurer then we would expect for example, larger firms to be in a position to provide redress themselves or agree a settlement with the person asserting a claim.
38. We will continue to work closely, as we have done previously, with the administrators appointed in the insolvency of an insurer and other compensation schemes to make sure all avenues of redress are fully explored and communicated to affected parties.

# Payment Limits

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## Maximum grant of £500,000 and how we 'define' a single claim

### *Overall level of consumer protection*

39. The reduction in the maximum grant will impact on a very small number of applicants who have suffered losses above the £500,000 limit who previously would have received a higher payment. Historically these claims have related predominately to conveyancing, probate, and less so personal injury settlements.
40. We have explored the impacts on the level of consumer protection including for characteristically vulnerable people and on small firms. Our analysis is set out in more detail in appendix 1, but our main findings are:
  - The maximum limit of £500,000 will provide full protection for the overwhelming majority of people: only 32 payments over the period 2004 - 2019 have been above £500,000 which is 0.2% of all payments. See appendix 1 paragraphs 1 to 3 and table 1.
  - Both the number of claims and the number of payments above £500,000 has been falling. This can mainly be attributed to the exclusion since 2015 of lenders and other large businesses from eligibility. Prior to this we saw a large number of high value claims from lenders associated with mortgage fraud. We spent time refusing most of the claims mainly on grounds the lender had contributed to their loss through reckless lending policies. See appendix 1 paragraph 3 and Table 1.
  - For conveyancing and probate which are the most common high value claims, the limits cover at 90% and 96% of all transactions respectively. See appendix 1 paragraphs 4 to 7 and chart 1.
  - That characteristically vulnerable (older, lower social grading, BAME, disabled) are less likely to use the types of legal services that give rise to large claims on the fund (conveyancing and probate). They are also less likely to use a small firm (eg 48% of black African/Caribbean people

used small firms compared to 78% of white people; and 67% of disabled people who are limited a lot, compared to 77% no disability) <sup>8</sup>.

- The likelihood that small firms will be undertaking work that may involve very large sums of money that would not be covered by the £500,000 limit is low. For example, our data suggests that nearly 9 out of 10 small firms either derive less than 25% of income from conveyancing work or are located outside of property hotspots. See appendix 1 paragraphs 8 to 9 and table 2.
41. This data therefore suggests there will not be a disproportionate impact on characteristically vulnerable people. The data also shows that the limit of £500,000 will provide full protection in most cases. It also suggests that small firms can continue to provide assurance to clients and lenders about the level of protection that is in place.
  42. We set out in the consultation that this maximum payment limit compares favourably to schemes in other sectors and other jurisdictions.
  43. We also consider that if we are to enter a prolonged financial downturn that history has shown can lead to more losses and claims on the fund, this lower limit can help make sure that the fund can provide a fair level of cover to most applicants while helping to manage the cost to the profession, which may ultimately be reflected in solicitor fees and passed on to consumers.
  44. We are maintaining our existing discretion to pay a higher sum in exceptional circumstances where we consider this to be in the public interest. The factors that we will consider will include:
    - the impact of the loss on the claimant. We are more likely to find exceptional circumstances where the loss has a potentially catastrophic impact on the claimant's quality of life.
    - the likely duration of such an impact – and the ability or otherwise of the applicant to “make up” losses by other means will be factors.
    - the extent to which the wider public confidence in the administration of justice is impacted by the loss, for example if a person has already suffered an injury that impact catastrophically on their quality of life confidence could be undermined further if they also suffer any financial loss.

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<sup>8</sup> <https://www.legalservicesconsumerpanel.org.uk/what-we-do/research-and-reports#2019>

## **Applying a fixed £5m cap to multiple applications from single or connected events**

45. The most immediate application of this mechanism arises from solicitors' involvement in high risk investment schemes.
46. The nature of the schemes and the way law firms operate in respect of these schemes is continually changing. In a recent case that was considered by the Solicitors Disciplinary Tribunal the solicitor acted on behalf of buyers to three 'fractional' development schemes, where purchasers paid deposits between 40-80% of the price for as-yet unbuilt units. The solicitor was lead partner in the sale of 118 units, for which almost £2.9m was deposited<sup>9</sup>.
47. This means that going forward where we apply a cap, eligible applicants are likely to receive a payment to alleviate their financial loss, but the payment may be lower than they would receive now. The decisions will be case specific, depending the volume of claims that are connected and how the £5m is apportioned across the multiple applicants.
48. We have reviewed and refreshed the data that we hold and remain of the view that the £5m figure is right, based on what we know about high-value claims and the potential impact on contributions. We are not in a position to make that data public due to its confidential nature. We now think it less likely that the fund will pay very large sums on one scheme because another regulator's fund has started to provide redress. However, there are potential liabilities in relation to new risks where we might expect high value applications to be made. For the schemes where we are already making payments or where we assess we are likely to make payments our estimate of the value of claims arising for each of ranges from £1m to £10m with an average of £5m.
49. We do not have data to quantify with any degree of certainty the characteristics of applicants that may be impacted. We will keep this under review and monitor for any disproportionate impact on specific groups including those with protected characteristics.
50. The ability to cap claims provides an explicit mechanism to manage the potential liabilities faced by the fund by the high-value connected claims such as dubious investment schemes. We have also warned solicitors and law firms about the risks of being involved in high risk investments and expect that the recent cases that have been considered by the Solicitors Disciplinary Tribunal will act as a deterrent.
51. These are both important to make sure that the fund remains viable contributions from the profession are as manageable as possible.

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<sup>9</sup> <https://www.legalfutures.co.uk/latest-news/solicitor-failed-to-advise-on-obvious-risks-of-off-plan-schemes>

52. We will keep under review the £5m figure based on the changing profile of claims. This will allow us to increase or reduce the fixed cap on a periodical basis reviewing the most up to date data on claims and projected claims.

# Costs

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## **Exclude payments for litigation costs other than in exceptional circumstances**

53. If we think an applicant is in a position to pursue litigation as an alternative means of redress and they incur litigation costs, then they may need to pay for these personally.
54. We consider the position of the applicant on a case by case basis when considering what steps might be proportionate for them to take to recover losses elsewhere. For example, if they are well organised, resourced and/or sufficiently informed we would expect them to take more steps than a vulnerable person making an application on their own behalf.
55. If we have decided that the applicant has the means/resources to pursue litigation, we do not think the fund should prioritise these payments. The litigation process allows for an application for costs to be made in addition to the claim for substantive losses. If professional advisers are engaged to help with the litigation then there are other funding mechanisms such as contingency fee agreements that could be considered.
56. We may however, pay some litigation costs in exceptional circumstances:
  - We may offer individuals choice to fund litigation upfront where there is another avenue of redress that they could pursue that means they might recover more than our limit. If they make this choice and receive a settlement below £500,000 they cannot then make a claim on the Fund as they have been appropriately reimbursed according to the courts.
  - Where we think an applicant should pursue another remedy and they are funding the litigation, we may pay some reasonable costs but only where not doing so would mean the applicant was in a substantially worse position than if we had processed the claimed straight away. We will apply the £500,000 limit to include these costs.
57. We will issue further guidance on this.

## **Not paying application costs**

58. Our approach will be to help the applicant to present the facts that we need to make a fair and robust decision.

59. We will review our online guidance to make sure it clearly sets out: who is able to claim, what types of claim we will consider, what information we will need, how to complete the application form, top tips for common issues.
60. Work is underway to simplify the application form and provide the necessary assistance to applicants as they fill out the form. This work also includes simplifying the process for applicants to submit a claim form and how we communicate with them at different stages of the process.
61. We will develop new guidance and training for staff around supporting the applicant through the process and advising them on the information needed to help establish the facts of a case and ways to obtain that information. We may also seek further information ourselves, including from the relevant solicitor or firm to inform our decision making. It is for us to make a judgement based on the facts, not for the applicant to "prove" that we must grant the application.
62. Updated guidance and training will also make sure teams have the appropriate tools to help for example, those applicants with disabilities and where reasonable adjustments might be needed.
63. We also plan to continue to explore with charities and other organisations people may turn to for advice when they suffer a loss at the hands of a solicitor and how we can provide guidance and support to help them.
64. Historically, most applicants do not instruct professionals to assist them in making their claim. We intend to undertake some consumer research with people that have applied to the fund so that their insights may inform our work programme.
65. We consider the above, mitigates the risk that some consumers may find it difficult to understand and provide the information needed to complete the application without professional help. This might include applications from consumers who for reasons of poverty, lack of ability or literacy skills, or because of a vulnerability of some other kind, would be unable to make an application without paid assistance.

# EDI impacts

66. We have considered whether there are EDI impacts throughout this Impact Assessment. We summarise the main conclusions in the table below.

<b>Issue</b>	<b>Our response</b>
<p><b>The level of consumer protection</b></p> <p>We received feedback that there could be consumers in vulnerable groups who will be affected by the reduction in the single claims limit including concerns about the reduction on those who have lost large personal injury settlements.</p>	<p>Our data shows that the claims limit would have covered over 99% of all historic applications. The data clearly shows that most claims above the new limit have been for losses arising out of conveyancing and probate work. Tracker survey data<sup>1</sup> suggests that non-white British ethnic groups are less likely to use the types of legal services that give rise to the most frequent and high value claims (conveyancing and probate). We will pay higher amounts in exceptional circumstances and where it is in the public interest to do so. We are more likely to find exceptional circumstances where the loss has a potentially catastrophic impact on the claimant's quality of life.</p>
<p><b>Not paying towards application costs</b></p> <p>We received feedback that withdrawing financial support for those that who seek professional support in making an application would affect vulnerable consumers who might otherwise struggle to make applications without assistance. This includes people with disabilities who and also those whose do not have English as their first language.</p>	<p>We have set out in our consultation response document how we will improve our support to applicants during the application process. Our work programme will also be informed by research with people who have previously received payments for application costs to help us target how this guidance and support.</p>
<p><b>Exclusion of large charities and trusts</b></p> <p>We received feedback that our change to exclude large charities and trusts could disadvantage the ultimate beneficiaries and, given the work charities do and the reasons trusts are set up, that a large proportion of their beneficiaries could have protected characteristics.</p>	<p>We have not seen evidence about the characteristics of beneficiaries of large charities. Our view is that large charities and trusts are able to manage both the risks of using legal services and have the to manage the financial impact should a legacy gift or trust money go missing.</p>

<p><b>Impact on small firms</b></p> <p>We received feedback that any reduction in the ability of the Compensation Fund to provide redress would have greatest impact on sole practitioners and small firms. This is because the fund is most likely to be used by the clients of smaller firms. This could impact on older solicitors and BAME solicitors who are over-represented in small firms</p>	<p>We have assessed the likelihood that small firms will be doing work that could result in a claim above the new maximum claim limit and conclude this is low. This means that small firms can continue to provide assurance to clients and lenders about the level of protection that is in place.</p> <p>We also think the suggestion put forward that barristers and experts will not work with small firms if they can no longer claim for unpaid fees is unlikely, particularly given the relatively low number of cases where these losses have occurred. There is a contractual relationship between barristers, experts and other service providers and usual commercial practices can be adopted to recover fees or other costs.</p>
<p><b>Managing contributions from the profession</b></p> <p>Controlling the cost on contributions is beneficial to all firms and particularly those with low levels of financial resilience. This is more likely to be small firms. More than half of firms we regulate meet our definition of a small firm and BAME and older lawyers are more highly represented amongst lawyers practising in such firms. We do not hold the same data in relation to the level of representation of lawyers with other protected characteristics.</p>	<p>The reforms will help make sure that the fund is maintained at a proportionate and stable cost to the profession.</p>

# Statement in respect of the Regulatory Objectives

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67. Here is our assessment of the changes against the regulatory objectives

<b>RO1: Protecting and promoting the public interest</b>	<ul style="list-style-type: none"><li>• We have made changes to the fund's scope and our prioritisation criteria to make sure that the fund is viable for the future. The continuation of a fund that is targeted to consumers of legal services that are least able to protect themselves is squarely in the public interest. If we see the anticipated economic downturn in the coming months and years, we are likely to receive more applications to the fund. The changes we are making will ensure we can deal with those applications in a way that is fair and proportionate.</li><li>• Our changes clarify the purpose of the fund. It cannot cover every conceivable loss caused by a solicitor. It is focused that on protecting consumers of legal services by helping those who have lost money due to fundamental ethical failures by those we regulate. This helps to uphold trust in the integrity of the legal profession.</li><li>• We will continue to focus regulatory action on the solicitors involved in investment schemes and to provide information to the profession about the key signs of high-risk or dubious investment schemes to reduce the risk they become unknowingly involved.</li></ul>
<b>RO2: Supporting the constitutional principles of the rule of law</b>	<ul style="list-style-type: none"><li>• We have amended our consultation proposal to also allow applications in certain circumstances from a party on the other side of a legal matter where the solicitor had failed to use funds for the purpose intended to complete a transaction for their benefit, or to make a settlement or other payment to them. This change was in response to consultation feedback recognising that the effective operation of the legal system requires mutual</li></ul>

	<p>reliance and trust between solicitors on each side of a transaction or dispute.</p>
<p><b>RO3: Improving access to justice</b></p>	<ul style="list-style-type: none"> <li>• We have assessed the risk of whether the change will impact negatively on small firms and so on the supply of solicitors and think this is low. See our comments against R06 for more information.</li> <li>• Consumers may be more likely to access the services of a solicitor if they are confident that certain regulatory protections are in place, including access to a compensation if things go wrong.</li> </ul>
<p><b>RO4: Protecting and promoting the interest of consumers</b></p>	<ul style="list-style-type: none"> <li>• Our changes to eligibility mean the fund is targeted to those that need most protection. The removal of hardship tests means we treat all applicants consistently and there is a reduced burden for small businesses and charities to demonstrate they are eligible to claim.</li> <li>• In focusing on the viability of the fund, we ensure that consumers will continue to benefit from its existence in the future.</li> <li>• The lower maximum payment limit provides a proportionate level of protection when considered against both comparable schemes and the pattern and nature of past and expected payments – it will provide full protection for an overwhelming majority of eligible applicants. We have not identified a disproportionate impact on the reduced maximum payment limit on people with protected characteristics.</li> <li>• We are fair and transparent through our purpose statement, guidance and decision-making about how we prioritise payments from a limited fund. This means consumers are better able to understand how they are protected by the fund and the factors we consider when assessing applications for a payment from the fund.</li> </ul>

<p><b>RO5: Promoting competition in the provision of services</b></p>	<ul style="list-style-type: none"> <li>• We maintain the cost of the fund at as manageable cost to the profession as possible. This mean the regulatory burden on firms is proportionate supporting a competitive market.</li> </ul>
<p><b>RO6: Encouraging an independent, strong, diverse and effective legal profession</b></p>	<ul style="list-style-type: none"> <li>• We do not believe that the changes will negatively impact on this objective. We have reviewed the risk that the proposals could have a negative impact on small firms (and therefore older and BAME solicitors that are overrepresented in small firms) and think the risk is low. We believe that overall, the changes we are making are necessary, so the fund remains viable to provide a proportionate level of protection in the future.</li> <li>• Our view is that overall, these benefits outweigh the low risk of potential negative impacts for solicitors from protected groups or risk to the supply of solicitors from these groups.</li> </ul>
<p><b>RO7: Increasing public understanding of the citizen's legal rights and duties</b></p>	<ul style="list-style-type: none"> <li>• Our purpose statement helps people to better understand the scope of the fund, whether they meet the criteria to make an application to the fund.</li> <li>• We will publish updated guidance to explain how we make our decisions and the factors we consider when assessing applications for a payment from the fund. We will test this with the public, so it is written in as consumer friendly way as possible.</li> <li>• We will issue new guidance to the public so they are clearer about where their contributory conduct or behavior may warrant refusal or reduction of a payment should they make an application to the fund. This will help people to better understand how they are protected when they use a solicitor. We will also update our information to ensure consumers understand what is required of an application to the fund.</li> </ul>

<b>RO8: Promoting and maintaining adherence to the professional principles</b>	<ul style="list-style-type: none"><li>• The changes are considered to have a neutral effect on this regulatory objective.</li></ul>

# Statement in respect of the Better Regulation Principles

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68. Here is our assessment of the changes against the regulatory objectives

<p><b>Proportionate</b></p>	<ul style="list-style-type: none"> <li>• The changes provide a proportionate level of consumer protection, allowing us to prioritise payments transparently and fairly and to make sure the fund remains viable in the future. (see also comments under RO4 in the statement above).</li> <li>• We believe our proposals are proportionate and targeted to the risks and issues we have identified. We have responded to the concerns raised in the feedback to the consultation about the impacts of the changes including on equality, diversity, and inclusion. This is set out in table at paragraph 66 above.</li> <li>• The changes are designed to makes sure that contributions from the profession are as manageable as possible and so do not place disproportionate regulatory costs on solicitors or groups of solicitors.</li> </ul>
<p><b>Accountable</b></p>	<ul style="list-style-type: none"> <li>• The changes clarify the purpose of the fund. We have engaged with a wide range of stakeholders throughout including public consultation and focus groups with consumers.</li> <li>• Our proposals establish a clear framework for when and how we will make payments from the fund so that both solicitors and consumers can understand how it operates.</li> </ul>
<p><b>Consistent</b></p>	<ul style="list-style-type: none"> <li>• Our proposals help make sure that we adopt a consistent approach to eligibility and treat all applicants equally.</li> </ul>

	<ul style="list-style-type: none"> <li>• Clearer rules will support consistency of decision making against clear and objective criteria in a way that can be understood.</li> <li>• The proposals will also make it easier for us to be consistent in the level of contributions levied each year, providing greater certainty to those we regulate.</li> </ul>
<b>Transparent</b>	<ul style="list-style-type: none"> <li>• Our proposal to publish information, for example when we consider it necessary to cap payments, will lead to greater transparency and help engagement with consumers.</li> <li>• Changes to how we support applicants through online guidance and an easier to use claim form will make it clear early in the process what needs to be submitted to make a 'good' application.</li> </ul>
<b>Targeted</b>	<ul style="list-style-type: none"> <li>• Our proposals are targeted to make sure that only those consumers that need to protecting have access to a well-run and viable fund.</li> <li>• The proposals target the operation of the fund on its core purpose of making good the direct financial loss caused by the actions of the solicitor or law firm.</li> </ul>

# Appendix 1

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1. In the consultation we provided data that showed that most grants paid from the fund are low. Over the period between 2010 to 2018 more than 75% of grants made were for less than £5,000. A limit of £500,000 would have seen lower payments for around only 0.4% of applications settled (or where we are reserving a possible payment). This amounts to 32 payments totalling around £14m, 10% of the amount paid in value. Any applications for grants above this sum generally relate to probate, mortgage monies and damages settlements.

## *Payment made*

2. We have updated our analysis based on the latest data and this shows:
  - Between the period 2004-2019 there were around 15625 payments made from the fund. 15,587 of these were below £500,000, and only 32 were above £500,000 (0.2% of total).
  - More recently, in the past 4/5 years for the period 2015-2019 there have only been seven payments made over £500,000 (in contrast there were 4098 total pay-outs).

## *Claims made*

3. A review of claims made (ie the actual amount applicants ask for vs what we eventually pay shows:
  - we refuse many more large claims than smaller claims: we have paid out c25% of claims over £500,000 since 2004, and c46% for claims below £500,000
  - that for claims above £500,000 we often end up paying an amount that will bring them under the new limit, and
  - that both the number of claims and the number of payments above £500,000 has been falling. This can mainly be attributed to the exclusion since 2015 of lenders and other large businesses from eligibility. Prior to this we saw a large number of high-value claims associated with mortgage fraud. We spent time refusing most of the claims mainly on grounds the bank had contributed to their loss through reckless lending policies.

**Table 1**

All Data				
Large Claim	Payment Made	n	Claim Size	Proportion of claims of each size that received payments
Yes	No	18050	Under £500,000	46.09%
No	Yes	15434	Over £500,000	25.48%
Yes	No	231		
Yes	Yes	79		

2015 Onwards				
Large Claim	Payment Made	n	Claim Size	Proportion of claims of each size that received payments
No	No	4571	Under £500,000	44.67%
No	Yes	3690	Over £500,000	20.00%
Yes	No	48		
Yes	Yes	12		

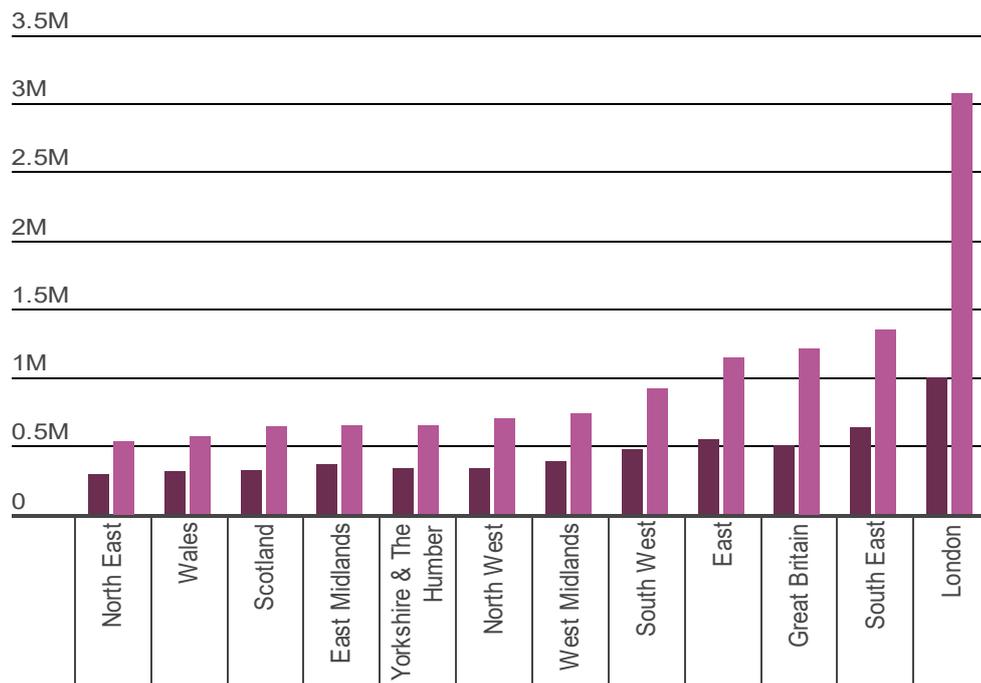
*Conveyancing and probate claims*

- High-value claims from individuals tend to be linked to conveyancing and probate transactions. In reviewing the maximum payment limit it is informative to reference data on for house sales and for net value of estates because this

will continue to represent the higher risk transactions that may give rise to potential future claims.

- House sales data for June 2019<sup>10</sup> suggests that for all regions in Great Britain a limit of £500,000 would capture 90% of all sales (the dark purple bar on the chart below). Two regions have the 90th percentile above this, the South East at around £630,000 and London is around £1,000,000

**Chart 1**



- The latest data<sup>11</sup> on the net value of estates suggests that for the UK as a whole a limit of £500,000 would capture 96% of the registered for tax year 2016-17 for inheritance tax purposes.
- Therefore data shows that the risk of someone needing to make a claim above £500,000 is extremely low, but most likely for conveyancing work in London and the South East.

### *Impact on small firms*

<sup>10</sup> <https://www.savills.co.uk/blog/article/283860/residential-property/what-price-are-britain-s-top-properties-.aspx>

<sup>11</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/832092/Table\\_12\\_4a.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/832092/Table_12_4a.pdf)

8. Our earlier work to assess the impact of our reduction in PII limits suggested 40% of small firms derive some income from residential property work. At that time we also mapped the location of small firms to 'property hotspots' which we configured by using Price Paid Data from the HM Land Registry. This data set consists of price paid property transactions (excluding commercial) received by the Land Registry between June 2017 and June 2018. We did this by ranking in descending order by the number of properties sold over £1m. The rankings have then been categorised in quintiles.
9. Our definition of a small firm is a firm which generates less than £400,000 in turnover and has four or fewer partners. When we did this analysis at the end of 2018 there were 1,891 out of 4727 small firms who have generated turnover in the residential conveyancing area of law (40%).

**Table 2**

	Local authority quintiles by number of property transactions valued over £1m 2017-2018					
Proportion of small firm turnover in residential conveyancing	1 to 70 (Hot)	71 to 137	138 to 205	206 to 273	274 to 346 (Not so hot)	Unknown
Less than 25%	556	187	120	63	47	13
25-50%	229	99	89	67	53	2
50-75%	89	53	48	24	19	4
75%-100%	55	27	20	11	6	0

10. This data suggests that nearly 9 out of 10 small firms either derive less than 25% of income from conveyancing work or are located outside of property hotspots (the firms shown as shaded in the table plus the 2836 that do no conveyancing work).