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

Responses and feedback to our consultation

Contents

Executive Summary

1. In this report we present the responses we received to our second consultation on reforms to the Compensation Fund (the fund), which closed on 21 April 2020. In the consultation we confirmed the proposals from the first consultation we said we intended to proceed with and added some further changes to how we proposed to operate the fund.

2. Having considered the consultation feedback and reviewed the potential impacts we have now finalised these reforms. We have decided to amend our proposal which would have limited claims to people that have been provided the legal service. Nearly all respondents strongly opposed this proposal. We will continue to allow applications from parties on the other side of a legal matter where it can be shown that 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 could be for example in a conveyancing transaction.

3. We have decided to proceed with all the other proposals. We have reviewed the responses from the consultation and remain of the view that the proposed arrangements provide a proportionate level of consumer protection, allow us to prioritise payments transparently and fairly and to make sure the fund remains viable in the future.

4. While some of the responses expressed mixed views about our proposals, there was in principle support for the following:

    - setting out more clearly the purpose of the fund
    - a consistent approach to eligibility without reference to a hardship test beyond a discretion to refuse or reduce a payment where the impact of the loss on the applicant is immaterial, and
    - a capping mechanism to manage the impact on the viability of the fund when we receive connected high-value applications, while making sure we treat applicants fairly and ensuring they receive some level of redress.

5. There were different views about the detail of the above and how some of the proposals might work in practice.

6. Some respondents also took the opportunity to reiterate their objections and provide further feedback on the proposals that we said we were progressing following the first consultation. We also explore this feedback in annex 1 to this document.

7. The responses to both this consultation, and our first consultation in 2018, have highlighted the ongoing friction between:

    - The SRA's regulatory aim to provide proportionate consumer protection, prioritising the discretionary fund and managing its liability to make sure it remains viable at a fair and stable cost to the profession. This includes taking steps to control and manage the fund's liability from high-value claims following the need to make some significant increases in contribution levels in recent years.

    - The majority view from respondents that the fund should meet every loss caused by a solicitor where there is no other redress available. They therefore object to changes that would see a reduction in the protection that is currently available, both in terms of who is eligible to claim and the level of redress available.

8. The Law Society has reviewed the proposals against the regulatory objectives and is broadly supportive of the intentions of the review. It sets out some concerns about the specific means by which we said these would be delivered.

9. The Legal Services Consumer Panel (LSCP), while agreeing that it was right to re-assess the Compensation Fund arrangements including the need for the fund to be sustainable, thought the proposals placed too much risk on the consumers of legal services. It considered the proposals to be poorly designed in some respects due, in its view, to a weak evidence base and a lack of consumer research or quantified impacts. It was strongly opposed to the new prioritisation criteria that would limit claims to direct recipients of legal services.

10. In addition, the LSCP and the Law Society discussed in their responses whether there was more to be done to reduce the cost of running the fund. They questioned whether intervention costs should be paid out of the fund, and if they are, whether they could be reduced. They also asked whether more should be done to tackle the root causes that result in people suffering a financial loss as a result of a solicitor's poor conduct. They suggested this could make it unnecessary to make changes to narrow payments from the fund.

11. Many respondents expressed concerns about the impact of some of the proposed reforms. For example, the Law Society thinks the proposals could risk inadvertently undermining equality, diversity, and inclusion.

12. We have updated our evidence base and explored these concerns and provide our response in this document and in more detail in the impact assessment published alongside this report. The impact assessment includes our final assessment of our changes against the Equality Act 2020, our regulatory objectives and the Better Regulation Principles.

Background

13. 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. The fund also pays the costs associated with us intervening into a solicitor's practice in order to protect clients and their money.

14. The fund has been operating for nearly 70 years, with no substantive review for around 20 years. We have made only piecemeal changes to how the fund operates. Consumer behaviour and the risks that give rise to applications for a payment from the fund are changing. For example, we are seeing cases with large numbers of high value claims from people that are connected to the same investment scheme. A review was therefore timely.

15. Our consultations have provided the opportunity to take a fresh look at our policy and rules in this area to make sure:

    - we are clear about the purpose of the fund, prioritising payments where they are most needed
    - we operate the fund in a transparent way with decisions being made consistently and against clear, objective criteria, and
    - the fund remains viable to continue to provide redress for the people it is there to protect and contributions from the profession are as manageable as possible.

Our proposals

16. Our first consultation in 2018 set out proposals to change the fund's rules and eligibility criteria to establish it as a hardship fund, prioritising the protection of vulnerable consumers.

17. In the second consultation, we confirmed that we were progressing with some of the proposals from the first consultation. These were:

    - excluding large charities and trusts from eligibility in line with our approach to large businesses
    - no longer paying for costs associated with making an application to the fund or litigation costs (other than litigation costs in exceptional circumstances)

- no longer covering the unpaid fees of barristers and other professional experts
- reducing the maximum payment for a single grant from £2m per claim to £500,000 per claim (paying higher only in exceptional circumstances)
- clarifying 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, and
- limiting the circumstances where a payment can be made where insurance is not in place.

18. We also proposed further changes to:

- remove any financial or hardship tests for eligible applicants beyond a discretion to refuse or reduce payments when we consider the loss to be immaterial or substantively compensated elsewhere
- narrow eligibility to applicants for whom the legal service has been provided, meaning that redress would not be provided when a loss is caused by the solicitor on the other side of a transaction
- manage the potential liability presented by high value, connected applications by introducing a capping mechanism for multiple connected claims.

Who did we hear from?

19. We received 15 responses. There is a full list of respondents who agreed we could publish their details at the end of this report.

20. We received the most responses from representative bodies such as the Law Society and local law societies. The LSCP, the Legal Ombudsman and other representative groups were among the other respondents.

21. As well as seeking formal responses to the consultation, we also undertook targeted engagement to discuss the proposals and what the impact on certain groups might be. This involved speaking at events and meeting with key stakeholders that have an interest in our financial protection arrangements.

22. We also held a small number of consumer focus groups to seek direct views on our proposals.

23. These focus groups revealed a divergent understanding of the purpose of the fund and the circumstances in which people should be able to benefit from it. Prevalent views from consumers included:

    - that it was right to exclude certain people, for example, organisations with sufficient income or assets to bear the impact of loss, to be able to claim from the fund

    - applicants should consider other genuine avenues of redress before coming to the fund, and

    - it was reasonable to cap grants for multiple connected claims so that all applicants received some redress.

24. We are grateful to everyone who took the time to respond to our consultation and also to everyone who attended our focus groups. We have reviewed all the comments we received and given each careful consideration.

25. In the remainder of this report we summarise the feedback we received for each of our consultation questions and set out our response to some of the individual points made.

Comments and feedback for question one

"Q1: Do you agree that the proposed purpose statement will help people understand the circumstances when a claim is likely to be paid?"

26. Having considered the feedback from the first consultation, we thought again about the fund's purpose and how we should draw the boundary of its scope in a way that is easily understood. We set out that our view that the fund should focus tightly on losses to consumers of legal services caused directly by the ethical failures of solicitors and law firms providing them services. This means that the fund would not try and cover all circumstances where a consumer may otherwise suffer a financial loss. We developed a statement to try and articulate the purpose of the fund and asked for views on whether it would help people understand the circumstances when a claim is likely to be paid.

Summary of responses

Agree	4
Disagree	8
Other	3

27. There was a general consensus that it was useful to have a statement which more clearly sets out the purpose of the fund. However, the majority of respondents (comprising mainly the local law societies) felt that the statement could be clearer and needed to be simplified if it was to be understood by members of the public.

28. The Legal Ombudsman thought the statement was helpful but suggested the use of plain English wherever possible to ensure that members of the public of all backgrounds were able to understand it easily.

29. The Law Society felt that the statement needed to reflect the entirety of the rules so that there was no confusion about who was eligible to claim or which losses were or were not covered.

30. One anonymous response felt that the purpose of the fund was aimed at protecting the profession and not the public who were at risk of being exploited by the profession. The Ecohouse Creditors Representative group argued that the fund should be compensating any losses caused by fraud and the SRA should make sure that the scheme was adequately funded to do so.

Our response

31. We have reviewed the draft statement to reflect our final policy changes and to make sure that the tone and language can be easily understood so that it helps manage the expectations of those considering making an application to the fund. A revised version has been published.

Comments and feedback for question two

"Q2: do you agree with our revised proposals to remove hardship tests for all individuals, small businesses, small charities and small trusts?"

32. Having reflected on views expressed in response to our consultation in March 2018 we proposed to remove the "hardship" criteria that currently exist for eligible individuals, small businesses, small charities and small trusts.

33. Our view was that formulation of the hardship criteria presented some perverse inconsistencies. For example, the hardship criteria applied where the loss was caused where a solicitor had failed to account but not where the loss is caused by the solicitor's dishonesty. The impact of the loss for the applicant may however be the same in both circumstances.

34. We did not consult on changing the eligibility criteria that was introduced in 2015 which excluded businesses with a turnover of over £2m from making a claim. We also said we were proceeding with the proposal to extend this to large charities with an income and trusts with assets of over £2m.

Summary of responses

Agree	15
Disagree	0
Other	0

35. There was unanimous support for the removal of hardship tests. The common theme from responses was that any loss of money would have an impact on eligible applicants and that the requirement to demonstrate hardship was unnecessary.

Our response

36. We are pleased that there was overall support for these proposals and will proceed as planned.

Comments and feedback for question three

"Q3: Do you agree with the proposal that we use our residual discretion to refuse or reduce payments on rare occasions when we consider the loss will be immaterial or substantively compensated elsewhere?"

37. We explained that we do not have a set threshold for what "hardship" means in practice and that we do not operate any type of "means tested" assessment usually associated with hardship tests. Instead we proposed that we will use our residual discretion to allow us to consider those rare cases in which the impact of loss is disproportionately low, and it would not be appropriate to meet it from a finite fund.

38. We explained that this residual discretion might be used to refuse or reduce a payment where the applicant has already received an appropriate level of compensation from another scheme or from an insurer who has not paid in full. Or for any other reason that would mean that the loss is immaterial when viewed in context of the applicant's wealth or circumstances.

Summary of responses

Agree	10
Disagree	4
Other	1

39. The majority of respondents agreed with the proposal and that the use of discretion in this way aligned with the statutory purpose of the fund. The Law Society thought this was not unreasonable especially if guidance as to the factors that might lead to such a decision and explaining in practice how the discretion is likely to be exercised was to be issued.

40. The Professional Negligence Lawyers Association (PNLA) suggested that where a loss could be made good by some other means and claims could be subrogated, then the SRA should step in and pursue the other route for the benefit of those that have suffered loss.

41. The Ecohouse Creditors Representative group however thought it was not for us to judge whether losses are immaterial to someone making a claim. Others agreed including the Newcastle Upon Tyne Law Society who said although a payment may be insubstantial having regard to the resources of the client, the fund still had a purpose in helping retain public confidence.

42. The LSCP was against the proposal. Its view was this was unnecessary as we have a maximum payment level and it is difficult to make fair, subjective judgements about whether a loss is immaterial. However, the LSCP interpreted this proposal to mean that we would look to refuse to make payments when we considered the amount claimed to be too low. This was not the case and would expect to apply discretion in this rarely because losses would likely be material to most applicants. We presented analysis of the general financial position of UK households [1] to emphasise this point.

43. However, in its response the Law Society did put forward a suggestion to introduce a *de minimis* amount for claims to be eligible for payment. It suggested that different minimum thresholds for different classes of applicants could be set (eg individuals, SMEs, charities and large businesses) based on factors like income, wealth, or turnover. The Law Society acknowledged that the proposal would introduce a new layer of administrative complexity. It is also notable that the suggestion would 'reintroduce' eligibility for large businesses.

Our response

44. We are pleased that there was overall support for this proposal. We will proceed with this proposal and continue to work on our draft guidance on factors that might lead to us exercising our residual discretion.

45. We do not agree with the suggestion from PNLA that the fund should stand in the shoes of the party that has suffered loss and pursue on their behalf an alternative remedy for compensation or redress. This is not and has never been the function of the fund. We do, however, take steps to recover any payment under subrogated rights from a third party, for example, insurers. This is done after a grant has been made from the fund.

46. We have considered the suggestion to introduce a "de minimis" payment level. The table below shows, for the last two years, the number of cases and total amounts paid where payments from the fund have been made of less than £500. To reduce volumes by around 10% and 20% a minimum payment threshold would have needed to be set at £325 and £500 respectively

[1] https://www.sra.org.uk/globalassets/documents/sra/consultations/supporting-evidence-analysis-comp-fund.pdf?version=48f268

Payment value	Number of payments	Total paid
£50 or less	12	£464
£100 or less	16	£1,869
£325 or less	159	£31,683
£500 or less	321	£99,413

47. According to a 2018 survey 32% of workers in the UK have savings of less than £500[2]. Research in 2016 found the figures to be even lower, with 40% of the working population having less than £100[3] in savings. This shows that to reach the volume of claims that would have a material impact on the administration cost of the fund, a minimum payment amount would need to be set at a level we think that people might not be able to afford to lose.

48. The creation of different minimum thresholds for different classes of applicants would also introduce the kind of wealth-based judgements that respondents to the first consultation were keen to avoid. This would also introduce additional complexity to the claims process as well as impacting on our control of costs. For these reasons we do not think we should introduce a minimum payment level or levels.

Comments and feedback for question four

"Q4: Do you agree that the fund should only be available to those who are the clients, or recipients, of the services of the solicitor/firm in question?"

49. This was a new proposal in the second consultation, building on the proposal in the first, to remove claims from barristers and professional experts from scope. We proposed to further narrow who could make a claim to only accept claims from those for whom the legal service is being or had been provided. Beneficiaries and others who are not under client retainers but are receiving the legal service in question would remain within scope.

[2] https://www.thersa.org/discover/publications-and-articles/reports/seven-portraits-of-economic-security-and-modern-work-in-the-uk
[3] https://www.moneyadviceservice.org.uk/blog/millions-at-risk-with-savings-of-100-or-less

50. We wanted to tightly focus on losses to consumers of legal services and move away from an assumption that any party who has lost out due to the actions of a solicitor or firm can claim against the fund if they are unable to get alternative redress, irrespective of their relationship with that solicitor or firm.

51. We do not collect data in a way that would allow us to quantify the precise impact of the proposal. We therefore provided examples in the consultation of applicants that would no longer be eligible to claim on the fund if we were to proceed with this proposal:

    - Third parties in personal injury/medical negligence claims such as credit hire or vehicle repair companies where the solicitor has not paid their costs out of damages received because they have been lost or stolen.
    - The opposing party in a legal proceeding such as spouses in a divorce matter where the other solicitor is holding and then steals the money set aside for a financial settlement.
    - Buyers who have lost money because of the dishonesty of the seller's solicitor in a conveyancing transaction.

52. Our experience suggests that these claims have been rare but when they are received, they are of high value. The most common claims we have paid arise where the buyer has lost out because the seller's solicitor has been dishonest or has been the victim of imposter fraud. There have been six interventions where there were cases of imposter fraud in the firm.

Summary of responses

Agree	1
Disagree	14
Other	0

53. All the respondents, with one partial exception, were against this proposal. This was on the basis that being able to rely on the other side's solicitor is fundamental to the successful running of the legal system and you have very little control, if any, over the choice of and actions of the other side's solicitor. Therefore, the proposal may lead to unjust outcomes and could also lead to a loss of trust in the profession and the legal system. We also received feedback on the potential impacts.

54. The Association of Personal Injury Lawyers supported the proposal. However, this was centred on a view that commercial organisations should not have access to the fund. It also stated that it was important that, in the context of personal injury claims, we should allow claims from those people that had to rely on a solicitor doing something and are not legally represented themselves.

55. The PNLA thought that there were situations where funds belonging to people who were not clients or recipients of the services of the solicitor/firm in question had been misappropriated and deserved to be protected[4].

56. Some other respondents thought that if these types of claims from the public who had suffered loss as a third party were rare, and we already expect applicants to pursue other remedies where reasonable and proportionate then there was no need to exclude these claims completely.

57. The LSCP's view was that professional principles extended beyond the contractual obligation to direct clients and that this had the potential to erode public and consumer confidence in the solicitors' profession. And that by cutting off all third-party compensation could lead to unjust outcomes, for example where the applicant is not the solicitor's client, but the legal work is intended to be of benefit to them. The LSCP thought our approach was at odds with our acceptance to receive complaints from third parties and felt that the impact of this proposal could reduce a solicitor's incentive to act fairly towards third parties, knowing that the third party had no right to claim on the fund, and would dissuade consumers from reporting misconduct, which might reduce intelligence on risks.

58. Some other respondents thought that if these types of claims from the public who had suffered loss as a third party were rare, and we already expect applicants to pursue other remedies where reasonable and proportionate then there was no need to exclude these claims completely.

59. The Law Society thought that this proposal could lead to people with otherwise valid claims being denied compensation. It noted that in some cases a firm's PII may cover a claim, but this would not be the case where there had been dishonesty by, for example, a sole practitioner. This would create a reputational risk to the profession and undermine public trust in the wider market for legal services, because it could result in blameless people being left to shoulder the cost of losses that were in fact the fault of SRA-regulated solicitors. It suggested that by removing the relative certainty provided under the current arrangements, liability concerns could increase the cost and difficulty of

[4] They highlighted an additional scenario in a recent case where a guarantor's (not a client) money held by a law firm was lost but the money was being held on trust (Goyal v Florence Care Ltd & Ors [2020] EWHC 659 (Ch) (19 March 2020)).

conducting business and particularly where large amounts of money are involved. Their view was this would also create too much uncertainty for consumers as to how they are protected. It also argued PII premiums would have to be adjusted to reflect the increased risk of claims relating to work of legal professionals from outside the firm and this could impact particularly on conveyancing firms in an already hard insurance market.

60. The Westminster & Holborn Law Society agreed in general terms with our proposal. However it also suggested that we might wish to allow claims from a party who is not the direct client of the defaulting practitioner but on whose behalf the defaulting practitioner held the money in accordance with an undertaking given to the them or their solicitor or on their authority.

Our response

61. We have considered the feedback we received and decided to amend this proposal to allow claims from non-clients in certain circumstances. We will proceed with limiting payment to:

    - people for whom the legal service has been provided, and
    - parties 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.

62. Reflecting the Holborn and Westminster suggestion this may be for example where the solicitor is holding money in accordance with an undertaking given to them or their solicitor (as is common in conveyancing) or where the third party relied on the solicitor to transmit damages in a personal injury case. This amendment recognises that effective operation of the legal system requires mutual reliance and trust between solicitors on each side of a transaction or dispute.

63. As now, we would refuse claims where we think that the third party should explore an alternative remedy (eg against insurers). We would also refuse claims where the solicitor was not directly involved in the transaction, for example where a solicitor's name is associated with an investment transaction to provide credibility but there is no underlying legal work involved.

Comments and feedback for question five

“Q5: Do you think we should expressly include a right for the client of a solicitor whose actions have caused the loss for which they are liable to make a claim on the fund, if no other redress is available?”

64. Linked to the proposal to exclude claims from non-clients, we were interested in whether we should expressly include a right for the client of the regulated provider whose actions have caused the loss to make a claim to the fund in circumstances where they (the client) had been held personally liable for the loss, and the third party had been unable to make a claim against their own solicitor.

Summary of responses

Agree	11
Disagree	1
Other	3

65. All respondents that agreed with the proposal felt the fund should be available to those who are unable to recover their losses for which the regulated provider was responsible, and it would not be fair or ethical to leave the client to suffer the burden of loss due to the fault or negligence of their solicitor.

66. The LSCP's view was that if the party who had suffered a loss must first pursue the client of the defaulting solicitor for the loss, even when it is not the client's dishonesty that has led to the loss, the approach was convoluted and long-winded which would add unnecessary cost, delay and stress to consumers.

67. The Legal Ombudsman's preference was for access to the fund to remain as it was to allow non clients to continue claiming where necessary.

68. Birmingham Law Society in its response were concerned about how it would work in practice. It also thought that the client of a firm that had caused the loss would face financial disincentive in taking action against the third-party client such that they became personally liable because of our proposal to only allow claims for legal costs in exceptional circumstances.

Our response

69. Having regard to the change in our position on applications from non-clients, we do not consider it necessary to include an express provision for clients of the defaulting solicitor or firm to claim on the fund if they find themselves held liable for the other parties' loss. The other party will be able to make a claim on the fund in the circumstances set out above.

70. If the other party does hold the client of the defaulting solicitor personally liable for the loss then, as is now, the client can make a claim on the fund providing all other avenues of possible redress have been exhausted.

Comments and feedback for question six

"Q6: Do you agree with the proposal to introduce a multiple application cap?"

71. We proposed to introduce a new mechanism that would allow us to manage the potential liability to the fund presented by high-value connected applications such as those related to property and other investment schemes. This will make it easier for us to be consistent in the level of contributions levied each year, providing greater certainty and ability to manage outgoings by those we regulate. The proposed approach would still allow all eligible applicants to receive a reasonable level of redress, that compares favourably to other schemes with capping mechanisms. The proposal was to cap payments:

    - arising from a single or connected event, and
    - which are likely to exceed a specified financial threshold.

Summary of responses

Agree	7
Disagree	8
Other	0

72. There was a mixed response about this proposal. The majority agreed that in principle a capping mechanism could be beneficial and necessary. Some of these respondents however expressed concerns with how we said we would apply the cap in practice. These concerns are discussed further in paragraphs 87 to 89.

73. The Law Society agreed, with some reservation, with the proposal accepting that it was necessary to limit the scope of some claims, especially those resulting from certain types of connected events or transactions, such as

investment, tax avoidance, litigation funding, or property schemes[5], which can result in large payments from the fund. Its view was that it was important that consumers understood when losses would be covered, and this supported the notion of operating the fund in a transparent way.

74. The Legal Ombudsman acknowledged the approach was a way to maintain the viability of the fund whilst acknowledging that this would mean lower payments to consumers in some circumstances compared to now.

75. Those who disagreed with the proposal in principle were concerned that some consumers would see reductions in redress compared to what they would have been received had there been no connection to other claims, and this may appear unfair. The LSCP thought that the application of the cap in some conveyancing and personal injury matters could have unintended consequences. It said that unlike investment schemes the impact of not receiving a full grant available for a single claim might mean that they are made homeless or, in personal injury cases, applicants might not be able to afford personal care for their lifetime. It also thought we needed to do more to supervise firms involved in for example, investment schemes and the use of effective enforcement measures.

Our response

76. We are pleased that most respondents agreed in principle that a capping mechanism could be beneficial and necessary. We will proceed with our proposal to cap where multiple claims arise out of a single or connected event. We explained in our consultation that one situation where we might need to apply the cap is from solicitors' involvement in investment schemes. We explain how we are also tackling solicitors' involvement in these schemes in paragraphs 112 to 115 below.

77. There may be other events that give rise to multiple client losses. If we decide that it is reasonable in these situations to apply the cap it is still likely that all applicants will receive some level of redress. In deciding how the cap is apportioned we also have the flexibility to consider the nature of the issue for each situation. We explain this further in paragraph 90 below.

[5] Claims arising out of these activities are often refused on the basis that the work being done by the solicitor/law firm was not the usual business of a solicitor.

Comments and feedback for question seven

"Q7: Do you agree that we set a financial threshold of £5m? Please provide any available evidence to support your response."

78. We also proposed to set a total cap of £5m for any single scheme that is captured. We said we thought that this approach provides transparency and certainty for the public, the profession and the fund. Several other compensation schemes that have caps set them at a fixed level. We stated in the consultation that we may periodically review the £5m figure based on the changing profile of claims. The £5m threshold was set as a proportionate sum, by reference to the expected payment for high value schemes we are aware of that are giving, or may give rise, to claims on the fund and the need to balance contribution levels from the profession. Our Board reviewed confidential data about claims in deciding to consult on this figure for the cap.

Summary of responses

Agree	4
Disagree	7
Other	4

79. Most respondents disagreed with this proposal raising concerns around fixing a total amount for any scheme at £5m to be apportioned between eligible claimants. This was in terms of whether £5m is the right amount, with some highlighting that we had provided limited data to support this figure.

80. This included the LSCP who said that there was no clear explanation of where the £5m figure had been derived from and that to consider the adequacy of any financial threshold would depend on circumstances of the event/connected event. A suggestion was made that even if financial threshold was set then there needed to be scope to consider extending/removing the cap in exceptional cases. The Law Society also thought there was no pressing need to fix a limit.

81. Some respondents argued that it would be fairer to adopt a more flexible approach, deciding the limit on a case-by-case basis. Considerations might include the level of reserves in the fund at the time, the impact of the loss, the culpability of the applicant and even the wider economic climate. Some

respondents argued that this would maximise the chances that applicants would receive fuller redress and would provide flexibility to address any unintended consequences or unusual situations.

82. For example, Newcastle Upon Tyne Law Society thought the fund could not be provide an open-ended guarantee of investment schemes but that the capping of any claims should be exercised as a discretion, with decisions on the level of the cap and how to apportion across claims made having regard to the specific circumstances of each case.

83. The Law Society suggested that if we introduced a fixed cap it should not apply to all claims relating to the same or connected underlying circumstances, but it should instead apply to all the clients of a particular firm with claims relating to the same or connected underlying circumstance. Its rationale was that if we also required the solicitor to inform the potential client approaching them that they might be subject to a multiple application cap for the relevant work that the firm was going to do, they might approach a different solicitor. In turn, this would make it more likely that the dubious nature of the scheme might be exposed if the original solicitor had not realised that it was dubious

Our response

84. We remain of the view that setting a fixed-level cap is the fairest and most transparent option. This provides the most certainty for clients, the profession and the fund. This will in turn provide greater flexibility for us to adopt a less conservative reserves approach to cover potential liability, with the associated contribution costs to the profession, which may ultimately be passed to consumers. A more flexible, discretionary limit would not provide certainty and would mean that any decision to limit payments that go below full recompense for an individual may result in challenge.

85. 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 explain this further in our Impact Assessment at paragraphs 45 to 52. We will review this figure periodically in light of claims data and other information.

86. We also remain of the view that the cap should be flexible enough to apply to payments arising from a single or connected event and not to individual firms, of which there may be several involved in an event. This is so we can manage the potential liabilities of the scheme to make sure it remains viable.

Comments and feedback for question eight

"Q8: Do you have a preference for any method of apportionment or that we retain the option to apply any of these depending on the circumstances?"

87. We set out that we would provide ourselves with the flexibility to apply any of a number of options for apportioning the £5m between applicants depending on the nature of the issue. For example, the money is divided equally among all applications brought within an advertised time limit.

Summary of responses

88. Local law societies and the Legal Ombudsman felt that, given the specifics of any one or connected claim, it would be better to retain a broad discretion in how grants were apportioned in the event of that the decision to cap grants was made. The Legal Ombudsman commented that it would like us to consider apportioning payments to the actual loss suffered rather than for example, all applicants receiving the same amount.

89. The Law Society's view was that our proposed approach to having the flexibility to respond differently in different situations was right and acknowledged the complexities of some case. The application of a more rigid formula could result in inequitable outcomes. Of the options set out in the rules, it thought that payment per claim by reference to the size of the loss of the respective claimants was preferable, although it appreciated that in the event of larger multiple applications it could be difficult to determine the relative size of individual applicants' losses. It strongly disagreed with the option that '…*an amount for each claim recovered per scheme based on what another regulator may pay in the same circumstances*…' should be set.

Our response

90. We will proceed with the approach to apply any of a number of options for apportioning the £5m between applicants depending on the nature of the issue. This approach gives us flexibility to consider and respond to the particular circumstances of the event to make sure we reach the fairest outcome. In each case we will make sure that we treat applicants consistently and fairly, communicating the outcome so that we are transparent.

Comments and feedback for question nine

"Q9: Do you have any other comments on the features of the proposal to cap multiple claims?"

Summary of responses

91. Birmingham Law Society commented that the capping of multiple claims arising from the same circumstance should be managed in such a way as to ensure that it is not a lifetime cap ie that there needs to be an end date for when the cap no longer applies.

92. Although accepting the principle that a mechanism to cap claims was right, the Law Society said that the proposal could lead to uncertainty for clients, who could not know how much they would recover until sometime after all claims have been received. It thought it was difficult to see how such delay could be avoided. However, closing the date for applications too early could disadvantage the most vulnerable clients, who might not be aware of their rights and could miss the opportunity to claim.

Our response

93. Once we are aware of an issue that could give rise to multiple applications our general experience is that potential applicants can be identified relatively quickly and signposted to make an application. To avoid delays, we are also reviewing our systems and processes to make sure we can process these payments efficiently and communicate early with applicants about the level of payment they will receive.

94. We are also undertaking work to help us communicate clearly to consumers how they are protected by the fund, including the circumstances in which a cap may be applied.

Comments and feedback for question ten

"Q10: Do you agree with the revised approach to how we will apply the single application limit?"

95. In the consultation we explained that we do not currently set out a definition of a single claim that would attract our maximum payment limit.

96. In our first consultation we suggested that the general principle should be that where the loss of money relates to single retainer, that should be dealt with as a single claim on the fund. In light of the responses received we acknowledged

that by linking a single claim to a single retainer may lead to an unfair outcome is some circumstances. We agreed that our approach should be flexible enough to reflect factors such as the nature of the relationship between parties to the retainer (or those benefiting from the services provided in the case of beneficiaries.

97. We consulted on a proposal to apply the single claim limit to each individual applicant receiving payment. Each individual applicant will receive a maximum of £500,000 for the loss arising from a single event or set of circumstances. This would mean for example, where a separating couple that has jointly instructed a solicitor to sell the family home that is worth significantly more than £500,000 and the sale proceeds are stolen, each person could make a claim for up to £500,000.

Summary of responses

Agree	8
Disagree	6
Other	1

98. The Law Society, local law societies and the Legal Ombudsman agreed that this revised approach was fairer than applying the limit to a single retainer, which is what had been proposed in our earlier consultation.

Our response

99. There was general support for this proposal and no issues raised that we think require us to amend our proposed approach to how we will apply the single application limit.

100. We will develop guidance to show how the single claim limit will apply to each individual applicant that makes an application (or applications) for the loss incurred by them arising from a single event or set of connected underlying circumstances.

Comments and feedback for question eleven

"Q11: Do you have any other comments on the proposals and impacts we have set out in the consultation? Are there any impacts particularly Equality Diversity and Inclusion impacts that you think we have not identified?"

101. Most respondents felt that they had raised concerns in response to specific questions.

102. Local law societies highlighted that firms in their local areas were often small firms and engaged with people that might be vulnerable. There were concerns about the possible disparity between the consumer protection arrangements and different outcomes for clients of small firms because they are unable to rely on the higher level of insurance cover if a solicitor has been dishonest. This could put people off using a small firm.

103. There was also a concern that the reduction in the maximum payment to £500,000 could impact on clients with personal injury or mis-selling financial product claims.

104. We set out some of the discreet issues raised and our response in our impact assessment.

Other issues raised

Intervention and operational costs

105. The LSCP and the Law Society discussed in their responses that a significant proportion of the fund's spend goes on intervening in and closing down firms. They questioned whether it was right that these costs should come from the fund. And if it was, whether focusing on reducing these costs might reduce the need to introduce measured to better prioritise direct payments. The cost of interventions and whether they should be paid from the fund was not something we discussed in this consultation.

106. The Law Society also commented that if the expenses incurred in the administration of applications are routinely increasing then that needed to be addressed before resorting to the reforms proposed.

Our response

107. The Solicitors Act 1974 provides that the cost of interventions may be paid from the fund. We revisited this in 2013 and concluded that that it was proportionate

and appropriate to do so. The alternative is to fund this activity through practising certificate fees, which is still a cost to the profession. The Board felt that the fund does carry reserves that allows it to better deal with the unpredicted costs of interventions and the connected payment of grants, which could not be accommodated within our budget in the same way as other operational activities.

108. We intervene in firms to protect the public interest on the grounds set out in legislation. We cannot control the instances where this threshold is met, and this varies year on year. We make every effort to work with firms to avoid the need for an intervention. And we are publishing new guidance to highlight our work in this area and encourage early discussion with firms where they are in difficulties.

109. The cost of an intervention will depend on the scale of work involved in closing the solicitor's practice and the amount of work that is involved in sorting through what could be a very poorly managed firm. In all cases we aim to allocate our resources efficiently so that the cost of any intervention is proportionate. Where possible, we will always look to the intervened firm and culpable individuals to recover the costs incurred. The total recovered over the past three financial years was circa £8.7m. This is made up of both intervention costs and grant recoveries. This figure does not however, include any subrogation back to the fund from the statutory trust.

110. The principle of allocating our resources efficiently applies equally to how we deal with applications received. We constantly look at ways of making sure that the costs are proportionate and will look to absorb any additional costs through efficiency savings.

Regulating better

111. The Law Society and the LSCP both highlighted in their response that more needed to be done to tackle solicitors involved in investment scams or misconduct through supervisory and enforcement activities. The Law Society also added that in its view, the problems existed because of the failure to properly inform the profession in respect of schemes that caused a loss of money.

Our response

112. It is acknowledged that while most solicitors do not become involved in high-risk or fraudulent schemes, those that do lend a veneer of credibility which third-party fraudsters can exploit to help persuade consumers that it is a legitimate venture. The solicitor's involvement is sometimes given as a safeguard that suggest that monies will be protected.

113. We continue to focus our regulatory action on the solicitors involved. In the last five years, we have taken 48 solicitors and two firms to the Solicitors Disciplinary Tribunal for being involved in questionable investment schemes. We have also issued guidance for the profession and the public, and published three warning notices about the key signs of dubious investments in 2013, 2016 and 2017.

114. Despite this action to deter and warn solicitors about the risks of these schemes, we continue to receive reports of solicitors who have been involved in high-risk investment schemes and a number of claims on the fund.

115. We have also carried out a thematic review of cases where solicitors have been involved in questionable investment schemes. This has helped us better understand the evolving nature of this risk, and how solicitors are sometimes unknowingly becoming involved. This review has shown that firms of all sizes are exposed to this risk and no firm should be complacent about taking steps to protect consumers. We have maintained the risk of solicitors and law firms involved investment schemes/high-risk transactions as a priority risk in our Risk Outlook.

Next steps

116. We will be submitting our rules to the Legal Services Board for formal approval. Subject to its approval, we will then work towards implementation including making any necessary operational changes.

117. We will continue to develop guidance to support the interpretation of the rules whilst working with our stakeholders. We will also be working with consumer groups to make sure that information for applicants is easily accessible and understood so that applications can be easily made.

List of respondents

Name	Respondent Type
Publish the response with my/our name ***Responses from organisations***	
Association of Personal Injury Lawyers (APIL)	Representative industry group
Birmingham Law Society	Law society
Devon and Somerset Law Society	Law society
Ecohouse Creditors Representative	
Kent Law Society	Law society
Legal Ombudsman	Other (Organisation)
Legal Services Consumer Panel	Representative consumer group
Leicestershire Law Society	Law society
Liverpool Law Society	Law society
Newcastle Upon Tyne Law Society	Law society
Northamptonshire Law Society	Law society
Professional Negligence Lawyers Association	Representative industry group
The Law Society	Law society
Westminster & Holborn Law Society	Law society
Publish the response anonymously ***Responses from individuals***	
ID25	Non-legally qualified, working in legal services