



Summary of decision

The purpose of this summary sheet is to provide a high level and accessible overview of the Legal Services Board's ("the LSB") decision. Readers are recommended to read the formal decision notice below for further detail. **This summary is not and should not be taken as a formal part of the LSB's decision notice under the Legal Services Act 2007 ("the Act").**

The LSB's decision is to grant in full the application from the Solicitors Regulation Authority (SRA) approving alterations to its regulatory arrangements in respect of its Compensation Fund. The application proposes that the contribution level for 2021/22 is £11.6m (reduced from £14.5m in 2020/21). This will mean an individual contribution of £40 (2020/21: £50) and a firm contribution of £760 (2020/21: £950).

Following the assessment of the SRA's application, the LSB has concluded that the changes do not meet the refusal criteria in the Act.

Decision notice

The Solicitors Regulation Authority (“SRA”) rule change application for approval of alterations to the regulatory arrangements relating to Compensation Fund contributions for 2021/22

1. The Legal Services Board (“**LSB**”) has granted an application from the Solicitors Regulation Authority (“**SRA**”) for approval of Compensation Fund Determinations for 2021/22 which set the level of contribution to the SRA Compensation Fund for individual solicitors, and recognised sole practitioners and recognised bodies who receive or hold client money, authorised by the SRA.
2. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (“the Act”) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Law Society is an approved regulator and the SRA is the regulatory arm to which the Law Society has delegated its regulatory functions.
3. This decision notice sets out the decision taken, including a description of the changes. The notes at page 6 of this notice explain the statutory basis for the decision.
4. The chronology for the LSB’s handling of this application is also set out below.

Chronology

- The LSB confirmed receipt of an application from the SRA on 30 July 2021.
- The 28-day initial decision period for considering the application ends on 26 August 2021.
- This decision notice is effective from 18 August 2021.
- The decision notice will be published on the LSB’s website by 20 August 2021.

Background

5. On 30 July 2021, the SRA submitted an application to the LSB for approval of changes to its regulatory arrangements relating to Compensation Fund contributions.
6. Each year the SRA considers the level of contributions required for the Compensation Fund from the individuals and firms that it authorises.
7. The established apportionment used for allocating the cost of the Compensation Fund is that 50% of the cost is contributed by regulated individuals and 50% is contributed by regulated firms holding client money. The SRA sets the proposed level of contribution by assessing expected pay outs and levels of claims against historic trends on claims numbers, amounts and timings and relevant specific information where available.

8. Contributions have decreased in each of the last two years and the SRA is proposing a further decrease this year. The SRA application explains that the decrease, on the best information available, will set the fund at a level where it can be managed on a sound financial basis.
9. The SRA also explained that the calculation of the contribution is based on predicted numbers and costs of interventions in the coming years, continuing trends for business as usual and claims in relation to uninsured firms, high-risk potential liabilities where known, and the continuing Covid-19 pandemic.
10. As a result of its analysis, the SRA considers that the minimum reserve requirements it has set can be satisfied by a lower level of contribution in the coming year.
11. It is notable that the LSB approved new Compensation Fund Rules on 14 June 2021¹. However, those Rules have not been considered by the SRA in setting the contribution levels proposed in this application. The SRA states it will take into account how these Rules should factor in its forecasting in future years. The impact of the Rules will depend on the nature of interventions undertaken and therefore estimated grant levels.

Proposed changes

12. A contribution level of £11.6m has been proposed for 2021/22. The SRA has therefore determined that the contributions required are £40 from individuals and £760 from firms. This is compared to the approved contribution level of £14.5m for 2020/21, with individual and firm contributions for £50 and £950 respectively.

Key issues considered in the assessment

13. The LSB notes the fact the SRA has been able to propose a reduction in contributions whilst maintaining an appropriate fund in line with the new principles it has in place for setting the level of contributions to the Compensation Fund.
14. Having considered the SRA's application and supporting documents, the LSB makes the following key points in relation to the application.

Principles

15. During the course of last year's assessment, the SRA confirmed that future applications would refer directly to the new principles it had consulted on for its Compensation Fund and how they have been applied in setting the level of contributions.
16. We welcome the inclusion in this year's application of a summary of the principles at Paragraph 14 and full detail of the principles in Annex D to the application. The SRA

¹ <https://legalservicesboard.org.uk/sra-compensation-fund-decision-notice>

application also explains that the primary objective is principle one which is to maintain the viability of the Fund.

Consultation

17. In last year's decision² the LSB noted that the SRA did not directly consult on the proposed level of contribution to the Fund and did not explain in its application the reasoning behind its decision not to consult.
18. This year the SRA has provided us with detail on its stakeholder engagement including the consultation it issued (application paragraphs 25-38). In addition, the SRA directly asked whether consultees agreed with the proposed reduction in the Compensation Fund contribution level for individuals. The application also explained that where responses referred to the proposed reduction, it was generally welcomed.
19. The SRA also included an initial Equality Impact Assessment (EIA) with its consultation (Annex E to the application) and asked for any views or comments on its conclusion that there was no potential for positive or negative impact on protected groups (where enough data was held to draw meaningful conclusions).
20. The application explained that no responses to the consultation indicated that the SRA analysis was incorrect or suggested that contributions would have a disproportionate impact on those with protected characteristics.

Impact

21. In last year's decision we explained that it was regrettable that an updated EIA had not been provided in the period since a differential impact on sole practitioners and firms with 2-4 partners (where Black and Asian lawyers are overrepresented) had been identified in 2017.
22. We set an expectation that the next application relating to Compensation Fund contributions would include an explanation of progress in relation to the differential impact the SRA had identified regardless of whether the wider fees review has been completed.
23. As explained at paragraph 19 above, the SRA included an initial EIA with this year's application. The Assessment concluded that there was no differential impact.
24. We asked the SRA to provide us with a further explanation of this given the different conclusion reached in the 2017 assessment and referred to in last year's application.
25. The SRA told us that the reason it flagged the over-representation in its previous application was to highlight this factual point as part of its commitment to recognising

² <http://legalservicesboard.org.uk/our-work/statutory-decision-making/alterations-to-regulatory-arrangements/attachment/20200812-decision-notice-sra-compensation-fund-2020>

that profile, rather than as something that was caused by the Compensation Fund model itself.

26. The SRA explained that the EIA supplied with this year's application was developed through an analysis of historic data for firms and the fees they pay. The EIA sets out how the contribution collection impacts across firms of different sizes. At paragraph 5 of the EIA the SRA explains that the contribution is a flat fee for both firms which hold client money and for individuals, so the total fee charged to a firm depends on the size of the firm. This means that fees will vary from £50 for a sole practitioner who does not handle client money to over £65,000 for the largest firms, employing over a thousand solicitors.
27. The SRA also set out that as large firms pay much more than small firms and they are often engaged in corporate and commercial work that does not attract claims on the Fund there is no indication of a disproportionate impact on Black and Asian lawyers who are over-represented in smaller firms.
28. The LSB is assured by the additional information supplied and welcomes the inclusion of an updated initial EIA alongside this year's application.

Decision

29. The LSB has considered the SRA's application against the refusal criteria in paragraph 25(3) of Schedule 4 to the Act. It considers that there is no reason to refuse this application and accordingly, the application is granted.
30. **Annex A** to this decision notice contains the Determination of Compensation Fund contributions approved by the LSB.

Matthew Hill, Chief Executive

Acting under delegated authority granted by the Board of the Legal Services Board

18 August 2021

Notes:

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that:
 - (a) granting the application would be prejudicial to the regulatory objectives
 - (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
 - (c) granting the application would be contrary to the public interest
 - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
 - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or
 - (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are:
 - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
 - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
 - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules³ about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

³ LSB's Rules for applications to alter regulatory arrangements – Version 2 April 2018
[https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20\(2\)/FINAL_Rules_for_applications_to_alter_regulatory_arrangements.pdf](https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20(2)/FINAL_Rules_for_applications_to_alter_regulatory_arrangements.pdf)

Annex A

Compensation Fund contributions 2021

This determination is made by the Solicitors Regulation Authority Board under rule 1.2 of the SRA Compensation Fund Rules 2021, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

- (1) Every person who applies for a practising certificate to commence on or after 1 November 2021, or who applies for initial registration or renewal of registration as a registered European lawyer or registered foreign lawyer to commence on or after 1 November 2021, shall pay with the fee payable in respect of that application, a contribution of £40 to the Fund.
- (2) Every recognised body or recognised sole practice that has held or received client money (as defined in the SRA Accounts Rules) during the period 1 November 2020 to 31 October 2021, shall pay with the annual periodical fee, a contribution of £760 to the Fund.
- (3) Every person that:
 - (a) applies for initial recognition as a recognised body or initial recognition as a recognised sole practice to commence during the period 1 November 2021 to 31 October 2022; and
 - (b) intends to hold or receive client money (as defined in the SRA Accounts Rules) at any time during the period 1 November 2021 to 31 October 2022.

shall pay with the fee payable in respect of that application, a contribution to the Fund as follows:

- i. £760 on applying for initial recognition to commence in the period 1 November 2021 to 31 December 2021;
 - ii. £570 on applying for initial recognition to commence in the period 1 January 2022 to 31 March 2022;
 - iii. £380 on applying for initial recognition to commence in the period 1 April 2022 to 30 June 2022;
 - iv. £190 on applying for initial recognition to commence in the period 1 July 2022 to 31 October 2022.
- (4) The SRA may waive the contribution payable under paragraph (3) above in circumstances where the initial application is made by a body which is changing its legal status or is succeeding to the practice of another authorised body and the predecessor body or practitioner has already paid a contribution to the Fund.

(5) In this determination:

Fund means the Solicitors' Compensation Fund established and maintained under rule 1.1 of the SRA Compensation Fund Rules 2021;

All other terms are to be interpreted in accordance with the Practising Certificate Fee Determination 2021.

(6) This determination shall come into force on 1 November 2021.

Compensation Fund contributions for Licensed Bodies 2021

This determination is made by the Solicitors Regulation Authority Board under rule 1.2 of the SRA Compensation Fund Rules 2021, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

- (1) Every licensed body that held or received client money (as defined in the SRA Accounts Rules) at any time during the period 1 November 2020 to 31 October 2021, shall pay, with the annual periodical fee, a contribution of £760 to the Fund.
- (2) Every licensed body that intends to hold or receive client money (as defined in the SRA Accounts Rules) at any time from the date on which the body is authorised to 31 October 2022, shall pay, with the initial periodical fee, a contribution to the Fund as follows:
 - i. £760 on applying for initial recognition to commence in the period 1 November 2021 to 31 December 2021;
 - ii. £570 on applying for initial recognition to commence in the period 1 January 2022 to 31 March 2022;
 - iii. £380 on applying for initial recognition to commence in the period 1 April 2022 to 30 June 2022;
 - iv. £190 on applying for initial recognition to commence in the period 1 July 2022 to 31 October 2022.
- (3) The SRA may waive the contribution payable under paragraph (2) above in circumstances where the initial application is made by a body which is changing its legal status or is succeeding to the practice of a recognised body or recognised sole practitioner and the predecessor body or practitioner has already paid a contribution to the Fund.
- (4) In this determination:

Fund means the Solicitors' Compensation Fund established and maintained under rule 1.1 of the SRA Compensation Fund Rules 2021;

All other terms are to be interpreted in accordance with the Licensed Body Fee Determination 2021.
- (5) This determination shall come into force on 1 November 2021.