



BIRMINGHAM LAW SOCIETY
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Response to SRA Consultation

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

March 2020

BIRMINGHAM LAW SOCIETY RESPONSE TO SRA COMPENSATION FUND CONSULTATION

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

It depends what is meant by “people” in question 1. If “people” means lay clients who are unrepresented then it might be helpful to adopt less formal/legal language. If “people” means the profession then the proposed purpose statement is satisfactory.

Also, one could argue that understanding when a claim is likely to be paid (or more importantly not paid) after the applicant has already lost money and comes to make a claim on the Fund, is a bit late in the day.

2. Do you agree with our revised proposals to remove hardship tests for all individuals, small businesses, small charities and small trusts?

We agree

3. 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?

It is not clear from the consultation paper – paragraphs 83 to 85 – as to how this discretion would be exercised so we are unable to agree or disagree. Future guidance is promised at paragraph 85. However, the present proposal appears vague and unsupported by any data. For example, we are not clear what is meant by “rare” as “on rare occasions” and how this links into the abandonment of the hardship test.

4. 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?

We are not convinced. The current position is that any person who entrusts funds to a solicitor can claim from the Fund if those monies are misappropriated. Removal of this category of potential applicants raises an important point for the reputation of the profession. We have traditionally been known as the profession which can be “*trusted to the ends of the earth*”¹. The Fund has played a key role in the public perception of our profession. If you deal with a solicitor in whatever capacity, your money will be safe. If this restriction is imposed then you will only be covered by the Fund if you are a client.

There are three examples at paragraph 89 of those applicants who would no longer be able to claim as follows: -

1. A buyer who has lost money because of the dishonesty of the seller’s solicitor in a conveyancing transaction would be excluded.
2. Third parties in personal injury claims such as vehicle hire companies where the solicitor has not paid their costs out of the client’s damages received because they have been lost or stolen.
3. An opposing party in divorce proceedings in a legal proceedings such as spouses in a divorce matter where the other solicitor is holding and then steals the money set aside for a financial settlement.

Whilst managing cost is a sensible objective, the Fund has always been a key consumer protection, head and shoulders above other schemes. Lessening eligibility could reduce trust and confidence in the profession. We have always been able to say with absolute confidence to a member of the public that if you deal with a solicitor then your money is safe and secure. If anything goes wrong, the Compensation Fund will step into the breach as a safety net. That will no longer be the case if all of the proposals are adopted. One can just imagine the damaging headlines – “*Mrs Smith loses life savings because of dishonest solicitor & profession refuses to compensate*”.

¹ *Bolton v Law Society [1993] EWCA Civ 32*

We have always had a Roll-Royce scheme compared to other professions so this would be a fundamental change and needs careful consideration before adoption.

In a similar vein, we cannot see any data as to the frequency of non-client claims and the amount paid out in such cases. If there are only a few cases per annum then it would be prudent to retain the ability of non-clients to claim but only where no other remedy is available

5. 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?

In principle yes – but the SRA should think about the practicalities. The client in question would have no interest in assisting the non-client and would not be able to seek legal advice unless he funded the costs himself as the SRA will not allow claims for legal costs to be made from the Fund.

6. Do you agree with the proposal to introduce a multiple application cap?

Yes

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

We agree – in order to protect the Fund.

8. 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?

No – the SRA should exercise its own discretion in the specific circumstances to ensure that equity prevails.

9. Do you have any other comments on the features of the proposal to cap multiple claims?

The capping of multiple claims arising from the same circumstance must be managed by the Fund in such a way as to ensure that it is not a lifetime cap.

10. Do you agree with the revised approach to how we will apply the single application limit?

Yes

11. 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?

Yes - see paragraph 72 of the Consultation paper - paragraph 4.1 of the Draft Rules seems not to take on board the proposal regarding charities and trusts.

Also, we refer to the argument that the SRA Fund is much more generous than other schemes. Some of the regulators used by way of comparison are very new on the scene (the Institute of Chartered Accountants probate scheme) and have very few members so these comparisons are not terribly convincing.

We cannot identify any other EDI impacts.

20 March 2020

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