

Mr Matthew Hill
Chief Executive
Legal Services Board

Contact:
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Date: 20 December 2023

Dear Mr Hill

Axiom Ince Ltd
SRA Compensation Fund

1. This letter is written on behalf of the Law Societies of Birmingham, Bristol, Leeds, Liverpool and Manchester, known collectively as the Joint V. It was prepared ahead of the Statement issued by the LSB on 19 December and we believe that it is worthwhile to present our view.
2. It addresses two issues –
 - a) Review of the SRA's role in relation to Axiom Ince Ltd; and
 - b) The potential call on the profession for contributions to the SRA Compensation Fund.

The events leading up to the intervention in Axiom Ince Ltd

3. Paul Philip has publicly expressed confidence that the SRA did everything it should have done according to its regulatory arrangements.
4. Many in the profession have expressed doubt whether that is so, believing that the 13-fold increase in the size of the firm from April to July 2023, including the acquisition of international offices, should have triggered review, either for reasons of anti-money laundering supervision or generally. There is also a comment on the Gazette website from a person claiming to have reported concerns over the firm's client account in November 2022.
5. If earlier review of the firm was not triggered by the provisions of the SRA's regulatory arrangements, this also begs the question of whether those arrangements should be reviewed.

6. Section 28 of the Legal Services Act 2007 requires that the SRA be accountable. The scale of the losses of client money is such that the profession should have independent assurance that confidence in the SRA's governance is warranted.
7. You informed the House of Commons Justice Committee that the LSB is exploring options for an independent, objective review of the events leading up to the SRA's intervention into Axiom Ince, which we support.
8. You described the SRA to the House of Commons Justice Committee as the 'most sophisticated, mature, best-resourced and arguably most effective regulator in our sector'. Having expressed such a view, we believe that the confidence of the public and the profession in any review requires that it be independent of the LSB as well as the SRA.
9. We would welcome discussion on the framework and terms of reference for such a review. We suggest that a retired High Court judge, or a King's Counsel, and a solicitor with recent experience of being subject to SRA regulation may be appropriate.

The Compensation Fund

10. The SRA has decided that it will not be imposing an overall cap on claims against the Compensation Fund. While this may be deferred for now, press reports indicate that it may amount to £400 per solicitor.
11. The SRA states that it has received claims totalling approximately £33m and it has paid out certain "emergency claims" already, but that "[if] funds are recovered from the insurance claim [which it is pursuing against Axiom Ince's insurers] or from the sale of frozen assets, then these will be used to replenish the compensation fund'. This approach appears to be inconsistent with rule 2.1 of the SRA Compensation Fund Rules 2021 (the SCFR) which provides that the Fund is a 'fund of last resort'. In any event, the Dixon Coles & Gill case, which took six years from SRA intervention to the Court of Appeal decision on insurance coverage, suggests an insurance claim will be complex and may take years.
12. The SRA introduced a discretion to impose a £5m cap on the Compensation Fund in rule 10.1 of the SCFR, after extensive consultation and with Legal Services Board approval, in 2021 in order to address the risk of 'multiple applications...that relate to the same or connected underlying circumstances'. The present circumstances fall fairly and squarely within that provision.
13. The SRA has decided not to exercise its discretion to apply the cap. However, section 28 requires that it exercise its power in a manner which is proportionate. We are unable to see how failure to impose the cap where the claims may exceed it by thirteen times might be proportionate. The SRA states that the cap was introduced in a different context, investment fraud, but the rule which has statutory force is not restricted in its effect and the SRA has given no other reason not to apply the cap.
14. We are not aware of any reported decisions on the meaning of 'proportionate' in section 28. However, in a different context, planning, in *R (on the application of Heath & Hampstead Society) v Vlachos*,¹² Carnwath LJ said³ 'It would be impossible, in my view, to argue that "proportionate" in this context is unrelated to relative size. For example, an extension three times the size of the original, however beautifully and unobtrusively designed, could not, in my view, be regarded as "proportionate" in the ordinary sense of that word.'


Conclusion

15. We would appreciate engagement on the issue of review and confirmation that our submission on that and on the Compensation Fund contribution will be drawn to the attention of the Board.

16. We are copying this letter to Paul Philip.

The views expressed in the letter are not necessarily the views of the individual members or directors of the Joint V.

Yours sincerely



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¹ [2008] EWCA Civ 193

² At [36]