

SRA Amendment to Regulatory Arrangements (Client Protection) Rules 2012

Rules dated 22 June 2012 made by the Solicitors Regulation Authority Board.

Made under Part I, Part II, sections 79 and 80 of, and paragraph 6B of Schedule 1 to, the Solicitors Act 1974 and sections 9 and 9A of, and paragraphs 14A, 14B and 32 to 34 of Schedule 2 to, the Administration of Justice Act 1985, paragraphs 2 and 3 of Schedule 14 to the Courts and Legal Services Act 1990 and section 83 of, and Schedule 11 to, the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

Coming into force on 1 October 2012.

The instruments referred to in Column (1) of the table set out below shall be amended in accordance with the corresponding entry in Column (2).

| (1) Instrument | (2) Provision |
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| SRA Handbook Glossary 2012 | <p>In the definition of "authorised insurer" replace "where relevant "class" has the meaning" with "where "relevant class" has the meaning".</p> <p>Insert a new definition as follows: "cessation period means, in respect of a <i>firm</i> and its <i>policy of qualifying insurance</i>, the period commencing on the expiry of the <i>extended indemnity period</i> in circumstances where the relevant <i>firm</i> has not ceased <i>practice</i> or obtained a <i>policy of qualifying insurance</i> for a <i>period of insurance</i> or, if prior to 30 September 2013, the remainder of the <i>indemnity period</i> (as the case may be) that immediately follows the <i>period of insurance</i> to which the relevant <i>policy</i> relates, and ending on the date which is the earlier to occur of:</p> <ul style="list-style-type: none"> (i) the date, if any, on which the <i>firm</i> obtains a <i>policy of qualifying insurance</i> incepting with effect on and from the commencement of the <i>extended indemnity period</i>; (ii) the date which is 90 days after the commencement of that <i>extended indemnity period</i>; or (iii) the date on which the <i>insured firm's practice</i> ceases." <p>In the definition of "claim" replace the word "person" with "<i>person</i>".</p> <p>In saving provision (B) of the definition of</p> |

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| | <p>"employee":</p> <ul style="list-style-type: none"> (a) replace "MTC" with "SRA Indemnity Insurance Rules"; (b) replace "associate" with "associate"; (c) replace "appointed person (as defined in the SRA Indemnity Insurance Rues)" with "appointed person". <p>Insert a new definition as follows: "existing instructions" means instructions to carry out <i>legal activities</i> received by a <i>firm</i> from a client, which the <i>firm</i> has accepted, on terms that have been agreed by the client, prior to the <i>firm</i> becoming subject to cover under the <i>cessation period</i>."</p> <p>Insert a new definition as follows: "extended indemnity period" means the period commencing at the end of the last <i>indemnity period</i> to which the <i>policy</i> relates and ending on the date which is the earlier to occur of:</p> <ul style="list-style-type: none"> (i) the date which is 30 days after the end of the last <i>indemnity period</i> to which the <i>policy</i> relates; (ii) the date on which a <i>policy</i> of <i>qualifying insurance</i> in respect of the relevant <i>firm</i> incepts that is applicable to the <i>indemnity period</i> or the remainder of the <i>indemnity period</i> (as the case may be) which immediately follows the last <i>indemnity period</i> to which the relevant <i>policy</i> relates; (iii) the date on which the <i>insured firm's practice</i> ceases." <p>Throughout paragraph (iii) of the definition of "principal" replace "person" with "<i>person</i>" except where the word "legal" immediately precedes "person".</p> <p>In the definition of "prior practice" replace "clause 5.3(a)" with "clause 5.6(a)". In paragraph (i) of the definition of "private legal practice" replace the word "<i>lawyers</i>" with "<i>lawyers</i>".</p> <p>In the definition of "SIIR" replace "2010" with "2010, the SRA Indemnity Insurance Rules</p> |
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| | <p>2011"</p> <p>In the definitions of "SRA Indemnity Insurance Rules" and "SRA Indemnity Rules" replace "2011" with "2012".</p> |
| <p>SRA Compensation Fund Rules 2011</p> | <p>In rule 1.3, replace "rule 25.2" with "rule 26.2".</p> <p>In rule 3.1, add the word "primary" after the word "The" at the commencement of the rule.</p> <p>Insert a new rule 3.2 as follows:</p> <p>"3.2 It is also an object of the Fund to provide compensation in respect of the civil liability of a <i>defaulting practitioner</i> or a <i>defaulting practitioner's employee</i> or <i>manager</i> who in accordance with the <i>SRA Indemnity Insurance Rules</i> should have had, but did not have, in place a <i>policy of qualifying insurance</i> against which a <i>claim</i> could be made in respect of such civil liability."</p> <p>Re-number the rules 3.2 to 3.3, rule 3.3 to 3.4, rule 3.4 to 3.5 and rule 3.5 to rule 3.6.</p> <p>In the re-numbered rule 3.4 add the words "(save in respect of a grant made under rule 5)" after the words "the Fund".</p> <p>In the re-numbered rule 3.5, replace "rule 3.3(b)" with "rule 3.4(b)".</p> <p>Insert a new Rule 5 as follows:</p> <p>"Rule 5: Grants in respect of uninsured defaulting practitioners"</p> <p>5.1 A grant may be made to provide compensation for loss suffered as a result of the civil liability of a <i>defaulting practitioner</i> or a <i>defaulting practitioner's employee</i> or <i>manager</i> who in accordance with the <i>SRA Indemnity Insurance Rules</i> should have had, but did not have, in place a <i>policy of qualifying insurance</i> against which a <i>claim</i> could be made in respect of such civil liability.</p> <p>5.2 Where an application for a grant is made under rule 5.1 a grant will only be made in circumstances where:</p> |

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| | <p>(a) the <i>defaulting practitioner</i> should have had, but did not have, in place a <i>policy of qualifying insurance</i> against which a <i>claim</i> could be made in respect of the civil liability of the <i>defaulting practitioner</i> or the <i>defaulting practitioner's employee or manager</i>;</p> <p>(b) the liability of the <i>defaulting practitioner</i> or the <i>defaulting practitioner's employee or manager</i> arises from <i>private legal practice</i> in connection with the <i>defaulting practitioner's practice</i>; and</p> <p>(c) the loss is not covered by the <i>SIF</i>.</p> <p>5.3 Any grant made under this rule 5 will be made in accordance with these rules and otherwise will be assessed and determined in accordance with the terms, conditions and exclusions of the <i>MTC</i> as though the <i>defaulting practitioner</i> had a <i>policy of qualifying insurance</i> against which a <i>claim</i> in respect of the loss had been made.</p> <p>5.4 Rules 4, 6, 7, 8.1, 9, 10.3, 14, 15.3 and 20 shall not apply to any grant made under this rule 5.”</p> <p>Re-number the existing rules 5 to 25 as rules 6 to 26 (including each sub-rule there under).</p> <p>In the re-numbered rule 6.2, replace “rule 5.1” with “rule 6.1”.</p> <p>In the re-numbered rule 6.3, replace “rule 5.1” with “rule 6.1”.</p> <p>In the re-numbered rule 7.1(b), replace “rule 5” with “rule 6”.</p> <p>In the re-numbered rule 8.1(f), replace “rule 10” with “rule 11”.</p> <p>Insert a new rule 8.2 as follows:</p> <p>“8.2 For the avoidance of doubt, a grant will not be made under rule 5 in respect of the following:</p> |
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- (a) Where there is a *policy* or *policies* of *qualifying insurance* against which a *claim* could be or has been made in respect of the civil liability of the *defaulting practitioner* or the *defaulting practitioner's employee* or *manager*.
- (b) Any losses that would not be covered under terms, conditions and exclusions of the *MTC* had the loss been subject to a *claim* under a *policy of qualifying insurance*."

In the re-numbered rule 10.1, replace the last word of the rule "dishonesty" with "conduct".

Insert a new rule 13.3 as follows:

"13.3 In respect of an application for a grant under rule 5, the *SRA* may, before deciding whether to make a grant, require the *applicant* and/or the *defaulting practitioner* to seek indemnity from one or more *qualifying insurers* under a *policy* or *policies* of *qualifying insurance*."

Re-number the existing rule 13.3 as rule 13.4.

Delete rule 14.2 and replace it with the following:

"14.2 If it appears to the *SRA* that:

- (a) any communication sent under rule 14.1 will not come to the attention of the *defaulting practitioner* or his, her or its *representative*; or
- (b) a grant should be made urgently as an interim measure to protect the interests of an *applicant* or potential *applicant* to the Fund,

then the *SRA* may make a grant notwithstanding failure to comply with the provisions of this rule."

Insert a new rule 14.3 as follows:

"14.3 Where the SRA has made a grant as an interim measure in accordance with rule 14.2(b), the SRA shall as soon as practicable send the communication referred to in rule 14.1(a) and may (insofar as the failure to communicate before the making of the grant has prejudiced the defaulting practitioner) waive in whole or in part the Fund's right of recovery against the defaulting practitioner."

In the re-numbered rule 17.1, replace "rule 23" with "rule 24".

In the re-numbered rule 24.1, replace "rules 13 and 20 to 24" with "rules 14 and 21 to 25".

In the renumbered rule 26.2, replace "rule 25.1" with "rule 26.1".

In the renumbered rule 26.2(d), replace "rule 5.1(c)" with "rule 6.1(c)".

In the renumbered rule 26.2(e), replace "rule 5.4" with "rule 6.4".

In the renumbered rule 26.2(f), replace "rule 7.1(i)" with "rule 8.1(i)".

In the renumbered rule 26.2(g), replace "rule 8.2" with "rule 9.2".

In the renumbered rule 26.2(h), replace "rule 9.4" with "rule 10.4".