

## **SRA Indemnity Fund (Amendment) Rules [2023]**

Rules made by the SRA Board on [date of board meeting]

Made under sections 31 and 37 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985, and section 83 of, and paragraph 19 of Schedule 11 to, the Legal Services Act 2007.

### **Rule 1**

The SRA Indemnity (Enactment) Rules 2012 shall be amended as follows:

- a) replace the title “SRA Indemnity (Enactment) Rules 2012” with “SRA Indemnity Fund (Enactment) Rules”;
- b) delete Rule 1;
- c) in Rules 2.1 and 2.5, replace “1 October 2012” with “1 October 2023”;
- d) in Rule 2.1 and 2.6, replace “SRA Indemnity Rules 2012” with “SRA Indemnity Fund Rules”; and
- e) in the supplemental notes, replace “SRA Indemnity Rules 2012” with “SRA Indemnity Fund Rules” and insert the following:

“Made by the SRA Board on [ date made by the Board]

Made under sections 31 and 37 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985, and section 83 of, and paragraph 19 of Schedule 11 to, the Legal Services Act 2007”

### **Rule 2**

The SRA Indemnity Rules 2012 shall be amended as follows:

- a) replace the title “SRA Indemnity Rules 2012” with “SRA Indemnity Fund Rules”;
- b) replace all references to “the **Society**” with “the **SRA**”, except in Rules 5.1 and 21.2;

- c) replace all references to “**fund**” with “**Indemnity Fund**”;
- d) replace all references to “Solicitors Indemnity Fund Limited” with “the **SRA**”;
- e) replace all references to “**private practice**” with “**private legal practice**”
- f) delete Rule 1;
- g) delete Rule 2;
- h) in Rule 3.1, after the “The SRA” delete the word “Handbook” and after the word “Glossary” delete the words “2012 (the Glossary)”;
- i) replace Rule 4.5 with the following:

“The **Indemnity Fund** shall be held, managed and administered in accordance with Part IV of these Rules by the **SRA** for this purpose, or by such other **person** or **persons** as the **SRA** may designate for such purpose.”;

- j) in Rule 8.1, after “to such a claim are first notified”, insert “in a **prescribed** form”;
- k) in Rule 8.1(c)(ii), after “arising out of circumstances notified”, insert “in the **prescribed** form”;
- l) replace Rule 8.5(a) with the following:

“such a claim is first notified to the **SRA** in the **prescribed** form at any time since 1 September 2007; and”

- m) in Rule 7.1(h), delete “or, unless otherwise provided by the terms of the waiver, waived by the Council under Rule 19 (or under any corresponding earlier Rule)”;
- n) in Rule 11.3, after “In no circumstances shall any claim to indemnity lie or be made against”, insert “the **SRA** or”;
- o) in Rule 14.7:
  - i. replace “Queen’s Counsel” with “King’s Counsel” and

- ii. replace “by the President of the Society for the time being” with “by an **authorised decision maker**”;

p) in Rule 14.11, replace:

“(b) such amount as may be necessary to satisfy any unpaid **contribution** and Value Added Tax and interest thereon at the rate of 4% above Barclays Bank base rate with quarterly rests or as such other rate as the Society may from time to time publish in the Law Society’s Gazette.” with

“(b) such amount as may be necessary to satisfy any unpaid **contribution** and Value Added Tax and interest thereon at the rate of 4% above Barclays Bank base rate with quarterly rests or as such other rate as **prescribed** by the **SRA**.”

q) delete and replace Rule 15.1 with the following:

“15.1 If a dispute arises between:

- a) a **person** who seeks indemnity from the **Indemnity Fund** in accordance with these Rules, and
- b) the **SRA**

concerning any claim or the quantum of any claim that is the subject of the indemnity being sought from the **Indemnity Fund** by the **person**, the **person** and the **SRA** shall endeavour to resolve the dispute amicably. If, however, the dispute remains unresolved within thirty (30) days of that dispute first arising, the dispute shall be referred to a sole arbitrator for determination, whose decision shall be final and binding on the **person** and the **SRA**. The **person** and the **SRA** shall endeavour to agree to a suitable arbitrator. In the event the **person** and the **SRA** cannot agree a choice of arbitrator, the **SRA** shall invite the President of the Chartered Institute of Arbitrators to appoint an arbitrator to make a final determination on the dispute.”;

r) delete and replace Rule 16.1 with the following:

“16.1 Solicitors, RELs, RFLs, recognised bodies and licensed bodies must make contributions to the Indemnity Fund in such amounts and at such times as may be *prescribed*.”;

- s) delete Rule 16.2;
- t) in Rule 16.3, replace “Solicitors’ Indemnity Rules 2006” with “Solicitors Indemnity Rules 2012”;
- u) in Rule 17.2(h), delete “(which subject to Rule 18, shall at all reasonable times be available on request to the Society for inspection and copying)”;
- v) delete Rule 17.2(i) and renumber the remaining sub-paragraphs of Rule 17 accordingly;
- w) delete Rule 18;
- x) delete Rule 19; and
- y) delete and replace Rule 21 with the following:

“21.1 The **Indemnity Fund** shall continue to be held, managed and administered by the SRA for so long as and to the extent that the SRA, may consider necessary or appropriate for the purpose of providing indemnity in respect of any claim(s) made or intimated during any **indemnity period** and/or during or subsequent to any **indemnity period** arising out of circumstances notified during any **indemnity period** as circumstances which might give rise to such claim(s).”

21.2 As and when the **SRA** no longer considers it necessary or appropriate that all or any part of the **Indemnity Fund** should be so held, managed and administered, the **SRA** may apply all or any part of the **Indemnity Fund** not so required, to the extent the **SRA** considers it reasonably practicable, for the purpose of providing indemnity in any other way permitted by section 37(2) of the **SA** and where some or all of the **Indemnity Fund** will not be used to provide such indemnity the **Indemnity Fund** shall be released to the **Society** for the overall benefit of the **solicitors'** profession in such manner as the **Society** may decide.”

The SRA Glossary shall be amended as follows:

- a) delete the following definitions:
  - i. **“AJA (2012)”**
  - ii. **“arrangement (2012)”**
  - iii. **“circumstances (2012)”**
  - iv. **“claim (2012)”**
  - v. **“Council (2012)”**
  - vi. **“foreign lawyer (2012)”**
  - vii. **“fund (2012)”**
  - viii. **“indemnity period (2012)”**
  - ix. **“insured (2012)”**.
  - x. **“licensed body (2012)”**
  - xi. **“member (2012)”**
  - xii. **“MTC (2012)”**
  - xiii. **“overseas (2012)”**
  - xiv. **“overseas practice (2012)”**
  - xv. **“partnership (2012)”**
  - xvi. **“person (2012)”**
  - xvii. **“principal (2012)”**
  - xviii. **“private practice (2012)”**
  - xix. **“qualifying insurance (2012)”**

- xx. **“recognised body (2012)”**
  - xxi. **“REL (2012)”**
  - xxii. **“RFL (2012)”**
  - xxiii. **“SA (2012)”**
  - xxiv. **“sole practitioner (2012)”**
  - xxv. **“solicitor (2012)”**;
- b) in the following definitions delete **“(2012)”**:

- i. **“eligible former principal (2012)”**
- ii. **“Establishment Directive (2012)”**
- iii. **master insurance policy (2012)**
- iv. **“preceding qualifying insurance (2012)”**
- v. **“previous practice (2012)”**
- vi. **“relevant successor practice (2012)”**
- vii. **“separate practice (2012)”**
- viii. **“SIIR (2012)”**
- ix. **“Society (2012)”**;

- c) replace the definition **“contributions (2012)”** with:

**“contributions**

means contributions previously made to the fund in accordance with Part III of the Solicitors' Indemnity Rules 2012 (or any earlier corresponding provisions), and any additional sums paid in accordance with Rule 16 of the SRA Indemnity Fund Rules.”

d) replace the definition “**expired run-off claim (2012)**” with:

**“expired run-off claim**

means any claim made against the *Indemnity Fund* for indemnity under the SRA Indemnity Fund Rules in respect of which no *preceding qualifying insurance* remains in force to cover such claim, by reason only of:

- (i) the run-off cover provided or required to be provided under the policy having been activated; and
- (ii) the sixth anniversary of the date on which cover under such *qualifying insurance* would have ended but for the activation of such run-off cover having passed; or
- (iii) (in the case of a firm in default or a run-off firm) the period of run-off cover provided or required to be provided under arrangements made to cover such claim through the *ARP* having expired.”

e) replace the definition “**expired run-off cover (2012)**” with:

**"expired run-off cover**

means either:

- (i) (unless (ii) below applies) the terms of the *preceding qualifying insurance*, excluding clause 5 (Run-off cover) of the *MTC*, as if it were a contract between the *SRA* and the firm or person making an *expired run-off claim*; or
- (ii) where they are provided to the *SRA* prior to payment of the claim, the terms of the *preceding qualifying insurance*, provided that:
  - (A) references in the *preceding qualifying insurance* to the qualifying insurer that issued such insurance shall be read as references to the *SRA*;
  - (B) any obligation owed by any insured under the preceding qualifying insurance to the qualifying insurer which issued such insurance shall be deemed to be owed to the *SRA* in place of such qualifying

insurer, unless and to the extent that the *SRA* in its absolute discretion otherwise agrees;

- (C) the obligations of the *Indemnity Fund* and/or any *insured* in respect of an expired run-off claim shall neither exceed nor be less than the requirements of the *MTC* which, in accordance with the applicable *SIIR*, such *preceding qualifying insurance* included or was required to include.

The *SRA* shall be under no obligation to take any steps to obtain the terms of any such *preceding qualifying insurance*, which for these purposes includes the terms on which it was written in respect of the *insured firm* or person in question, and not merely a standard policy wording.”;

- f) after the definition of “**immigration work**” insert:

**“Indemnity Fund**

means the fund maintained in accordance with the *SRA Indemnity Fund Rules*.”;

- g) replace the definition “**indemnity period**” with:

**“indemnity period**

means:

- (i) in the *SRA Indemnity Insurance Rules* and the *MTC*, the period of one year starting on 1 September 2000, 2001 or 2002, the period of 13 calendar months starting on 1 September 2003, or the period of one year starting on 1 October in any subsequent calendar year
- (ii) in the *SRA Indemnity Fund Rules*, the period of one year commencing on 1 September in any calendar year from 1987 to 2002 inclusive, the period of 13 calendar months commencing on 1 September 2003, and the period of one year commencing on 1 October in any subsequent calendar year.”;

- h) replace the definition “**master policy (2012)**” with:

**“master policy**



Means a policy referred to in Rule 5 of the SRA Indemnity Fund Rules.”;

- i) replace the definition “**member**” with:

**“member**

- (i) (unless (ii) below applies) means:

(a) in relation to a *company*, a *person* who has agreed to be a member of the *company* and whose name is entered in the *company's* register of members; and

(b) in relation to an *LLP*, a member of that *LLP*

- (ii) for the purposes of the *SRA Indemnity Fund Rules*, means a member of a practice, being:

(A) any principal (including any *principal*) therein;

(B) any *director* or officer thereof, in the case of a *recognised body* or a *licensed body* which is a *company*;

(C) any member thereof in the case of a *recognised body* or a *licensed body* which is an *LLP*;

(D) any *recognised body* or a *licensed body* which is a *partner* or held out to be a *partner* therein and any officer of such *recognised body* or a *licensed body* which is a *company*, or any member of such *recognised body* or a *licensed body* which is an *LLP*;

(E) any person employed in connection therewith (including any *trainee solicitor*);

(F) any *solicitor* or *REL* who is a consultant to or associate in the practice;

(G) any *foreign lawyer* who is not an *REL* and who is a consultant or associate in the practice; and

(H) any *solicitor* or *foreign lawyer* who is working in the practice as an agent or locum tenens, whether he or she is so working under a contract of service or contract for services;

and includes the estate and/or personal representative(s) of any such persons.”;

j) replace the definition “**non-registered European Lawyer (2012)**” with:

**“non-registered European lawyer**

Means a member of a legal profession which is covered by the *Establishment Directive*, but who is not:

- (i) a *solicitor*, *REL* or *RFL*,
- (ii) a barrister of England and Wales, Northern Ireland or the Irish Republic, or
- (iii) a Scottish advocate.

k) in the definition “**overseas practice**” before the word “means” add “(i)” and after the words “providing legal services” add:

“; and

(ii) in the SRA Indemnity Fund Rules means a *practice* carried on wholly from an *overseas* office or offices, including a practice deemed to be a *separate practice* by virtue of paragraph (ii) of the definition of *separate practice*.”

l) replace the definition “**panel solicitors (2012)**” with:

**“panel solicitors**

means any solicitors appointed in accordance with Rule 14.15 of the SRA Indemnity Fund Rules.”;

m) in the definition “**practice**” after “England and Wales” add:

“; save for in the SRA Indemnity Fund Rules where it means a practice to the extent that:

- (i) in relation to a *licensed body*, it carries on *regulated activities*; and
  - (ii) in all other cases, it carries on *private practice* providing professional services as a sole *solicitor* or *REL* or as a *partnership* of a type referred to in Rule 6.1(d) to 6.1(f) of the SRA Indemnity Fund Rules and consisting of or including one or more *solicitors* and/or *RELs*, and shall include the business or practice carried on by a *recognised body* in the providing of professional services such as are provided by individuals practising in *private legal practice* as *solicitors* and/or *RELs* or by such individuals in *partnership* with *RFLs*, whether such practice is carried on by the *recognised body* alone or in *partnership* with one or more *solicitors*, *RELs* and/or other *recognised bodies*.”;
- n) in the definition “**principal**” after the word “means” add “(unless paragraph (c) of this definition applies)” and at the end of the definition add:

“(c) in the SRA Indemnity Fund Rules, means:

- (i) a *solicitor* who is a *partner* or a sole *solicitor* within the meaning of section 87 of the SA, or an *REL* who is a *partner*, or who is a sole practitioner, or an *RFL* or *non-registered European lawyer* who is a *partner*, and includes any *solicitor*, *REL*, *RFL* or *non-registered European lawyer* held out as a principal; and
- (ii) additionally in relation to a *practice* carried on by a *recognised body* or a *licensed body* alone, or a *practice* in which a *recognised body* or a *licensed body* is or is held out to be a *partner*:

(A) a *solicitor*, *REL*, *RFL* or *non-registered European lawyer* (and in the case of a *licensed body* any other person) who:

- (1) beneficially owns the whole or any part of a share in such *recognised body* or *licensed body* (in each case, where it is a *company* with a share capital); or
- (2) is a member of such *recognised body* or *licensed body* (in each case, where it is a *company* without a share capital or an *LLP* or a *partnership* with legal personality); or

(B) a *solicitor*, *REL*, *RFL* or *non-registered European lawyer* (and in the case of a *licensed body* any other person) who is:

(1) the ultimate beneficial owner of the whole or any part of a share in such *recognised body* or *licensed body* (in each case, where the *recognised body* or *licensed body* is a *company* with a share capital); or

(2) the ultimate owner of a member or any part of a member of such *recognised body* or *licensed body* (in each case, where the *recognised body* or *licensed body* is a *company* without a share capital or an *LLP* or a *partnership* with legal personality).”;

o) in the definition “***private legal practice***”:

i. after the word “means” add:

“(unless paragraph (ii) of this definition applies):

(i)”

ii. after the words “Local Crematoria” add:

“(ii) in the SRA Indemnity Fund Rules, means the provision of services in private *practice* as a *solicitor* or *REL* in an *authorised body* including, without limitation:

(a) providing such services in England, Wales or anywhere in the world in a *recognised sole practice*, a *recognised body* or a *licensed body* (in respect of an activity regulated by the SRA in accordance with the terms of the body's licence);

(b) the provision of such services as a secondee of the *insured firm*;

(c) any insured acting as a personal representative, *trustee*, attorney, notary, insolvency practitioner or in any other role in conjunction with a *practice*;

(d) the provision of such services by any *employee*; and

(e) the provision of such services pro bono;

but does not include:

- (f) discharging the functions of any of the following offices or appointments:
- (i) judicial office;
  - (ii) Under Sheriffs;
  - (iii) members and clerks of such tribunals, committees, panels and boards as the Council may from time to time designate but including those subject to the Tribunals and Inquiries Act 1992, the Competition Commission, Legal Services Commission Review Panels, Legal Aid Agency Review Panels and Parole Boards;
  - (iv) Justices' Clerks; or
  - (v) Superintendent Registrars and Deputy Superintendent Registrars of Births, Marriages and Deaths and Registrars of Local Crematoria
- (g) practice to the extent that any fees or other income accruing do not accrue to the benefit of the practice carrying on such *practice* (except where a solicitor notary operates such notarial practice in conjunction with a solicitor's practice, whether or not the notarial fees accrue to the benefit of the solicitor's practice);
- (h) practice by a *solicitor* or *REL* in the course of his or her employment with an employer other than a *solicitor*, *REL*, *recognised body*, *licensed body* or *partnership* such as is referred to in Rule 6.1(d) to 6.1(f) of the SRA Indemnity Fund Rules; in which connection and for the avoidance of doubt:
- i. any such *solicitor* or *REL* does not carry on private legal practice when he or she acts in the course of his or her employment for persons other than his or her employer;
  - ii. any such *solicitor* or *REL* does not carry on private legal practice merely because he or she uses in the course of his or her employment a style of stationery or description which appears to hold him or her out as a *principal* or *solicitor* or *foreign lawyer* in private legal practice; or

- iii. any practice carried on by such a *solicitor* outside the course of his or her employment will constitute private legal practice.”;

p) replace the definition “regulated activity (2012)” with:

**“regulated activity**

means

- (i) any *reserved legal activity*;
- (ii) any *non-reserved legal activity* except, in relation to an MDP, any such activity that is excluded on the terms of the licence;
- (iii) any other activity in respect of which a *licensed body* is regulated pursuant to Part 5 of the *LSA*.”;

q) replace the definition “regulated person (2012)” with:

**“regulated person**

has the meaning given by section 21 of the *LSA*”; and

r) replace the definition “**relevant indemnity period (2012)**” with:

**“relevant indemnity period**

in relation to *contributions* or indemnity means that *indemnity period* in respect of which such *contributions* are payable or such indemnity is to be provided in accordance with the SRA Indemnity Fund Rules.

**Rule 4**

These rules shall come into force on [1 October 2023].