

## **Legal Services Act: New forms of practice and regulation**

### Consultation paper 13

### Draft SRA (Cost of Investigations) Regulations – Powers to charge for costs of investigations

1. This consultation invites you to comment on the draft SRA (Costs of Investigations) Regulations which are annexed to this paper and which we hope to introduce in March 2009. We believe that a short consultation period is appropriate as the draft regulations are only intended to put the current charging policy into the form of regulations and given the importance of having the new regulations in place when the changes to the statutory powers come into force.
2. The SRA already has the power under section 44C of the Solicitors Act 1974 to recover from solicitors a reasonable contribution towards the costs of our investigations and there are also equivalent powers in respect of recognised bodies and employees of solicitors. These powers were introduced by the Access to Justice Act 1999 and were first used by the Law Society in 2002. However, Parliament has decided to amend them by substituting a new section 44C which will allow us to make regulations prescribing charges to be paid by solicitors and employees who are the subject of a discipline investigation. This gives more flexibility in that the charges do not have to necessarily relate to the actual cost of the investigation. The changes also close an important gap in the previous provisions as they will allow us to recover these charges as a debt due to the SRA.
3. Similar changes have been made to paragraph 14A of Schedule 2 to the Administration of Justice Act 1985 in relation to recognised bodies and section 43 which deals with the control of non-solicitors who are or have been involved in a legal practice, such as solicitors' employees or a non-solicitor manager of a recognised body. The amended section 44C will also apply to registered European lawyers and their employees and to registered foreign lawyers.
4. The ability to charge for the costs of investigations is an important regulatory tool and the current "polluter pays" policy is still based on the principles established by the Law Society Council in 2002, although the costs recoverable have been changed over time. This policy seeks to ensure that those responsible for the costs of investigations are required to pay for them rather than spreading the costs among all practitioners, which is unfair to the good practitioners who do not generate such costs.

5. The new powers would allow us to undertake a full review of the way the charges are calculated and the circumstances in which the charges will be applied. We recognise that these are significant policy decisions that require careful thought and full consultation. We will undertake such a review in the near future. Therefore the draft regulations simply reflect the current policy and basis of charging. These regulations must be in place by the time the amended section 44C comes into force as otherwise the SRA would be unable to continue to apply its current policy.
6. The SRA has published information sheets on the way that the costs are currently calculated and essentially they apply a standard level of charge in bands based on the amount of time spent investigating and considering each case. These charges are reflected in the appendix to the draft regulations and are as follows:
  - Under 2 hours – £300
  - 2 hours or more but less than 8 hours – £600
  - 8–16 hours – £1,350

In addition to the fixed charge of £1,350, where investigations take more than 16 hours, an extra charge of £75 for every hour after that will be applied. There is also an additional fixed charge of £250 for an unsuccessful appeal.

7. The draft regulations also reflect the current position in that we will only impose charges where there is a finding against the regulated person or where the SRA has decided to make an order under section 43(2) of the Solicitors Act 1974. If the matter is referred to the Solicitors Disciplinary Tribunal, we will not try to impose any charges under these regulations but we have the right to try to recover costs at the Solicitors Disciplinary Tribunal.
8. The regulations have been drafted in accordance with the SRA's strategic principles and key objectives which are published on the SRA website.<sup>1</sup> These principles include operating in accordance with the government's Five Principles of Good Regulation which are that regulation should be:
  - Proportionate: Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
  - Accountable: Regulators must be able to justify decisions, and be subject to public scrutiny.
  - Consistent: Government rules and standards must be joined up and implemented fairly.
  - Transparent: Regulators should be open, and keep regulations simple and user-friendly.

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<sup>1</sup> See [www.sra.org.uk/strategy](http://www.sra.org.uk/strategy).

- Targeted: Regulation should be focused on the problem, and minimise side effects.
9. This consultation is aimed at all those interested in the provision and regulation of legal services, including consumers. The closing date for responses is 24 December 2008.

## Questions

1. Are the draft regulations clear and transparent?
2. Do you believe that the draft regulations will have a disproportionate impact on any group or category of persons?
3. Do you have any other comments on the draft regulations?

## How to respond

For information on how to respond, please visit our website.

- Go to [www.consultations.sra.org.uk](http://www.consultations.sra.org.uk).
- Select **Draft SRA (Cost of Investigations) Regulations**.
- Click **How to respond**.

## Submission deadline

The deadline for responses is **24 December 2008**.

As stated above, we believe that a short consultation period—four weeks—is appropriate, as the draft regulations are only intended to put the current charging policy into the form of regulations, and given the importance of having the new regulations in place when the changes to the statutory powers come into force.

# ANNEX 1

## Draft SRA (Costs of investigations) Regulations [2009]

*Rules and regulations about charging for the costs of investigations carried out by the SRA*

*commencing [            ]*

*made by the Solicitors Regulation Authority Board under sections 31, 43, 44C, 79 and 80 of the Solicitors Act 1974 and section 9 and paragraph 14A of Schedule 2 to the Administration of Justice Act 1985 with*

- *the concurrence of the Master of the Rolls under section 31 of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985; and*
- *the concurrence of the Lord Chancellor under paragraph 16 of Schedule 22 to the Legal Services Act 2007.*

### **Regulation 1 - Interpretation**

In these regulations, unless the context otherwise requires:

- (1) “adjudicator” means a person not involved in the investigation or preparation of a case who is authorised by the SRA to make a SRA finding;
- (2) “discipline investigation” means an investigation by the SRA to determine whether a regulated person should be subject to a SRA finding or an application to the Tribunal;
- (3) “LLP” means a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000;
- (4) “manager” means:
  - (a) a partner in a partnership;
  - (b) a member of an LLP; or
  - (c) a director of a company;
- (5) “recognised body” means a partnership, company or LLP recognised by the Solicitors Regulation SRA under section 9 of the Administration of Justice Act 1985;
- (6) “registered European Lawyer” means a person registered by the Solicitors Regulation Authority under regulation 17 of the European Communities (Lawyer’s Practice) Regulations 2000;
- (7) “registered foreign lawyer” means a person registered by the Solicitors Regulation Authority under section 89 of the Courts and Legal Services Act 1990;

- (8) “regulated person” means:
- (a) a solicitor;
  - (b) a registered European lawyer;
  - (c) a registered foreign lawyer;
  - (d) a recognised body;
  - (e) a manager of a recognised body; or
  - (f) an employee of a recognised body, a solicitor or a registered European lawyer;
- (9) “section 43 investigation” means an investigation by the SRA as to whether there are grounds for the SRA:
- (a) to make an order under section 43(2) of the Solicitors Act 1974; or
  - (b) to make an application to the Tribunal for it to make such an order;
- (10) “SRA” means the Solicitors Regulation Authority, the independent regulatory body of the Law Society of England and Wales;
- (11) “SRA finding” is a decision that the SRA is satisfied in accordance with section 44D(1) of the Solicitors Act 1974 or paragraph 14B(1) of Schedule 2 to the Administration of Justice Act 1985;
- (12) “the Tribunal” means the Solicitors Disciplinary Tribunal;
- (13) the singular includes the plural and vice versa.

## **Regulation 2 – Scope**

- (1) These regulations prescribe the charges to be paid to the SRA by:
- (a) regulated persons who are the subject of a discipline investigation;
  - (b) persons who are the subject of a section 43 investigation.
- (2) These regulations shall not prevent, prohibit or restrict the exercise of any other powers or other action by the SRA.

## **Regulation 3 – Discipline investigations**

- (1) A regulated person who is the subject of a discipline investigation may be required by the SRA to pay a charge in accordance with these regulations provided that there has been a SRA finding against the regulated person.
- (2) A SRA finding may be made by:
- (a) agreement between the regulated person and the SRA;
  - (b) a person duly authorised by the SRA;

- (c) a single adjudicator; or
- (d) an adjudication panel.

#### **Regulation 4 – Section 43 investigations**

- (1) A person who is the subject of a section 43 investigation may be required by the SRA to pay a charge in accordance with these regulations provided that the SRA has made an order under section 43(2) of the Solicitors Act 1974.
- (2) An order under section 43(2) of the Solicitors Act 1974 may be made by:
  - (a) agreement between the person and the SRA;
  - (b) a single adjudicator; or
  - (c) an adjudication panel.

#### **Regulation 5 – Decision to require payment of charges**

- (1) The amount of charges payable by any person in the circumstances falling within regulation 3(1) or 4(1) above will be determined by the person, adjudicator or adjudication panel making the relevant SRA finding or decision to make an order under section 43(2) of the Solicitors Act 1974 or where such a finding or order is made by agreement, the person duly authorised by the SRA to enter into such an agreement.
- (2) Where a person is required to pay any charges under these regulations, such charges shall be paid within a time and in the manner specified by the SRA.

#### **Regulation 6 – Basis of charges**

- (1) Subject to regulation 6(2) below, the amount payable under regulation 5 will be determined in accordance with the schedule of charges in appendix 1 to these regulations.
- (2) In exceptional circumstances, the SRA may charge less than the amount that would be payable in accordance with the schedule of charges in appendix 1 to these regulations provided that it is considered by the SRA to be fair and reasonable to do so.
- (3) The SRA may require any person in the circumstances falling within regulation 3(1) or 4(1) above to pay an additional charge where such person has made an unsuccessful appeal to the SRA against the SRA finding or the order made under section 43(2) of the Solicitors Act 1974.
- (4) The additional amount payable under regulation 6(3) shall be in accordance with the schedule of charges in appendix 1 to these regulations.
- (5) For the purposes of this regulation an appeal will be unsuccessful if, after the appeal has been heard, any SRA finding remains or the order made under section 43(2) of the Solicitors Act 1974 has not been quashed.

**Regulation 7 – Recovery of charges**

Any charge which a person is required to pay under these regulations is recoverable by the SRA as a debt due to the SRA from that person.

**Regulation 8 - Commencement**

These regulations shall come into force on [ ] but shall not apply to any decisions that were made before these regulations came into force.

# APPENDIX 1

## Schedule of Charges

1. This Schedule of charges sets out the basis of calculating the amount of charges payable under regulations 5 and 6.
2. The SRA will record the amount of time spent investigating and considering each case and the amount payable under the regulations will vary depending on the amount of time spent on that matter.
3. The standard levels of charges are as follows:

<b>Number of hours spent on matter</b>	<b>Standard Charge</b>
Under 2 hours	£300.00
2 hours or more but under 8 hours	£600.00
8–16 hours	£1,350

4. In addition to the fixed charge of £1,350, where investigations take more than 16 hours, an extra charge of £75 for every hour after that will be applied.

There will be an additional fixed charge for an appeal of £250.