

Solicitors Regulation Authority

Allocation and collection of fees

Consultation

June 2007

Purpose of consultation

1. The purpose of this consultation is to obtain views from the profession, trainees, students and other stakeholders on the Solicitors Regulation Authority (SRA) Board's proposed principles for the allocation and collection of fees, other than the practising certificate fee.

Introduction

2. The SRA regulates solicitors and their practices in the public interest. The SRA was established by the Law Society to separate the regulation of the profession from the Law Society's representational role.
3. The vast majority of the SRA's regulatory functions are funded through the practising certificate (PC) fee, collected annually from solicitors to coincide with the renewal of PCs. Currently, however, the SRA collects fees relating to some other activities, particularly in relation to functions concerning education, training and development of students, trainees and solicitors.
4. This consultation does not tackle the allocation and collection of income through the PC fee—although, if enacted in its current form, the Legal Services Bill will enable the SRA to consider other methods of allocating and collecting fees to fund its activities. The SRA would consult widely prior to making any decisions about the PC fee.
5. In coming years, the allocation and processes for collection of fees could change markedly, because of greater flexibility post-legislation and operational efficiencies gained through increased IT capability and streamlining of processes. However, in advance of the realisation of those benefits, the SRA Board wishes to rationalise, as far as possible, the allocation of and processes for collection of fees for “add-on” services.
6. The SRA is under a duty to eliminate unlawful discrimination and is committed to the promotion of equality and diversity across the profession and the public it serves. A regulatory impact assessment will be completed following consultation. To assist the assessment, as part of the consultation process, the Board is seeking views on whether its proposals may have an adverse impact on any groups.

7. The consultation focuses on principles governing fee allocation and collection, and not on the amount of each fee to be charged.
8. In October 2007, the Board expects to make decisions on the principles surrounding fee allocation and collection, with a view to a new fees structure being in place, where this can be achieved, from 1 January 2008.
9. The consultation period ends on **26 September 2007**. Responses, accompanied by a completed **About you** form, should be sent by email to fees.consultations@sra.org.uk.

Current Position

Fees charged

10. Currently, fees are collected for applications relating to education, training and development. Some are charged at a rate calculated to cover the total cost of administering the process. For example, fees are charged for:
 - enrolment as a student prior to commencing the legal practice course (LPC);
 - applications for membership of SRA accreditation schemes.
11. The fee for the SRA's administration of the LPC—validation and monitoring of courses and the like—is collected for the SRA by the LPC providers from each student on their course. The relevant fee is calculated annually according to the predicted number of students sitting the LPC the following academic year. In recent years, however, the fees recovered have generated a surplus, because the numbers of students have been higher than predicted and, through efficiency gains, the operational cost of the process has decreased. The surplus has been paid into the Law Society's Bursaries Fund, established to provide financial assistance to potential LPC students from disadvantaged backgrounds.
12. Some other applications are charged for on a partial costs recovery basis. For example, lawyers from other jurisdictions who apply for admission as a solicitor in England and Wales are charged for the cost of processing the application. However, this fee does not cover any costs incurred by the SRA to determine whether their qualification is equivalent to the qualifications required by solicitors in England and Wales.
13. Another example relates to the establishment of limited liability practices (LLPs) or incorporated practices, where a fee, including a contribution to the Compensation Fund is charged. In reality, this rarely reflects the costs of ensuring regulatory compliance. (Arguably, part of the service currently offered by the SRA goes beyond securing regulatory compliance and extends into advice on the most effective and advantageous way of setting up such a practice. This will be reviewed as soon as time permits.)
14. A further example is the fee charged to solicitors without practising certificates who choose to stay on the toll of solicitors. Unlike the PC fee, which reflects the majority of the costs of regulation—including consumer complaints—and some

representational costs, the fee for staying on the roll is charged at a nominal rate only.

Fees not charged

15. There are services provided free of charge by the SRA, which, although open to all, are only used by some solicitors. Examples of these are
 - applications for waivers of the rules,
 - entry on the Exempt Professional Firms register at the FSA,
 - enquiries both in writing and over the phone for guidance on compliance with the rules,
 - monitoring undertaken by the Practice Standards Unit (PSU).

The SRA's proposed principles

Allocation of fees

Services offered to solicitors and their practices

16. The SRA considers that the vast majority of its regulatory functions should be funded through the PC fee. However, we consider that it is appropriate to charge separately for certain services, as outlined below.
17. The Board proposes to distinguish services offered to provide support to solicitors to achieve compliance with the rules from those services resulting in an added benefit to the individual or firm seeking them.
18. The former would be funded through the PC fee and would include, for example, enquiries made to the Ethics Guidance Service and monitoring undertaken by the PSU.
19. The latter would be charged at cost and would include, for example, applications for membership of accreditation schemes and applications for waivers of the rules.

Question 1

- i) Is the Board right to conclude that some services should be paid for in addition to the PC Fee? Why do you think this?
- ii) Is the Board right to distinguish those services offered to support compliance with the rules from those resulting in an added benefit for those solicitors seeking them? Why do you think this?
- iii) Has the Board identified the right services?
- iv) Should the SRA charge for any other services? If so, what are they, and why do you think fees should be charged for these services?

- v) Might these proposals have an unjustifiable adverse impact on certain groups within the profession? If so, what are they?

Services offered to lawyers from who have not qualified as solicitors in England and Wales

20. The SRA considers that lawyers who have not qualified as solicitors in England and Wales should meet the full costs of processing their applications, including the costs of validating and assessing their qualifications against the standards for solicitors in England and Wales.

Question 2

- i) Do you agree that lawyers who are not qualified as solicitors in England and Wales should bear the full costs of processing their applications? Why do you think this?
- ii) Might these proposals have an unjustifiable adverse impact on certain groups? If so, what are they?

Services offered to students and trainees

21. The Board has considered most carefully the current requirement for students to pay to enrol with the SRA prior to commencing their LPC. We are conscious of the levels of student debts that the majority of students carry with them as they embark on the LPC.
22. However, before granting a certificate of enrolment, the SRA must verify that academic qualifications meet the appropriate standard and that there are no issues affecting the student's character and suitability to become a solicitor. These are important safeguards for the public and, therefore, must be taken most seriously by the SRA and students. The requirement to pay a fee may well serve to focus students' attention on the importance of the step they are taking and the seriousness with which the SRA treats issues concerning character and suitability to be admitted as a solicitor.
23. Accordingly, the SRA considers that it is correct to charge a separate fee for student enrolment, based on the cost of administering the process. (The SRA may well wish to consult, in the future, on the appropriate timing for completion of the necessary regulatory checks, although the fee-charging principles would remain the same.)
24. Similar considerations apply to fees charged to trainees at the point at which they seek admission to the roll of solicitors. Here again, the SRA has concluded that it is appropriate to charge a fee to cover the administrative costs of the process.
25. There is also an issue about students, from home or abroad, seeking exemption from part or all of the Common Professional Examination (CPE) or

Graduate Diploma in Law (GDL), based on the equivalence of courses which they have completed. If there is to be reliable validation of equivalence, the administrative elements of processing applications need to be supplemented by arrangements to assess whether the courses concerned meet the necessary requirements. It may be that in some cases course providers will see commercial benefit in paying for validation; but if students apply to secure exemptions from the GDL/CPE it seems reasonable that the onus should be on them, as the applicants, to pay (or secure payment of) the full costs of processing their applications.

Question 3

- i) Is it right to charge students and trainees for regulatory activity required to be completed before admission to the Roll of solicitors? What are your reasons?
- ii) Might these proposals have an unjustifiable adverse impact on certain groups? If so, what are they?

Fees for validating and monitoring of LPCs

- 26. Each year, LPC providers collect a fee from each student on their course, to cover the SRA's costs associated with administering, validating and monitoring LPCs to ensure consistent quality. The fee is calculated by predicting the likely numbers of students sitting an LPC in the following academic year.
- 27. The Board considers that this fee should be collected from providers, rather than separating it from the overall cost of the LPC to students—although the Board recognises that this fee is likely to be passed on to students, whether directly or indirectly.
- 28. To avoid generating a surplus, the Board proposes that the fee should be based on the actual cost to the SRA of validating and monitoring the LPC in the previous year, with an adjustment for inflation, and divided proportionately between course providers.

Question 4

- i) Is the Board right to conclude that LPC providers should be responsible for the SRA's costs of administering, validating and monitoring the LPC? What are your reasons?
- ii) Might these proposals have an unjustifiable adverse impact on certain groups? If so, what are they?

Means Testing

- 29. The Board has considered offering differential fees and/or exemptions from payment of fees to applicants, depending on their means. This would require applicants to complete a statement of their means and the SRA to assess and

validate information provided. The SRA does not currently undertake this type of work, and the work involved to assess means reliably is likely to be expensive.

30. The Board does not propose to offer differential fees and/or exemptions from payment of fees depending on means.

Question 5

- i) Is the Board right to conclude that differential fees and/or exemption from payment of fees, depending on means, should not be offered? What are your reasons?
- ii) If not, how might the Board go about assessing the means of applicants, without adding significantly to the cost of the process?
- iii) Should the administrative costs of means-testing be borne from the PC fee?
- iv) If not, from where should the cost be met?
- v) Might these proposals have an unjustifiable adverse impact on certain groups? If so, what are they?

Review of fees

31. The SRA proposes to review fees every two years to ensure that the fees charged reflect the actual cost to the SRA of processing applications.

Question 6

- i) Is a review of fees every two years the right approach? If not, how often should be reviewed?
- ii) Might these proposals have an unjustifiable adverse impact on minority groups? If so, what are they?

Collection of fees

Methods of payment

32. Currently, the SRA receives fee payments through a variety of means, including cheque, debit and credit card, BACS and CHAPS transfers and postal orders. A tiny minority of fees are paid in cash, at the payee's risk.
33. In future, the SRA proposes not to accept payments in cash.

34. As happens now, the SRA proposes that all fees should be paid when an application is made. Applications will not be processed until the full fee has been received.

Question 7

- i) Is the Board right not to accept payment of fees in cash? If you disagree, what are your reasons?
- ii) Is the Board correct to require payment in advance of an application being considered? If not, why not?
- iii) Might these proposals have an unjustifiable adverse impact on certain groups? If so, what are they?

Refunding fees paid

35. Currently, partial refunds of fees are made in exceptional circumstances. There is no clear definition of “exceptional”, which could lead to inconsistency of approach.
36. The SRA proposes that, in future, where an application is withdrawn before work on processing it has been started, a refund of the fee, less an administrative charge, should be made.
37. Where an application is withdrawn before it has been fully processed, a partial refund of the fee should be made, following deduction of an amount reflecting the cost of work involved to that point.

Question 8

- i) Is the Board right to offer refunds of fees, in the circumstances described? If not, why not, and when do you think, if ever, the Board should offer to refund fees?
- ii) Might these proposals have an unjustifiable adverse impact on minority groups? If so, what are they?

Summary of questions

Question 1

- i) Is the Board right to conclude that some services should be paid for in addition to the PC Fee? Why do you think this?
- ii) Is the Board right to distinguish those services offered to support compliance with the rules from those resulting in an added benefit for those solicitors seeking them? Why do you think this?
- iii) Has the Board identified the right services?
- iv) Should the SRA charge for any other services? If so, what are they and why do you think fees should be charged for these services?
- v) Might these proposals have an unjustifiable adverse impact on certain groups within the profession? If so, what are they?

Question 2

- i) Do you agree that lawyers who are not qualified as solicitors in England and Wales should bear the full costs of processing their applications? Why do you think this?
- iii) Might these proposals have an unjustifiable adverse impact on certain groups? If so, what are they?

Question 3

- i) Is it right to charge students and trainees for regulatory activity required to be completed before admission to the Roll of solicitors? What are your reasons?
- iii) Might these proposals have an unjustifiable adverse impact on certain groups? If so, what are they?

Question 4

- i) Is the Board right to conclude that LPC providers should be responsible for the SRA's costs of administering, validating and monitoring the LPC? What are your reasons?
- iii) Might these proposals have an unjustifiable adverse impact on certain groups? If so, what are they?

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