

SRA (Cost of Investigations) Regulations 2009

Consultation on increase in charges for cost of investigations

1 July 2009

Introduction and background

1. This consultation invites you to comment on the proposed changes to the SRA (Cost of Investigations) Regulations 2009 which we hope to introduce, in part, from January 2010. These costs are only applied where an investigation results in a formal regulatory sanction.
2. The SRA already had power under the Solicitors Act 1974 and the Access to Justice Act 1999 to recover the costs of our investigations in certain circumstances. Those powers were amended by the Legal Services Act 2007, and the SRA undertook a public consultation in December 2008 on the draft SRA (Cost of Investigations) Regulations.¹ The SRA (Cost of Investigations) Regulations 2009 came into force on 31 March 2009.²
3. The ability to charge for the costs of investigations is an important tool and the current recovery of costs is still based on the principles established by the Law Society Council in 2002, although the amount of costs recoverable has been changed over time.
4. The policy of the SRA is that the cost of investigations should be paid, so far as practicable, by those found to have committed acts of misconduct of sufficient seriousness to merit an adverse finding. This reduces the costs which have to be met by the wider profession through the practising certificate fee. No fee is charged if there is no finding of misconduct.
5. The amendment to our powers under the Legal Services Act and the implementation of the SRA (Cost of Investigations) Regulations 2009 has enabled 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 decisions that require careful thought and full consultation.
6. The SRA has published the SRA (Cost of Investigations) Regulations 2009, and the Schedule at Appendix 1 to the Regulations sets out the basis on which costs are calculated and charged. Essentially, the SRA applies a standard level of charge in bands based on the amount of time spent investigating and considering each case and where the investigation results in a formal regulatory sanction. These are as follows:
 - Under two hours – £300
 - Two hours or more, but less than eight hours – £600
 - Eight to sixteen hours – £1,350

¹ See www.sra.org.uk/sra/consultations/1566.article.

² See www.sra.org.uk/sra/regulatory-framework/2734.article.

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 is applied. There is also an additional fixed charge of £250 for an unsuccessful appeal. The charges have been unchanged since January 2007.

Information about the basis of charges and when costs can be recovered is also provided in "Information Sheets" and relevant correspondence to regulated persons.

Proposed changes

7. It is proposed that the principle of charging a fixed or standard cost will be maintained, using the same methodology of average actual costs including overheads. Timings will reflect current processes, based on measurements of fully trained staff in the two principal caseworking units concerned. However, we will move—over two years—to recovering full undiscounted costs.
8. Experience over the last three years, reinforced by recent analysis, indicates that it is more equitable to apply the charge in three "bands", linked in each case to a range of caseworking hours.
9. The new charges from 1 January 2010 (bands A-C in the table below) will be set at a level halfway between the current levels (which are currently average costs discounted by 25 per cent) and the new, indicative, full charge.
10. The hourly rate for work in excess of 16 hours will remain unchanged (Band D), reflecting the low cost of inflation over the last three years. This rate is the marginal cost of caseworking time, with no further charge for the direct and indirect overhead costs which are included in the banded rates.
11. With regards to appeals (Band E), in 2006 the SRA chose not to increase appeals at that time—which explains the higher-than-average increase.
12. When exercising the power to recover the costs of a disciplinary investigation which includes an on-site inspection resulting in a formal regulatory sanction, it is proposed that an additional fixed charge will be applied. The average cost of an on-site inspection is £6,500. Taking into account the current economic climate, and the fact that this charge is new, the £6,500 charge will be reduced to £2,000 for 2010, which is significantly lower than the actual costs.
13. These proposed increased charges would apply to new matters received from 1 January 2010.

Band	Number of investigative hours	Current charges	Proposed charge from 01/01/2010
A	Under 2 hours	£300	£350
B	2 hours or more but under 8 hours	£600	£700
C	8–16 hours	£1,350	£1,550
D	Exceeds 16 hours, hourly rate applied	£75	£75
E	Appeals	£250	£350
F	On-site inspections	n/a	£2,000

14. There is no free-standing right of appeal against a decision to charge. The SRA has considered this aspect, and has decided it is not appropriate to give a stand-alone right of appeal on costs, although costs can be reviewed as part of any appeal of the substantive decision. However, if an appeal is made with regard to the substantive decision and is upheld in its entirety, the original costs from that decision and the appeal costs will not be charged.
15. At Annex 1 is the current Schedule of Charges. At Annex 2 are the proposed amendments to the Schedule of Charges at Appendix 1 to the SRA (Cost of Investigations) Regulations 2009.
16. It is the intention of the SRA to move to full cost recovery from 2011. We are not proposing this for 2010 because we consider that full cost recovery would need to be based upon a more-detailed assessment and apportionment of costs. In particular, a transparent mechanism would be required to deal with complex cases in which—for example—a major on-site inspection led to a relatively minor sanction: in such cases, charging the full cost of the investigation would not be justified.
17. The table below shows the possible effect of this change, although further work and consultation will be required before firm proposals are made.

Band	Number of investigative hours	Current charges	Proposed charge from 1/1/2010	Indicative proposed charge from 1/1/2011
A	Under 2 hours	£300	£350	£400
B	2 hours or more but under 8 hours	£600	£700	£800
C	8–16 hours	£1,350	£1,550	£1,800
D	Exceeds 16 hours, hourly rate applied	£75	£75	£75
E	Appeals	£250	£350	£500
F	On-site inspections	n/a	£2,000	£6,500

18. The SRA proposes to undertake further work on the move towards full cost recovery, and to consult upon proposals in preparation for introducing a new regime from 1 January 2011.
19. This consultation paper on proposed amendments to Schedule of Charges at Appendix 1 to SRA (Cost of Investigations) Regulations 2009 is aimed at all those interested in the provision and regulation of legal services. The closing date for responses is 30 September 2009.

Questions

1. Are the proposed changes clear and transparent?
2. Do you believe that the proposed changes for 2010 will have a disproportionate impact on any group or category of person?
3. Do you agree that the SRA should develop further proposals with a view to recovering full costs from 2011?
4. Do you have any other comments?

How to respond

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

- Go to www.sra.org.uk/consultations.
- Select **Schedule of Charges – SRA (Cost of Investigations) Regulations 2009**.
- Click **How to respond**.

Submission deadline

The deadline for responses is 30 September 2009.