

# Legal Services Act: New forms of practice and regulation

Consultation paper 10

Compensation Fund

25 April 2008

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## 1. Introduction

1. The Solicitors Regulation Authority (SRA) maintains a Compensation Fund for the purposes of making grants to persons who have suffered loss by reason of the dishonesty of a solicitor and to applicants who have suffered hardship as a consequence of a failure by a solicitor to account for money. Grants are made at the discretion of the SRA.
2. Currently the key provisions relating to the Compensation Fund are to be found in section 36 and schedule 2 of the Solicitors Act 1974 ("the Act"). Section 36 sets out the requirement to maintain a Compensation Fund, the scope of the Fund and the power to make Rules about the Fund and about the procedure for making grants from it. The collection of contributions and the administration of the Fund are dealt with in Schedule 2.
3. The procedures for making and processing applications are set out in the Compensation Fund Rules 1995. Attached to the Rules are guidelines which decision makers may take into account when exercising the SRA's discretion.
4. One of the changes to be introduced by the Legal Services Act 2007 (LSA) is the repeal of section 36 and schedule 2 and the introduction of new sections 36 and 36A. The new sections are enabling provisions which give the Society (in practice the SRA) the power to make rules relating to all aspects of the Compensation Fund. This means that the new rules must include the relevant provisions currently in section 36 and schedule 2 and they must come into effect upon the commencement date to avoid a hiatus.
5. In the new sections 36 and 36A there is no longer any reference to dishonesty or hardship. The SRA could have taken the opportunity to totally rewrite the rules and to extend the scope of the Fund. However, it is important to get the new rules in place, including any process of concurrence and/or approval, by 1 March 2009, so as to be in time for the implementation of Legal Disciplinary Practices, firm-based regulation of partnerships and other changes in the SRA's rule-making powers. It is therefore considered appropriate that any changes to take place now will be confined to ones that are relatively minor and for the benefit of the public. It is unlikely that major changes will be proposed until the Legal Services Board is up and running and the new approval process is in place.
6. The current rules and guidelines are attached as Annex 1 and the proposed new rules as Annex 2.

## 2. Proposed changes

### General changes

7. The implementation of the LSA and the need to restructure the rules has provided the opportunity to simplify the provisions currently set out in the 1995 rules and guidelines with a view to making them more user friendly. In particular, it is not intended at this stage to have separate guidelines. Whilst the new legislation provides for guidelines, it is considered to be better that all the relevant provisions are set out in one document, rather than two as is the

present case, and that they are written in more consumer friendly language. Some of the current guidelines should more properly be treated as rules, and have been adapted as such. Others in effect merely repeat the rules and have been deleted.

## Hardship

8. Under the current provisions of the Act grants can be made (a) in the event of dishonesty, or (b) where a failure to account has occurred and hardship arises as a result. The hardship test broadly has the effect of separating out applications from private individuals from those from institutional applicants such as banks and building societies. This is because it is difficult for such a financial institution to show that it has suffered hardship. It has been a long established policy of the Fund that for private individuals the hurdle to be overcome is very low.
9. Whilst the LSA will substitute a new section 36 of the Solicitors Act which no longer refers to dishonesty or hardship, the draft new rules have retained these terms. The reasons for this are (i) to maintain, by and large, the status quo for reasons set out in paragraph 5, and (ii) to maintain the focus of the protection afforded by the Fund on individual applicants acting in their personal capacity. That is not to say that the Fund considers that a body corporate or other business could not suffer hardship. The main change introduced in the draft new rules is to formalise the low hurdle for private individuals. Rule 3 provides that an individual applicant whose dealings with the defaulting practitioner were in a private capacity will be deemed to have suffered hardship. This is not a significant change in the way in which the Fund has been operating in practice but it will provide transparency. A business client, whether an individual, partnership or body corporate, will have to demonstrate hardship.

## Maximum grant

10. Under the present rules, the Fund limits grants to £1 million for any one claim. There is power to waive this limit if the circumstances justify it. It is believed that the limit has been waived on just one occasion. This was an exceptional case involving the defrauding of a paraplegic of a large part of his award of damages. The current limit was set about 14 years ago at a time when the limit of indemnity under the compulsory professional indemnity scheme was £1 million per claim. With effect from 2005 the minimum level of indemnity was increased to £2 million any one claim for sole practitioners and partnerships and to £3 million for limited companies and limited liability partnerships.
11. Over the last 14 years the value of property and the level of damages for personal injury have increased considerably and an increase in the level of the maximum grant is long overdue. It is therefore proposed that the Compensation Fund limit should be increased to £2 million in line with minimum level of compulsory indemnity cover (see Rule 16) and that the power of waiver be retained.

## Time limit

12. The current rules state that an application must be submitted within six months of the date that the loss, or the possibility of loss, first came to the applicant's

knowledge and that failure to comply could result in the applicant being penalised. It is often difficult for a full application to be put together within this time scale not least because following an intervention into a firm, it may take some time to clarify the financial position of the firm. Another factor is that applicants are often in the position of having to piece together information where files and papers are missing. It is therefore considered that the six month period is too short.

13. To overcome these problems it is proposed to extend the time limit to twelve months (see Rule 10). This should not raise any financial issues and will allow an applicant more time to collate evidence thus the applicant will be in a position to submit a complete application making it easier for the Fund's staff to investigate the claim.

### Rectification costs

14. The Compensation Fund has for very many years dealt with applications for reimbursement of additional costs incurred by an applicant for the completion of work that the applicant's solicitor has been paid for but has not carried out. This type of claim often relates to a conveyancing matter where the post completion formalities were outstanding at the time the firm was the subject of an intervention by the SRA. The client of the intervened firm is placed in the position of having to instruct a new firm to complete the work. In some cases the mortgage lender instructs its solicitors to complete the work and passes the rectification cost onto the borrower.
15. This type of grant has not been specifically expressed in the Compensation Fund Rules to date so the opportunity has been taken to address this by the insertion of a new Rule 13.3. The average annual cost of this type of grant is around £120,000 which is not expected to change significantly following the introduction of this Rule.

### Fund of last resort

16. In the current guidelines it is stated at general principle 1 (c) that the Fund is administered as a fund of last resort. This implies that before making any grant the Fund will require applicants to exhaust other civil remedies. Whilst in many cases this is indeed how the fund operates there are occasions where, in the public interest, the Fund acts as a fund of first resort.
17. Examples of where the Fund acts as a fund of first resort include:
  - (1) Following an intervention by the SRA into a conveyancing practice the Compensation Fund makes emergency funds available to the practice in the form of loans to enable the completion of urgent property transactions. This minimises the disruption to clients and also the size of any potential claims on the Fund.
  - (2) In circumstances where there is complex theft of client money resulting in intervention and uncertainty as to whether claims should fall to the firm's indemnity insurer or the Compensation Fund, the Fund has dealt with

claims pending the outcome of an investigation to establish where claims should properly lie.

- (3) The Compensation Fund will provide immediate funding where there is an urgent need such as a defaulting solicitor's client facing the threat of bankruptcy or facing the repossession of property due to the failure of the solicitor to redeem a mortgage.
18. In the draft new Rules the reference to fund of last resort has been replaced by a new Rule 12 - "Exhausting other remedies" – which more accurately reflects the true position.

### 3. Questions

1. Do you agree that an individual whose dealings with a defaulting practitioner have been in a personal capacity and who has suffered or is likely to suffer loss due to a failure to account should be deemed to have suffered hardship? (Rule 3)
2. Do you agree that the maximum grant should be increased from £1 million to £2 million, subject to the power to waive the limit? (Rules 16 and 22)
3. Do you agree that the time limit for submitting an application should be increased from 6 months to 12 months? (Rule 10)
4. Do you consider that grants in respect of rectification costs should be specifically expressed in the Rules? (Rule 14(3))
5. Do you consider that the wording of Rule 12 more accurately describes the true nature of the Fund rather than the phrase "Fund of last resort"?

**Please give reasons for your answers.**

### 4. 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 **Compensation Fund**.
- Click **How to respond**.
- Alternatively, go to [www.sra.org.uk/sra/consultations/798.article#respond](http://www.sra.org.uk/sra/consultations/798.article#respond).

#### Time limits

The deadline for responses is **6 June 2008**, except that for comments on Question 2 (raising the limit for grants to £2 million), the deadline is extended to **20 June 2008**.

# Annex 1

## [Draft] Solicitors' Compensation Fund Rules ~~1995~~ [2009]

Rules dated ~~26 January 1995~~ [1 March 2009] commencing [1 March 2009] made by the ~~Council of the Law Society~~ [Solicitors Regulation Authority Board](#) under ~~Section 36(8)~~ [sections 36, 36A and 79](#) of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985, with the concurrence of the Master of the Rolls under 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.

### 1. Interpretation

~~(a)(1)~~ In these ~~Rules~~ [rules](#):

“**the Act**” means the Solicitors Act 1974;

“**applicant**” means a person or persons applying for a grant out of the Compensation Fund under ~~section 36 of the Act, Schedule 2 paragraph 6 of the Administration of Justice Act 1985 or Schedule 14 paragraph 6 of the Courts & Legal Services Act 1990~~ [rule 3 of these rules](#);

“**appointed representative**” means [the personal representative of a deceased defaulting practitioner; the trustee of a bankrupt defaulting practitioner; the administrator of an insolvent defaulting practitioner, or other duly appointed representative of a defaulting practitioner;](#)

“**compensation claim**” means [a claim in respect of a loss for which a grant may be made under these rules;](#)

“**defaulting practitioner**” means:

~~(i)(a)~~ [\(a\)](#) a solicitor in respect of whose act or default, or in respect of whose employee's act or default, an application for a grant is made;

~~(ia)(b)~~ [\(b\)](#) a registered European lawyer in respect of whose act or default, or in respect of whose employee's act or default, an application for a grant is made;

~~(ii)(c)~~ [\(c\)](#) a recognised body in respect of whose act or default, or in respect of whose ~~officer's manager's~~ or employee's act or default ~~(in the case of a company), or in respect of whose member's act or default (in the case of a limited liability partnership)~~, an application for a grant is made; or

~~(iii)(d)~~ [\(d\)](#) a registered foreign lawyer who is ~~practising in a manager of a partnership, limited liability partnership or company together~~ with a solicitor ~~or a, a~~ registered European lawyer [or a recognised body](#), and in respect of whose act or default or in respect of whose employee's act or default, an application for a grant is made;

and the expressions "defaulting solicitor", "defaulting registered European lawyer", "defaulting recognised body" and "defaulting registered foreign lawyer" shall be construed accordingly;

“**exempt European lawyer**” [has the meaning assigned in rule 24 of the Solicitor's Code of Conduct 2007;](#)

“manager” means a partner in a partnership, a member of a limited liability partnership or a director of a company, as defined in rule 24 of the Solicitor's Code of Conduct 2007;

“recognised body” has the meaning assigned by section 9 of the Administration of Justice Act 1985;

“registered European lawyer” means an individual registered with the Law Society SRA under regulation 17 of the European Communities (Lawyer's Practice) Regulations 2000; and

“registered foreign lawyer” has the meaning assigned by section 89 of the Courts and Legal Services Act 1990;

“SRA” means the Solicitors Regulation Authority; and

when referring to a practitioner, applicant or other person which is a body rather than an individual, words denoting the masculine or feminine gender (such as "he or she" or "who") also include the neuter ("it" or "which").

(b)(2) Other expressions in these Rules-rules have the meaning assigned to them by the Act.

(c)(3) The Interpretation Act 1978 applies to these Rules-rules as it applies to an Act of Parliament.

## 2. Maintenance of and contributions to the Fund

(1) The Law Society (“the Society”) shall establish and maintain the fund called the Solicitors' Compensation Fund (“the Fund”) for making grants in respect of compensation claims.

### ***Guideline 1. General principles***

#### ***Guideline 1(a)***

(2) Every solicitor, registered European lawyer, registered foreign lawyer and recognised body shall make contributions to the compensation fund at such times and in such circumstances, as may be prescribed from time to time by the SRA. Any unpaid contributions may be recovered as a debt due to the Society.

(3) Paragraph (2) shall not apply to a solicitor, registered European lawyer or registered foreign lawyer who is a Crown Prosecutor.

(4) The Society may invest any money which forms part of the Fund in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act).

(5) The Society may insure with authorised insurers, in relation to the Fund, for such purposes and on such terms as it considers appropriate.

(6) The Society may

(a) borrow for the purposes of the Fund;

(b) charge investments which form part of the Fund as security for borrowing by the Society for the purposes of the Fund.

- (7) The Fund may be applied by the SRA for the following purposes (in addition to the making of grants in respect of compensation claims):
- (a) payment of premiums on insurance policies effected under paragraph (5);
  - (b) repayment of money borrowed by the Society for the purposes of the Fund and payment of interest on any money so borrowed under paragraph (6);
  - (c) payment of any other costs, charges or expenses incurred by the Society in establishing, maintaining, protecting, administering or applying the Fund;
  - (d) payment of any costs, charges or expenses incurred by the SRA in exercising its powers under Part II of Schedule 1 to the Act (intervention powers);
  - (e) payment of any costs or damages incurred by the SRA, its employees or agents as a result of proceedings against it or them for any act or omission of its or theirs in good faith and in the exercise or purported exercise of such powers.

### 3. Grants which may be made from the Fund

#### ***Guideline 1. General principles***

##### ***Guideline 1(a)***

The ~~basic~~ object of the Fund is to replace "~~clients' money~~" ~~misappropriated by a solicitor or his or her employee(s), but, although an~~ client money which a defaulting practitioner or a defaulting practitioner's employee or manager has misappropriated or otherwise failed to account for. ~~applicant for a grant must be a person who has suffered loss through the actions of the solicitor, he or she~~ The applicant need not necessarily be or have been the ~~defaulting practitioner's~~ client.

##### ***Guideline 1(b)***

- (1) A grant out of the Fund is made wholly at the discretion of the ~~Council of the Law Society~~ SRA. No person has a right to a grant enforceable at law, ~~but the intention of the Council is to seek to administer the Fund in an even-handed and consistent manner.~~
- (2) For any grant to be made out of the Fund, an applicant must satisfy the SRA that:
- (a) he has suffered or is likely to suffer loss in consequence of the dishonesty of a defaulting practitioner or the employee or manager of a defaulting practitioner or
  - (b) he has suffered or is likely to suffer loss and hardship in consequence of a failure to account for money which has come into the hands of a defaulting practitioner or the employee or manager of a defaulting practitioner, which may include the failure by a defaulting practitioner to complete work for which he was paid,
- in the course of a transaction of a kind which is part of the usual business of the persons listed in rule 1(1) (a), (b), (c) and (d).



### **Guideline 1(f)**

The Council normally require that the “dishonesty” or “failure to account” referred to in Section 36(2)(a) and (b) of the Solicitors Act 1974 must have occurred within the course of a solicitor/client transaction of a kind which is part of the usual business of a solicitor.

#### (3) For the purposes of paragraph (2)(b):

- (a) an individual whose dealings with the defaulting practitioner have been in a personal capacity and who has suffered or is likely to suffer loss due to a failure to account shall be deemed to have suffered hardship; and
- (b) a body corporate, or an individual whose dealings with the defaulting practitioner have been in a business capacity, and who has suffered or is likely to suffer loss due to a failure to account must provide evidence to satisfy the SRA that the body or individual has suffered or is likely to suffer hardship.

### *Guideline 5. Interim grants*

~~— In an application where it appears that there is severe hardship, the Council may make an interim grant before the full investigation of the whole application has been completed and without the full application being admitted. However, the Council must be satisfied that there has been a loss of an amount at least equal to that to be paid out by way of an interim grant.~~

#### (4) A grant may, at the sole discretion of the SRA, be made as an interim measure.

### *Guideline 6. Claims where the defaulting solicitor is or was in partnership*

- ~~(a) — Losses caused by the dishonesty of a partner or employee will normally be recoverable from the Solicitors' Indemnity Fund, or after 31 August 2000 from the firm's insurer under the Solicitors' Indemnity Insurance Rules. The Council may, however, make a grant to an applicant in respect of part of his or her claim which is not covered by the Indemnity Fund or by the firm's insurance, e.g. where the remaining partners are unable to settle all or part of the claim from their own resources.~~
- ~~(b) — Accordingly, applicants should proceed with a claim against the remaining partners who, in turn, will make a claim against the Indemnity Fund, or after 31 August 2000 under the firm's insurance. Where there is doubt as to whether a claim should be met from the Indemnity Fund or the Compensation Fund, the Society endeavours to make suitable arrangements with Solicitors' Indemnity Fund Limited to ensure that claims are paid promptly.~~

## **2.4. Grants in respect of persons not authorised to practise**

- (a)(1)** A grant may be made in respect of a defaulting solicitor even if the defaulting solicitor had no practising certificate in force ~~or was suspended from practice~~ at the date of the relevant act or default provided that the **Council SRA** is reasonably satisfied that the applicant was unaware of the absence of a **valid** practising certificate ~~or of the suspension~~.
- (aa)(2)** A grant may be made in respect of a defaulting registered European lawyer even if, at the date of the relevant act or default, the registration of that lawyer in the **Society's SRA's** register of European lawyers was suspended or was

cancelled under regulation 8 of the European Lawyers Registration Regulations 2000 due to non-renewal provided that the [Council SRA](#) is satisfied that the applicant was unaware of the suspension or cancellation.

~~(b)(3)~~ A grant may be made in respect of a defaulting recognised body even if the recognition of that body had expired for non-renewal under regulation ~~7.1 of the Recognised Bodies Regulations [2005]~~ [8.3 of the Solicitors' Recognised Bodies Regulations 2007](#) on or before the date of the relevant act or default provided that the [Council SRA](#) is reasonably satisfied that the applicant was unaware of such revocation.

~~(e)(4)~~ A grant may be made in respect of a defaulting registered foreign lawyer even if, at the date of the relevant act or default, the registration of that lawyer in the register of foreign lawyers was suspended ~~or, or~~ was cancelled under Schedule 14 paragraph 3(4)(a) of the Courts and Legal Services Act 1990 due to non-renewal ~~provided, provided~~ that the [Council SRA](#) is reasonably satisfied that the applicant was unaware of the suspension or cancellation.

### 3.5. Grants to practitioners

(1) A grant may be made to a defaulting practitioner who or which has suffered or is likely to suffer loss or by reason of his, her or its liability to any client in consequence of some act or default of:

(a) in the case of a defaulting solicitor, registered European lawyer or registered foreign lawyer, any of his or her employees or any fellow manager;

(b) in the case of a defaulting recognised body, any of its managers or employees or any fellow manager,

in circumstances where but for the liability of that defaulting practitioner a grant might have been made from the Fund to some other person.

(2) No grant shall be made

~~(i) — under section 36(2)(c) of the Act to any solicitor, or~~

~~(ii) — under section 36(2)(c) of the Act to any registered European lawyer, or~~

~~(iii) — under Schedule 14 paragraph 6(1)(c) of the Courts & Legal Services Act 1990 to any registered foreign lawyer, or~~

~~(iv) — under Schedule 2 paragraph 6(2)(c) of the Administration of Justice Act 1985 to any solicitor, registered European lawyer, recognised body or registered foreign lawyer, or to any other individual or body corporate permitted under rule 14 of the Solicitors' Code of Conduct 2007 to be a member of a recognised body,~~

under paragraph (1) unless the [Council SRA](#) is satisfied that no other means of making good the loss is available and that ~~he or she~~ [the defaulting practitioner](#) is ~~fitted by reason of conduct, age and experience (or, in the case of a company it is fit and proper fitted by reason of the conduct, age and experience of its officers and employees, or in the case of a limited liability partnership it is fitted by reason of the conduct, age and experience of its members and employees)~~ to receive ~~such~~ a grant.

(3) A grant under paragraph (1) may be made by way of a loan and shall be repayable by the recipient at the time and upon such terms as shall be specified by the SRA.

### **Guideline 1(e)**

A grant may be made out of the Fund to a solicitor applicant, usually by way of a loan, in circumstances where a loss within the ambit of the Fund has been suffered by reason of misappropriation of clients' money by his or her partner or employee or where he or she is the purchaser of a practice from a defaulting solicitor, provided that the application is not tainted with the default. Exceptionally, such a grant may be made even though the applicant may be entitled to indemnity under the Solicitors' Indemnity Fund and without prejudice to that indemnity.

### **4.6. Foreign lawyers**

- (a)(1) If a registered European lawyer is exempted from contributing to the Compensation Fund ~~under the Solicitors' Compensation Fund (Foreign Lawyers' Contributions) Rules 1994~~ on the basis of that he or she has completely equivalent cover under home state rules, no grant shall be made:
- (i)(a) ~~under section 36(2)(a) of the Act~~ in respect of any act or default of the registered European lawyer or his or her employee unless, in the case of an employee, the employee is:
    - (A)(i) a solicitor, or
    - (B)(ii) the employee of a partnership which includes at least one person who ~~is not exempted on the basis of that provision;~~ or which contributes to the Fund; or
  - (ii) ~~under section 36(2)(b) of the Act in respect of any act or default of the registered European lawyer;~~ or
  - (iii)(b) ~~under section 36(2)(c) of the Act~~ rule 5 to the registered European lawyer.
- (b)(2) No grant shall be made ~~under section 36 of the Act~~ in respect of any act or default of a registered European lawyer or an exempt European lawyer, or the employee of a registered European lawyer, where such act or default took place outside the United Kingdom, unless the ~~Council-SRA~~ is satisfied that the act or default was, or was closely connected with, the act or default of a solicitor or the employee of a solicitor, or that the act or default was closely connected with the registered European lawyer's practice in the United Kingdom.
- (c)(3) No grant shall be made ~~under Schedule 14 paragraph 6(1) of the Courts & Legal Services Act 1990~~ in respect of the act or default of a registered foreign lawyer, or of the employee ~~or partner~~ of a registered foreign lawyer, where such act or default took place outside England and Wales, unless the ~~Council-SRA~~ is satisfied that the act or default was, or was closely connected with, the act or default of a solicitor or the employee of a solicitor, or that the act or default was closely connected with practice in England and Wales.

### **Guideline 2.7. Losses which cannot be the subject of a grant outside the remit of the Fund**

~~Certain losses are outside the ambit of the Fund because the Council has no power to make a grant. Examples are:-~~ A grant will not be made in respect of the following;

- (a) ~~losses arising as a result of misappropriation of money by a solicitor outside his or her practice as such or by a solicitor's employee acting outside the scope of his or her employment;~~

- ~~(b)~~ (a) losses arising solely by reason of professional negligence by a solicitor defaulting practitioner, or the employee or manager of a defaulting practitioner;
- ~~(c)~~ (b) losses arising by reason of the failure of a solicitor to satisfy a money judgment against him or her which are the personal debts of a defaulting practitioner and where the facts ~~of the judgment~~ would not otherwise give rise to a claim on the Compensation Fund;
- ~~(d)~~ losses where the Council is satisfied that either no evidence of dishonesty is available or, where in the case of failure to account, an applicant is not suffering material hardship—

### **Guideline 3. Losses in respect of which a grant may not be made**

Notwithstanding the statutory provisions of section 36, there are certain losses in respect of which it is not normally the practice of the Council to make a grant. Examples are

- ~~(a)~~ (c) losses which result losses resulting from, but ~~do does~~ not form part of any misappropriation of, or failure to account for, money or money's worth. This is subject to certain exceptions, e.g. legal costs incurred in applying for a grant and interest on the amount of the grant.
- (d) losses resulting from the trading debts or liabilities of the defaulting practitioner.

### **Guideline 9. Personal liabilities of a solicitor**

The Council will not normally make a grant in respect of the personal or trading debts or liabilities of a solicitor or a solicitor's firm or where the monies form part of a commercial transaction or business venture between the applicant and the solicitor outside the normal solicitor/client relationship.

- ~~(b)~~—the application is tainted with the applicant's own dishonesty.
- ~~(c)~~ (e) the where the applicant has contributed to ~~his, her or its~~ the loss as a result of ~~his/her or its~~ his activities, omissions or behaviour either before, during or after the transaction giving rise to the application ~~or thereafter~~.

### **Guideline 10. Applicant's own behaviour**

When considering any application, the Council takes into account the conduct of the applicant and/or the applicant's servants or agents both before and after the loss was sustained. If the Council, in the exercise of its discretion, considers an applicant and/or an applicant's servants or agents to have inter alia contributed to the circumstances of the loss, or to have failed to submit an application for a grant within a reasonable time (see also Rule 6 of the Solicitors' Compensation Fund Rules), or to have failed to pursue an application diligently, then the application may be rejected in its entirety or the amount of any grant substantially reduced.

- ~~(d)~~ (f) in where in the case of an applicant who is a member of a profession, or is engaged in trade or business or performs a function, ~~where~~ the loss arises in connection with that ~~profession or in the course of that~~ profession, trade, business or function, and there is evidence that the applicant and/or the applicant's servants or agents contributed to the loss by failing to exercise a reasonable standard of care.
- ~~(e)~~ (g) ~~the loss amounts~~ losses amounting to a claim for contractually agreed interest between the applicant and the ~~solicitor~~ defaulting practitioner.

~~Where, following the authorisation of a principal grant, the Council makes a supplementary grant for a sum in lieu of lost interest, the sum is calculated at rates which may from time to time be prescribed by the Council.~~

- ~~(f) (h) the Society was not notified of the applicant's loss within six months of the date upon which the loss first came or ought to have come to the applicant's knowledge, and there are no exceptional circumstances which, in the opinion of the Council, justify the delay (see Rule 6 of the Solicitors' Compensation Fund Rules);~~
- ~~(h) (h) the losses occurring loss occurred in relation to an overseas partnership of which all solicitor partners are exempt from other provisions of Rules 12 and 13 of the Solicitors Overseas Practice Rules 1990 by virtue of Rules 12(6) and 13(6), and which does not fall within rule 15.27(1)(c) or (2)(b) of the Solicitors' Code of Conduct 2007, unless:~~
- ~~(i) the loss did not occur occurred as a result of a solicitor's dishonesty, or~~
  - ~~(ii) the loss occurred as a result of failure to account by a solicitor acting as a named trustee.~~
- ~~(i) (j) the application is applications by the Legal Services Commission for loss occasioned through making regular payments under the Commission's contracting schemes for civil and/or criminal work.~~

### Guideline 3(g) 8. Undertakings

~~the application is based on the failure by a solicitor to comply with an undertaking. The Fund does not generally underwrite a solicitor's undertaking. Failure on the part of a solicitor to comply with an undertaking is a matter of misconduct which may be the subject of a complaint to the Law Society's Consumer Complaints Service or the Compliance Directorate, but does not of itself entitle the recipient to make a successful application for a grant out of the Fund. A grant in respect of a failure by a defaulting practitioner to comply with an undertaking An application may, however, will be considered favourably if it can be shown that an the undertaking was given in the course of the solicitor's defaulting practitioner's usual business as a solicitor acting on behalf of a client, that the recipient acted reasonably in accepting the undertaking and placing reliance on the solicitor in his or her capacity as such undertaking, and that:~~

- ~~(i) the undertaking was given with dishonest intent for the purpose of procuring money or money's worth, or~~
- ~~(ii) the undertaking, although not given with dishonest intent, is subsequently dishonestly not performed by the solicitor for the purpose of procuring money or money's worth.~~

~~The Council SRA does not consider the giving of an undertaking in circumstances which amount to the solicitor giving of a bare guarantee either of his or her the defaulting practitioner's personal liabilities or, or the financial obligations and liabilities of a client or third party to, to form part of the usual business of a solicitor, and such an undertaking would~~

~~therefore not normally be regarded as having been given within the course of a solicitor/client transaction, or other legal practitioner.~~

#### ~~Guideline 14.~~ 9. Multi-profession frauds

~~In an application where~~ Where the loss has been sustained as a result of the combined activities of more than one profession, (e.g. a ~~solicitor defaulting practitioner~~ conspires with an accountant or surveyor, or ~~a dishonest solicitor~~ is assisted by a negligent accountant or valuer) the ~~Council SRA~~ will normally consider ~~how the role of~~ each contributing factor ~~affected in causing~~ the applicant's loss. The ~~Council SRA~~ will normally endeavour to base any grant on its assessment of that portion of the loss primarily attributable to the acts of the ~~solicitor defaulting practitioner~~ as opposed to that portion which is primarily attributable to the acts or omissions of the other professional parties, or to other factors. The ~~Council SRA~~ may decide to make a grant on a pro-rata basis in accordance with its assessment of the importance of each contributing factor in the loss, or may reject an application in its entirety if it is of the opinion that the loss was primarily due to other factors rather than the ~~solicitor's defaulting practitioner's~~ dishonesty.

#### 5. Application form

~~Every applicant shall complete and deliver to the Society an application in such form as may from time to time be prescribed by the Society.~~

#### ~~6. Time limits~~ 10. Applications: form and time limit

Every application ~~shall~~ must be delivered to the ~~Society SRA, in such form as may from time to time be prescribed by the SRA,~~ within ~~six~~ twelve months after the loss, or likelihood of loss, or failure to account, as the case may be, first came, or reasonably should have come, to the knowledge of the applicant. The ~~Council SRA~~ may extend this period if satisfied that there are ~~exceptional~~ circumstances which justify the extension of the time limit.

#### ~~7.~~ 11. Documentation in support

~~The Council may require an application to be supported by a statutory declaration and accompanied by any relevant documents and shall cause such enquiries to be made in relation to the application as it sees fit. Failure to provide documentation or information requested or to co-operate fully in the Council's enquiries may be taken into account when the application is considered.~~

#### **Guideline 1(d)**

~~The burden of satisfying the Council that a loss has been suffered within the ambit of the Fund rests with each applicant, but the Society will give guidance and, so far as possible, for the purpose of the application, allow the applicant reasonable access to records under the Society's control or to which the Society has access.~~

The burden of proving a claim rests with the applicant who must provide such documentation as may be required by the SRA including when requested, a statement of truth. Failure to provide such documentation or to co-operate with the SRA will be taken into account when determining the merits of the application.

#### **Guideline 4. Requirements to be satisfied**

~~Every applicant for a grant out of the Compensation Fund must satisfy the Council:-~~

- ~~(a)—that he, she or it has suffered or is likely to suffer actual loss of money or money's worth;~~

- ~~(b) that such loss has been occasioned by (i) the dishonesty of a solicitor (or his or her employee) acting in the course of his or her practice as such or in connection with a Trust of which the solicitor was at the material time, a professional Trustee or (ii) the failure of a solicitor (or his or her employee) to account for money received in the course of his or her practice or in connection with a Trust of which the solicitor was, at the material time, a professional Trustee;~~
- ~~(c) that any alleged dishonesty is evidenced either by the conviction of the solicitor (or his or her employee), or by a finding of fraud in a civil action, or by evidence leading to an inevitable presumption of theft. Where an application is based on failing to account, the application must be supported by sufficient documentation to substantiate that a failure to account has occurred and that the applicant is suffering or is likely to suffer hardship; and~~
- ~~(d) that the loss is not reasonably recoverable from any other source.~~

## ~~8.~~ 12. Exhausting other remedies

### ~~Guideline 1(c)~~ 4. Fund of last resort

- ~~(1) The Fund is administered as a fund of last resort. This means that a~~ A grant may be limited or refused to an applicant refused or limited where the loss or part of the loss is an insured risk or where the loss is capable of being made good by recourse to another person some other means.
- ~~(2) The Council SRA may, before deciding whether or not to make a grant, require the applicant:~~
  - ~~(a) to pursue~~ to pursue of any civil remedy which may be available to the applicant in respect of the loss,
  - ~~(b) to commence insolvency proceedings.~~
  - ~~(c) the making of~~ to make a formal complaint to the Police in respect of any dishonesty on the part of the defaulting practitioner or ~~may require~~
  - ~~(d) the assistance of an applicant to assist~~ to assist in the taking of any disciplinary action against the defaulting practitioner.
- ~~(3) In the absolute discretion of the SRA, a grant may be made from the Fund before requiring the applicant to resort to other means of recovery.~~

### ~~Guideline 7. Institution of civil proceedings~~

~~In some cases the Council may require an applicant to institute civil proceedings including, where appropriate, insolvency proceedings against the solicitor in respect of the loss suffered. The purpose of the proceedings may be to recover all or part of the alleged loss or to quantify precisely the amount of such loss.~~

~~No applicant should institute proceedings unless and until the written consent of the Society has been obtained and the question of who is to be responsible for the costs has been decided, otherwise any application for a grant in respect of such costs may be rejected by the Council.~~

*Guideline 8. Prosecution of dishonest solicitors*

In all appropriate cases, the applicant will be expected to assist the Police in connection with enquiries into the commission of any criminal offence by the solicitor in respect of the alleged acts giving rise to the application. However, the Council may consider an application for a grant notwithstanding that a defaulting solicitor has not been convicted of any such offence nor has been the subject of a finding of dishonesty by the Solicitors' Disciplinary Tribunal.

**14. 13. Notice to defaulting practitioner**

**(a)(1)** The Council SRA shall not make a grant unless ~~a letter~~;

(a) a communication has been sent (i) ~~to the defaulting solicitor practitioner at his or her last known correspondence address or to any solicitors or other lawyers instructed by him or her his or her appointed representative (ia) to the defaulting registered European lawyer at his or her last known correspondence address or to any solicitors or other lawyers instructed by him or her, as well as to the appropriate regulatory body for the defaulting registered European lawyer within his or her home jurisdiction or jurisdictions, whether in Europe or elsewhere;~~

~~(ii) to the defaulting recognised body at its registered office as last communicated to the Council or the Society under rule 14 of The Law Society's Code of Conduct [2005]; or~~

~~(iii) to the defaulting registered foreign lawyer at his or her last known correspondence address or to any solicitors or other lawyers instructed by him or her as well as to the appropriate regulatory body for the defaulting registered foreign lawyer within his or her home jurisdiction or jurisdictions.~~

informing ~~him/her or it~~ the defaulting practitioner of the nature and value of the application ~~and; and~~

(b) not less than eight days have elapsed since the date of receipt of such letter communication, which shall be regarded as the day following the date of the communication.

~~(b) If by reason of death, insolvency or other disability, proper notification under sub-paragraphs (a)(i), (ia) or (iii) of this rule cannot be given to a defaulting practitioner then such notice may be given to a Personal Representative, Trustee in Bankruptcy or any other person who the Society is satisfied acts for or on behalf of the defaulter and/or his or her Estate.~~

~~(c) Where the defaulting practitioner is a recognised body and it appears to the Society that any letter sent under (a)(ii) above will not come to the attention of the recognised body (or any officer or employee thereof if it is a company, or any member or employee thereof if it is a limited liability partnership) then the letter may be sent to the liquidator and/or receiver of the recognised body or to any other person for the time being accountable for the affairs of the recognised body.~~

(d)(2) If it appears to the Society SRA that any letters communication sent under ~~sub-paragraphs (a)(i) to (iii) of this rule paragraph (1)~~ will not come to the attention of the defaulting practitioner or ~~any other person on his or her behalf appointed representative~~, then the Council SRA may make a grant notwithstanding failure to comply with the provisions of this ~~Rule rule~~.



## ~~9-14.~~ Costs for submitting applications

### (1) Litigation

Where an applicant intends to or has already instituted proceedings for recovery of his loss and wishes to apply for a grant in respect of the costs of the proceedings, the SRA will only consider such costs where;

- (a) they can be shown to be proportionate to the loss, and
- (b) there is a reasonable chance of making a recovery in respect of the loss, or
- (c) the proceedings were necessary to the making of an application to the Fund

### (2) Application costs

Where a grant is made, the ~~Council-SRA~~ may consider an application for a further grant in respect of the reasonable costs properly incurred by the applicant with either his solicitor or other professional adviser, provided that such costs were incurred wholly, necessarily and exclusively in connection with the preparation, submission and proof of the application. ~~If, in the view of the Council, such costs were not reasonably or properly incurred then the Council may decline to pay some or all of these costs.~~

#### *~~Guideline 13. Payment of costs of application~~*

~~The Council has the power to make a further grant in respect of the reasonable costs of an applicant's solicitor or other professional adviser relating to a claim where a grant is authorised (see Rule 9 of the Solicitors' Compensation Fund Rules). The Council may not, however, be prepared to make such a further grant or may grant less than the full costs if it is of the opinion that all or part of the costs should not have been incurred, or might have been saved by an earlier approach to the Society, or is of the view that the costs incurred are unreasonable or excessive.~~

### (3) Costs where the defaulting practitioner has failed to complete work

If the defaulting practitioner did not complete the work for which he was paid, a failure to account shall be deemed to have arisen within the meaning of rule 3(2)(b) of these rules. In such circumstances, the SRA may consider making a grant in respect of the additional reasonable legal costs incurred by the applicant in completing the outstanding work or a grant by way of contribution towards those costs.

## ~~10-15.~~ Interest

- (1) The ~~Council-SRA~~ may consider an application for a supplementary grant by way of a sum in lieu of lost interest on a principal grant. Such interest will normally be calculated in accordance with the rates prescribed from time to time by the ~~Council for Compensation Fund applications and SRA~~. This will normally be calculated from the day upon which the loss which was the subject of the principal grant was incurred, up to the next working day after the ~~despatch of the grant cheque~~ payment of the principal grant. Such payment will take into account that a grant is a gift and is therefore not subject to tax.

~~Guideline 12.—Payment of interest on claims~~

~~In appropriate cases, the Council will consider an application for a supplementary grant in lieu of lost interest on the amount of the grant from the date of the loss (see Rule 10 of the Solicitors' Compensation Fund Rules). If paid, interest will normally be calculated at those rates prescribed from time to time by the Council which take into account that a grant is a gift and is therefore not subject to tax.~~

~~(2) Where the application for the principal grant is in respect of a failure to redeem a mortgage, the SRA may also make a grant in respect of the additional interest accrued to the mortgage account as a result of the defaulting practitioner's failure to redeem.~~

~~11.~~ **16. Discretion to limit Maximum grant**

~~In relation to any loss sustained, or any sum of money which came under the control of a defaulting practitioner, after 10th June 1993, the Council will refuse to authorise a grant of an amount which would result in sums exceeding £1,000,000.00 (inclusive of all costs and interest) being paid to or on behalf of an applicant from either the Compensation Fund or the Solicitors Indemnity Fund or both together in respect of any individual transaction or matter.~~

~~Guideline 15. Normal maximum payout~~

~~For any loss sustained, or any sum of money that came into the possession of a defaulting solicitor, subsequent to 10 June 1993, it is the Council's policy not to authorise a grant with regard to any individual transaction which would result in an aggregate sum exceeding £1,000,000, inclusive of all interest and costs, being paid from a combination of the Compensation Fund and the Solicitors Indemnity Fund or the Compensation Fund solely.~~

~~Subject to rule 22, the maximum grant that may be made is £2 million.~~

~~12.~~ **17. Assisting in recovering money Recovery and Subrogation**

~~Where a grant is made otherwise than by way of loan or if by way of a loan repayment of the loan is waived or otherwise the borrower has failed to repay part or all of the loan, the Society shall be subrogated to the rights and remedies of the person to whom or on whose behalf the grant is made (the recipient) to the extent of the amount of the grant. In such event the recipient shall if required by the SRA whether before or after the making of a grant, and upon the SRA giving to the recipient a sufficient indemnity against costs, sue for recovery of the loss in the name of the recipient but on behalf of the Society for the purpose of giving effect to the Society's rights and to permit the SRA to have conduct of such proceedings.~~

~~Rule 12 An applicant to whom a grant has been made may be required to prove, on behalf of the Society in any insolvency and/or winding-up of the defaulting practitioner and also to comply with all proper or reasonable requirements of the Council in the exercise of subrogated rights under section 36(4) of the Act.~~

~~Guideline 11.~~ **18. Deduction from grants**

~~(a)(1) The Council SRA may deduct from any grant the costs that would have been legally due to the solicitor defaulting practitioner provided that the work had been properly completed so that the applicant will not be in a better position by~~

reason of a grant than he or she would otherwise have been in. ~~A deduction in respect of notional costs may be made by the Council notwithstanding the fact that the defaulting solicitor may not have held a practising certificate at all material times. If defaulting solicitor did the work so badly, or did not complete it, with the result that the applicant has had to instruct another solicitor to carry out or finish the work, then a grant may be made for the additional reasonable costs incurred by the applicant.~~

- ~~(b)(2) The Council will normally seek to~~ SRA may within its discretion deduct from any grant all monies already recovered by an applicant and monies which either will be or should have been recovered. ~~For example, if an application is for a sum of £10,000 but an applicant has already recovered, from whatever source, a sum of £2,000, the Council will normally seek to base any grant on the balance of £8,000. This principle will usually apply even when an applicant believes that he is receiving re-payments at a contractually agreed rate, but where the solicitor has, in fact, actually misappropriated the money advanced and is, for example, making re-payments in lieu of interest in an effort to allay suspicion.~~

### ~~13.~~ 19. Refusal of an application

- (1) If the ~~Council~~ SRA refuses to make a grant of either the whole or part of the amount applied ~~for then the Council shall cause~~ for, the applicant ~~to~~ will be informed in writing of the reasons for the decision.

#### *Guideline 16. Rejection of claim*

- (2) ~~The most common ground for rejection of an application is that it does not come within the Compensation Fund's statutory framework. When the Council refuse or are unable to make a grant, the applicant will be informed in writing of the reason for this decision. The fact that an application has been rejected does not prevent a further application being submitted, or the rejected application being re-considered, provided that substantial new relevant evidence, information or submissions are produced in support of the new application or the request for re-consideration.~~

## 20. Appeals

Should the applicant wish to appeal against refusal of an application, written notice of intention to appeal must be delivered to the SRA within thirty days of the date of receipt of the decision, which shall be regarded as the day following the date of the written communication of the decision. Such notice must be accompanied by details of the grounds of appeal together with any additional evidence in support.

### ~~15.~~ 21. Notice of requirements

Any requirement of the ~~Council or the Society~~ SRA under these ~~Rules may~~ rules will be communicated ~~by a notice~~ in writing.

### ~~16.~~ Guidelines

~~When exercising the discretion conferred upon it by Section 36(2) of the Act, Schedule 2 paragraph 6(2) of the Administration of Justice Act 1985 and Schedule 14 paragraph 6(1) of the Courts and Legal Services Act 1990, the Council may take into consideration the Guidelines contained in the Schedule to these Rules and decisions of the Council, and any other guidelines that the Council may approve, although these guidelines and decisions shall not fetter the Council's discretion.~~

## Schedule - Guidelines

These guidelines form part of the Solicitors Compensation Fund Rules 1995 made by the Council on 26 January 1995, although were subject to amendment by the Council on 18th July 1996, 22nd May 2000, 25th February 2004, 17th March 2004 and 9th February 2005.

**In these guidelines, reference to a solicitor shall include registered European lawyers; registered foreign lawyers practising in partnership with a solicitor or a registered European lawyer; and recognised bodies.**

### ~~17.~~ 22. Waivers

The ~~Council~~ SRA may waive any of the provisions of these ~~Rules~~ rules excepting ~~Rule 14~~ rules 13, 19, 20 and 21.

### ~~18.~~ 23. Repeal and commencement

(1) These ~~Rules~~ rules shall come into operation on 1 March ~~1995~~ 2009, whereupon the Solicitors' Compensation Fund Rules ~~1975 (as amended) 1995~~ shall cease to have effect save in respect of applications submitted before that date, which shall continue to be subject to the 1995 rules.

(2) On 1 July 2009, rule 4 shall be amended as follows:

(a) In paragraph (2):

(i) delete "cancelled under regulation 8 of the European Lawyers Registration Regulations 2000" and substitute "revoked under regulation 9.2(a)(ii) of the SRA Practising Regulations [2009]"; and

(ii) delete "suspension or cancellation" and substitute "suspension or revocation";

(b) In paragraph (3):

(i) delete "had expired for non-renewal under regulation 8.3" and substitute "was suspended or was revoked under regulation 9(c)"; and

(ii) delete "expiry" and substitute "suspension or revocation"; and

(c) In paragraph (4):

(i) delete "cancelled under Schedule 14 paragraph 3(4)(a) of the Courts and Legal Services Act 1990" and substitute "revoked under regulation 9.2(a)(ii) of the SRA Practising Regulations [2009]"; and

(ii) delete "suspension or cancellation" and substitute "suspension or revocation".

# Solicitors' Compensation Fund Rules [2009]

Rules dated [1 March 2009] commencing [1 March 2009] made by the Solicitors Regulation Authority Board under sections 36, 36A and 79 of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985, with the concurrence of the Master of the Rolls under 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.

## 1. Interpretation

(1) In these rules:

**“the Act”** means the Solicitors Act 1974;

**“applicant”** means a person or persons applying for a grant out of the Compensation Fund under rule 3 of these rules;

**“appointed representative”** means the personal representative of a deceased defaulting practitioner; the trustee of a bankrupt defaulting practitioner; the administrator of an insolvent defaulting practitioner, or other duly appointed representative of a defaulting practitioner;

**“compensation claim”** means a claim in respect of a loss for which a grant may be made under these rules;

**“defaulting practitioner”** means:

- (a) a solicitor in respect of whose act or default, or in respect of whose employee's act or default, an application for a grant is made;
- (b) a registered European lawyer in respect of whose act or default, or in respect of whose employee's act or default, an application for a grant is made;
- (c) a recognised body in respect of whose act or default, or in respect of whose manager's or employee's act or default, an application for a grant is made; or
- (d) a registered foreign lawyer who is a manager of a partnership, limited liability partnership or company together with a solicitor, a registered European lawyer or a recognised body, and in respect of whose act or default or in respect of whose employee's act or default, an application for a grant is made;

and the expressions "defaulting solicitor", "defaulting registered European lawyer", "defaulting recognised body" and "defaulting registered foreign lawyer" shall be construed accordingly;

**“exempt European lawyer”** has the meaning assigned in rule 24 of the Solicitor's Code of Conduct 2007;

**“manager”** means a partner in a partnership, a member of a limited liability partnership or a director of a company, as defined in rule 24 of the Solicitor's Code of Conduct 2007;

**“recognised body”** has the meaning assigned by section 9 of the Administration of Justice Act 1985;

**“registered European lawyer”** means an individual registered with the SRA under regulation 17 of the European Communities (Lawyer’s Practice) Regulations 2000;

**“registered foreign lawyer”** has the meaning assigned by section 89 of the Courts and Legal Services Act 1990;

**“SRA”** means the Solicitors Regulation Authority.; and

when referring to a practitioner, applicant or other person which is a body rather than an individual, words denoting the masculine or feminine gender (such as "he or she" or "who") also include the neuter ("it" or "which").

- (2) Other expressions in these rules have the meaning assigned to them by the Act.
- (3) The Interpretation Act 1978 applies to these rules as it applies to an Act of Parliament.

## 2. Maintenance of and contributions to the Fund

- (1) The Law Society (“the Society”) shall establish and maintain the fund called the Solicitors' Compensation Fund ("the Fund") for making grants in respect of compensation claims.
- (2) Every solicitor, registered European lawyer, registered foreign lawyer and recognised body shall make contributions to the Fund in such amounts, at such times and in such circumstances, as may be prescribed from time to time by the SRA. Any unpaid contributions may be recovered as a debt due to the Society.
- (3) Paragraph (2) shall not apply to a solicitor, registered European lawyer or registered foreign lawyer who is a Crown Prosecutor.
- (4) The Society may invest any money which forms part of the Fund in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act).
- (5) The Society may insure with authorised insurers, in relation to the Fund, for such purposes and on such terms as it considers appropriate.
- (6) The Society may
  - (a) borrow for the purposes of the Fund;
  - (b) charge investments which form part of the Fund as security for borrowing by the Society for the purposes of the Fund.
- (7) The Fund may be applied by the SRA for the following purposes (in addition to the making of grants in respect of compensation claims):
  - (a) payment of premiums on insurance policies effected under paragraph (5);
  - (b) repayment of money borrowed by the Society for the purposes of the Fund and payment of interest on any money so borrowed under

paragraph (6);

- (c) payment of any other costs, charges or expenses incurred by the Society in establishing, maintaining, protecting, administering or applying the Fund;
- (d) payment of any costs, charges or expenses incurred by the SRA in exercising its powers under s36(A) of the Legal Services Act 2007 (intervention powers);
- (e) payment of any costs or damages incurred by the SRA, its employees or agents as a result of proceedings against it or them for any act or omission of its or theirs in good faith and in the exercise or purported exercise of such powers.

### 3. Grants which may be made from the Fund

The object of the Fund is to replace client money which a defaulting practitioner or a defaulting practitioner's employee or manager has misappropriated or otherwise failed to account for. The applicant need not necessarily be or have been the defaulting practitioner's client.

- (1) A grant out of the Fund is made wholly at the discretion of the SRA. No person has a right to a grant enforceable at law.
- (2) For any grant to be made out of the Fund, an applicant must satisfy the SRA that:
  - (a) he has suffered or is likely to suffer loss in consequence of the dishonesty of a defaulting practitioner or the employee or manager of a defaulting practitioner or
  - (b) he has suffered or is likely to suffer loss and hardship in consequence of a failure to account for money which has come into the hands of a defaulting practitioner or the employee or manager of a defaulting practitioner, which may include the failure by a defaulting practitioner to complete work for which he was paid,

in the course of a transaction of a kind which is part of the usual business of the persons listed in rule 1 (1) (a),(b),(c) and (d).

- (3) For the purposes of paragraph (2)(b):
  - (a) an individual whose dealings with the defaulting practitioner have been in a personal capacity and who has suffered or is likely to suffer loss due to a failure to account shall be deemed to have suffered hardship; and
  - (b) a body corporate, or an individual whose dealings with the defaulting practitioner have been in a business capacity, and who has suffered or is likely to suffer loss due to a failure to account must provide evidence to satisfy the SRA that the body or individual has suffered or is likely to suffer hardship.

- (4) A grant may, at the sole discretion of the SRA, be made as an interim measure.

#### 4. Grants in respect of persons not authorised to practise

- (1) A grant may be made in respect of a defaulting solicitor even if the defaulting solicitor had no practising certificate in force at the date of the relevant act or default provided that the SRA is reasonably satisfied that the applicant was unaware of the absence of a valid practising certificate.
- (2) A grant may be made in respect of a defaulting registered European lawyer even if, at the date of the relevant act or default, the registration of that lawyer in the SRA's register of European lawyers was suspended or was cancelled under regulation 8 of the European Lawyers Registration Regulations 2000 due to non-renewal provided that the SRA is reasonably satisfied that the applicant was unaware of the suspension or cancellation.
- (3) A grant may be made in respect of a defaulting recognised body even if the recognition of that body had expired for non-renewal under regulation 8.3 of the Solicitors' Recognised Bodies Regulations 2007 on or before the date of the relevant act or default provided that the SRA is reasonably satisfied that the applicant was unaware of such revocation.
- (4) A grant may be made in respect of a defaulting registered foreign lawyer even if, at the date of the relevant act or default, the registration of that lawyer in the register of foreign lawyers was suspended, or was cancelled under Schedule 14 paragraph 3(4)(a) of the Courts and Legal Services Act 1990 due to non-renewal, provided that the SRA is reasonably satisfied that the applicant was unaware of the suspension or cancellation.

#### 5. Grants to practitioners

- (1) A grant may be made to a defaulting practitioner who or which has suffered or is likely to suffer loss by reason of his, her or its liability to any client in consequence of some act or default of:
  - (a) in the case of a defaulting solicitor, registered European lawyer or registered foreign lawyer, any of his or her employees or any fellow manager;
  - (b) in the case of a defaulting recognised body, any of its managers or employees or any fellow manager,

in circumstances where but for the liability of that defaulting practitioner a grant might have been made from the Fund to some other person.

- (2) No grant shall be made under paragraph (1) unless the SRA is satisfied that no other means of making good the loss is available and that the defaulting practitioner is fit and proper to receive a grant.
- (3) A grant under paragraph (1) may be made by way of a loan and shall be repayable by the recipient at the time and upon such terms as shall be specified by the SRA.



## 6. Foreign lawyers

- (1) If a registered European lawyer is exempted from contributing to the Fund on the basis that he or she has completely equivalent cover under home state rules, no grant shall be made:
  - (a) in respect of any act or default of the registered European lawyer or his or her employee unless, in the case of an employee, the employee is:
    - (i) a solicitor, or
    - (ii) the employee of a partnership which includes at least one person who or which contributes to the Fund; or
  - (b) under rule 5 to the registered European lawyer.
- (2) No grant shall be made in respect of any act or default of a registered European lawyer or an exempt European lawyer, or the employee of a registered European lawyer, where such act or default took place outside the United Kingdom, unless the SRA is satisfied that the act or default was, or was closely connected with, the act or default of a solicitor or the employee of a solicitor, or that the act or default was closely connected with the registered European lawyer's practice in the United Kingdom.
- (3) No grant shall be made in respect of the act or default of a registered foreign lawyer, or of the employee of a registered foreign lawyer, where such act or default took place outside England and Wales, unless the SRA is satisfied that the act or default was, or was closely connected with, the act or default of a solicitor or the employee of a solicitor, or that the act or default was closely connected with practice in England and Wales.

## 7. Losses outside the remit of the Fund

A grant will not be made in respect of the following;

- (a) losses arising solely by reason of professional negligence by a defaulting practitioner, or the employee or manager of a defaulting practitioner;
- (b) losses which are the personal debts of a defaulting practitioner and where the facts would not otherwise give rise to a claim on the Fund;
- (c) losses resulting from, but not forming part of any misappropriation of, or failure to account for, money or money's worth.
- (d) losses resulting from the trading debts or liabilities of the defaulting practitioner.
- (e) where the applicant has contributed to the loss as a result of his activities, omissions or behaviour either before, during or after the transaction giving rise to the application.

- (f) where, in the case of an applicant who is a member of a profession, or is engaged in trade or business or performs a function, the loss arises in connection with that profession, trade, business or function and there is evidence that the applicant and/or the applicant's servants or agents contributed to the loss by failing to exercise a reasonable standard of care.
- (g) losses amounting to a claim for contractually agreed interest between the applicant and the defaulting practitioner.
- (h) The loss occurred in relation to an overseas partnership which does not fall within rule 15, 27(1)(c) or (2)(b) of the Solicitors' Code of Conduct 2007, unless:
  - (i) the loss occurred as a result of a solicitor's dishonesty, or
  - (ii) the loss occurred as a result of failure to account by a solicitor acting as a named trustee.
- (i) applications by the Legal Services Commission for loss occasioned through making regular payments under the Commission's contracting schemes for civil and/or criminal work.

## 8. Undertakings

A grant in respect of a failure by a defaulting practitioner to comply with an undertaking will be considered if it can be shown that the undertaking was given in the course of the defaulting practitioner's usual business acting on behalf of a client, that the recipient acted reasonably in accepting the undertaking and placing reliance on the undertaking, and that:

- (i) the undertaking was given with dishonest intent for the purpose of procuring money or money's worth, or
- (ii) the undertaking, although not given with dishonest intent, is subsequently dishonestly not performed for the purpose of procuring money or money's worth.

The SRA does not consider the giving of an undertaking in circumstances which amount to the giving of a bare guarantee of the defaulting practitioner's personal liabilities, or the financial obligations and liabilities of a client or third party, to form part of the usual business of a solicitor or other legal practitioner.

## 9. Multi-profession frauds

Where the loss has been sustained as a result of the combined activities of more than one profession, (e.g. a defaulting practitioner conspires with an accountant or surveyor, or is assisted by a negligent accountant or valuer) the SRA will consider the role of each contributing factor in causing the applicant's loss. The SRA will base any grant on its assessment of that portion of the loss primarily attributable to the acts of the defaulting practitioner as opposed to that portion which is primarily attributable to the acts or omissions of the other professional parties, or to other factors. The SRA may decide to make a grant on a pro-rata basis in accordance with

its assessment of the importance of each contributing factor in the loss, or may reject an application in its entirety if it is of the opinion that the loss was primarily due to other factors rather than the defaulting practitioner's dishonesty.

## 10. Applications: form and time limit

Every application must be delivered to the SRA, in such form as may from time to time be prescribed by the SRA, within twelve months after the loss, or likelihood of loss, or failure to account, as the case may be, first came, or reasonably should have come, to the knowledge of the applicant. The SRA may extend this period if satisfied that there are circumstances which justify the extension of the time limit.

## 11. Documentation in support

The burden of proving a claim rests with the applicant who must provide such documentation as may be required by the SRA including when requested, a statement of truth. Failure to provide such documentation or to co-operate with the SRA will be taken into account when determining the merits of the application.

## 12. Exhausting other remedies

- (1) A grant may be refused or limited where the loss or part of the loss is an insured risk or where the loss is capable of being made good by some other means.
- (2) The SRA may, before deciding whether to make a grant, require the applicant:
  - (a) to pursue any civil remedy which may be available to the applicant in respect of the loss,
  - (b) to commence insolvency proceedings,
  - (c) to make a formal complaint to the Police in respect of any dishonesty on the part of the defaulting practitioner or
  - (d) to assist in the taking of any action against the defaulting practitioner.
- (3) In the absolute discretion of the SRA, a grant may be made from the Fund before requiring the applicant to resort to other means of recovery.

## 13. Notice to defaulting practitioner

- (1) The SRA shall not make a grant unless:
  - (a) a communication has been sent to the defaulting practitioner at his or her last known correspondence address or to his or her appointed representative informing the defaulting practitioner of the nature and value of the application; and

- (b) not less than eight days have elapsed since the date of receipt of such communication, which shall be regarded as the day following the date of the communication.
- (2) If it appears to the SRA that any communication sent under paragraph (1) will not come to the attention of the defaulting practitioner or his or her appointed representative, then the SRA may make a grant notwithstanding failure to comply with the provisions of this rule

## 14. Costs

### (1) Litigation

Where an applicant intends to or has already instituted proceedings for recovery of his loss and wishes to apply for a grant in respect of the costs of the proceedings, the SRA will only consider such costs where:

- (a) they can be shown to be proportionate to the loss, and
- (b) there is a reasonable chance of making a recovery in respect of the loss, or,
- (c) the proceedings were necessary for the making of an application to the Fund

### (2) Application costs

Where a grant is made, the SRA may consider an application for a further grant in respect of the reasonable costs properly incurred by the applicant with either his solicitor or other professional adviser, provided that such costs were incurred wholly, necessarily and exclusively in connection with the preparation, submission and proof of the application

### (3) Costs where the defaulting practitioner has failed to complete work

If the defaulting practitioner did not complete the work for which he was paid, a failure to account shall be deemed to have arisen within the meaning of rule 3(2)(b) of these rules. In such circumstances, the SRA may consider making a grant in respect of the additional reasonable legal costs incurred by the applicant in completing the outstanding work or a grant by way of contribution towards those costs.

## 15. Interest

- (1) The SRA may consider an application for a supplementary grant by way of a sum in lieu of lost interest on a principal grant. Such interest will be calculated in accordance with the rates prescribed from time to time by the SRA. This will normally be calculated from the day upon which the loss which was the subject of the principal grant was incurred, up to the next working day after payment of the principal grant. Such payment will take into account that a grant is a gift and is therefore not subject to tax.
- (2) Where the application for the principal grant is in respect of a failure to redeem a mortgage, the SRA may also make a grant in respect of the additional

interest accrued to the mortgage account as a result of the defaulting practitioner's failure to redeem.

## 16. Maximum grant

Subject to rule 22, the maximum grant that may be made is £2million.

## 17. Recovery and Subrogation

Where a grant is made otherwise than by way of loan or if by way of a loan repayment of the loan is waived or otherwise the borrower has failed to repay part or all of the loan, the Society shall be subrogated to the rights and remedies of the person to whom or on whose behalf the grant is made (the recipient) to the extent of the amount of the grant. In such event the recipient shall if required by the SRA whether before or after the making of a grant and upon the SRA giving to the recipient a sufficient indemnity against costs, prove in any insolvency and/or winding-up of the defaulting practitioner and sue for recovery of the loss in the name of the recipient but on behalf of the Society. The recipient shall also comply with all proper and reasonable requirements of the SRA for the purpose of giving effect to the Society's rights and shall permit the SRA to have conduct of such proceedings.

## 18. Deduction from grants

- (1) The SRA may deduct from any grant the costs that would have been legally due to the defaulting practitioner so that the applicant will not be in a better position by reason of a grant than he or she would otherwise have been in.
- (2) The SRA may within its discretion deduct from any grant all monies already recovered by an applicant and monies which either will be or should have been recovered.

## 19. Refusal of an application

- (1) If the SRA refuses to make a grant of either the whole or part of the amount applied for, the applicant will be informed in writing of the reasons for the decision.
- (2) The fact that an application has been rejected does not prevent a further application being submitted provided that substantial new relevant evidence, information or submissions are produced in support of the new application.

## 20. Appeals

Should the applicant wish to appeal against refusal of an application, written notice of intention to appeal must be delivered to the SRA within thirty days of the date of receipt of the decision, which shall be regarded as the day following the date of the written communication of the decision. Such notice must be accompanied by details of the grounds of appeal together with any additional evidence in support.

## 21. Notice of requirements

Any requirement of the SRA under these rules will be communicated in writing.

## 22. Waivers

The SRA may waive any of the provisions of these rules except rules 13, 19, 20 and 21.

## 23. Repeal and commencement

- (1) These rules shall come into operation on 1 March 2009, whereupon the Solicitors' Compensation Fund Rules 1995 shall cease to have effect save in respect of applications submitted before that date, which shall continue to be subject to the 1995 rules.
- (2) On 1 July 2009, rule 4 shall be amended as follows:
  - (a) In paragraph (2):
    - (i) delete "cancelled under regulation 8 of the European Lawyers Registration Regulations 2000" and substitute "revoked under regulation 9.2(a)(ii) of the SRA Practising Regulations [2009]"; and
    - (ii) delete "suspension or cancellation" and substitute "suspension or revocation";
  - (b) In paragraph (3):
    - (i) delete "had expired for non-renewal under regulation 8.3" and substitute "was suspended or was revoked under regulation 9(c)"; and
    - (ii) delete "expiry" and substitute "suspension or revocation"; and
  - (c) In paragraph (4):
    - (i) delete "cancelled under Schedule 14 paragraph 3(4)(a) of the Courts and Legal Services Act 1990" and substitute "revoked under regulation 9.2(a)(ii) of the SRA Practising Regulations [2009]"; and
    - (ii) delete "suspension or cancellation" and substitute "suspension or revocation".

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