

Draft SRA (Cost of Investigations) Regulations 2009 (Annex G2)

Rules and regulations about charging for the costs of investigations carried out by the Solicitors Regulation Authority

dated 31 March 2009

commencing 31 March 2009

amended 6 October 2011

made by the Solicitors Regulation Authority Board under sections 31, 43, 44C, 79 and 80 of the Solicitors Act 1974[*search <http://www.statutelaw.gov.uk>*], section 9 of and paragraph 14A of Schedule 2 to the Administration of Justice Act 1985[*search <http://www.statutelaw.gov.uk>*] and sections 83 and 93B and paragraph 16 of Schedule 22 of the Legal Services Act 2007 with

- the concurrence of the Master of the Rolls under section 31 of the Solicitors Act 1974, paragraph 16 of Schedule 22 to the Legal Services Act 2007[*search <http://www.statutelaw.gov.uk>*] and article 4 of the Legal Services Act 2007 (Commencement No. 4, Transitory and Transitional Provisions and Appointed Day) Order 2009[*search <http://www.statutelaw.gov.uk>*], and
- the concurrence of the Lord Chancellor under paragraph 16 of Schedule 22 to the Legal Services Act 2007 and article 4 of the Legal Services Act 2007 (Commencement No. 4, Transitory and Transitional Provisions and Appointed Day) Order 2009.

Regulation 1 – Interpretation

In these regulations, unless the context otherwise requires:

- (1) "adjudicator" means a person not involved in the investigation or preparation of a case who is authorised by the SRA to make an SRA finding;
- (2) "discipline investigation" means an investigation by the SRA to determine whether a regulated person should be subject to an SRA finding or an application to the Tribunal;
- (3) "Head of Legal Practice ("HOLP")" means a person within the meaning of section 91 of the Legal Services Act 2007;
- (4) "Head of Finance and Administration (HOFA)" means a person within the

meaning of section 92 of the Legal Services Act 2007;

- (5) "licensed body" means a body licensed by the SRA under Part 5 of the Legal Services Act 2007;
- (6) "LLP" means a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000 [*link: <http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&title=Limited+Liability+Partnerships+Act+2000&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=1575435&PageNumber=1&SortAlpha=0>*];
- (7) "manager" means:
- (a) a partner in a partnership;
 - (b) a member of an LLP; or
 - (c) a director of a company;
 - (d) in relation to any other body, a member of its governing body;
- (8) "person who has an interest in licensed body" means a person who has an interest or indirect interest in a licensed body as defined by section 72(3) and (5) of the Legal Services Act 2007;
- (9) "recognised body" means a partnership, company or LLP recognised by the SRA under section 9 of the Administration of Justice Act 1985;
- (10) "registered European Lawyer" means a person registered by the SRA under regulation 17 of the European Communities (Lawyer's Practice) Regulations 2000 [*link: <http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&title=European+Communities+%28Lawyer%27s+Practice%29+Regulations+2000&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=2635271&PageNumber=1&SortAlpha=0>*];
- (11) "registered foreign lawyer" means a person registered by the SRA under section 89 of the Courts and Legal Services Act 1990 [*link: <http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&title=Courts+and+Legal+Services+Act+1990&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=2065498&PageNumber=1&SortAlpha=0>*];
- (12) "regulated person" means:
- (a) a solicitor;
 - (b) a registered European lawyer;

- (c) a registered foreign lawyer;
 - (d) a recognised body;
 - (e) a manager of a recognised body;
 - (f) a licensed body;
 - (g) a manager of a licensed body
 - (h) an employee of a recognised body, a licensed body, a solicitor or registered European Lawyer; or
 - (i) a person who has an interest in a licensed body.
- (13) "section 43 investigation" means an investigation by the SRA as to whether there are grounds for the SRA:
- (a) to make an order under section 43(2) of the Solicitors Act 1974; or
 - (b) to make an application to the Tribunal for it to make such an order;
- (14) "SRA" means the Solicitors Regulation Authority, the independent regulatory body of the Law Society of England and Wales;
- (15) "SRA finding" is a decision that the SRA is satisfied:
- (a) that a regulated person has failed to comply with a requirement imposed by or made under the Solicitors Act 1974, the Administration of Justice Act 1985 or the Legal Services Act 2007;
 - (b) in relation to a solicitor, that there has been professional misconduct;
- (16) "the Tribunal" means the Solicitors Disciplinary Tribunal which is an independent statutory tribunal constituted under section 46 of the Solicitors Act 1974;
- (17) the singular includes the plural and vice versa.

Regulation 2 – Scope

- (1) These regulations prescribe the charges to be paid to the SRA by:
- (a) regulated persons who are the subject of a discipline investigation;

- (b) persons who are the subject of a section 43 investigation.
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- (2) These regulations shall not prevent, prohibit or restrict the exercise of any other powers or other action by the SRA.

Regulation 3 – Discipline investigations

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

Regulation 4 – Section 43 investigations

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

Regulation 5 – Decision to require payment of charges

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

- (2) Where a person is required to pay any charges under these regulations, such charges shall be paid within a time and in the manner specified by the SRA.

Regulation 6 – Basis of charges

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

Regulation 7 – Recovery of charges

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

Regulation 8 – Commencement

- (1) These regulations shall come into force on 31 March 2009 but shall not apply to any decisions that were made before these regulations came into force.
- (2) From 31 March 2010, regulation 1(9) shall have effect as if the words "sole practitioner" were inserted after "means".

APPENDIX 1

Schedule of Charges

1. This Schedule of charges sets out the basis of calculating the amount of charges payable under regulations 5 and 6.
2. The SRA will record the amount of time spent investigating and considering each case and the amount payable under the regulations will

vary depending on the amount of time spent on that matter.

3. The standard levels of charges are as follows:

Number of hours spent on matter	Standard Charge
Under 2 hours	£300.00
2 hours or more but under 8 hours	£600.00
8–16	£1350

4. In addition to the fixed charge of £1350, where investigations take more than 16 hours, an extra charge of £75 for every hour (£37.50 for every half hour) will be applied (rounded up or down to the nearest half hour).
5. For the purposes of regulations 6(3) and 6(4), the additional fixed charge for an appeal shall be £250.