

Solicitors Regulation Authority (SRA)

**Legal Services Act: New forms of practice and regulation –
consultation paper 10**

Compensation Fund



A response by the Association of Personal Injury Lawyers

June 2008

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has around 5,000 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:

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Introduction

APIL welcomes the SRA's consultation on the compensation fund. The protection of clients is paramount and we believe the compensation fund provides an essential fall-back fund when all other client protection measures fail. It ensures that there is protection for clients if the solicitor's professional indemnity insurance will not pay out due to the dishonesty of the solicitor. This marks solicitors out from other providers of legal services such as claims management companies.

Provisions relating to the payment of compensation from the fund need to be kept up to date to continue to offer an effective safety net for clients. We therefore welcome the proposals contained within the SRA's consultation paper as we believe they will make the compensation fund more relevant to clients today.

Question 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)

Yes. We believe that this is a sensible measure. Many if not most individuals who have lost money due to a solicitor's dishonesty or failure to account will have suffered hardship.

Personal injury clients, like many other individuals who approach a solicitor, do so because they believe the solicitor can help them right a wrong they have suffered. To be wronged again by the solicitor, and to find out that the solicitor's insurance will not rectify this, is surely enough for an individual to have to go through. Additional hurdles to claiming compensation for losses suffered as a result of the solicitor's wrongdoing should not be put in an individual's way.

Question 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)

We agree that the limit should be increased and that there should be a power to waive this increased limit.

The £1 million limit is too low. The limit needs to be set at a level below which most claims will realistically fall, but with the power to waive this in exceptional circumstances so that a client does not lose crucial monies.

There are now a lot more personal injury cases in which damages are over £1million than there were when the limit was set 14 years ago, due to the increasing costs of care and housing. We therefore support the proposed increase to £2 million.

Retaining the ability to waive this newly increased limit is critical. In cases where personal injury victims receive high value damages much of the money is intended to provide for future care and essential living costs. Damages are carefully calculated to provide personal injury claimants with just enough funds to meet their reasonable needs. If an unscrupulous solicitor takes part of these damages, the client will not be able to pay for his or her future care and living costs and the compensation fund ought to rectify this where possible.

The case of Thomas McGoldrick, the personal injury solicitor who stole over £1 million from his client is a good example of when a waiver is needed and we recognise the fact that this case was the one time in which the existing limit was exceeded and the client compensated fully. The ability to rectify such wrongs in the future must be retained and so the SRA must be able to waive the limit.

Question 3

Do you agree that the time limit for submitting an application should be increased from 6 months to 12 months? (Rule 10)

Yes. Six months is a relatively short time period. Twelve months is much more reasonable. It may take time to be able to ascertain what remedies are available and contact the SRA about the issue, especially in the case of personal injury victims, many of whom are vulnerable and who need to seek help to submit an application for compensation.

Question 4

Do you consider that grants in respect of rectification costs should be specifically expressed in the Rules? (Rule 14(3))

Yes. This would provide clarity and certainty.

Question 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"?

Yes. The phrase "fund of last resort" seems absolute and if in practice the compensation fund can operate in a way that varies from this, the rules should reflect this. The wording of rule 12 makes it clear that the SRA can require other remedies to be exhausted, such as pursuing the solicitor for negligence which would be covered by a professional indemnity insurance policy, before a payment from the compensation fund can be made.