

Solicitors Regulation Authority
199 Wharfside St
Birmingham
B1 1RN



17 April 2020

By email only: protectreforms2020@sra.org.uk

Dear Sirs

Protecting users of legal services - prioritising payments from the SRA Compensation Fund

APIL welcomes the opportunity to respond to the SRA's consultation on the Compensation Fund. The Compensation Fund provides an essential fall back fund when client protection measures fail, and sets solicitors apart as providers of legal services, when compared to claims management companies and others, with the fund providing an extra level of protection for clients who choose a solicitor. We are concerned that the changes to the compensation fund being proposed will leave clients unable to claim the compensation they have lost as a result of their solicitor behaving dishonestly, failing to have the proper professional indemnity insurance in place, or where there was valid insurance in place, but the policy has been voided. There is already a discretion which is exercised when decisions are made as to whether an application to the fund is successful, and we do not believe there need to be wholesale changes to the fund. We are strongly against the reduction in the maximum payment to £500,000.

We have responded only to those questions within our remit.

Q2) Do you agree with our revised proposals to remove the hardship tests for all individuals, small businesses, small charities and small trusts?

Q3) Do you agree with the proposal that we use our residual discretion to refuse or reduce payments on rare occasions when we consider the costs will be immaterial or substantively compensated elsewhere?

We agree that the hardship tests will be removed. It is unfair that those who suffer loss as a result of a solicitor failing to account must prove hardship, whereas those who have suffered as a result of dishonesty do not. Regardless of income, most people will be significantly impacted from any level of financial loss – as the consultation document states, two thirds of typical working families in “middle Britain” have less than three months outgoings saved, and only a third are confident that they could handle a financial crisis. We agree that the fairer approach is to use the residual discretion in the fund to allow for those rare cases in which the impact of the loss is disproportionately low to be refused under the fund.

Q4) Do you agree that the fund should only be available to those who are the clients, or recipients, or the services of the solicitor/firm in question?

While we would agree that commercial organisations should not have access to the fund, care must be taken around any rule which limits the fund to those who are clients or recipients of the services of the solicitor/firm in question. In relation to personal injury claims, it is important that the wording of any restriction around this would not prevent those who are unable to act for themselves because they do not have the capacity to do so, from accessing the fund. Ultimately, the fund should primarily protect the consumer.

Q5) Should we expressly include a right for the client of a solicitor whose actions have caused the loss for which they are liable to make a claim on the fund, if no other redress is available?

We do not think that there should be a blanket rule, but this should be a factor in the decision making process as to whether an award should be made. There should be no double recovery. There should be a right for the Fund to be joined in any related action where appropriate.

Q10) Do you agree with the revised approach to how we will apply the single applications limit?

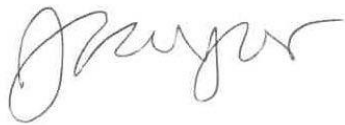
We strongly disagree with the proposal to reduce the limit on a single claim from £2 million to £500,000. The current limit of £2 million is correct. In order to provide effective protection, the limit must be set at a level below which most claims will realistically fall, and there must also be a power to waive this limit in exceptional circumstances, so that a client does not lose crucial monies.

The suggested cut in the limit for the compensation fund from £2 million to £500,000 will mean that many severely injured clients will be left without adequate compensation. Due to the increased costs of care and housing, it is not rare for damages in serious personal injury cases to be well over £500,000. 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 some of these damages, or does not have adequate professional indemnity insurance in place to provide cover if professional negligence has occurred, the severely injured claimant will not be able to meet the cost of their future care and living costs. It is vital that the Compensation Fund remains able to rectify this where possible.

The Compensation Fund is already a discretionary fund, and payments are made on the merits of the particular case. There is already a requirement that each application to the fund is considered on its merits, and as part of this, there is consideration about whether the loss can be made good by some other means, or whether the activities, omissions or behaviour of the applicant contributed to the loss. This ensures that the fund is only accessed where necessary. It is vital that the fund remains viable as a fall back option should a client suffer losses as a result of solicitors failing to account for damages, behaving dishonestly, or not being properly insured.

We hope that our comments prove useful to you.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Alice Taylor', written in a cursive style.

Alice Taylor

Legal Policy Officer