

# Solicitors' Compensation Fund Rules 1995

Client Protection Directorate

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## Statutory authority, rules and guidelines

The Law Society's Compensation Fund is maintained pursuant to Section 36 of the Solicitors Act 1974. The object of the Fund is to enable the Society to make grants to those persons who have suffered loss by reason of the dishonesty of a solicitor, or his employee, or to an applicant who has suffered hardship as a consequence of a failure by a solicitor to account for money.

Section 36(2) provides as follows:-

"Where the Council are satisfied –

- (a) that a person has suffered or is likely to suffer loss in consequence of dishonesty on the part of a solicitor, or of an employee of a solicitor, in connection with that solicitor's practice or purported practice or in connection with any trust of which that solicitor is or formerly was a trustee; or
- (b) that a person has suffered or is likely to suffer hardship in consequence of failure on the part of a solicitor to account for money which has come to his hands in connection with his practice or purported practice or in connection with any trust of which he is or formerly was a trustee; or
- (c) that a solicitor has suffered or is likely to suffer loss or hardship by reason of his liability to any of his firm's clients in consequence of some act or default of any of his partners or employees in circumstances where but for the liability of that solicitor a grant might have been made out of the Compensation Fund to some other person;

the Society may make a grant out of the Compensation Fund for the purpose of relieving that loss or hardship."

Section 36(8) provides as follows:-

"The Council may make Rules about the Compensation Fund and the procedure for making grants from it."

The administration of the Compensation Fund is presently subject to the Solicitors' Compensation Fund Rules 1995 which provides as follows:-

Rules dated 26 January 1995 made by the Council of the Law Society under Section 36(8) of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985.

## Solicitors' compensation fund rules 1995

### 1 Interpretation

- (a) 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 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.

“defaulting practitioner” means:

- (i) 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) 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) a recognised body in respect of whose act or default, or in respect of whose officer's or employee's act or default (in the case of a company), or in respect of whose member's or employee's act or default (in the case of a limited liability partnership), an application for a grant is made; or
- (iii) a registered foreign lawyer who is practising in partnership with a solicitor or a registered European lawyer, 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.

"**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 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 & Legal Services Act 1990.

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

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

- (a) 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 is reasonably satisfied that the applicant was unaware of the absence of a practising certificate or of the suspension.
- (aa) 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 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 is satisfied that the applicant was unaware of the suspension or cancellation.

- (b) A grant may be made in respect of a defaulting recognised body even if the recognition of that body had been revoked for non-renewal under regulation 7.1 of the Solicitors' Recognised Bodies Regulations 2007 on or before the date of the relevant act or default provided that the Council is reasonably satisfied that the applicant was unaware of such revocation.
- (c) 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 & Legal Services Act 1990 due to non renewal provided that the Council is reasonably satisfied that the applicant was unaware of the suspension or cancellation.

### **3. Grants to practitioners**

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,

unless the Council is satisfied that no other means of making good the loss is available and that he or she is fitted by reason of conduct, age and experience (or in the case of a company it is 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.

### **4. Foreign lawyers**

- (a) If a registered European lawyer is exempted from contributing to the Compensation Fund under the Solicitors' Compensation Fund (Foreign Lawyers' Contributions) Rules 1991 on the basis of completely equivalent cover under home state rules, no grant shall be made:
  - (i) 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) a solicitor, or
    - (B) the employee of a partnership which includes at least one person who is not exempted on the basis of that provision;

- (ii) under section 36(2)(b) of the Act in respect of any act or default of the registered European lawyer; or
  - (iii) under section 36(2)(c) of the Act to the registered European lawyer.
- (b) No grant shall be made under section 36 of the Act in respect of any act or default of a registered European lawyer, or the employee or partner of a registered European lawyer, where such act or default took place outside the United Kingdom, unless the Council is satisfied that the act or default was, or was closely connected with, the act or default of a solicitor, or that the act or default was closely connected with the registered European lawyer's practice in the United Kingdom.
- (c) 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 is satisfied that the act or default was, or was closely connected with, the act or default of a solicitor, or that the act or default was closely connected with practice in England and Wales.

## **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**

Every application shall be delivered to the Society within six 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 may extend this period if satisfied that there are exceptional circumstances which justify the extension of the time limit.

## **7. 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.

## **8. Other remedies**

The Council may, before deciding whether or not to make a grant, require the pursuit of any civil remedy which may be available in respect of the loss, the making of a formal complaint to the Police in respect of any dishonesty on the part of the defaulting practitioner or may require the assistance of an applicant in the taking of any disciplinary action against the defaulting practitioner.

## **9. Costs for submitting applications**

Where a grant is made, the Council 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, exclusively and necessarily 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 those costs.

## **10. Interest**

The Council 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 will normally be calculated from the day 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.

## **11. Discretion to limit 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.

## **12 Assisting in recovering money**

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.

## **13. Refusal of an application**

If the Council refuses to make a grant of either the whole or part of the amount applied for then the Council shall cause the applicant to be informed in writing of the reasons for the decision.

## **14. Notice to defaulting practitioner**

- (a) The Council shall not make a grant unless a letter has been sent:
  - (i) to the defaulting solicitor at his or her last known correspondence address or to any solicitors or other lawyers instructed by him or her;
  - (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 (or any Rules for the time being replacing those Rules); or under rule 14 of the Solicitors' Code of Conduct 2007.
- (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 of the nature and value of the application and not less than eight days have elapsed since the date of such letter.

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

## **15. Notice of requirements**

Any requirement of the Council or the Society under these Rules may 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.

## **17. Waivers**

The Council may waive any of the provisions of these Rules excepting Rule 14.

## **18. Repeal and commencement**

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

# Solicitors' compensation fund rules 1995 [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, 9th February 2005 and 1st July 2007

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.

### 1. General Principles

- (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 applicant for a grant must be a person who has suffered loss through the actions of the solicitor, he or she need not necessarily be or have been the solicitor's client.
- (b) A grant out of the Fund is made wholly at the discretion of the Council of the Law Society. 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.
- (c) The Fund is administered as a fund of last resort. This means that a grant may be limited or refused to an applicant where the loss is an insured risk or where the loss is capable of being made good by recourse to another person.
- (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.
- (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.
- (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.

## **2 Losses which cannot be the subject of a grant**

Certain losses are outside the ambit of the Fund because the Council has no power to make a grant. Examples are:

- (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) losses arising solely by reason of professional negligence by a solicitor;
- (c) losses arising by reason of the failure of a solicitor to satisfy a money judgment against him or her 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.

## **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) losses which result from, but do 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.
- (b) the application is tainted with the applicant's own dishonesty.
- (c) the applicant has contributed to his, her or its loss as a result of his/her or its activities, omissions or behaviour either before, during or after the transaction giving rise to the application or thereafter.
- (d) 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 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) the loss amounts to a claim for contractually agreed interest between the applicant and the solicitor. 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) 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);

- (g) 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 but does not of itself entitle the recipient to make a successful application for a grant out of the Fund.

An application may, however, be considered favourably if it can be shown that an undertaking was given in the course of the solicitor'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 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 does not consider the giving of an undertaking in circumstances which amount to the solicitor giving a bare guarantee either of his or her personal liabilities or the financial obligations and liabilities of a client or third party 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.

- (h) the 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 the loss did not occur as a result of a solicitor's dishonesty.
- (i) the application is by the Legal Services Commission for loss occasioned through making regular payments under the Commission's contracting schemes for civil and/or criminal work.

#### **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.

## **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.

## **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.

## **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.

## **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.

## **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.

## **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.

## **11. Deduction from grants**

- (a) The Council may deduct from any grant the costs that would have been due to the solicitor 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 a 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) The Council will normally seek to 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.

## **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.

### **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.

### **14. Multi-profession frauds**

In an application where the loss has been sustained as a result of the combined activities of more than one profession, (e.g. a solicitor conspires with an accountant or surveyor, or a dishonest solicitor is assisted by a negligent accountant or valuer) the Council will normally consider how each contributing factor affected the applicant's loss. The Council will normally endeavour to base any grant on its assessment of that portion of the loss primarily attributable to the acts of the solicitor 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 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 dishonesty.

### **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.

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

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.