

SRA BOARD
3 June 2015

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Schedule of Delegation - Compensation Fund

Purpose

- 1 This paper proposes an amendment to the Schedule of Delegation to enable the exercise of a new power to summarily dismiss applications to the Compensation Fund.

Recommendation

- 2 The Board is asked to approve the proposed amendment to the Schedule of Delegation.

If you have any questions about this paper please contact: David Middleton, Executive Director. Legal and Enforcement and Client Protection, david.middleton@sra.org.uk – 0121 329 6003

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Background

- 3 Decisions on payment or refusal of applications to the Compensation Fund (CF) are made in accordance with the Schedule of Delegation ("the Schedule") approved from time to time by the SRA Board. An extract from the Schedule containing those delegations which relate to the Compensation Fund is at Annex 1.
- 4 Historically, the Compensation Fund Rules ("the Rules") contained no restriction on who could apply to the Fund for a grant. However, on 1 April 2015, changes to the Rules¹ came into force which contain eligibility criteria limiting applications to the Fund to:
 - individuals;
 - business/ corporate bodies with a turnover of less than £2M;
 - charities with an annual income of less than £2M; and
 - trusts with an asset value of less than £2M².

The amended Rules are attached at Annex 2. The changes were an amendment to Rule 3.4 and the insertion of new Rules 3.6 to 3.12.

- 5 The Rules include a new power, set out in Rule 3.12, that: "*the SRA may summarily determine whether a person is eligible to apply for a grant*". The purpose of this is to avoid the need to carry out a full investigation when it is clear that the applicant is not eligible for a grant. The proposal is to delegate the power to make such a summary decision to the level of Technical Advisers in the Fund.
- 6 There are cases where it is clear that a grant will not be made but if the applicant insists, the CF has to refer the claim to Adjudication for a formal decision. That position remains where there is some scope for argument or discretion such as where the conduct of the claimant will almost certainly mean that a grant will be refused (eg he has been convicted of a fraud in relation to the particular transaction).
- 7 The proposed amendment is, however, limited to the new situation where the lack of eligibility is clear by application of the Rules and there is therefore no effective discretion. Of course, if there is a genuine issue it can still be referred to Adjudication. An example would be where the claimant is a charity which has an argument with some merit as to hardship to its beneficiaries.
- 8 An appeal process is provided as discussed below. Ultimately, claimants also have the protection of potential judicial review and those where there is an

¹ The new Rules were approved by the Board on 17 September 2014 and by the Legal Services Board on 17 October 2014.

² Trusts and charities with turnover/asset value exceeding £2M may still be eligible if they can show that their beneficiaries will suffer hardship.

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issue about eligibility are more likely than most consumers to have the resources to make such an application.

Proposed Delegations

- 9 Two new delegations are proposed (11B and 11C) to reflect the introduction of Rule 3.12 as follows:

“11B. To make a summary determination as to whether a person is eligible to apply for a grant out of the Compensation Fund (under rule 3.12 of the SRA Compensation Fund Rules):

Claims Advisers,³ Technical Advisers, Senior Technical Advisers, Technical Manager, Claims Management and Recoveries Manager and Director of Client Protection.

11C. To decide upon an appeal from a summary determination under Rule 3.12 of the SRA Compensation Fund Rules:

Senior Technical Advisers, Technical Manager, Claims Management and Recoveries Manager and Director of Client Protection.”

Process

- 10 In practice, the proposed delegation would be applied as follows. All applications made to the Compensation Fund currently go through a sifting process (known as the enquiry stage). This entails a preliminary analysis of the application by a Technical Adviser (“TA”) to ensure that the claim falls within the remit of the Fund⁴.
- 11 As part of the enquiry stage, the TAs will make a determination as to whether a person is eligible to claim in accordance with the amended Rules. Many cases are already concluded by claimants being informed that the claim is not within the remit of the Fund. Most accept this and do not pursue the claim. The same process may be appropriate in many cases where eligibility issues arise: such as where a second-tier bank which has not dealt with the Fund before makes an application and accepts when told that it is not eligible. Formal determinations under the delegation will be particularly useful where the issue is clear but the claimant will not accept that.
- 12 The TAs comprise two solicitors, a chartered accountant, and two people with both Law Degrees and LPC qualifications. Collectively, they have over 50 years’ experience of working in the Compensation Fund. The TAs deal with the most complex claims and provide support and guidance to the Claims Investigators who deal with most applications to the Fund.

³ Claims advisers are at the same level as technical advisers and the different name is a historical anomaly. They supervise the work of claims investigators.

⁴ The TA also reviews the claim for complexity and urgency as part of the allocation process.

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- 13 The TAs also have an existing adjudication function and can make decisions on claims up to the values stated in the Schedule, namely £10,000 (see Annex 1 for existing delegations).
- 14 The work of the TAs is overseen by two Senior Technical Advisers and responsibility for the team as a whole lies with the Technical Manager. Collectively, these individuals have over 40 years' experience of the Compensation Fund. The Senior Advisers and the Technical Manager have oversight of and carry out audits of the work of the TAs. This already includes sampling files which are closed for being outside of the remit of the Fund and the new assessment of eligibility will therefore be covered in this process.
- 15 Without this delegated power, cases would need to move through the investigative process to decision even though the claim fails the eligibility criteria. The ability to make a summary decision will mean that time will not be spent unnecessarily investigating and adjudicating applications that cannot succeed. Claims Investigators will be freed up to focus solely on claims from eligible applicants. There may also be costs savings as there will be no need to deploy single Adjudicators or the Panel of Adjudicators to consider high value applications where the claimant is clearly ineligible.
- 16 If an applicant is dissatisfied with the summary determination, they can appeal the decision and it will be considered by a Senior Technical Adviser or the Technical Manager.
- 17 The proposed amendments were considered and approved by the Regulatory Risk Committee at its meeting on 8 April 2015.

Recommendation:

The Board is asked to approve the proposed amendment to the Schedule of Delegation.

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Supporting information

Links to the Strategic Plan and / or Business Plan

- 18 This paper relates to our strategic objective to “improve our operational performance and make fair and justifiable decisions promptly, effectively and efficiently” in the context of ensuring client protection through an effective and efficient Compensation Fund.

How the issues support the principles of better regulation

- 19 A properly run Compensation Fund provides transparency and accountability.

What engagement approach has been used to inform the work (and what further communication and engagement is needed)

- 20 N/A

What equality and diversity considerations relate to this issue

- 21 There are no equality and diversity considerations relevant to this paper.

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Annexes

- Annex 1** Extract from Schedule of Delegation
Annex 2 Amendments to the Compensation Fund Rules

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Existing Delegations for the Compensation Fund

No	Delegation	Level & Restrictions
11	To make decisions in respect of payment or rejection of claims on the Compensation Fund (up to the value prescribed)	Panel of Adjudicators Sub Committee – no limit A single Adjudicator – up to £500,000 Senior Advisers, Claims Management and Recoveries Manager, Technical Manager and Director of Client Protection (in Client Protection) – up to £100,000 Claims Advisers, Technical Advisers (in Client Protection) up to £10,000
11A	To make decisions in respect of payment or rejection of claims on the Compensation Fund (up to the value prescribed) where the proposed payment is an urgent interim measure to protect the interests of an applicant or potential applicant to the fund	Adjudication, Executive Directors and Director of Client Protection – no limit Senior Advisers and Technical Manager (in Client Protection) – up to £500,000 Technical Advisers and Claims Advisers (in Client Protection) – up to £250,000
12	To authorise release of funds from the Compensation Fund in an emergency	Adjudication and Executive Directors Director of Client Protection Any two of: Team Managers in Claims Management and Recoveries, Senior Advisers, Claims Management and Recoveries Manager, Technical Manager (in Client Protection)
13	To give an undertaking on behalf of the Compensation Fund to return an overpayment from a Statutory Trust Account	Team Managers in Claims Management and Recoveries, Senior Advisers, Claims Management and Recoveries Manager, Technical Manager and Director (in Client Protection)
13A	To make decisions in respect of payment from the Compensation Fund to a Statutory Trust Account to return an overpayment	Adjudication - no limit Senior Adviser, Technical Manager and Director of Client Protection (in Client Protection) up to £500,000 Technical Advisers and Claims Advisers (in Client Protection) - up to £250,000

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Amendments to the Compensation Fund Rules

- 3.4 For any grant to be made out of the Fund, an applicant must satisfy the SRA that the applicant is eligible in accordance with rule 3.7, 3.8, 3.9 or 3.10 and (save in respect of a grant made under rule 5) 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 or owner 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 or owner 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 an activity of a kind which is part of the usual business of a defaulting practitioner and, in the case of a defaulting licensed body, the act or default arose in the course of performance of a regulated activity.

...

- 3.7 A person is eligible under this rule to apply for a grant out of the Fund where the person:
- (a) is an individual; or
 - (b) at the time the application is made, is a sole trader, partnership, body corporate, unincorporated association or mutual association with an annual turnover of less than £2 million;
- and does not fall within rule 3.8, 3.9(a) or 3.10(a).
- 3.8 A person is eligible under this rule to apply for a grant in the circumstances set out in rule 3.4(a) if at the time the application is made the person falls within one or more of the following categories:
- (a) a charity with annual income net of tax in the most recent financial year of less than £2 million; or
 - (b) a trustee of a trust with an asset value of less than £2 million.
- 3.9 A person is eligible under this rule to apply for a grant in the circumstances set out in rule 3.4(b) if the person:

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- (a) at the time the application is made falls within one or more of the following categories:
 - (i) a charity with annual income net of tax in the most recent financial year of less than £2 million; or
 - (ii) a trustee of a trust with an asset value of less than £2 million;

and

 - (b) has satisfied the SRA that its beneficiaries have suffered, or are likely to suffer, hardship if a grant is not made.
- 3.10 A person is eligible under this rule to apply for a grant in the circumstances set out in rule 3.4(a) or (b) if the person:
 - (a) at the time the application is made falls within one or more of the following categories:
 - (i) a charity with annual income net of tax in the most recent financial year of £2 million or more; or
 - (ii) a trustee of a trust with an asset value of £2 million or more;

and

 - (b) has satisfied the SRA that its beneficiaries have suffered, or are likely to suffer, hardship if a grant is not made.
- 3.11 Having regard to the discretionary nature of the Fund, the SRA may take into account such evidence as it sees fit when determining eligibility under rules 3.7 to 3.10 and may make a broad estimate of any relevant amount.
- 3.12 The SRA may summarily determine whether a person is eligible to apply for a grant.