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Regulation
Authority

Protecting the users of legal services: balancing cost and access to legal services

Summary of responses

Compensation Fund

January 2020

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Introduction

This short annex provides a summary of responses to those questions in our consultation 'Protecting the users of legal services: balancing cost and access to legal services' that related to the SRA Compensation Fund (the Fund). We asked a series of questions around proposals designed to make sure we are clear about the purpose of the Fund. We also consulted on proposals to make the Fund more transparent.

Who responded

We received 160 responses to the consultation. And set out further detail on these responses below.

These were combined responses to the proposed changes to our Professional Indemnity Insurance (PII) arrangements and the changes we proposed to the Fund. Several respondents, such as insurers, opted not to answer all of the questions in the 'Compensation Fund' section of the consultation.

At the end we include details of the 85 respondents that agreed that we could publish their identity. We received most responses from the profession. The next largest group of respondents was representative bodies such as the Law Society, local law societies and other groups representing lawyers (some of whom responded to say they endorsed the Law Society position on some or all of the questions).

The Legal Services Consumer Panel, the Legal Ombudsman, compliance professionals, other representative groups and individuals in different professional capacities were among some of the other respondents.

Separate to analysing formal responses to the consultation, we also undertook targeted engagement to discuss the proposals and what the impact on certain groups might be. This involved speaking at events, holding roundtable meetings with key stakeholders that have an interest and specialism in this area of work. We also held public focus groups to gauge whether people understood our financial protection arrangements and, if the proposals were implemented, what that might mean for different people.

This is a summary of the formal responses we received to each of the consultation questions which relate to the Fund. We have carefully considered the feedback from respondents in the round and have set out how this has informed our approach to the revised package of reforms set out in our second consultation, [Protecting the users of legal services: prioritising payments from the Compensation Fund](#).

Breakdown of responses

Question 13

To what extent do you agree that the proposed changes to the Compensation Fund would clarify its purpose as a targeted hardship fund protecting the vulnerable that need and deserve it most?

Summary of responses

1. In response to this question most respondents focused on two main areas, the proposal to articulate the purpose of the Fund as a targeted hardship fund, and the proposal to limit eligibility for individual claimants to those with net household assets of £250,000 or lower. We summarise the feedback on the eligibility proposal at question 15 and 16 on page 6.
2. On the whole, respondents wanted to see the Fund available to everyone who had suffered loss as a result of dishonesty or negligence by a solicitor.
3. A number of respondents, including the Legal Ombudsman supported the principle; that the “Compensation Fund should be made available to those who are less able to sustain financial losses”. Other respondents, including law firms, also agreed that the Fund should be targeted at people that needed it the most and for people in genuine hardship.
4. However, many respondents disagreed that our changes would achieve the aims of our reforms. Several respondents referenced (and supported) the Law Society’s response. This was critical of the proposals for a number of reasons. They particularly questioned whether the SRA could describe the purpose of the Fund as a hardship Fund in the way proposed – suggesting that this was not an option open to us. A significant number of respondents considered that the proposed changes would be both disproportionate and could result in unfair outcomes for people that would ordinarily assume that they would be protected by the Fund. This was particularly noted in response to the proposal to base eligibility on an individual’s wealth.
5. A small number of respondents suggested that, if the aim was to address the risks arising from dubious investment schemes, that we might explore alternative ways to address those, rather than, as the Law Society stated, making wholesale changes to the Fund. Suggestions to address this included capping payments or simply excluding such investment schemes from falling within the scope of the Fund.
6. Some respondents questioned our proposal to exclude barristers’ and experts’ fees from the Fund. The Bar Council argued that money was held on trust for the barrister and that non-payment of fees could cause hardship to individual barristers. Other respondents including barrister chambers supported this view, arguing that the discretionary nature of the fund is sufficient to prevent claims from barristers who are not suffering hardship. However, some respondents disagreed by saying that it was in favour of “preventing larger businesses, experts and barristers from utilising the fund”.

Question 14

Are there any options for changes to how we manage the Compensation fund that we have not identified that we should consider further? Please explain why and provide any evidence that supports your view.

7. As noted above in responses to Question 13, a number of respondents, including the Law Society suggested that one option for prioritising payment from the Fund could be to explore limiting or capping the amount paid out on claims from any one scheme (using the example of dubious investment schemes). Suggestions as to how this could be achieved included:
 - limiting the amount paid out for each scheme to a maximum compensation 'pot'
 - applying a cumulative limit on claims from any one scheme
 - limiting the number of investors who could claim on any one scheme
 - setting a maximum investment amount that would be paid out
 - limiting the maximum payment to any one investor.
8. The Law Society suggested that if a single investment scheme can give rise to multiple claims on the Fund, then limiting each scheme to a maximum compensation pot of £2m might be a feasible, and defensible, solution – guarding against the risk of a flood of claims wiping out the Fund entirely.
9. Alongside this, respondents suggested that the SRA could look at targeted ways to manage risk, with investment schemes given as an example, stressing that the solution should be proportionate to the problem. A small number of respondents suggested one solution might be for solicitors to take out a one-off indemnity policy for high risk transactions.
10. Respondents also questioned whether the Fund should be meeting the costs of interventions. These respondents also called for greater transparency and visibility around the costs of interventions noting they are a large expenditure from the Fund.
11. Away from these general themes, individual respondents also made a small number of other suggestions as follows:
 - develop a straightforward questionnaire and means test to filter out claims that will not be successful at the outset
 - the Fund should be administered by the profession and not the SRA
 - the Fund should explicitly cover situations where the law firm is insolvent or the law firm's insurer is insolvent, and the Financial Services Compensation Scheme (FSCS) will not meet the liability. Affected clients will not have any influence over these events and should be protected.

Question 15 and 16

To what extent do you agree we should exclude applications from people living in wealthy households?

Do you think that our proposed measure of wealth and threshold for excluding these applications is appropriate?

12. A small number of respondents supported the limiting or exclusion of applications from people living in wealthy households because they are less in need of a fall-back and can afford to buy other protection, including insurance to cover legal expenses.
13. However, in general respondents did not support these proposals with the majority echoing the Law Society's strong opposition to "...the idea that regulatory protections should discriminate based on characteristics of claimants...". It was felt there was no measure of wealth that could be used for the eligibility criteria that would treat individuals fairly in all circumstances. This was because a person's wealth could be derived from many different and forever changing sources and that to try and apply a consistent approach to what was included in any assessment of wealth would be difficult to apply. One retired solicitor commented that "the Compensation Fund should fund those who have lost through the negligence of a solicitor, irrespective of their financial standing".
14. Respondents thought the proposal:
- was arbitrary and could lead to stark cut off points
 - was too rigid – and would have adverse consequences on those who are close to the line
 - could exclude individuals for perverse reasons (eg that they lived in a large house or in the South East)
 - would be difficult to administer and would be extremely onerous for the SRA to check and to monitor on a case by case basis.
15. There was some misunderstanding about the definition of £250,000 net wealth that we had used for the consultation. However, despite this, respondents were not in favour of any restrictions on access to the Fund based on houseful assets. Respondents also noted that if the proposal only excluded the wealthiest 5 per cent of households, as calculated by the SRA, then it would not effectively meet the aim of making payments to those that needed it the most.

Question 17

Do you think we should be making any other changes to eligibility and/or the circumstances where we would make a payment?

16. Only a small number of respondents provided detailed comments in response to this question.
17. Of those that did most disagreed that we should be introducing any further changes to eligibility and took the opportunity to raise concerns about the existing criteria for large businesses (saying the threshold should be higher). A number of responses said we should exclude claims from investment schemes completely and or that we should be robust in taking account contributory negligence of the applicant
18. One respondent thought that all claims should be considered based on their merits rather than discounting a claim at the outset due to eligibility.
19. A number of respondents also raised the issues around the definition of large charities, trusts and businesses, and whether this should be measured on net profit rather than on income and turnover alone. Eligibility of barristers was also raised again in response to this question.
20. Another common theme was a request for the SRA to make more data available to support proposals, such as the size of claims and the types of claims that the Fund receives and pays.

Question 18

Do you think we have set out the right approach for assessing when a maximum payment has been reached?

21. In the consultation we proposed that where the loss relates to a single retainer, then that should be dealt with as a single claim on the Fund regardless of the number of people affected. We would consider separate applications from more than one person where there are separate retainers, or the transactions being undertaken are not connected.
22. Most respondents disagreed or did not answer this question saying we had not given enough information about the impact on payments to be able to take a view.
23. A number of respondents agreed including the Law Society that it would be helpful to set clear rules to establish when a maximum payment has been reached but did not agree with the specific proposal we had made. Those that responded thought the proposal risked favouring business transactions over personal transactions. For example, they thought it was unfair to penalise couples taking out a joint retainer particularly when the transaction related to a main residence. Similarly, they thought there could be an impact on charities which might jointly instruct a solicitor to act on their behalf of an estate.
24. There were a very small number of alternative suggestions made for how we should assess when a maximum payment has been reached. A respondent suggested that applying a single principle was not appropriate and that that more factors needed to be

taken into consideration such as whether the claim relates to a private residence and the financial circumstances of individual applicants. They also thought that there should be a distinction made between personal and business type transactions such as investment scenarios or the sale of shares. Other respondents also thought our approach could disadvantage individuals that have no connection between them, for example beneficiaries of estates.

Question 19

Do you think the current formula remains a fair way to apportion the costs of maintaining the Compensation Fund?

25. Again, only a small number of respondents commented. However, there were clear themes within these responses as follows:

- The methodology should be updated to cover impact on the Fund of emerging risks (cyber-crime given as the example) and/or be restructured accordingly.
- Intervention costs should be excluded from the Fund.
- Contributions should be based on a law firm or individual solicitor's risk profile or regulatory history.
- 'Riskier' firms should pay higher contributions.

26. There was also a view that smaller firms are currently subsidising larger ones through their contributions, and that contribution levels should be set by the ability to pay (and based on gross turnover).

Question 20

What steps do you think might be reasonable for someone to take to investigate a scheme/transaction before committing money to it and that it is genuine?

27. Overall, respondents considered that the responsibility to investigate an investment scheme lay primarily with the potential investor themselves. These respondents outlined general ways to carry out the appropriate due diligence such as consulting own experts (eg financial adviser), utilising checking services (eg Solicitor Checker, the Money Advice Service), speaking to Financial Conduct Authority (FCA) and Financial Ombudsman Service (FOS) and engaging financial experts.

28. Conversely, others including a submission on behalf of the Ecohouse Victims Group who have lost money in a specific investment scheme, highlighted that the complexity of some cases makes client due diligence very difficult and that some clients are more vulnerable to fraud than others.

29. Some respondents suggested that there were steps that solicitors could take to advise potential investors about schemes, including providing written information on what steps and research a client should take before proceeding with a transaction.

30. However, some respondents also observed that establishing what is a risky scheme is an exercise that is generally done with hindsight and that asking a solicitor firm to assess the risk of a scheme may not always be realistic.
31. Several respondents considered that the involvement of a solicitor in any scheme should be sufficient to bring claims within the scope of the Fund – as clients should be able to rely on SRA regulation as giving ‘legitimacy’ to solicitor involvement. They noted it is very difficult for clients to identify whether a solicitor has set out to deliberately defraud. Respondents who thought this, acknowledged that each case should be judged on its merits.
32. A small number of respondents noted that involvement in an investment scheme is unlikely to fall within the usual business of a solicitor – and would therefore automatically be excluded under the current rules from the Fund.
33. Other suggestions made by respondents included:
- SRA to make rules to prevent solicitors becoming involved in investment schemes
 - Solicitors to tell clients they will not be covered by the Fund if anything goes wrong with a scheme
 - Exclude investment schemes from the Fund
 - Stress clients’ responsibility to look after their own interests – the principles of contributory negligence and causation should apply to those seeking compensation from the Fund
 - It is not for the Fund to underwrite get rich quick schemes.

Question 21

Do you think setting out clear guiding principles in the rules or as guidance could make the purpose and scope of the Fund and how we make decisions clearer to users of legal services and their advisors?

34. Respondents favoured clear and transparent guidance, and provided some suggestions relating to existing decision-making guidance that could be adopted, or new guidance needed using examples of guidance issued by the Financial Ombudsman Service. It was suggested that whatever decisions we take about the eligibility for claiming against the Fund, it was critical that these changes were communicated in a simple way, by consolidating all relevant information into once place on the SRA website, for users of legal services. Respondents noted that guidance should be published in advance of any revised rules coming into force and would need to be targeted at both solicitors and clients in order to be properly useful.
35. There was consistent strong support for setting out some clear guiding principles. It was noted that ‘guiding principles’ were common and used by others to set out the parameters of any scheme. Respondents felt that any steps to set out what the Fund

was there to do and how it would help was seen as a positive step to promote visibility of the Fund and transparency in how it operated.

Question 22

Are there any positive or negative equality, diversity and inclusion impacts from the proposed changes to the Compensation Fund that you do not think we have identified?

36. Some respondents thought that the proposals we made in the consultation had the potential to impact vulnerable consumers especially if applicants needed to do more to protect themselves or that their conduct would be considered as part of the application process. There was also a concern that the proposals could impact on the trust placed in the profession and that a large number of firms were small firms which tend to be made up of black, Asian and minority ethnic practitioners. Most people did not feel they could comment further without additional information on payment data being provided.

List of respondents

Name	Respondent Type
Publish the response with my/our name	
Responses from organisations	
4 New Square	Law firm or other legal services provider
Association of British Insurers	Representative industry group
Association of Women Solicitors	Representative industry group
Bailoran Solicitors	Law firm or other legal services provider
Bar Council	Other (Organisation)
Birmingham Law Society	Law society
BladeLaw	Law firm or other legal services provider
Bristol Law Society	Law Society
Burges Salmon LLP	Law firm or other legal services provider
Cardiff and District Law Society	Law society
Chancery PII	Other (Organisation)
Chartered Institute of Legal Executives	Representative industry group
CILEx Regulation	Representative industry group
City of London Law Society	Law society
County Societies Group	Other (Organisation)
Criminal Cases Review Commission	Representative industry group
DAC Beachcroft LLP	Law firm or other legal services provider
Decoded: Legal	Law firm or other legal services provider
Ecohouse Victims Group	Representative consumer group
Express Solicitors	Law firm or other legal services provider
Hampshire Incorporated Law Society	Law society
Howden UK Group Ltd	PII broker
Ian Newbery & Co	Law firm or other legal services provider
Institute of Legacy Management	Representative industry group
International Underwriting Association	Representative industry group
JLT Group	PII broker
Joe Egan Solicitors	Law firm or other legal services provider
Junior Lawyers Division	Representative industry group
Law Society of England and Wales	Law Society
LawNet	Representative industry group
Legal Ombudsman	Other (Organisation)
Legal Risk LLP	Law firm or other legal services provider
Legal Services Consumer Panel	Representative consumer group
Leicestershire Law Society	Law society
Liverpool Law Society	Law society
Lloyd Rehman & Co.	Law firm or other legal services provider
Lloyd's Market Association	Representative industry group
Lockton	PII broker

Manchester Law Society	Law society
Mather & Co Solicitors	Law firm or other legal services provider
Middlesex Law Society	Law society
Miller Insurance	PII broker
Minster Law Limited	Law firm or other legal services provider
Morrish Solicitors LLP	Law firm or other legal services provider
MRTIPS	Law firm or other legal services provider
Newcastle upon Tyne Law Society	Law society
Northamptonshire Law Society	Law society
Nottinghamshire Law Society	Law society
Pearce West Employment Solicitors	Law firm or other legal services provider
Pett Franklin & Co LLP	Law firm or other legal services provider
Professional Negligence Lawyers' Association	Representative industry group
QBE Insurance Group	PII insurer
Slate Legal Limited	Law firm or other legal services provider
Sole Practitioners Group	Representative industry group
Solicitor Assist	PII broker
Surrey Law Society	Law society
UK Finance	Representative industry group
Zurich	PII broker

Responses from individuals

Alison Fielden	Solicitor
Andrew Harrison	Solicitor
Ann Mear	Other (Personal)
Becky Moyce	Other (Personal)
Charles Harris	Other legal professional
David Ofosu-Appiah	Solicitor
David Thomas	Solicitor
Fiona Swann	Other (Personal)
Graham Balchin	Solicitor
Jason Pearce	Solicitor
Janis Purdy	Solicitor
Jennifer Woodyard	Solicitor
John S Mackay	Non-legally qualified, working in legal services
Klearchos Kyriakides	Solicitor
Laurence Mann	Solicitor
Leigh Price	Non-legally qualified, working in legal services
Lionel Conner	Solicitor
Nicholas Davidson	Other legal professional
Oliver May	Other (Personal)
Peter Anthony Sloan	Solicitor
Peter Bloxham	Solicitor

Publish the response anonymously

Responses from organisations

ID-067	Law firm or other legal services provider
ID-089	Law firm or other legal services provider
ID-098	Law firm or other legal services provider
ID-112	Other
ID-118	Law firm or other legal services provider
ID-145	Other
ID-159	Law firm or other legal services provider
ID-166	Law firm or other legal services provider
ID-167	Law firm or other legal services provider
ID-196	Law firm or other legal services provider
ID-208	Law firm or other legal services provider
ID-221	Law firm or other legal services provider
ID-268	Law firm or other legal services provider
ID-273	Law firm or other legal services provider
ID-281	Other
ID-284	Law firm or other legal services provider
ID-294	Law firm or other legal services provider
ID-305	Law firm or other legal services provider
ID-323	Law firm or other legal services provider
ID-331	Law firm or other legal services provider
ID-Anonymous1	
ID-Anonymous2	

Responses from individuals

ID-050	Lawyer
ID-059	Solicitor
ID-072	Solicitor
ID-079	Solicitor
ID-091	Solicitor
ID-095	Non-legally qualified, working in legal services
ID-100	Solicitor
ID-102	Solicitor
ID-127	Solicitor
ID-170	Solicitor
ID-172	Solicitor
ID-178	Non-legally qualified, working in legal services
ID-205	Solicitor
ID-217	Solicitor
ID-230	Solicitor
ID-256	Solicitor
ID-278	Solicitor
ID-277	Solicitor
ID-283	Solicitor
ID-287	Other legal professional

ID-289	Solicitor
ID-307	Solicitor
ID-314	Solicitor
ID-324	Solicitor
ID-327	Solicitor
ID-333	Other legal professional

Publish my/our name but not the response

Responses from organisations

Aon plc	PII broker
Association of South Western Law Societies	Law society
Devon and Somerset Law Society	Law society
Honne Limited / Legal Eye	Law firm or other legal services provider
Purdys Solicitors	Law firm or other legal services provider

Responses from individuals

Jeffrey Forrest	Solicitor
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