

# SRA Compensation Fund Rules

## Introduction

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These rules govern the way that we operate the SRA Compensation Fund. This is a discretionary fund of last resort for relieving hardship arising from loss suffered as a result of the acts or omissions of those regulated by us. It does this primarily by making grants to people whose money has been stolen, or has not been accounted for by individuals and firms we regulate.

It is funded by contributions from individuals and firms authorised by us.

We have provided guidance on the way we operate the fund [[link to guidance](#)].

## Part 1: The Fund

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### Rule 1: Maintenance of and contributions to the Fund

- 1.1 The **SRA** shall establish and maintain a fund for making grants in respect of claims made in accordance with these rules.
- 1.2 **Solicitors, RELs, RFLs, recognised bodies** and **licensed bodies** must make contributions to the **Fund** in such amounts and at such times as may be **prescribed**.
- 1.3 Any unpaid contributions may be recovered as a debt due to the **SRA**.
- 1.4 The **SRA** may at any time:
  - (a) borrow for the purposes of the **Fund**;
  - (b) charge investments which form part of the **Fund** as security for borrowing by the **SRA** for the purposes of the **Fund**.

### Rule 2: The object of the Fund

- 2.1 The object of the **Fund** is to alleviate hardship arising from loss suffered as a result of the acts or omissions of a **defaulting practitioner**.
- 2.2 The **Fund** is a discretionary fund of last resort and no person has a right to a grant enforceable at law.
- 2.3 Without prejudice to the generality of rules 2.1 and 2.2, the **SRA** may decide that it will not pay, or will limit the payment of, grants in particular circumstances, or in relation to particular types of application, **applicant** or loss.

## Part 2: Payment of grants from the Fund

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### Rule 3: Eligibility for a grant

- 3.1 A person is eligible to apply for a grant if, at the time the application is made, they are:
- (a) an individual whose net household financial assets amount to less than £250,000;
  - (b) a sole trader, *partnership*, body corporate, unincorporated association or mutual association with an annual *turnover* of less than £2 million;
  - (c) a *charity* with annual income net of tax in the most recent financial year of less than £2 million; or
  - (d) a trustee of a trust with an asset value of less than £2 million.
- 3.2 The *SRA* when determining eligibility under this rule may make a broad estimate of any relevant amount.

### Rule 4: Defaulting practitioners

- 4.1 The *SRA* may only make a grant in respect of acts or omissions of a *defaulting practitioner*, or of a *defaulting practitioner's employee, owner* or *manager* as appropriate, which fall within rule 5.
- 4.2 A *defaulting practitioner* means:
- (a) a *solicitor* or *REL* who at the date of the relevant act or omission was practising:
    - (i) in an *authorised body*;
    - (ii) in a *non-commercial body*; or
    - (iii) in accordance with [regulation X of the *SRA Authorisation of Individuals Regulations*];
  - (b) an *RFL* who is a *manager* or *owner* of an *authorised body*;
  - (c) a *recognised body*; or
  - (d) a *licensed body*,

and the expressions "defaulting solicitor", "defaulting REL", "defaulting recognised body", "defaulting RFL" and "defaulting licensed body" shall be construed accordingly.

- 4.3 A grant may be made where, at the date of the relevant act or omission:
- (a) a **defaulting solicitor** had no practising certificate in force;
  - (b) the registration of a **defaulting REL** or **defaulting RFL** had expired or been revoked;
  - (c) the authorisation of a **defaulting recognised body** or **defaulting licensed body** had been suspended or revoked;

provided that the **SRA** is satisfied that the **applicant** was unaware of the absence of a valid practising certificate or the relevant expiry, suspension or revocation (as the case may be).

#### **Rule 5: Grants which may be made from the Fund**

- 5.1 The **SRA** may make a grant where it is satisfied that the **applicant** has suffered or is likely to suffer financial loss directly resulting from:
- (a) the dishonesty of a **defaulting practitioner** or the **employee** or **manager** or **owner** of a **defaulting practitioner**; or
  - (b) 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 the **defaulting practitioner** was paid,

in the course of an activity of a kind which is part of the usual business of a **solicitor** and, in the case of a **defaulting licensed body**, the performance of a **regulated activity**.

- 5.2 The **SRA** may make a grant to alleviate direct losses suffered as a result of the civil liability of a **defaulting practitioner** or a **defaulting practitioner's employee** or **manager** or **owner** in circumstances where:
- (a) the **defaulting practitioner** in accordance with the SRA Indemnity Insurance Rules should have had, but did not have, in place a **policy** of **qualifying insurance**;
  - (b) the liability of the **defaulting practitioner** or the **defaulting practitioner's employee** or **manager** would have been covered by a **policy** of **qualifying insurance**; and
  - (c) the loss is not covered by the **SIF**.

- 5.3 For the avoidance of doubt, no grant will be made under rule 5.2 where due to the insolvency or cessation of the insurer the **defaulting practitioner's policy** of **qualifying insurance** has been disclaimed or otherwise ceases.

## Rule 6: Grants to defaulting practitioners

- 6.1 The **SRA** may make a grant to a **defaulting practitioner** who or which has suffered or is likely to suffer loss by reason of their liability to any client in direct consequence of an act or omission of:
- (a) in the case of a **defaulting solicitor**, **defaulting REL** or **defaulting RFL**, any of their **employees** or any fellow **manager**;
  - (b) in the case of a **defaulting recognised body**, any of its **employees or managers or owners**;
  - (c) in the case of a **defaulting licensed body**, any of its **employees or managers or owners**, provided that such act or omission arose in the course of performance of a **regulated activity**,

in circumstances where, but for the liability of the **defaulting practitioner**, a grant might have been made from the **Fund**

- 6.2 The **SRA** may make a grant under this rule by way of a loan upon such terms as the **SRA** specifies.
- 6.3 In the case of a **defaulting recognised body** or a **defaulting licensed body**, the **SRA** may make such grant payable to one or more of the **managers** or **owners** of the **defaulting recognised body** or **defaulting licensed body**. If a loan is made to more than one **person**, they shall be jointly and severally liable for the repayment of the loan.

## Rule 7: Grants in respect of statutory trusts

- 7.1 The **SRA** may make a grant to alleviate a deficiency in a **statutory trust** held by the **SRA**.
- 7.2 The **SRA** may make a grant to a person where the money would have been due to that person but for their claim having been extinguished under rule 8.2 of the SRA Statutory Trust Rules.

## Rule 8: Interest

- 8.1 In respect of any grants made under rules 5, 6 or 7 the **SRA** may make a supplementary grant by way of a sum in lieu of lost interest on the loss underlying the principal grant. Such interest will be calculated by the **SRA** in accordance with **prescribed** rates.
- 8.2 Where the application for the principal grant is in respect of a failure to redeem a mortgage, the **SRA** may also make a grant in respect of the additional interest accrued to the mortgage account as a result of the **defaulting practitioner's** failure to redeem.

## Rule 9: Maximum grant

9.1 Unless the **SRA** is satisfied that there are exceptional circumstances in the public interest that justify a higher sum, the maximum grant that may be made is £500,000.

## Rule 10: Conduct of the applicant and contribution to loss

10.1 A grant may be refused or reduced to take account of:

- (a) the character of the **applicant**:
- (b) dishonest, improper or unreasonable conduct by the **applicant** or anyone acting on their behalf:
  - (i) in the circumstances that gave rise to the application;
  - (ii) in relation to the application itself;
- (c) failure to pursue the application promptly, co-operatively, openly and in good faith.

10.2 A grant may be refused or reduced to take account of any act or omission by the **applicant** or anyone acting on their behalf that has contributed to or has failed to mitigate the loss.

## Rule 11: Losses outside the remit of the Fund

11.1 For the avoidance of doubt, the **SRA** shall not make a grant in respect of losses that:

- (a) arise solely by reason of professional negligence or breach of retainer by a **defaulting practitioner**, or the **employee** or **manager** of a **defaulting practitioner**, save as provided for in rule 5.2;
- (b) comprise legal or other professional costs incurred by the **applicant** in making an application to the **Fund**;
- (c) comprise legal costs incurred by, or ordered against, the **applicant** in actual or potential proceedings brought to recover the loss;
- (d) are indirect or consequential, save where a claim is made under rule 5.2, or a claim for costs of completing or remedying work for which the **defaulting practitioner** has been paid;
- (e) are, or result from, the trading debts or liabilities of the **defaulting practitioner**, including claims for fees payable to the **applicant** for which the **defaulting practitioner** is liable;
- (f) are for interest payable to the **applicant**, save where the discretion to make a grant under rule 8 is exercised;
- (g) are suffered by the Legal Aid Agency as a result of making regular payments under the Agency's contracting schemes for civil and/or criminal work;

- (h) where the *applicant*:
  - (i) has been made bankrupt and any grant would vest in the trustee in bankruptcy;
  - (ii) has entered into a voluntary arrangement with their creditors and any grant would vest in the administrator of the arrangement; or
  - (iii) is in liquidation.

#### **Rule 12: Foreign lawyers**

- 12.1 The *SRA* shall not make a grant in respect of any act or omission of an *REL* or an *EEL*, or the *employee* of an *REL*, where such act or omission took place outside the *UK*, unless the *SRA* is satisfied that the act or omission was, or was closely connected with, the act or omission of a *solicitor* or the *employee* of a *solicitor*, or that the act or omission was closely connected with the *REL's* practice in the *UK*.
- 12.2 The *SRA* shall not make a grant in respect of the act or omission of an *RFL*, or the *employee* of an *RFL*, where such act or omission took place outside England and Wales, unless the *SRA* is satisfied that the act or omission was, or was closely connected with, the act or omission of a *solicitor* or the *employee* of a *solicitor*, or that the act or omission was closely connected with practice in England and Wales.

#### **Rule 13: Fund of last resort**

- 13.1 The *SRA* may refuse or reduce a grant where the loss or part of the loss is, or was, capable of being made good by some other means.

#### **Rule 14: Deduction from grants**

- 14.1 The *SRA* may deduct from any grant such amount as it sees fit so that the *applicant* will not be in a better position by reason of a grant than the *applicant* would otherwise have been in.
- 14.2 The *SRA* may deduct from any grant such amount as it sees fit to represent monies already recovered, or which will or should have been recovered, by the *applicant* through other means in respect of the loss.

#### **Rule 15: Apportionment and multi-party issues**

- 15.1 Where the loss has been sustained as a result of the act or omission of more than one party, the *SRA* may consider the role of each party in contributing to the *applicant's* loss in deciding whether to make a grant and, if so, the amount of any grant.
- 15.2 In the case of a *defaulting licensed body*, the *SRA* may consider the extent to which the loss is attributable to an act or omission which falls outside of the performance of a *regulated activity* in deciding whether to make a grant and, if so, the amount of any grant.

## Part 3: Applications and Procedures

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### Rule 16: Application and time limit

- 16.1 An **applicant** must make an application for a grant in the **prescribed** form, and within 12 months of the date they first became aware, or should reasonably have become aware, of the loss.
- 16.2 The **SRA** may extend the 12 month period in rule 16.1 by such period and in such circumstances as it considers it to be in the public interest to do so.
- 16.3 The **applicant** and the **applicant's** agents and representatives must at all times promptly and proactively provide:
- (a) full and frank disclosure of all information and documents relevant to the application; and
  - (b) information, documents and evidence requested by the **SRA**, which may include verification of matters by statement of truth or affidavit.

### Rule 17: Notice to defaulting practitioner

- 17.1 The **SRA** may not make a grant unless it has given not less than 8 days' notice to the **defaulting practitioner** informing them of the nature and value of the application, unless it appears to the **SRA** that it would not be reasonably practicable to give such notice, or the grant should be made urgently.
- 17.2 Where the **SRA** has made a grant urgently in accordance with rule 17.1, the **SRA** shall as soon as, and so long as, it is practicable to do so, give notice to the **defaulting practitioner** in the terms set out in rule 17.1 and may (insofar as any failure to give notice before the making of the grant has prejudiced the **defaulting practitioner**) waive in whole or in part the **Fund's** right of recovery under rule 18 against the **defaulting practitioner**.

### Rule 18: Recovery and subrogation

- 18.1 Where the **SRA** makes a grant the **SRA** shall be subrogated to the rights and remedies of the person to whom or on whose behalf the grant is made to the extent of the amount of the grant. The recipient of a grant must comply with all proper and reasonable requirements of the **SRA** for the purpose of giving effect to the **SRA's** rights under this rule, and shall permit the **SRA** to have conduct of any proceedings brought on its behalf.

### Rule 19: Refusal of an application

- 19.1 If the **SRA** refuses to make a grant of either the whole or part of the amount applied for, the **applicant** will be informed in writing of the reasons for the decision.
- 19.2 The fact that an application has been rejected does not prevent a further application being submitted provided that material new relevant evidence or information is produced in support of the new application.

## Supplemental notes

Made by the SRA Board on [date] 2018

Made under sections 36, 36A, 79 and 80 of the Solicitors Act 1974, section 9 of and paragraph 6 of Schedule 2 to the Administration of Justice Act 1985, section 83 of and paragraph 19 of Schedule 11 to the Legal Services Act 2007 and the Legal Services Act 2007 (The Law Society and The Council of Licensed Conveyancers) (Modification of Functions) Order 2011.

Approved by the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007, on [date] 2018.

Commencing on [date] 2018 and replacing the SRA Compensation Fund Rules 2011 save in respect of applications submitted before that date, which continue to be subject to the SRA Compensation Fund Rules 2011.