

Capping payments from the Fund (Rule 10)

5 July 2021

Status

This guidance is to help you understand how we make decisions on applications received for payments out of the SRA Compensation Fund (the Fund).

Who is this guidance for?

This guidance is for all applicants seeking a payment from the Fund and for those assisting applicants with their application.

Purpose of this guidance

To explain when we may apply a cap of £5m to payments from the Fund on multiple applications arising out of a single or connected underlying circumstances.

A cap on payments from the Fund

We can decide to limit the total payments from the Fund on connected applications to a total of £5m. This will mean that we will not pay more than £5m in total on those applications and applicants may not therefore receive the full amount they have applied for. For example, if we apply the cap in a case where there are £10m losses, we will consider how we will pay the £5m. For example, we may pay all applications a proportion of the losses incurred, or we may decide to pay a higher percentage to certain types of applicants.

This approach will allow us to assess these applications fairly and consistently and to provide all eligible applicants a reasonable level of redress while also managing the potential liability faced by the Fund.

When the cap may apply

We can consider applying the cap where:

- we have received more than one application relating to the same or connected underlying circumstances
- we believe that the likely payments from the Fund on those applications will exceed £5m.

Examples of the same or connected underlying circumstances include, for example:

- the applications arise from a pattern of activity or behaviours of a firm we have intervened into where client money has been misappropriated [by the firm's partners]
- the applications relate to different legal practices involved in the same or connected work. For instance, where several firms are acting for clients purchasing investment property in the same large development.

Deciding to implement the cap

When deciding whether payments should be subject to a cap, we will consider all relevant circumstances including, for example:

- How are the applications connected? Are the applications closely connected, e.g all relate to a pattern of activity or behaviours (the 'modus operandi') of an intervened firm, or to one transaction, or one development or scheme, or is the connection looser than that?
- What is the total likely to be paid out by the Fund? The decision to cap will be based on likely payments from the Fund. We may receive applications for £7m but if it is apparent that half of those will not meet the Fund's criteria and so will not be paid, then we will not consider a cap.
- Is it proportionate and appropriate for the Fund to apply a cap? What will be the impact on the applicants if a cap is applied?

We will investigate these issues in reaching our decision and we may ask for evidence from applicants and others.

We will let all applicants know as soon as possible if we are considering applying a cap. We will not be able to progress the applications until we know for certain if a cap will apply. We will try to make this decision as soon as possible and we will keep applicants informed throughout this process.

We will give an indication of the likely timescale – if the applications involve complex issues, it could be some months before we can make the decision to cap or not.

We may also impose a deadline for applications to be received so that we can assess the appropriate payments to make under the cap, once we have decided to apply this.

We may be able to deal with very urgent cases while we are considering a cap. The circumstances where we do this will be very limited – for example, where an applicant has already exchanged contracts on the property purchase, is contractually obliged to complete the transaction on a certain date and requires the funds to do so.



What happens if we make a decision to impose a cap?

If we decide to apply a cap, we will publish details of the decision on our website. People who have not yet made an application to the Fund will therefore be made aware that any payment they receive might be subject to a cap and the timescales for submitting an application.

We will contact you to explain how the cap will affect your application.

Example

We intervene into a firm which has been misappropriating money from clients purchasing off-plan overseas property for many years. Our initial estimate is that around £7m has been stolen from just over 100 clients by misappropriating deposits and instalments payments being made by clients. Shortly after the intervention, we receive several applications for missing money.

We have therefore received multiple applications where the payments from the Fund are likely to exceed £5m. We will consider whether to impose a cap. The decision maker considers the following points:

- The applications are closely connected as they all relate to misappropriations by the intervened firm on overseas property cases. The solicitors involved worked in the same team and acted together as a group.
- We have reliable evidence that the losses exceed £5m and that the applicants will satisfy the other Fund rules and so are likely to be paid.
- What is the impact on the clients if a cap is imposed? It would mean paying a maximum of £5m against total losses of £7m. Each client would therefore recover just over 70% of their loss.

The decision maker decides that it is proportionate and appropriate to impose a cap. Therefore, the Fund will pay out £5m across all applications.

We notify all current applicants of our intention to apply the cap and publish the decision on our website inviting other potential applicants to come forward within two months. At the end of the two-month period, we have received applications which total £8m. We decide that the cap, which would result in a payment of 62.5% on each application, remains proportionate and appropriate.

Further guidance

Read more information about our Compensation Fund

[<https://www.sra.org.uk/consumers/compensation-fund/>] .

Further help

If you require further assistance, please contact our Contact Centre

[<https://www.sra.org.uk/contactus/>] .