



# Solicitors' Compensation Fund Rules 2009

Last updated 31 March 2009

Rules dated 31 March 2009 commencing 31 March 2009 made by the Solicitors Regulation Authority Board under *sections 36, 36A, 79 and 80 of the Solicitors Act 1974* and *section 9 of the Administration of Justice Act 1985*, with the concurrence of the Master of the Rolls and the Lord Chancellor under article 4 of the Legal Services Act 2007 (Commencement No. 4, Transitory and Transitional Provisions and Appointed Day) Order 2009 and paragraph 16 of Schedule 22 to the Legal Services Act 2007.

## 1. Interpretation

- (1)

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 rule 3 of these rules;

"appointed representative" means the personal representative of a deceased defaulting practitioner; the trustee of a bankrupt defaulting practitioner; the administrator of an insolvent defaulting practitioner, or other duly appointed representative of a defaulting practitioner;

"approved regulator" means a body listed in *paragraph 1 of Schedule 4 to the Legal Services Act 2007* (whether or not that paragraph has been brought into force), or designated as an approved regulator by an order under paragraph 17 of that Schedule,

and reference to the SRA as an approved regulator means the SRA carrying out regulatory functions assigned to the Law Society as an approved regulator;

"defaulting practitioner" means:

- (a)

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;

- (b)

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;

- (c)

a recognised body in respect of whose act or default, or in respect of whose manager's or employee's act or default, an application for a grant is made;  
or

- (d)

a registered foreign lawyer who is a manager of a partnership, limited liability partnership or company together with a solicitor, a registered European lawyer or a recognised body, 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;

"exempt European lawyer" has the meaning assigned in *rule 24 of the Solicitor's Code of Conduct 2007*;

"manager" means a partner in a partnership, a member of a limited liability partnership or a director of a company, as defined in *rule 24 of the Solicitor's Code of Conduct 2007*;

"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 SRA under *regulation 17 of the European Communities (Lawyer's Practice) Regulations 2000*;

"registered foreign lawyer" has the meaning assigned by *section 89 of the Courts and Legal Services Act 1990* and

"SRA" means the Solicitors Regulation Authority.

- (2)

Other expressions in these rules have the meaning assigned to them by the Act.

- (3)

The *Interpretation Act 1978* applies to these rules as it applies to an Act of Parliament.

## *2. Maintenance of and contributions to the Fund*

- (1)

The Law Society ("the Society") shall establish and maintain the fund called the Solicitors' Compensation Fund ("the Fund") for making grants in respect of compensation claims.

- (2)

Every solicitor, registered European lawyer, registered foreign lawyer and recognised body shall make contributions to the Fund in such amounts, at such times and in such circumstances, as may be prescribed from time to time by the Council of the Law Society. Any unpaid contributions may be recovered as a debt due to the Society.

- (3)

Paragraph (2) shall not apply to a solicitor, registered European lawyer or registered foreign lawyer who is a Crown Prosecutor.

- (4)

The Society may invest any money which forms part of the Fund in any investments in which trustees may invest under the general power of investment in *section 3 of the Trustee Act 2000* (as restricted by *sections 4 and 5 of that Act*).

- (5)

The Society may insure with authorised insurers, in relation to the Fund, for such purposes and on such terms as it considers appropriate.

- (6)

The Society may

- (a)

borrow for the purposes of the Fund;

- (b)

charge investments which form part of the Fund as security for borrowing by the Society for the purposes of the Fund.

- (7)

The Fund may be applied by the SRA for the following purposes (in addition to the making of grants in respect of compensation claims):

- (a)

payment of premiums on insurance policies effected under paragraph (5)  
[#2-5] ;

- (b)

repayment of money borrowed by the Society for the purposes of the Fund and payment of interest on any money so borrowed under paragraph (6)  
[#2-6] ;

- (c)

payment of any other costs, charges or expenses incurred by the Society in establishing, maintaining, protecting, administering or applying the Fund;

- (d)

payment of any costs, charges or expenses incurred by the SRA in exercising its powers under *Part 2 of Schedule 1 to the Act (intervention powers)*;

- (e)

payment of any costs or damages incurred by the Society, the SRA, their employees or agents as a result of proceedings against any or either of them for any act or omission of its or theirs in good faith and in the exercise or purported exercise of such powers.

### ***3. Grants which may be made from the Fund***

The object of the Fund is to replace client money which a defaulting practitioner or a defaulting practitioner's employee or manager has misappropriated or otherwise failed to account for. The applicant need not necessarily be or have been the defaulting practitioner's client.

- (1)

A grant out of the Fund is made wholly at the discretion of the SRA. No person has a right to a grant enforceable at law.

- (2)

For any grant to be made out of the Fund, an applicant must satisfy the SRA 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 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 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 a transaction of a kind which is part of the usual business of the persons listed in rule 1 (1) (a) to (d) [r1-1-a] .

- (3)

For the purposes of paragraph (2)(b) [r3-2-b] :

- (a)

an individual whose dealings with the defaulting practitioner have been in a personal capacity and who has suffered or is likely to suffer loss due to a failure to account shall be deemed to have suffered hardship; and

- (b)

a body corporate, or an individual whose dealings with the defaulting practitioner have been in a business capacity and who has suffered or is likely to suffer loss due to a failure to account must provide evidence to satisfy the SRA that it, he or she (the body or individual) has suffered or is likely to suffer hardship.

- (4)

A grant may, at the sole discretion of the SRA, be made as an interim measure.

#### 4. Grants in respect of persons in default of regulatory requirements

- (1)

A grant may be made in respect of a defaulting solicitor even if the defaulting solicitor had no practising certificate in force at the date of the relevant act or default provided that the SRA is reasonably satisfied that the applicant was unaware of the absence of a valid practising certificate.

- (2)

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 SRA'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 SRA is reasonably satisfied that the applicant was unaware of the suspension or cancellation.

- (3)

A grant may be made in respect of a defaulting recognised body even if the recognition of that body had expired for non-renewal under *regulation 8.3 of the Solicitors' Recognised Bodies Regulations 2007* on or before the date of the relevant act or default provided that the SRA is reasonably satisfied that the applicant was unaware of such revocation.

- (4)

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 and Legal Services Act 1990* due to non-renewal, provided that the SRA is reasonably satisfied that the applicant was unaware of the suspension or cancellation.

#### 5. Grants to practitioners

- (1)

A grant may be made to a defaulting practitioner who or which has suffered or is likely to suffer loss by reason of his, her or its liability to any client in consequence of some act or default of:

- (a)



in the case of a defaulting solicitor, registered European lawyer or registered foreign lawyer, any of his or her employees or any fellow manager;

- (b)

in the case of a defaulting recognised body, any of its managers or employees or any fellow manager,

in circumstances where but for the liability of that defaulting practitioner a grant might have been made from the Fund to some other person.

- (2)

No grant shall be made under paragraph (1) unless the SRA is satisfied that no other means of making good the loss is available and that the defaulting practitioner is or in the case of a recognised body are fit and proper to receive a grant.

- (3)

A grant under paragraph (1) shall normally be made by way of a loan and shall be repayable by the recipient at the time and upon such terms as shall be specified by the SRA.

- (4)

In the case of a defaulting recognised body, such grant may be payable to one or more of the managers of the defaulting recognised body. If a loan is made to more than one manager, they shall be jointly and severally liable for the repayment of the loan to the Society.

## 6. Foreign lawyers

- (1)

If a registered European lawyer is exempted from contributing to the Fund on the basis that he or she has completely equivalent cover under home state rules, no grant shall be made:

- (a)

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:

- (i)

a solicitor, or

- (ii)

the employee of a partnership which includes at least one person who or which contributes to the Fund; or

- (b)

under rule 5 [r5] to the registered European lawyer.

- (2)

No grant shall be made in respect of any act or default of a registered European lawyer or an exempt European lawyer, or the employee of a registered European lawyer, where such act or default took place outside the United Kingdom, unless the SRA is satisfied that the act or default was, or was closely connected with, the act or default of a solicitor or the employee of a solicitor, or that the act or default was closely connected with the registered European lawyer's practice in the United Kingdom.

- (3)

No grant shall be made in respect of the act or default of a registered foreign lawyer, or of the employee of a registered foreign lawyer, where such act or default took place outside England and Wales, unless the SRA is satisfied that the act or default was, or was closely connected with, the act or default of a solicitor or the employee of a solicitor, or that the act or default was closely connected with practice in England and Wales.

## *7. Losses outside the remit of the Fund*

A grant will not be made in respect of the following:

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- (a)

Losses arising solely by reason of professional negligence by a defaulting practitioner, or the employee or manager of a defaulting practitioner.

- (b)

Losses which are the personal debts of a defaulting practitioner and where the facts would not otherwise give rise to a claim on the Fund.





- (c)

The loss results from, but does not form part of, any misappropriation of, or failure to account for, money or money's worth.

- (d)

The loss results from the trading debts or liabilities of the defaulting practitioner.

- (e)

The loss amounts to a claim for contractually agreed interest between the applicant and the defaulting practitioner.

- (f)

The SRA was not notified of the applicant's loss in accordance with rule 10 [10] .

- (g)

The loss occurred in relation to an overseas partnership which does not fall within *rule 15, 27(1)(c) or (2)(b) of the Solicitors' Code of Conduct 2007*, unless:

- (i)

the loss occurred as a result of a solicitor's dishonesty, or

- (ii)

the loss occurred as a result of failure to account by a solicitor acting as a named trustee.

- (h)

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.

## 8. Undertakings

A grant in respect of a failure by a defaulting practitioner to comply with an undertaking will be considered if it can be shown that the undertaking was given in the course of the defaulting practitioner's usual business acting on

behalf of a client, that the recipient acted reasonably in accepting the undertaking and placing reliance on the undertaking 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 for the purpose of procuring money or money's worth.

The SRA does not consider the giving of an undertaking in circumstances which amount to the giving of a bare guarantee of the defaulting practitioner's personal liabilities, or the financial obligations and liabilities of a client or third party, to form part of the usual business of a solicitor or other legal practitioner.

## *9. Multi-party and multi-profession issues*

- (1)

Where the loss has been sustained as a result of the combined activities of more than one party, (e.g. a defaulting practitioner conspires with an accountant or surveyor, or is assisted by a negligent accountant or valuer) the SRA will consider the role of each contributing factor in causing the applicant's loss. The SRA will base any grant on its assessment of that portion of the loss primarily attributable to the acts of the defaulting practitioner as opposed to that portion which is primarily attributable to the acts or omissions of the other parties, or to other factors. The SRA 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 defaulting practitioner's dishonesty.

- (2)

When a solicitor, registered European lawyer or registered foreign lawyer is practising as the manager or employee of a body authorised not by the

SRA but by another approved regulator, the SRA will not consider any claim in respect of that individual's act or default, or his or her employee's act or default.

- (3)

When an individual authorised not by the SRA but by another approved regulator is practising as the manager or employee of a recognised body, the SRA will in its discretion consider a claim in respect of that individual's act or default.

## *10. Applications: form and time limit*

Every application must be delivered to the SRA, in such form as may from time to time be prescribed by the SRA, within twelve 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 SRA may extend this period if satisfied that there are circumstances which justify the extension of the time limit.

## *11. Documentation in support*

The burden of proving a claim rests with the applicant who must provide such documentation as may be required by the SRA including when requested, a statement of truth. Failure to provide such documentation or to co-operate with the SRA will be taken into account when determining the merits of the application.

## *12. Exhausting other remedies*

- (1)

A grant may be refused or limited where the loss or part of the loss is an insured risk or where the loss is capable of being made good by some other means.

- (2)

The SRA may, before deciding whether to make a grant, require the applicant:

- (a)

to pursue any civil remedy which may be available to the applicant in respect of the loss,



- (b)

to commence insolvency proceedings,

- (c)

to make a formal complaint to the Police in respect of any dishonesty on the part of the defaulting practitioner or

- (d)

to assist in the taking of any action against the defaulting practitioner.

- (3)

In the absolute discretion of the SRA, a grant may be made before requiring the applicant to resort to other means of recovery.

### ***13. Notice to defaulting practitioner***

- (1)

The SRA shall not make a grant unless:

- (a)

a communication has been sent to the defaulting practitioner at his, her or its last known correspondence address or to his, her or its appointed representative informing the defaulting practitioner of the nature and value of the application; and

- (b)

not less than eight days have elapsed since the date of receipt of such communication, which shall be regarded as the day following the date of the communication.

- (2)

If it appears to the SRA that any communication sent under paragraph (1) [13-1] will not come to the attention of the defaulting practitioner or his, her or its appointed representative, then the SRA may make a grant notwithstanding failure to comply with the provisions of this rule.

### ***14. Costs***

- (1)

#### **Litigation**

Where an applicant intends to or has already instituted proceedings for recovery of his loss and wishes to apply for a grant in respect of the costs of the proceedings, the SRA will only consider such costs where:

- (a)

they can be shown to be proportionate to the loss and the amount likely to be recovered, or

- (b)

the proceedings were necessary for the making of an application to the Fund.

- (2)

#### **Application costs**

Where a grant is made, the SRA 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, necessarily and exclusively in connection with the preparation, submission and proof of the application.

- (3)

#### **Costs where the defaulting practitioner has failed to complete work**

If the defaulting practitioner did not complete the work for which he was paid, a failure to account shall be deemed to have arisen within the meaning of rule 3(2)(b) [r3-2-b] of these rules. In such circumstances, the SRA may consider making a grant in respect of the additional reasonable legal costs incurred by the applicant in completing the outstanding work or a grant by way of contribution towards those costs.

## **15. Interest**

- (1)

The SRA 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 be calculated in accordance with the rates prescribed from time to time by the SRA. This 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 payment of the principal grant. Such payment will take into account that a grant is a gift and is therefore not subject to tax.

- (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.

## ***16. Maximum grant***

Subject to rule 23 [r23] , the maximum grant that may be made is £2million.

## ***17. Recovery and subrogation***

Where a grant is made otherwise than by way of loan or if by way of a loan repayment of the loan is waived or otherwise the borrower has failed to repay part or all of the loan, the Society shall be subrogated to the rights and remedies of the person to whom or on whose behalf the grant is made (the recipient) to the extent of the amount of the grant. In such event the recipient shall if required by the SRA whether before or after the making of a grant and upon the SRA giving to the recipient a sufficient indemnity against costs, prove in any insolvency and/or winding-up of the defaulting practitioner and sue for recovery of the loss in the name of the recipient but on behalf of the Society. The recipient shall also comply with all proper and reasonable requirements of the SRA for the purpose of giving effect to the Society's rights and shall permit the SRA to have conduct of such proceedings.

## ***18. Reduction in grants***

Where an applicant or the applicant's servant or agent has contributed to the loss as a result of his, her or its activities, omissions or behaviour whether before, during or after the event giving rise to the application, the SRA may, in the exercise of discretion and to the extent that such activity, omission or behaviour has contributed to the loss, reduce the amount of any grant that may be authorised or reject the application in its entirety.

## ***19. Deduction from grants***

- (1)

The SRA may deduct from any grant the costs that would have been legally due to the defaulting practitioner so that the applicant will not be in a better

position by reason of a grant than he, she or it would otherwise have been in.

- (2)

The SRA may within its discretion deduct from any grant all monies already recovered by an applicant and monies which either will be or should have been recovered.

## ***20. Refusal of an application***

- (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.

- (2)

The fact that an application has been rejected does not prevent a further application being submitted provided that substantial new relevant evidence, information or submissions are produced in support of the new application.

## ***21. Appeals***

Should the applicant wish to appeal against refusal of an application, written notice of intention to appeal must be delivered to the SRA within thirty days of the date of receipt of the decision, which shall be regarded as the day following the date of the written communication of the decision. Such notice must be accompanied by details of the grounds of appeal together with any additional evidence in support.

## ***22. Notice of requirements***

Any requirement of the SRA under these rules will be communicated in writing.

## ***23. Waivers***

The SRA may waive any of the provisions of these rules except rules 13 [r13] and 20 to 24 [r20] .

## ***24. Repeals and commencement***

- (1)

These rules shall come into operation on 31 March 2009, whereupon

- (a)

the *Solicitors' Compensation Fund Rules 1995* shall cease to have effect save in respect of applications submitted before that date, which shall continue to be subject to the 1995 rules; and

- (b)

the *Solicitors' Compensation Fund (Foreign Lawyers' Contributions) Rules 1991* shall cease to have effect.

- (2)

On 1 July 2009, rule 4 [r4] shall be amended as follows:

- (a)

in paragraph (2) [r4-2] :

- (i)

delete "cancelled under *regulation 8 of the European Lawyers Registration Regulations 2000*" and substitute "revoked under *regulation 9.2(a)(ii) of the SRA Practising Regulations 2009*"; and

- (ii)

delete "suspension or cancellation" and substitute "suspension or revocation";

- (b)

in paragraph (3) [r4-3] :

- (i)

delete "had expired for non-renewal under *regulation 8.3*" and substitute "was suspended or was revoked under *regulation 9(c)*"; and

- (ii)

delete "expiry" and substitute "suspension or revocation"; and

- (c)

in paragraph (4) [r4-4] :



- (i)

delete "cancelled under *Schedule 14 paragraph 3(4)(a) of the Courts and Legal Services Act 1990*" and substitute "revoked under *regulation 9.2(a)(ii) of the SRA Practising Regulations 2009*"; and

- (ii)

delete "suspension or cancellation" and substitute "suspension or revocation".