

Case studies

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Waivers

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Related guidance

This case study should be read in conjunction with the guidance on granting waivers [<https://www.sra.org.uk/sra/decision-making/guidance/granting-waiver/>] .

Example 1: a refusal to waive the requirement to have a HOFA

The Head of Finance and Administration (HOFA) of a small licensed body we regulate leaves the firm. The firm asks us if we would consider granting them a waiver of the requirement to replace the HOFA on the basis that they do not have a suitable candidate, and the volume of client account transactions is small.

In this case, even if the factual circumstances led us to believe that a waiver was appropriate, we do not have the power to grant a waiver because the requirement derives from statute (in this case paragraph 13 of Schedule 11 to the Legal Services Act 2007, which provides that our rules must specify that a licensed body must, always, have a Head of Finance and Administration fulfilling this role). As this is a legislative requirement, we cannot grant a waiver from it.

Example 2: waiver of the requirement applying to COLPs

An Irish firm based in Dublin wants to open an office in England. The Irish firm already has in place an experienced and senior partner who acts as the equivalent of the firm's compliance officer. The firm would like her to fulfil the role of COLP in the new recognised body they are intending to set up in England. As she does not meet the requirement in our rules to be a COLP (as she is not an individual authorised to carry on reserved legal activities by an approved regulator), the firm applies for a waiver of rule 8.2(d) of the Authorisation of Firm Rules. The Irish firm provides evidence of her experience and qualifications and how she will discharge her obligations as COLP including the courses she proposes to go on to make sure she is fully familiar with our Standard and Regulations

[<https://www.sra.org.uk/solicitors/standards-regulations-resources/>] .

In light of the individual's significant relevant experience and the firm's wish to provide services to its existing clients who are based in England), we decide that the application meets our waiver criteria. In particular we decide that granting the waiver will support the regulatory objectives of helping to protect and promote the interests of consumers and promote competition in the provision of legal services.

Example 3: a waiver of the SRA Indemnity Insurance Rules (SIIR)

A Scottish firm of solicitors wants to open a branch office in England at which dual-qualified solicitors will be based. That English office is required, under the SIIR, to have its own policy of indemnity insurance that meets our requirements. The firm wants a waiver because the English office is covered by the firm's Scottish Master Policy, which includes "foreign work/foreign advice extension" cover for practice conducted outside the jurisdiction of Scotland. However, the master policy does not comply with the SIIR, because the insurers under the Scottish Master Policy are not participating insurers, the master policy is not a "policy" (as no separate policies are issued to individual firms), nor is its qualifying insurance written on our minimum terms and conditions.

Although the Scottish Master Policy does differ in some respects to that required by our rules, the key scope is broadly the same. The firm does conveyancing work and we are satisfied the insurance level provides adequate cover for clients in both England and Wales. We therefore grant the waiver of the SIIR, as doing so meets the regulatory objectives of protecting and promoting consumer interests. It also promotes competition in the provision of legal services.

Example 4: a refusal to grant a waiver of the SIIR

A firm of solicitors wants to open an office in England. They apply for a waiver of the obligation to have a separate policy of indemnity insurance on the basis that the type of work they will do is "low risk" and the premiums they have been quoted are unaffordable.

We refuse the waiver as the purpose of the present requirement to have insurance in place is to provide a clear and consistent level of protection for consumers of legal services. provided by firms authorised by us.