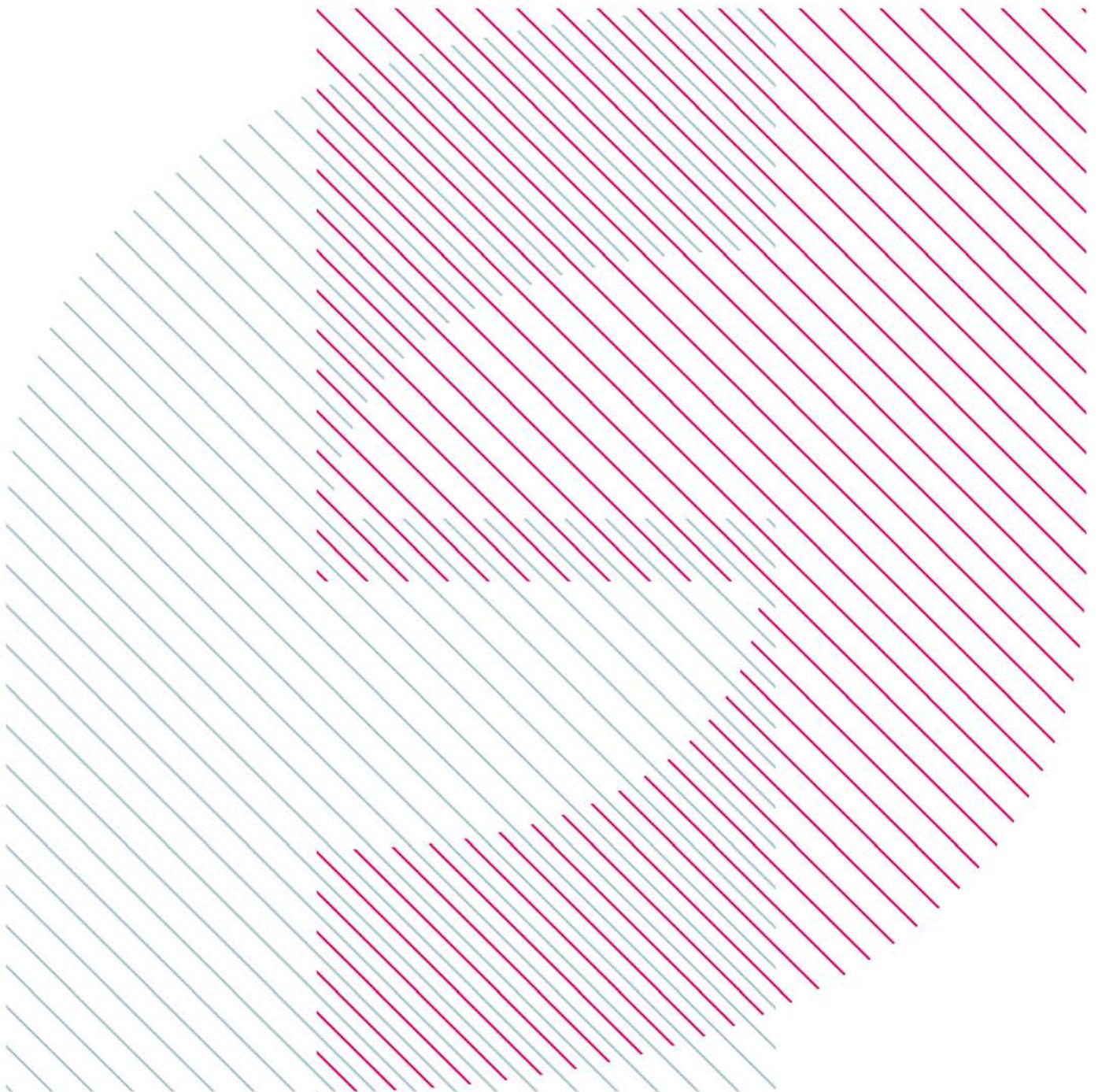




Consultation Response

Solicitors Regulation Authority
Protecting users of legal services
– prioritising payments from the
SRA Compensation Fund



Introduction

1. The Legal Ombudsman (LeO) was established by the Legal Services Act (2007). We protect and promote the public interest by resolving complaints and providing redress when things go wrong with the provision of legal services. We then take the learning and insight we gain from complaints and feed these lessons back to the profession, regulators, and policy makers to encourage the sector to develop and improve.
2. We welcome the opportunity to respond to the Solicitors Regulation Authority's (SRA) consultation on its revised proposals for prioritising payments from the SRA Compensation Fund.
3. The Legal Ombudsman exists to ensure that there are reasonable options for redress for members of the public who use legal services. As the Compensation Fund is an alternative source of redress in situations where circumstances prevent us from enforcing our remedies, it is important to us that the Fund remains appropriate and accessible for all who need it.
4. We are pleased to see the changes made to proposals by the SRA in response to feedback on its prior consultation from our organisation and others. We look forward to hearing the final shape of the new rules and will consider how they might impact on the information we provide to those who contact us.

Consultation questions

Q1. Do you agree that the proposed purpose statement will help people understand the circumstances when a claim is likely to be paid?

5. Yes, the purpose statement explains access to the Fund well, although we would urge the use of plain English wherever possible to ensure that members of the public of all backgrounds are able to understand it easily. As an example, we would recommend taking out the word 'notwithstanding' to make the wording clearer.

Q2. Do you agree with our revised proposals to remove hardship tests for all individuals, small businesses, small charities and small trusts?

6. We support the SRA's decision to abandon its proposals to limit payments to 'wealthy households' and to designate this as a hardship fund. We agree with the thresholds laid out in this consultation regarding the kind of organisation that should have access to the Compensation Fund, which mirrors our own scheme, and with the conclusion that most people will be significantly impacted from any level of financial loss caused

by a solicitor. In our experience, situations where money has been lost can be very distressing even where the level of loss is objectively low.

7. Overall, the proposal to remove hardship tests seems appropriate and we support any changes that will make the operation of the fund more consistent.

Q3. Do you agree with the proposal that we use our residual discretion to refuse or reduce payments on rare occasions when we consider the loss will be immaterial or substantively compensated elsewhere?

8. Yes, this is an appropriate use of discretion. Our own rules make reference to similar situations, giving us the power to dismiss a complaint where we can see that an issue has already been dealt with substantively by an alternative scheme. We also can and do issue decisions where we have found poor service but no detriment, and as such we do not recommend a remedy in these cases. We consider that the SRA's proposal in this instance mirrors this common-sense approach, and is important in maintaining the Compensation Fund for those who really need it.

Q4. Do you agree that the Fund should only be available to those who are the clients, or recipients, of the services of the solicitor/firm in question?

9. As a matter of principle, we do not agree with this proposal. It is indicated in the consultation paper that historically such payments have been made in cases where losses are high. While it is positive that there are relatively few of these instances, it seems counterintuitive to discount instances where detriment is particularly significant. If ultimately the Fund exists, as the SRA has already set out, to 'uphold trust in the integrity of the profession', excluding such cases appears to work against this aim.
10. Although we appreciate that this change has been proposed with our jurisdiction in mind, we would urge caution against mirroring our rules in this instance. This is an area in which we are conscious of gaps in the existing system of redress, and we would not want to see these compounded.
11. Moreover, it is not compelling to say that solicitors should not be expected to adhere to professional ethical standards for the benefit of all involved in a transaction. It is in the interests of all legal service providers that members of the public can have a high degree of trust in the integrity of the profession as a whole. Denying redress for those significantly impacted by a failure to meet those professional standards would be likely to damage this considerably.
12. While we acknowledge that the SRA has suggested an alternative route to redress (by claiming against the other party to a transaction/proceedings, who can then make a claim themselves against their solicitor or the Fund), this adds an extra layer of complication. In the interests of expediency, if it is possible to achieve the same outcome with fewer steps in the process, we would generally suggest that that would be a better course to pursue.

Q5. Do you think we should expressly include a right for the client of a solicitor whose actions have caused the loss for which they are liable to make a claim on the Fund, if no other redress is available?

13. If the SRA does end up following through on this proposal, then yes, we agree that the rights of the client should be proactively stated. However, our preference would be for the SRA to keep access to the Fund as it is currently, and allow third parties to continue claiming where necessary.

Q6. Do you agree with the proposal to introduce a multiple application cap?

14. While we are aware that this will still mean that there will be bigger gaps in redress going forward in cases where losses are high, we also acknowledge the SRA's central aim of ensuring the future viability of the Compensation Fund. With this in mind, we support this proposal on the basis that this will help to ensure that this important source of redress can be maintained. Provided that the SRA is able to identify potential claimants and encourage them to make applications where there are likely to be many of them, we believe this approach would be fair.

Q7. Do you agree that we set a financial threshold of £5m? Please provide any available evidence to support your response.

15. Our organisation does not hold any data to help us assess the appropriateness of this threshold. In the abstract, however, this seems reasonable.

Q8. Do you have a preference for any method of apportionment or that we retain the option to apply any of these depending on the circumstances?

16. Individual cases are likely to have differing particulars that make one or other method more appropriate. At the Legal Ombudsman, we believe that assessing redress on a case-by-case basis is a sound way to ensure fairness. We therefore agree that the SRA should retain the option to apply any of the suggested methods according to the circumstances.

Q9. Do you have any other comments on the features of the proposal to cap multiple claims?

17. We are interested to understand why the SRA has chosen not to recognise the difference in losses that may be sustained by individuals in these cases. While we acknowledge that in relation to investment schemes, all parties will have made a risk-based decision, this does not really apply to situations such as litigation funding. Would the SRA consider awarding payments as a proportion of losses, rather than paying the same amount to all applicants? If not, it would be useful to understand why this has been rejected as a method of apportionment.

Q10. Do you agree with the revised approach to how we will apply the single application limit?

18. We agree that this is a fairer way to approach applications than applying the limit to a single retainer. As above, we agree with the revised approach insofar as we accept that the sustainability of the Fund is of crucial importance for the future.

Q11. Do you have any other comments on the proposals and impacts we have set out in the consultation? Are there any impacts particularly Equality Diversity and Inclusion impacts that you think we have not identified?

19. We do not have any further comments to make, and consider that negative EDI impacts have largely been addressed by these revisions to the original proposals.

Conclusion

20. Thank you for the opportunity to comment on the SRA's proposals for administering its Compensation Fund scheme in the future.
21. Our joint Better Information research indicates that there needs to be clearer explanations about which firms are regulated and what protections they offer, including access to the Compensation Fund.
22. Therefore our concern going forward is that any changes are appropriately communicated to the public – and users of legal services in particular – and that everyone has access to clear instruction about how to apply to the Compensation Fund. It is also crucial that they have a good understanding of varying regulatory protections and how this relates to access to the Fund as well.
23. We would be pleased to work on this with the SRA and (if relevant) the LSB, to ensure that consumer protection is maintained to a high standard and all users of legal services can navigate systems of redress with relative ease.

For any questions about our response please contact our External Affairs Team at support@legalombudsman.org.uk
