

## **Litigation costs (Rule 12.1(e))**

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**

This guidance explains when we will consider making a payment towards an applicant's costs of litigation that they have undertaken, or propose to undertake, to recover their loss.

### **Litigation costs**

We will only make a payment in relation to an applicant's litigation costs in exceptional circumstances.

### **Upfront agreement or payment**

We may consider contributing to your legal costs where:

- you have a claim against a third party with high prospects of success and recovery
- you cannot reasonably fund the litigation (including via third parties, conditional fee agreements (CFAs) etc), and
- our contribution towards your litigation costs is likely to lead to a significant saving to the Fund overall.

### **Example 1**

Three clients have lost a total of £1.8m between them in a joint conveyancing transaction as their own solicitor failed to account for the money. The clients have high prospects of success in a claim against the solicitor's insurers, but the insurers are contesting liability. The clients have incurred £100,000 of costs so far and cannot afford to fund further costs themselves. Because of the insurer's attitude a CFA or similar



is not available despite the clients making reasonable attempts to find a solicitor to take on the case on that basis.

The total further costs of the litigation are estimated to be £150,000.

We agree to provide funding for the applicants' legal costs on the basis that if they succeed there will be a significant net saving to the Fund which we have assessed would otherwise be likely to pay the £1.8m in full.

### **After the event contribution**

We may consider an after the event contribution to your legal costs where you:

- you acted reasonably in bringing and resolving the litigation (in circumstances where the Fund would have required you to do so before considering your application);
- taking into account the costs you have incurred in bringing the litigation, which you have not been able to recover, you have still incurred a substantial loss; and
- the total payment by the Fund, including the contribution to the legal costs, will not be more than your original loss.

### **Example 2**

A group of 20 clients buying holiday apartments suffer losses averaging £50,000 each due to failure to account by their solicitor. In total the claims are £1m. The clients collectively make a claim against their solicitor. The solicitor's insurer defends the claim forcing the applicants to issue proceedings and incur substantial legal costs of £300,000. The insurer then offers to settle the proceedings at 75% of the claims and 50% of the costs. The clients accept and apply to the Fund the balance of their losses plus the balance of the costs. Their applications are for £400,000 in total (£250,000 losses and £150,000 costs).

We decide to use our residual discretion to refuse any payments for their principal losses. The clients have settled with the insurer and have recovered a substantial element of their losses back.

When the costs of the litigation are taken into account, which the clients are liable for, then each client's net recovery is less than half of their original losses. We decide that a contribution of £100,000 towards the costs is appropriate in the circumstances.

### **Example 3**

Client A sues their solicitor over a conveyancing matter involving a £200,000 loss of funds. The insurers have refused liability on the grounds of the solicitor's dishonesty. Client A obtains judgment against the solicitor for the full amount, plus costs of £30,000, but none of the debt is recovered as the solicitor has moved abroad with no traceable assets.

We pay the client £200,000 in relation to their original loss but no contribution towards their costs because doing so would lead to overall payments greater than the principal loss. We also do not consider that the costs have had a disproportionate effect on the loss recovered by the client or that it was reasonable to incur the costs as it should have been established at the outset that any judgement was likely to be unenforceable.

### **We will adopt a cost inclusive approach to applying the limit**

Any costs that we pay will be included within the £2m maximum payment. So we would not consider a payment for costs where you have already obtained a net settlement of £2m or more through litigation but make an application for a 'top-up' of any unpaid costs.

### **Further guidance**

Read more information about our [Compensation Fund](https://guidance.sra.org.uk/consumers/compensation-fund/) [<https://guidance.sra.org.uk/consumers/compensation-fund/>].

### **Further help**

If you require further assistance, please contact the [Contact Centre](https://guidance.sra.org.uk/contactus/) [<https://guidance.sra.org.uk/contactus/>].