

SRA Financial Penalties and Adjudication (Amendment) Regulations 2023

Regulations made by the SRA Board on 31 January 2023

Made under sections 2, 13, 28, 31, 44C and 44D of the Solicitors Act 1974, section 9 of, and paragraphs 14A and 14B of Schedule 2 to, the Administration of Justice Act 1985, section 83 of, and Schedule 11 to, the Legal Services Act 2007, section 89 of, and paragraphs 2 and 3 of Schedule 14 to, the Courts and Legal Services Act 1990 and the Legal Services Act 2007 (The Law Society and the Council of Licensed Conveyancers) (Modification of Functions) Order 2011.

Regulation 1

1.1 In Rule 3 of the SRA Regulatory and Disciplinary Procedure Rules:

- (a) insert 'subject to rule 3.6' at the start of Rule 3.1(b);
- (b) insert as Rule 3.1(h): 'where the **SRA** does not hold sufficient evidence that requirements made under rule 11.1 (b) were complied with, direct the payment of a fixed financial penalty in the prescribed sum in accordance with section 44D(2)(b) of the **SA**, paragraph 14B(2)(b) of Schedule 2 to the **AJA** or section 95 of the **LSA**;' ; and
- (c) insert as Rule 3.6: 'A decision under rule 3.1(b) to direct the payment of a financial penalty (other than by agreement with the relevant **person**) must be made by an **adjudicator**, or where the amount of the penalty is within Band D of the **SRA**'s guidance on its approach to financial penalties, by an **adjudication panel**'

1.2 In Rule 8 of the SRA Regulatory and Disciplinary Procedure Rules:

- (a) in Rule 8.4, after 'simple majority.' insert 'Where the **adjudication panel** has two members, the appointed Chair has the casting vote.';
- (b) in Rule 8.5, delete 'However, the panel may decide to conduct a hearing, which it may decide should be held in public, if it considers it in the interests of justice to do so.' and insert 'of the **adjudication panel**.' after 'in private by way of a meeting';
- (c) delete the wording of Rule 8.6 and substitute:

8.6 An **adjudicator** may at their sole discretion decide to:

- (a) invite the relevant *person* to be interviewed by an *authorised decision maker* accompanied by their representative (if any);
- (b) direct a hearing before an *adjudication panel* either in private or public in accordance with rule 8.6A, if the matter cannot be considered by the *Tribunal* and
 - (i) there is a material dispute of fact which cannot be determined without a hearing in which the parties are cross examined; or
 - (ii) if there is an overriding public interest in the matters being heard in public.'

(d) After Rule 8.6, insert:

8.6A Where an *adjudicator* has decided an allegation should be considered at a hearing:

- (a) the *SRA* shall send a notice informing the relevant *person* of the date, time and venue of the hearing, no less than 28 days before the date fixed for the hearing;
- (b) the relevant *person* and the *SRA* shall have the right to attend and be represented; and
- (c) the *adjudication panel* may, at any time, whether of its own initiative or on the application of a party, adjourn the hearing until such time and date as it thinks fit.'

1.3 After Rule 10 insert:

Rule 11: Fixed Financial Penalties

11.1 Where the *SRA* has evidence that a relevant *person* has committed one or more of the breaches listed in rule 11.2, it may notify them and will:

- (a) set out the allegation and the facts in support, accompanied by any evidence or documentation that the **SRA** considers to be relevant to the allegation;
- (b) require the relevant **person** to remedy any specified breaches and provide evidence of the action taken to the **SRA** within a specified period (which must be no less than seven days from the date of the notification); and
- (c) make a recommendation as to the decision to be made under rule 3.1(h) (taking into account any previous penalties issued), regarding publication under rule 9, and costs under rule 11.4, in the event that the requirements made under rule 11.1(b) are not complied with.

11.2 The prescribed breaches are:

- (a) SRA Transparency Rule 1.5
- (b) SRA Transparency Rule 2.1
- (c) SRA Transparency Rule 4.1
- (d) SRA Authorisation of Firms Rule 13.4
- (e) SRA Authorisation of Firms Rule 13.6
- (f) SRA Financial Services (Scope) Rule 5.3
- (g) SRA Financial Services (Scope) Rule 5.4;
- (h) SRA Code of Conduct for Firms Rule 3.3(a); or
- (i) SRA Code of Conduct for Firms Rule 2.1 and/or 3.8(a) in respect of material changes or inaccurate or incomplete information provided about:
 - (i) **COLPs** and/or **COFAs** (with reference to Rule 8.1 SRA Authorisation of Firm Rules)
 - (ii) Managers and owners (with reference to Rule 9.1 SRA Authorisation of Firm Rules)
 - (iii) Non-authorised material interest holders in licensed bodies (with reference to paragraphs 21 to 24 of Schedule 13 to the Legal Services Act 2007)
 - (iv) Beneficial owners, officers and/or managers of firms which are independent legal professionals (ILPs) and/or tax advisers (with reference to Regulation 26 of The Money

Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 as may be amended from time to time) (the MLRs)

- (v) Beneficial owners, officers and/or managers of firms which are trust or company service providers (TCSPs) (with reference to Regulations 56 and 57 of the MLRs)
- (vi) Money laundering reporting officer and/or money laundering compliance officer of an ILP, TCSP and/or tax adviser (with reference to Regulation 21 of the MLRs)

11.3 The prescribed sums for the purposes of rule 3.1(h) are:

- (a) £750 for a first breach
- (b) £1500 for a subsequent breach of the same category within 3 years of the date of the first penalty, or a continuation of the first breach after the **SRA** has directed payment of a penalty for that breach.

11.4 An **authorised decision maker** may require a **person** who is the subject of a decision under rule 3.1(h) to pay a charge of £150 in respect of the **SRA**'s investigation costs.

11.5 Rules 2.3, 2.4, 2.5, 2.6, 8.6 and 10 do not apply to the imposition of penalties under rule 3.1(h).'

Regulation 2

2.1. In Rule 3 of the SRA Application, Notice, Review and Appeal Rules:

- (a) insert 'subject to rule 3.7,' at the start of rule 3.4;
- (b) insert 'subject to rule 3.7,' at the start of rule 3.6; and
- (c) after Rule 3.6 insert:

3.7 Rules 3.4 and 3.6 do not apply where the **SRA** decides to review a decision made under rule 3.1(g) of the SRA Regulatory and Disciplinary Procedure Rules to make an application to the **Tribunal**.'

2.2. In Rule 4 of the SRA Application, Notice, Review and Appeal Rules:

- (a) in rule 4.1, after 'A review will', insert 'usually';
- (b) in rule 4.1, after 'written evidence alone.', insert 'An **adjudicator** may at their sole discretion invite the relevant person to be interviewed by an **authorised decision maker** accompanied by their representative (if any)';
- (c) insert 'Subject to rule 4.3' at the start of rule 4.2;
- (d) in rule 4.2, after 'on a review', insert '(save for a review of a decision made under rule 3.1(h) of the SRA Regulatory and Disciplinary Procedure Rules),';

(e) After Rule 4.2, insert:

4.3 On a review of a decision made under rule 3.1(g) of the SRA Regulatory and Disciplinary Procedure Rules to make an application to the **Tribunal**, the **authorised decision maker** may also overturn the decision where they consider that the conditions in rule 6.1 of the SRA Regulatory and Disciplinary Procedure Rules are no longer met.

4.4 On a review of a decision made under rule 3.1(h) of the SRA Regulatory and Disciplinary Procedure Rules, the **authorised decision maker**, as appropriate may exercise any of the powers set out at rule 4.2, where they consider that:

(a) the **person** had complied with the requirements made under rule 11.1(b) of those rules; or

(b) the **person** had taken all reasonable steps to ensure they receive **SRA** communications but did not receive the notification under rule 11.1 of those rules.

4.5 A review of a decision made by an **adjudicator** may only be carried out by another **adjudicator** or an **adjudication panel**. A review of a decision made by an **adjudication panel** may only be carried out by another **adjudication panel**.

4.6 A review will not be conducted by the **authorised decision maker** who made the decision under review. For avoidance of doubt this does not apply in respect of corrections under rule 3.1(a).'

Regulation 3

Insert into the SRA Glossary:

Adjudicator

means a legally qualified person engaged by the **SRA** for the purpose of making regulatory decisions, and whose adjudication work is functionally separate to the work of the **SRA**'s operation functions, including its investigation, supervision and authorisation functions. The term **Adjudicator** includes an **Adjudication Panel** when the context permits.

Adjudication Panel

means a panel of lay and legally qualified persons engaged by the **SRA** for the purpose of making regulatory decisions, and whose adjudication work is functionally separate to the work of the **SRA**'s operational functions, including its investigation, supervision and authorisation functions. '

Regulation 4

These regulations come into force on 30 May 2023 or the date of approval by the Legal Services Board, whichever is the later.