

Draft plain English summary of the new fee policy

Introduction

This document explains the new fee policy for the practising year 2010/2011 which will apply to the renewal process in November 2010. The way the cost of regulation is currently allocated amongst the profession through the practising certificate fee leads to anomalies and unfairness in the context of modern legal practice. The SRA is introducing a new approach to practising fees in 2010. The SRA carried out three consultations between June 2009 and April 2010 which helped to establish a fairer fee policy.

What are mandatory practising fees?

Our powers to charge fees are mainly contained in the Solicitors Act 1974 and the Administration of Justice Act 1975, as amended by the Legal Services Act 2007.

The majority of our funding comes from annual fees set by us each year which are now approved by the Legal Services Board (LSB)

We can charge annual fees to individuals (e.g. Practising Certificate Fee) as well as firms (Recognised Sole Practitioners and Recognised Bodies). These are mandatory and must be paid in order for individuals and firms to gain or maintain their authorisation to practise.

What do the fees pay for?

The income from mandatory practising fees can only be used for certain purposes. These are:

- Regulatory activities (the total costs of the SRA)
- Non regulatory activities provided by the Law Society which are Permitted Purposes under the Legal Services Act (e.g. Law reform activities)
- Levies required to be paid under the Legal Services Act
 - Part of the running costs of the Legal Services Board
 - Part of the running costs of the Office for Legal Complaints (OLC)
 - Part of the start up costs for the LSB and OLC
 - Full costs of the Solicitors Disciplinary Tribunal (SDT)

All these costs make up the total funding requirement which needs to be met by the profession.

Objectives of the new fees policy

The new fees policy aims to:

- achieve greater fairness for all in meeting the cost of regulation from 2010 (not to increase revenues from fees)
- make the fee structure more logical and spread the costs more fairly over the various sectors of the profession (i.e. between in-house and private practice). The restructure is also now possible and appropriate in the light of changes already made by the Legal Services Act 2007, through the introduction of firm based as well as individual based regulation
- make the fee structure more compatible with alternative business structures (ABSs) when they are permitted from 2011
- meet our strategic objective to ensure that our policies and regulations are fair and that they are not directly or unjustifiably indirectly discriminatory

We adopted, after consultation, the following principles, The new fee policy should:

1. be fair to fee payers,
2. be efficient and economical to administer,
3. ensure a predictable income to meet the cost of regulation,
4. be stable—charges should not vary considerably year on year,
5. be as simple as possible—to enable the regulated profession to predict their likely fees,

6. be based on data that can be verified,
7. ensure that, where possible, the costs of processes that are not of general application should be borne by those making such applications, as far as possible, on a cost recovery basis,
8. take some account of ability to pay, in particular in relation to small and new businesses— fees should not be a deterrent to new entrants.

What is the total funding requirement for this year?

The net total funding requirement for 2010/11 is £121.7m compared to £122.2m last year. Additionally we will collect approximately £2.1m as a contribution to the Compensation Fund.

Information will be available online which provides transparency and comparative information (e.g. how this compares with the previous year).

The New Fee Structure

The new fee structure will be made up of four main component parts:

1. Individual practising fee

A flat fee payable by every solicitor seeking a Practising Certificate and every Recognised European Lawyer (REL) and Recognised Foreign Lawyer (RFL) seeking to register.

The practising fee for individuals is as follows:

1 November 2010 to 31 December 2010 inclusive	1 January 2011 to 31 March 2011 inclusive	1 April 2011 to 30 June 2011 inclusive	1 July 2011 to 31 October 2011 inclusive
£428	£333	£238	£143

There are reduced fees for maternity leave as follows:

1 November 2010 to 31 December 2010 inclusive	1 January 2011 to 31 March 2011 inclusive	1 April 2011 to 30 June 2011 inclusive	1 July 2011 to 31 October 2011 inclusive
£238	£190.5	£143	£95.5

Please note that £48 is the charge for handling the application which is included in the above fees.

RFLs based mainly outside England and Wales will pay a reduced registration fee of £100.

2. Firm practising fee

A fee payable by every firm (Recognised Sole Practitioner or Recognised Body) seeking or maintaining authorisation to practice. The firm practising fee will be calculated based on the firm's turnover (the definition of turnover is set out in Appendix 1). The following banded turnover table is used to calculate each firm's fee. Please note that £100 is the charge for handling the application which is included in the fees below.

Calculation of Turnover

Turnover Range (A)	Pay %* of Turnover within band (B)	Minimum Turnover in band (C)	Minimum Fee in Band (D)
£0 - £19,999	1.10%	£0	£100
£20,000 - £149,999	0.65%	£20,000	£320
£150,000 - £499,999	0.63%	£150,000	£1,165
£500,000 - £999,999	0.60%	£500,000	£3,370
£1,000,000 - £2,999,999	0.57%	£1,000,000	£6,370
£3,000,000 - £9,999,999	0.39%	£3,000,000	£17,770
£10,000,000 - £29,999,999	0.33%	£10,000,000	£45,070
£30,000,000 - £69,999,999	0.30%	£30,000,000	£111,070
£70,000,000 - £149,999,999	0.27%	£70,000,000	£231,070
£150,000,000 +	0.10%	£150,000,000	£447,070

* % is equivalent to 'divided by 100' (e.g. 0.65% = 0.0065)

The firm fee is calculated by following the steps below:

1. Identify which band the turnover (T) falls in from column A.
2. Take T and subtract the figure in the corresponding column C.
3. Multiply this figure by the corresponding percentage in column B.
4. Finally add this figure to the corresponding figure in column D.
5. Firm fee then needs to be rounded to the nearest pound (i.e. if less than 50p then round down and if equal to or more than 50p then round up).

Formula: (T - C) x B + D

Worked examples

Example 1: For Turnover of £0:
 $(£0 - £0) \times 1.1\% + £100 = £100$

Example 2: For Turnover of £200,000:
 $(£200,000 - £150,000) \times 0.63\% + £1,165 = £1,480$

Example 3: For Turnover of £813,421:
 $(£813,421 - £500,000) \times 0.60\% + £3,370 = £5,250$

Example 4: For Turnover of £279,123,528:
 $(£279,123,528 - £150,000,000) \times 0.1\% + £447,070 = £576,194$

For a brand new firm

The firm practising fee due at *initial application* is as follows. Please note that £200 is the charge for handling the initial application which is included in the fees below.

1 November 2010 to 31 December 2010 inclusive	1 January 2011 to 31 March 2011 inclusive	1 April 2011 to 30 June 2011 inclusive	1 July 2011 to 31 October 2011 inclusive
£1,000	£800	£600	£400

- The firm practising fee due at *first renewal* is based on the first 12 months of the firm's turnover and can be estimated where appropriate.

For a new firm which is a successor practice

- The firm practising fee due at *initial application* is £200.
- The firm practising fee due at *first renewal* will be calculated based on its successor turnover (see Appendix 1)

For an existing firm which is a successor practice

- The firm practising fee will be calculated based on its successor turnover (see Appendix 1)

Additional fees for firms with branch office outside England and Wales

- The firm practising fee will be increased by £200 per branch office outside England and Wales.

3. Individual Compensation Fund contribution

A flat fee of £10 is payable by each individual irrespective of whether they hold client money. The exception to this is CPS for whom there is a statutory exemption from paying this contribution.

4. Firm Compensation Fund contribution

A flat fee of £120 will be payable by firms which hold client money.

The policy decisions behind the new fee structure

The split between individuals and firms

Prior to firm-based regulation, approximately 90 per cent of the income to support the activities of the Law Society, the SRA and the Legal Complaints Service was collected through the practising certificate fees paid by or on behalf of individual solicitors. However, between 60 per cent and 80 per cent of regulatory activity is focused on firms rather than individuals, making the current system unfair.

For each aspect of the funding requirement (i.e. regulation and Compensation Fund), there will be both an individual and a firm component under the new policy. For the regulation component, 40% of the costs will be met through the individual practising fee and 60% through the firm practising fee. This 40:60 split is a starting point, and may well change in the following years to reflect the increasing regulatory focus on firms.

This change in policy results in a significant reduction (60%) in the fees for in-house solicitors, RELs and RFLs working in commerce and industry, local government and the not for profit sector, who are not required to pay a firm practising fee. This does translate into a shift of the fee burden onto private practice of approximately 15%. However, this better reflects the cost of regulating the in-house sector and so is fairer.

For the Compensation Fund contribution, it is difficult to apportion the cost of the Compensation Fund to individuals or firms and so the cost has been simply split 50:50. The Compensation Fund promotes public confidence in the profession as a whole and therefore both individuals and firms should contribute.

The Compensation Fund

Under the new fee policy, the Compensation Fund contributions will only be used to fund the cost of claims, reserves and direct costs. Until now the contributions have also been used to pay for certain indirectly related regulatory costs. Over £8m of these costs have been shifted to the total funding requirement and so met by practising fees. It is envisaged that from next year all of the remaining regulatory costs (e.g. cost of interventions) will be transferred. The two stage approach is being taken because the Compensation Fund reserves are currently too high. This will deliver a significant improvement in transparency.

Because the Compensation Fund funding requirement is low this year, the firm contribution is a flat fee payable by all firms which hold client money. This approach will be reviewed next year in line with the expected increase in Compensation Fund contributions.

Discounts

As the new system will provide a significant reduction in individual practising fees, the number of available discounts has been reduced significantly. This simplification will reduce the administration costs of the SRA.

We have however retained the maternity leave discount. We will review the need for additional discounts next year.

RFLs and RELs

We will continue to treat RELs and RFLs in the same manner as solicitors, both for the renewal of registration and for individual contributions to the Compensation Fund. As is the case today, RFLs who are mainly (over 50%) based outside of England and Wales will pay a flat fee per year of £100 for their registration.

Firms with branch offices outside England and Wales

UK firms with branches outside England and Wales will be charged a small flat fee in relation to each foreign branch to cover the SRA's costs of relevant activities and processes (e.g. application).

Application and Regulation Fees

The annual individual and firm practising fees include amounts to cover the charges for handling the relevant applications. In order to improve transparency and comply with the Framework Services Directive, we now publish these charges in order to distinguish them from general regulatory costs.

Transitional Fee Moderation Process

As some firms will face a considerable increase in the first year of this new fee structure, a transitional fee moderation process for certain firms has been provided in order to facilitate a smoother transition to the new funding arrangement.

Applicants will be required to satisfy all of the following conditions to qualify for a reduced fee:

1. Turnover from most recent closed annual accounts after 31 October 2009 is below £500,000.
2. Turnover from most recent closed annual accounts after 31 October 2009 is at least 30% less than the figure for the previous year.
3. Total fees and contributions for 2010 based on the turnover figure from closed annual accounts prior to 1 November 2009 will be at least 50% higher than the total paid by the firm in 2009 for renewal.

We will set the firm practising fee for an applicant who meets the above criteria by using a turnover figure that is half way between the figure for the most recent closed annual accounts (post 31 October 2009) and the figure for the prior year.

Applications under the fee moderation process will be accepted between 19 July and 31 August 2010. To re-coup the operational costs of processing an application, the SRA will charge a fee of £250 to applicants who want to be considered. As the process is not based on the exercise of discretion, the outcome of the process will be final.

Appendix 1: Detailed turnover definition and guidance

The following paragraphs describe how the turnover figure that will be used for the purposes of determining the renewal fee will be calculated:

1. Turnover figure means a firm's total gross fees arising from work undertaken from offices in England and Wales.
 - *Gross fees includes:* all professional fees of the firm including remuneration, retained commission, and income of any sort whatsoever of the firm (including notarial fees). Work in Progress (WIP) should be included.
 - *Gross fees does not include:* interest, reimbursement of disbursements, VAT, remuneration from a non-private practice source, dividends, rents, and investment profit.
2. The turnover figures that will be used when billing firms in October 2010 will be based on **closed accounts**, audited where possible.
 - Closed accounts are defined, in order of preference, as:
 1. an audited set of financial statements
 2. an unaudited set of financial statements signed off by an accountant
 3. a submitted tax return for the year.
3. Bad debt should be handled under normal accounting procedures. Where it has been allowed for in the turnover figure for a firm's last closed accounting period prior to 1 November 2009, that is acceptable. If a bad debt has been discovered after closing the firm's accounts, then the turnover figure cannot be re-adjusted. Those adjustments could potentially be accounted for in the following year's closed accounts.
4. The turnover figure should, wherever possible, be for the last complete (12 months) accounting period prior to the 1 November 2009 (e.g. 31 March 2009). The latest acceptable annual accounting period end date is 31 October 2009.
5. The turnover figure should be an exact figure wherever possible. A figure rounded to the nearest £1,000 will be acceptable only if more detail is unavailable.
6. Those firms who do not have closed accounts which ended within the period from 1 November 2008 to 31 October 2009, should provide the SRA with an estimate of the turnover figure as well as the previous year's turnover figure based on accounts which have been closed. The SRA will determine at its discretion whether to use the 2008 figure if an updated 2009 figure based on closed accounts has not been received by 31 August 2010.
7. The turnover figure must be for a 12 month period.
 - (a) For a brand new firm (i.e. not a successor firm nor one resulting from change in status), an estimate for the first 12 months of practice (irrespective of whether this is after 31 October 2009) will be accepted; the basis upon which the firm has made the estimate should be provided to the SRA.
 - (b) If a firm has changed its annual accounting period, its latest closed accounting period prior to the 1 November 2009 will be shorter or longer than 12 months. The following approach should be used by the firm, providing an explanation of how they have derived their turnover figure:
 - Preferably, provide the turnover for the 12 month period immediately preceding the new accounting period end date (as long as prior to 1 November 2009)
 - Alternatively, if this is not possible then take the last closed accounts period prior to the 1 November 2009 and scale it appropriately (e.g. if the last closed accounting period was for six months then it should be doubled; if the last closed accounting period was for 15 months, then it should be divided by 15 and then multiplied by 12).
8. If a firm has a change in status (e.g. partnership to LLP, sole practitioner to partnership), then at renewal it should respond as if there were no change in status.

Successor Turnover

Successor turnover is relevant where firms have changed through, for example, an acquisition, merger or split. All successor turnover will be calculated based on the Turnover Figures for each

of the affected firms.

If a firm has succeeded to the whole or a part of one or more firms (e.g. through merger or acquisition), successor turnover will be calculated by combining the appropriate proportion of the Turnover Figure for each of the affected firms which has become part of the successor practice:

- In a simple merger between firms A and B, combine the Turnover for each firm.
- In a merger of one firm (firm A) with part of another firm (e.g. one third of firm B) then firm A should add the corresponding proportion of firm B's Turnover Figure to its Turnover Figure (e.g. firm A's Turnover Figure + third of firm B's Turnover Figure)

For a firm which has split or ceded part of their practice to another firm and wishes this change to be reflected in a successor turnover figure, the successor turnover figure will be a proportion of the Turnover Figure, as long as it is clear how the Turnover Figure for such a firm is to be distributed between the successor firms. 100% of the Turnover Figure must be accounted for between the successor firms. For example:

- In a merger of firm A with one third of firm B then
 - firm B's successor turnover figure will be two thirds of its Turnover Figure, Firm A's will be its Turnover Figure plus one third of B's Turnover Figure
- Where firm A and one third of firm B become new firm C
 - firm A's turnover will be £0 (closed) and B's turnover will be two thirds of its Turnover Figure. Firm C's successor turnover figures will be the combination of A's Turnover Figure and one third of firm B's.

In a case where all successor firms agree on the apportionment of 100% of the Turnover Figures, then the SRA will accept the successor turnover figures.

In the case where all successor firms are unable to agree the apportionment of 100% of the Turnover Figures, then the SRA will apportion the Turnover Figures for the purposes of determining renewal fees. The SRA will determine this apportionment based on the information available and its decision will be final. Firms will not be able to renew recognition without an appropriate successor turnover figure being determined, as this is necessary to calculate the appropriate firms' fee.