

Guidance for SRA Compensation Fund applications on Axiom Ince

Introduction

1 December 2023

This document contains guidance for caseworkers and decision makers dealing with the processing and determination applications received by the SRA Compensation Fund (the fund) arising from the intervention into Axiom Ince Limited (Axiom).

From the applications already received and our wider assessment of the circumstances of this intervention, we recognised it was necessary to develop and publish a policy on Axiom applications to ensure consistency and transparency. This guidance is the culmination of the initial evaluation process and has been developed as the scale and character of applications has become clearer.

We have been considering whether to impose a cap on the total payments from the fund on Axiom claims as permitted by the fund's rules. While we were considering this decision, we developed guidance to allow the fund to deal with emergency claims so as to protect clients with particular vulnerabilities and the most pressing need.

Now that we have decided not to impose a cap, we have developed this new guidance to reflect that decision and to set out the fund's approach to dealing with applications relating to Axiom. The guidance sets out how the fund will deal with applications in a priority order, based on providing protection to the most acutely affected applicants first and then dealing with other applicants in an order based on the categories of priority explained below.

We will keep this guidance under review to make sure that it prioritises effective consumer protection in the manner most consistent with the purposes for which the fund has been established. We will undertake regular reviews within the Client Protection team to make sure we are considering the types of applications being received and any changes in the circumstances surrounding the intervention. In the event that we identify the need for any significant changes in the guidance and/or the prioritisation approach, we will obtain executive director approval. We will publish this guidance and any revisions on our website.

The guidance is intended to assist decision-making on a case-by-case basis. It remains for the decision maker to make their decision based on the specific circumstances of the application. However, this guidance will assist in ensuring consistency and the efficient use of the fund's

resources, and will also allow the flexibility necessary to safeguard the interests of applicants whose interests require them to be prioritised.

It is recognised that in each case, the applicant is seeking a discretionary payment from the fund following some form of financial loss. However, we recognise that the impact of the loss will vary and, in some cases, will be immediate, exposing the applicant to acute financial difficulties and irreparable or long-lasting harm. The guidance does not change the discretionary nature of the fund. The fund remains discretionary, and no applicant is entitled to a payment.

We have also identified factors which could exacerbate these difficulties. These include protected characteristics under the Equality Act 2010 and anything indicating that the applicant may be in a position of heightened vulnerability. The guidance has been formulated in light of our public sector equality duty

The guidance is specific to the applications received in relation to Axiom. It:

- a. details the principles to inform decision making
- b. directs how those principles are to be applied
- c. confirms that the fund's decision remains discretionary.

Applications will be considered in line with guidance on prioritisation applicable at the time the application is decided.

Background

On 14 August 2023, we intervened into the individual practices of Pragnesh Modhwadia, Shyam Narendra Mistry and Idnan Liaqat. These individuals were directors of Axiom. Mr Modhwadia is the sole owner and managing partner.

The intervention into the practice of Mr Modhwadia was on the grounds of suspected dishonesty and breaches of the SRA Accounts Rules. Mr Mistry and Mr Liaqat's practices were intervened into on the basis of breaches of the SRA Accounts Rules.

The sole shareholder at the firm, Pragnesh Modhwadia, was suspected of misusing significant amounts of client money, resulting in an account shortage estimated to be more than £60 million. The suspected dishonesty and missing client money was uncovered following a visit by an SRA team, and further digging behind what on the face of it looked like well-ordered accounts. The nature of the suspected dishonesty was sophisticated and included falsified bank statements and letters.

Following close liaison with Axiom, which included providing them with details of the fund and inviting fee-earners to contact us about their most

urgent cases, it became apparent that intervention into Axiom was inevitable.

We intervened into Axiom on 2 October 2023.

Dealing with SRA Compensation Fund applications

There are several factors which point to the need for guidance in this case, including:

- The volume of applications expected (around 250 to date but likely to be several thousand).
- The total funds misappropriated and the unprecedented scale of the loss to applicants.
- The extensive legal and investigatory process required to pursue alternative forms of recovery.
- The irreparable harm and/or loss to which applicants might otherwise be exposed.
- The potential for certain applicants to experience heightened financial hardship on account of vulnerabilities such as age, race, financial dependency, nationality or social disadvantage and their lack of alternative resources.

It is clear that the fund will receive applications at an unprecedented level from Axiom clients. We have identified that those with heightened vulnerability could experience potentially excessive delay.

This guidance has been formulated in the light of our public sector equality duty. We recognise that there may be applications from Axiom clients who may by reason of protected characteristics potentially be exposed to additional disadvantage. The guidance is intended to enhance consumer protection and provide assistance to those experiencing or having the potential to experience acute or severe financial hardship.

We continue to gather data on applications received from Axiom clients which include the relevant Equality Act data. However, the time critical nature of the present circumstances, together with the provenance, character and scale of the Axiom applicants requires action if the protective purpose of the fund is to be served.

We have now decided that a cap will not be imposed on applications received by the fund relating to Axiom. This means that we need to consider how we ensure that we can deal with the increased volume of cases with the finite resource available to the fund. As such, we have identified an approach that allows us to deal with the applications from those who we believe will be significantly impacted by the losses suffered due to the actions of Axiom.

We have compiled an [Equality Impact Assessment](https://rules.sra.org.uk/sra/research-publications/equality-impact-assessment-sra-compensation-fund/) [https://rules.sra.org.uk/sra/research-publications/equality-impact-assessment-sra-compensation-fund/]. In light of the continuing nature of our public sector equality duty, the EIA will be kept under review and monitored in the light of the ongoing receipt of information and data. We will publish any revisions made.

Compliance with our public sector equality duty is an ongoing obligation. We will continue to review and amend this guidance. By considering the applications as they received, we will gather statistical evidence relating to (among other things) the protected characteristics of the applicants. This data will be considered on a quarterly basis and will also be used to inform the revision or review of this guidance.

Prioritisation of SRA Compensation Fund applications

Our usual approach following intervention is to deal with very urgent claims first and then to deal with claims in the order in which they are received. But, in light of the volume of applications and size of the losses on Axiom, we cannot simply deal with the Axiom applications in this way.

We have therefore decided to apply a prioritisation process to applications received, rather than dealing with them based on when we received the application. We will give the greatest priority to applications where we think the impact of the loss suffered is more immediate and the applicant will face the most significant hardship.

We will deal with applications in the following priority order:

- Emergency applications
- Individuals purchasing a property to live in
- Individuals who have paid for legal services that have not been completed – such as divorce proceedings, immigration and litigation
- Individuals selling properties and individuals buying investment properties
- Trusts and probate matters
- Commercial transactions

We have explained more about these categories below. We have also produced [guidance for applicants](https://rules.sra.org.uk/sra/news/axiom-ince-intervention-information/#heading_7239) [https://rules.sra.org.uk/sra/news/axiom-ince-intervention-information/#heading_7239] to understand what this means for their application and have set out our current anticipated timescales for dealing with applications. These timescales will be kept under review and amended dependent on volumes and progress.

The prioritisation approach we have taken and this guidance will be kept under review. We will monitor the effectiveness of this guidance and outcomes. We will contact applicants should our policies and guidance

change as this might affect how we make decisions on applications already submitted.

It is important to note that the fund's rules, such as on eligibility and alternative avenues of recovery, will apply to all claims.

Emergency applications

On any intervention, there is a process for dealing with emergency applications which allows expedited decisions in the cases where the applicant could face the most significant harm. Based on this usual process, we applied emergency criteria to Axiom applications pending a decision on the cap in cases where the applicant faced heightened vulnerability and irreparable harm. This allowed us to make payments where clients faced the most serious risk of prejudice while the cap was considered.

Applicants requiring an emergency payment to be made will remain the first priority for the fund. The focus remains on applicants of heightened vulnerability comprising those who would suffer exceptional hardship if they do not receive an urgent payment.

We have set out below some examples where heightened vulnerability might occur. These are illustrations to promote consistency. They do not prevent a decision maker from exercising their own judgment and discretion having regard to all the circumstances.

- a. **Risk of homelessness** – ie will the applicant have nowhere to live if a payment is not made? This often links to the second criteria below. An example could be where a client is buying a house, having given notice on their rental property. Contracts were exchanged, completion is due and the applicant has to leave their current rented property. The balance of the purchase was to be funded by the client's savings and by a mortgage. Both the client's savings and deposit money were with Axiom Ince and have been lost. Another example would be where the firm was dealing with a statutory lease extension for a client which is due to complete that day – the client could lose the statutory deposit and also the right to extend the lease if it does not complete.
- b. **Client under contractual obligation to complete on private domestic residence (as opposed to a buy to let or investment property)** – this will be standard residential conveyancing and links with the homelessness criteria above. It will typically be where the applicant is buying their primary family home to live in and has exchanged contracts and is obliged to complete. They will be in breach of contract and face forfeiture of deposit if they cannot complete.
- c. **Imminent insolvency** – for instance, where a client was expecting to receive sale proceeds or an inheritance which was to be used to



avoid imminent insolvency. We will need to be satisfied both that the insolvency is very likely and imminent, but also that any payment would stave it off. We will not make a payment if, for instance, the bankruptcy would still proceed anyway.

- d. **No alternative sources of finance or recourse available** – the fund is a fund of last resort and will always consider whether reasonable alternative remedies are available to the applicant. This will apply to emergency claims also. For example, if a very wealthy individual was buying a property and had paid a deposit which has now gone, we might want to confirm that they could not pay the deposit again from private funds. Given the inevitable urgency of claims meeting these criteria, we are not likely to require people to take steps which would not be quick such as claiming on the firm's indemnity insurance or taking other legal recovery steps.
- e. **Social or Economic Disadvantage** – It is not yet known to what extent (if any) there are any Axiom applicants whose hardship and/or financial difficulties may be exacerbated by reason of any protected characteristic within the meaning of the Equality Act 2010. These include age, disability, race, and nationality. When assessing an application, the existence of any protected characteristic and its impact upon the applicant's position should be duly considered in evaluation of the hardship and heightened vulnerability to which the applicant is exposed.

Individuals purchasing a property to live in

This is the same as the risk of homelessness and contractual obligation points set out in the emergency applications section above, but with time being less critical so the application need not be treated as an emergency.

This will apply to residential conveyancing where the purchaser will live in the property. Claims are likely to be for deposit money or payment on account of costs paid held by Axiom.

Legal services paid for but not completed

Clients of Axiom may have paid money to the firm on account of costs or to pay for disbursements, such as court fees. If the work for which the payment related was not done, or was partially done, then that can be the basis of an application to the fund.

Generally, the sums involved in such applications will be smaller than those relating to property purchases, which is why they are being dealt with as a lower priority.

However, if an applicant's circumstances are such that they will face particular prejudice if their application under this category is not expedited, we will take that into account.

Individuals selling property or buying investment property

Where an individual is selling a residential property and purchasing another, then they are likely to come within the priority categories above relating.

Where an individual was selling a property without an associated purchase or with no risk of homelessness, that will be a lower priority. The likely claim is for sale proceeds, in part or in whole, held by Axiom. Without an associated purchase meeting the criteria above, the risk of prejudice to the applicant is lower.

On property purchases, our priority categories focus first on applicants buying a property to live in. An application for money arising from the purchase of property as an investment is likely to be less critical and so will be a lower priority unless the applicant is able to show particular prejudice or vulnerability.

Trusts and probate

It is not uncommon for distributions from trusts and probates to take many months. As many beneficiaries will have expected to wait for any money from a trust or estate, it is reasonable to set these as a lower priority than the other categories above.

As with all priority categories, if an applicant can show particular prejudice or vulnerability, we will take that into account.

Commercial transactions

Large companies and corporate entities will not be eligible to apply to the fund. Those which are eligible are likely to be better placed than private individuals to absorb the loss of money for a longer period until their application can be determined.

Again, if an applicant can show particular prejudice or vulnerability, we will take that into account.

Organisational measures

We have put in place various operational measures to help us to deal with the Axiom applications as efficiently as possible.

To date, we have:

- Undertaken an Equality Impact Assessment.
- Begun recruitment of a dedicated team to deal with Axiom applications.

- Created a dedicated email inbox for Axiom applications.
- Published the dedicated email address on our website and on our agents' websites and asked our agents to pass details onto clients.
- Email address also published on our website and on agents' websites