

CILEx Regulation Compensation Arrangements Guidance



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CILEx REGULATION COMPENSATION ARRANGEMENTS GUIDANCE

SECTION 1: GENERAL

1.1 General Principles of the CILEx Regulation Compensation Arrangements

- 1.1.1 The primary aim of the CILEx Regulation Compensation Arrangements is to recompense clients of a firm providing legal services authorised and regulated by CILEx Regulation ('a CILEx Authorised Entity') who have incurred a loss due to the dishonest misappropriation or dishonest failure to account of that authorised entity, its owners, managers or employees. Civil liability claims, such as for professional negligence, are generally covered by the insurance that a firm has in place (see below however). For simplicity we will refer to these firms (CILEx Authorised Entities) as 'authorised firm(s)' throughout this guidance.
- 1.1.2 Payments under the scheme are funded primarily by the underwriters of insurance maintained by CILEx Regulation in order to fund claims (although a small fund is also maintained).
- 1.1.3 If you wish to make a claim under the CILEx Regulation Compensation Arrangements you must complete the appropriate application form.
- 1.1.4 Claims under the CILEx Regulation Compensation Arrangements can only be made as a last resort. This means that you must have exhausted all other means of redress. For example, a grant may be refused where your loss is covered by another insurance policy against which you can make a claim. All grants under the CILEx Regulation Compensation Arrangements are discretionary and can only be made within the limits of the scheme.
- 1.1.5 You must provide CILEx Regulation with evidence that you have incurred a loss, that you are eligible to claim under the Arrangements and that you have suffered or will suffer hardship due to the loss.
- 1.1.6 This guidance is broad and is intended to assist applicants in making claims from the CILEx Regulation Compensation Arrangements. It also includes information on how claims will be decided and the factors decision makers are likely to take account of in exercising their discretion. Applicants and decision makers should however read this guidance in conjunction with the CILEx Regulation Compensation Arrangements Rules.
- 1.1.7 In some situations, firms may have been regulated by a different regulator in the past. Where the event giving rise to a claim happened under that previous regulator, a claim against the CILEx Regulation Compensation Arrangements will not be possible.



1.2 Completing the form

- 1.2.1 The application form is designed so that you can complete it yourself. If you need assistance in completing it please contact CILEx Regulation.
- 1.2.2 If you instruct someone, such as a lawyer, to complete the form for you and your claim is at least partly successful then you may be awarded a contribution towards your costs. Further information can be found below at paragraph 4.4.

SECTION 2: THE APPLICATION

2.1 Timing of the application

- 2.1.1 An application under the CILEx Regulation Compensation Arrangements should be made promptly and at the latest within one year of either the loss (i.e. the dishonest misappropriation or failure to account or the events giving rise to a civil liability) occurring or the date on which you knew (or with reasonable diligence should have known) that you had or would suffer a loss. Grants will only be made outside of these timescales in exceptional circumstances. Exceptional circumstances might arise where due to extremely poor health, or some other form of incapacitation, an individual is not able to make a claim within the normal deadline.

2.2 Identity

- 2.2.1 You must provide photographic proof of your identity as part of your application; this can be a copy of your passport or driving licence certified by a lawyer or other professional person. Alternatively, if you have instructed a lawyer to make the application on your behalf, we will accept confirmation from them that they are satisfied as to your identity.

2.3 Information required

- 2.3.1 You must demonstrate in the application form, or with supporting written evidence, that (among other things):
- you have suffered or are likely to suffer actual loss of money (or something that has a value in money) and such loss occurred:
 - as a result of the dishonest misappropriation or dishonest failure to account by an authorised firm (or one of the firm's principals, owners, managers or employees) in the course of acting for you in work of a sort which the firm is authorised by CILEx Regulation to undertake. Ordinarily other types of loss would be covered by the authorised firm's professional indemnity insurance (though see below); or



- in respect of the civil liability of an authorised firm where the firm has (contrary to the CILEx Professional Indemnity Insurance Rules) failed to ensure that professional indemnity insurance is in place to cover such liability (certain conditions apply however, see below);
 - you are eligible to claim under the Arrangements (see Section 3 for more information on eligibility);
 - you are suffering or are likely to suffer hardship; and
 - you are unable to recover the loss from any other source, which should include details of the other sources of possible recovery (such as under a policy of insurance) and the steps you have taken to show that recovery from those sources is not possible.
- 2.3.2 You must prove your claim and provide us with information which we ask for in support of this. Failure to do so could impact upon your claim. Please note that it can take time to gather the information which we need to determine your claim. We are grateful to applicants for their patience during this process.
- 2.3.3 Your application must be supported by a statutory declaration as to the accuracy of the information provided in it.

2.4 Submitting the application

You should send the application form with a certified copy of your identity and evidence to support your claim to:

The CILEx Regulation Compensation Arrangements,
Kempston Manor,
Kempston,
Bedford
MK42 7AB

Alternatively, you may email your completed form to:
info@cilexcompensationfund.org.uk

SECTION 3: REQUIREMENTS TO BE SATISFIED

3.1 Losses that cannot be subject to a grant

3.1.1 There are some losses that fall outside the scope of the CILEx Regulation Compensation Arrangements and for which no grant can be made. Losses falling into this category include those:

- which can be recovered from some other source (e.g. under a policy of insurance);



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- arising where the authorised firm was acting outside of its authorisation at the time that the loss arose (e.g. by undertaking an activity it was not authorised by CILEx Regulation to undertake or by practising overseas);
 - arising by reason of the failure of a legal practitioner to satisfy a financial judgment against you where the facts of the judgment would not otherwise give rise to a claim on the CILEx Regulation Compensation Arrangements;
 - which have not led to your hardship.
- 3.1.2 Claims for professional negligence (and other civil liabilities) should be made on the authorised firm's professional indemnity insurance and not on the Compensation Arrangements.
- 3.1.3 Grants may only be made for losses which arise from the carrying out (or purported carrying out) of legal work which the firm is authorised to offer to the public. If a firm is authorised to conduct a specific reserved legal activity and is providing services to the client in that area then a grant may be made. This would apply even if the incident which gave rise to the loss did not occur during the conduct of a specific reserved activity and concerned a different stage of the client's legal matter. If, however, a loss arises from work in an area of law quite separate to the firm's authorisation then no grant can be made.
- 3.1.4 You will only be able to claim under the Arrangements if you are eligible to do so and have suffered loss and hardship as a result of the dishonest misappropriation or failure to account. If you instructed your lawyer in a personal capacity rather than as part of your work or business then you will generally be eligible. If you are a business or other organisation with annual income of £2 million or more then you will not be eligible to claim under the scheme. 'Annual income' will typically mean turnover i.e. monies coming into the organisation in the most recent financial year after the deduction of taxes and any trade discounts. For further information see rule 6(5) of the CILEx Regulation Compensation Arrangements Rules.

3.2 Losses in respect of which a grant will normally not be made

- 3.2.1 There are certain losses for which a grant normally cannot be made. All grants from the Arrangements are discretionary but particular circumstances in which a grant would not normally be made include:
- losses which occurred due to your own dishonesty;
 - losses which occurred where your own activities and behaviour (either before, during or after the transaction) contributed to the loss;
 - losses arising in connection with your profession, trade or business, where there is evidence that you or anyone connected with you



contributed to the loss by failing to exercise a reasonable standard of care;

- losses arising out of a contractual claim (other than the contractual arrangement that you have instructed the authorised firm over) between you and the firm;
- losses due to lost interest on the principal grant (the sum is calculated at rates which may from time to time be prescribed by the Adjudicators);
- losses based on the failure by an authorised firm to comply with an Undertaking (an Undertaking is an agreement given by a lawyer to carry out certain actions) unless the Undertaking:
 - was given with dishonest intent for the purpose of procuring money or money's worth, or;
 - although not given with dishonest intent, is subsequently dishonestly not performed by the authorised firm for the purpose of procuring money or money's worth; or
 - would not normally be regarded as having been given within the course of a lawyer/client transaction.

3.3 Other remedies

3.3.1 Before deciding whether or not to make a grant, the Adjudicators may require you to:

- pursue any civil remedy which may be available to you to recover the loss;
- make a formal complaint to the Police in respect of any dishonesty on the part of the authorised firm;
- give assistance in taking any disciplinary action against the authorised firm.

3.4 Prosecution of dishonest lawyers

3.4.1 In appropriate cases, you will be expected to assist the Police in connection with enquiries into the commission of any criminal offence by the authorised firm in respect of the alleged acts giving rise to your application. However the Adjudicators may consider an application for a grant even if there is no conviction against any owner, member, manager or employee of the authorised firm and no owner, member, manager or employee of the authorised firm has been the subject of a finding of dishonesty.



3.5 Institution of civil proceedings

3.5.1 In some cases the Adjudicators may require you to institute civil proceedings (i.e. to sue to get back the money you lost), including insolvency proceedings, in respect of the loss suffered. The purpose of the proceedings may be to recover all or part of the alleged loss. You should not institute proceedings unless and until the written consent of CILEx Regulation has been obtained and the question of who is to be responsible for the costs has been decided. Otherwise any application for a grant in respect of such costs may be rejected by the Adjudicators.

3.6 Your behaviour

3.6.1 When considering your application, the Adjudicators will take into account your conduct and that of anyone connected with you. If the Adjudicators considers that you or anyone connected with you have contributed to the circumstances of the loss, or have failed to submit an application for a grant within the required time, or have failed to pursue an application diligently, then the application may be rejected in its entirety or the amount of any grant may be reduced.

3.7 Personal liabilities of a lawyer

3.7.1 The Adjudicators will not normally make a grant in respect of the personal or trading debts or liabilities of a lawyer or an authorised firm where the monies form part of a commercial transaction or business venture between you and the lawyer outside the normal lawyer/client relationship.

3.8 The discretionary nature and limits of the Arrangements

3.8.1 The CILEx Regulation Compensation Arrangements is discretionary and no person has a right to receive a grant.

3.8.2 In designing the CILEx Regulation Compensation Arrangements, CILEx Regulation has had regard to the likely nature of claims upon the Scheme and made arrangements to fund these at a level which provides a robust level of consumer protection. These arrangements include maintaining insurance policies to fund claims and collecting monies from all authorised firms.

3.8.3 It should be borne in mind however that ultimately the Arrangements is finite in nature. There are limits on the size of claim which can be made under the rules (£500,000) as well as a limit on the amount of money which can be paid out in respect of losses arising from one firm (£2 million). There are also limits on the total funds available in any given year. Though highly unlikely, in the event that insufficient funds are available to meet your claim within the terms of the scheme then a reduced or nominal sum may instead be paid.



- 3.8.4 Decision makers appointed to determine whether a grant should be made on the fund or not should have proper regard to any representations made to them by CILEx Regulation as to the likely availability of funds to meet a particular claim. All grants under the scheme should be made subject to CILEx Regulation receiving funds from the insurers of the scheme to pay out to the claimant. Grants cannot be made where funds are not available to pay them.
- 3.8.5 In the unlikely event of available funds available being exhausted, or near exhausted, decision makers must exercise their discretion to ensure fairness between current and likely future applicants. This will include consideration of awards being made on a reduced, pro rata or nominal basis. Such awards may be made on an interim basis where the decision makers considers availability of funds to be a short-term limitation and is otherwise satisfied that it would be fair and just to do so. If it appears that the £2 million limit on how much can be paid out in respect of one firm may be reached then:
- only urgent grants aimed at alleviating severe hardship should be made until the fund is in a position to estimate the likely total exposure to the fund;
 - urgent grants may be allowed in part on an interim basis and the full claim reviewed again once the fund is in a position to estimate the likely overall exposure to the fund;
 - in determining how much should be paid out on an urgent interim basis a conservative approach should be adopted, taking account of the risk of depleted sums being available for the remaining claimants;
 - where necessary claims should be settled on a pro rata basis.

SECTION 4: AUTHORISING A GRANT

4.1 Maximum pay-outs

- 4.1.1 The maximum grant that can be made out under the CILEx Regulation Compensation Arrangements is £500,000 inclusive of all interest and costs. The maximum amount that can be paid out in respect of one authorised firm is £2 million.

4.2 Interim grants

- 4.2.1 Where it can be shown that you will suffer severe hardship, the Adjudicators may make an interim grant before the full investigation of the whole application has been completed and without the full application having been admitted. However, in making such payment the Adjudicators must be satisfied that there has been a loss of an amount at least equal to that to be paid out by way of an interim grant.



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4.3 Deduction from grants

4.3.1 The Adjudicators may deduct from your grant the costs that would have been due to your legal practitioner or authorised firm had the work been properly completed by them but which have not been paid. You should not be in a better position because you have received a discretionary grant than you would have been if the work had been properly done in the first place.

4.3.2 The Adjudicators will deduct from your grant all monies already recovered by you and money which either will or should have been recovered. For example, if your application is for £2,000 but you have already recovered, from whatever source, a sum of £1,000 the Adjudicators will base any grant on the balance of £1,000.

4.4 Payment of costs and costs for submitting applications

4.4.1 The Adjudicators have the power and discretion to make a further grant in respect of the reasonable costs of the person acting for you relating to a claim and rectifying errors of the authorised firm where a grant is authorised. This discretion is subject to the overall limit of £500,000 and the limits on claims for costs as set out below.

4.4.2 The maximum award for costs of making this claim is currently set at £100 plus VAT. It is ultimately your responsibility to pay any bill for services used and you will not be able to claim any sum above this amount.

4.4.3 A claim for costs may be reduced if the costs incurred could have been better mitigated by an earlier approach to CILEx Regulation or if costs incurred are unreasonable or excessive.

4.5 Interest

4.5.1 A supplementary grant, by way of a sum in lieu of lost interest on a principal grant, may also be made by the Adjudicators. Such interest will normally be calculated in accordance with the rates prescribed from time to time by the Adjudicators for compensation applications, and will normally be calculated from the day the loss, which was the subject of the principal grant, was incurred, up to the next working day after the despatch of the grant.

SECTION 5: YOUR OBLIGATIONS AFTER A GRANT HAS BEEN MADE

5.1 Assisting in recovering money

5.1.1 If a grant is made, you may be required to assist in the recovery of this money from the authorised firm and/or its principals or employees. You will be contacted in connection with any such proceedings.

5.1.2 If you become aware that you are not entitled to some or all of the money you have received, you must agree to return it to CILEx within 30 days of



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being notified of such a matter. You will be asked to provide a declaration to this effect in the application form that you have signed.

SECTION 6: REFUSAL & REJECTION

6.1 Refusal of an application

6.1.1 If an application is refused for the whole or part of the amount applied for, you will be informed in writing of the reasons for the decision.

6.2 Rejection of claim

6.2.1 If the Adjudicators reject or are unable to make a grant, you will be informed in writing of the reasons for this decision. The fact that an application has been rejected does not prevent a further application being submitted by you, or the rejected application being re-considered, provided that you are able to provide substantial new relevant evidence, information or submissions in support of the new application or the request for re-consideration.



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