

## DRAFT Amendments to the Compensation Fund Rules (0.8)

### CILEx COMPENSATION ARRANGEMENTS ~~FUND~~ RULES

#### Introduction

1. (1) These are the CILEx Compensation Arrangements~~Fund~~ Rules.
- (2) These rules are made by CILEx under ~~articles 3 and 4 of~~ the Legal Services Act 2007 (Chartered Institute of Legal Executives) (Modification of Functions) Order 2014.
- (3) These rules come into force on 5<sup>th</sup> January, 2015.
- (4) Responsibility for the application and administration of these Rules and of the Fund is delegated by CILEx to CILEx Regulation.

#### Interpretation

2. In these Rules, unless otherwise provided:

<b>Applicant:</b>	means a person applying for a Discretionary Grant;
<b>Authorised Entity:</b>	means a partnership (including a limited liability partnership), company or sole principal authorised by CILEx under the Legal Services Act 2007 to: <ol style="list-style-type: none"> <li>(a) carry on an activity which is a <u>Reserved Legal Activity</u> <del>reserved legal activity</del>; or</li> <li>(b) provide immigration advice or immigration services;</li> </ol> <p><u>and where the context permits, references to acts or omissions by such a body shall include the acts or omissions of such a body's principals (including the partners in a partnership, the members in an LLP or the directors in a company) and employees;</u></p>
<b>CILEx:</b>	means the Chartered Institute of Legal Executives;
<b><u>CILEx Regulation:</u></b>	<u>means Cilex Regulation Ltd;</u>
<b><u>Compensation Insurance Contract</u></b>	<u>means a contract of insurance taken out pursuant to rule 3(2)(a);</u>
<b><u>Consumer:</u></b>	means an individual acting for purposes which are wholly or mainly outside of that individual's trade, business, craft or profession;
<b>Discretionary Grant:</b>	means a <del>D</del> discretionary <del>G</del> grant made <del>by CILEx</del> under Rule <del>5-6</del> (1)(a) or (b) <u>out of the Fund or with a view to payment being made by virtue of a Compensation Insurance Contract;</u>

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<u>Eligible Person:</u>	<u>has the meaning given in rule 6(5);</u>
<b>the Fund:</b>	means the CILEx Compensation Fund <u>as described in rule 4;</u>
<u>Legal Services</u>	<u>do not include:</u> <ul style="list-style-type: none"> <li>i) <u>practising as an employee of an employer other than a sole principal or entity regulated by CILEx Regulation; or</u></li> <li>ii) <u>discharging the functions of any of the following offices or appointments:</u> <ul style="list-style-type: none"> <li>a) <u>judicial office;</u></li> <li>b) <u>Under Sheriffs;</u></li> <li>c) <u>members and clerks of such tribunals, committees, panels and boards as the CILEx Regulation Board may from time to time designate but including those subject to the Tribunals and Inquiries Act 1992, the Competition Commission, Legal Services Commission Review Panels and Parole Boards;</u></li> <li>d) <u>Justices' Clerks; or</u></li> <li>e) <u>Superintendent Registrars and Deputy Superintendent Registrars of Births, Marriages and Deaths and Registrars of Local Crematoria.</u></li> </ul> </li> </ul>
<u>Qualifying Insurance:</u>	<u>has the meaning given in Rule 1(2) of the CILEx Professional Indemnity Insurance Rules;</u>
<u>Regulated Legal Activity</u> <del>regulated legal activity:</del>	means: <ul style="list-style-type: none"> <li>(a) a <u>Reserved Legal Activity</u> <del>reserved legal activity</del>; or</li> <li>(b) immigration advice or immigration services; <del>and</del></li> </ul>
<u>Reserved Legal Activity</u> <del>reserved legal activity:</del>	has the same meaning as in the Legal Services Act 2007.

### Compensation Arrangements ~~The Fund~~

3. (1) CILEx shall establish and maintain compensation arrangements in accordance with these rules.
- (2) For the purposes of rule 3(1), compensation arrangements shall include arrangements for the funding of discretionary grants under rule 6 by one or more of the following:
  - (a) insurance provided by an authorised insurer (within the meaning of section 64 of the Legal Services Act 2007);
  - (b) the Fund.

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### The Fund

- ~~4.3~~(1) CILEx must establish and maintain the CILEx Compensation Fund (the Fund) which is to be applied to the payment of Discretionary Grants and for the other purposes provided for under these Rules.
- (2) Every Authorised Entity must make contributions to the Fund. CILEx~~x~~ may from time to time prescribe the rate and amount of, and payment arrangements for, those contributions which may include provision for different payments to be made by different descriptions of Authorised Entity.
- (3) Any contribution which is not paid in accordance with ~~paragraph rule 4~~(2) may be recovered by CILEx as a debt.

### Management of the Fund

- ~~5.4~~ (1) The Fund ~~shall is to be~~ held, managed, administered and distributed by CILEx Regulation, which may in particular:
- (a) make discretionary grants from the Fund in accordance with rule 6~~hold and distribute any monies raised for the purposes of the Fund~~;
  - (b) invest the Fund in any investments in which trustees may invest under section 3 of the Trustee Act 2000 (general power of investment) as restricted by sections 4 and 5 of that Act;
  - (c) insure in relation to the Fund, and pay premiums in respect of such insurance from the Fund, for such purposes and on such terms as it considers appropriate (including for the avoidance of doubt in respect of a Compensation Insurance Contract);
  - (d) borrow for the purposes of the Fund, pay interest on any money so borrowed, repay any money so borrowed and use investments or other property which form part of the Fund as security for such borrowing; and
  - (e) use the Fund to pay any ~~other~~ costs, charges or expenses properly incurred by CILEx in establishing and administering the Fund (which may include such liabilities incurred by persons appointed to manage and administer the Fund on behalf of CILEx).
- (2) The payments which may be made under ~~paragraph rule 5~~(1)(e) include any expenditure, including the payment of any award of costs or damages, incurred by CILEx, CILEx Regulation, their employees or agents as a result of proceedings against any of them for any good faith act or omission in the exercise or purported exercise of powers under these Rules.
- (3) For the avoidance of doubt, CILEx Regulation may delegate part or all of its functions under these rules to staff members or other persons appointed for this purpose. Any such delegation must be in writing.

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### Discretionary Grants

- 6.5. (1) ~~The Fund may be used by~~ CILEx Regulation ~~may to~~ make Discretionary Grants to Eligible ~~p~~Persons ~~who are clients of Authorised Entities~~ to
- (a) compensate (in whole or in part) for losses suffered as a direct consequence of a dishonest misappropriation or a dishonest failure to account by an Authorised Entity in the course of providing to that person Legal Services of a type which that entity was authorised by CILEx Regulation to provide~~replace money which an Authorised Entity has misappropriated or for which an Authorised Entity has otherwise failed to account~~; or
  - (b) compensate (in whole or in part) a person in respect of the civil liability of an Authorised Entity which, contrary to the CILEx Professional Indemnity Insurance Rules, does not have in place a policy of qualifying insurance against which a claim in respect of that civil liability can be made.
- (2) A grant may not be made in excess of funds available under these compensation arrangements or in respect of any loss:
- (a) arising solely by reason of the professional negligence of an Authorised Entity;
  - (b) which is a personal debt or trading debt or liability of an Authorised Entity;
  - (c) arising from practice by the Authorised Entity outside of England and Wales;
  - (d) which is a claim for interest under a contract between the Applicant and an Authorised Entity; ~~or~~
  - (e) which did not arise from the provision of legal services performance or purported performance by an Authorised Entity of a regulated legal activity that it is authorised by CILEx to undertake;
  - (f) arising from the provision of services by an individual (including authorised individuals) other than through a sole principal or entity authorised by CILEx; or
  - (g) where the other requirements for making a Discretionary Grant under these rules have not been satisfied, including in particular as regards the Applicant suffering loss and hardship (rule 7(2)) and where other remedies may be available (rule 8).
- (3) Discretionary Grants may be made:
- (a) on an interim basis;
  - (b) subject to payment being received from an insurer pursuant to a Compensation Insurance Contract.

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- (4) CILEx Regulation shall publish guidance as to the criteria to be applied in deciding whether to make a Discretionary Grant. Such guidance may include:
- (a) the circumstances in which it might be appropriate for the time limits for making an application under these rules to be extended;
  - (b) a requirement for decision makers to take account of the affordability of each application in the context of maintaining the Fund in appropriate cases;
  - (c) guidance on when and how to distribute monies on a pro rata or nominal basis;
  - ~~(d) a requirement for decision makers to take account of the terms of any relevant Compensation Insurance Contract;~~
  - (e) guidance on making use of interim grants;
  - (f) guidance on acts or omissions on the part of an Applicant which may result in a claim being refused or reduced, including where the conduct of the Applicant has contributed to the loss and where the Applicant has not provided full cooperation during the course of the application;
  - (g) guidance on assessing eligibility under these rules, including the need to take a broad approach in the context of calculating assets and income and to take account of assets held or income received by any parent undertaking;
  - (h) guidance on making use of interim grants in circumstances where there is a significant risk that the aggregate limit set for grants per Authorised Entity under rule 9(2) will be met and the period of time after which final grants should ordinarily be made.
- (5) For the purposes of rule 6(1), a person is eligible if that person is a client or former client of the Authorised Entity and is either:
- (a) a Consumer; or
  - (b) any other person who has neither assets of £1 million or more nor annual income in the last accounting year (including annual turnover) of £1 million or more.
- (6) Any Discretionary Grant is to be made in the absolute discretion of CILEx Regulation and no person has a legally enforceable right to any grant.

**Applications**

- ~~7.6.~~ (1) An application for a Discretionary Grant must be made:
- (a) in the form CILEx Regulation may from time to time prescribe; and
  - (b) made promptly and in any event, save for exceptional circumstances, not more than one year after the Applicant first knew, or with reasonable diligence should have known, about the misappropriation, failure to account or events giving rise to a civil liability (as the case may be).
- (2) An Applicant must provide evidence to satisfy CILEx Regulation that, in consequence of the misappropriation, failure to account or events giving rise to

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a civil liability (as the case may be), the Applicant has suffered or is likely to suffer loss and hardship.

- (3) The Applicant has the burden of proving a claim and must provide CILEx Regulation with such documents or other information as it may require in respect of that claim (though for the avoidance of doubt satisfaction of such requirements does not give a person a legally enforceable right to any grant).
- (4) Failure to provide documents or other information or to co-operate with CILEx Regulation may be taken into account when determining the merits of an application.

### Other Remedies and Subrogation

- ~~8.7~~ (1) A Discretionary Grant may be refused in respect of all or any part of a loss that is:
- (a) an insured risk; or
  - (b) capable of being made good by any other means.
- (2) Before deciding whether to make a Discretionary Grant and subject to exercising its discretion under rule 8(4) below, CILEx Regulation ~~may~~ shall require an Applicant to:
- (a) pursue any civil remedy against: ~~the Authorised Entity who is the subject of the application;~~
    - (i) the Authorised Entity who is the subject of the application;
    - (ii) any third party who possesses or controls the money that the Applicant seeks to recover;
  - (b) commence insolvency proceedings against that Authorised Entity;
  - (c) make a formal complaint to the Police or other agency against that Authorised Entity; and
  - (d) assist in the taking of any action against that Authorised Entity.
- (3) If a Discretionary Grant is made, the Fund is subrogated to any rights or remedies of the recipient in relation to the subject-matter of the Discretionary Grant ~~are to be subrogated to CILEx~~ and, if required by CILEx Regulation (whether before or after the making of the grant) the Applicant must:
- (a) prove in any insolvency or winding-up of the Authorised Entity;
  - (b) sue for recovery of the loss or other property in the name of the Applicant but on behalf of CILEx; and
  - (c) comply with any other reasonable requirement for the purpose of giving effect to CILEx's rights.
- (4) CILEx Regulation may waive the requirement for an Applicant to pursue one or

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more of the steps set out in rule 8(2) above if:

- (a) a Discretionary Grant is being made on an interim basis;
- (b) there is no reasonable prospect of such steps assisting in the recovery of the Applicant's losses; or
- (c) it would otherwise be unreasonable to require the Applicant to do so.

### **Grant Limits**

9. 8. (1) A Discretionary Grant ~~may~~shall not exceed £500,000.

(2) Discretionary Grants made in respect of one Authorised Entity shall not exceed a total of £2 million.

### **Refusal of an Application**

10. 9. If an application for a Discretionary Grant is refused, whether in whole or part, CILEx Regulation must inform the Applicant in writing of its decision and the reasons for that decision.