

Rule	Current Position	Proposed change	Reason for change
Title of the rules	Currently the rules are known as the CILEx Compensation Fund Rules.	Change to CILEx Compensation Arrangements.	CILEx Regulation is proposing to move towards a largely insurance backed set of compensation arrangements. This proposed change is simply to reflect that.
1(2)	Currently the rules set out the legal authority under which they are made quite specifically.	We are proposing to make this broader and simply rely upon the Order more broadly under which the rules are made.	To ensure that we are not limiting what powers we rely upon in making the rules.
2	Definition of authorised entity does not currently make it absolutely clear that references to acts or omissions by employees or managers of these firms will be covered by references to acts or omissions by the firm. References to Reserved Legal Activities have not been capitalised in order to make clear that the definition as set out in the rules applies.	As changes are proposed elsewhere in the rules, we intend to take this opportunity to put beyond doubt that misappropriations (for example) by an employee of the firm would be covered by the rules and to capitalise defined terms where appropriate.	To ensure clarity.
2	-	Some other new definitions have been added to the rules as new provisions have been proposed. These are perhaps best understood in the context of the rule changes themselves and so will be explained further below.	-
3	Currently there is no equivalent to the new provision which broadens the scope of what CILEx and CILEx Regulation may do to provide compensation for clients of CILEx regulated entities. At present the position in the rules is simply that a pot of money known as the fund must be maintained.	To enable CILEx and CILEx Regulation to put arrangements in place to compensate clients of CILEx regulated entities by taking out insurance to pay out compensation if money is misappropriated (for example) by the firm and potentially to rely solely upon that source of compensation at some stage in the future.	The proposed provisions allow compensation arrangements to be made up of both insurance and a fund or just one of these. In the short term it seems likely that some level of fund will be needed but the changes would enable a transition in due course to a model based entirely upon insurance rather than the maintenance of a large pot of money if feasible.
4(2)	Currently the rules simply state that fees can be charged to CILEx regulated entities for contributions to the compensation arrangements.	We are proposing to adopt the wording in the enabling statutory instrument (the section 69 order) which gives us rule making power to put beyond doubt that those fees can vary dependant upon the type of CILEx law firm.	To more closely reflect the powers for charging fees available to CILEx and CILEx Regulation under enabling legislation.
Various	Currently the rules refer to 'paragraph x' or 'paragraph y' when cross-referencing other parts of the rules	As changes are to be made elsewhere in the rules, we propose to change this to referring to 'rule x' etc	This is simply a stylistic change to align more with best practice.

Rule 5 (general)	See tracked changes in rules.	A number of largely stylistic changes and changes to improve clarity have been proposed. The exception is 5(f) which is more substantial and is explained separately below.	Most of these changes are stylistic and to ensure that the rules are in keeping with the enabling legislation which gives us the power to make these rules.
Rule 5(f)	Currently the rules permit payments to be made for civil liability claims which could have been made against a CILEx authorised entity but where the firm has failed to maintain professional indemnity insurance. However, such claims cannot be made under the rules where they arise purely as a result of professional negligence.	To consult upon a possible option of enabling CILEx Regulation to use the Compensation Fund to pay for the firm's run off insurance premium itself if the firm fails to do so. It would be subject to seeking stakeholder views during consultation and reaching an appropriate agreement with the insurers on accepting the money for the cover which we are hopeful can be achieved. Possible issues with such an arrangement need to be explored more fully during consultation. However, we are interested in seeking views as to whether this could be a helpful means of expanding the consumer protections afforded by the scheme.	The change at Rule 5(f) is being consulted upon as means of ensuring robust consumer protection. It envisages the possibility of the Fund paying the insurance premium offered to the firm when closing rather than paying out on the claims itself.
5(3)	Currently the rules do not prescribe delegation arrangements where someone other than the CILEx Regulation Board is taking decisions on the grants.	We are proposing to specify that the Board may delegate grant making decisions.	This is to put the position beyond doubt and to add some formality to the arrangements for delegating.
6(1) & 6(5)	<p>Currently the rules anticipate the compensation fund paying out for two types of scenario:</p> <p>(a) where a firm misappropriates/fails to account for client money and</p> <p>(b) where a firm fails to take out professional indemnity insurance and therefore clients cannot claim on insurance where mistakes are made by the firm (provided that the loss does not arise solely from professional negligence).</p> <p>Applicants must demonstrate that they have suffered loss and 'hardship'. The latter means that larger businesses will ordinarily not be able to benefit from the Compensation Fund.</p>	<p>We are proposing to introduce some changes to this rule:</p> <ul style="list-style-type: none"> • we are introducing eligibility criteria which would largely limit claims on the funds to consumers (i.e. those who instruct a firm as a private individual not as a business) and small businesses (i.e. turnover and assets of less than a prescribed sum); • we are also proposing to put the need for misappropriations and failures to account to involve some aspect of dishonesty in order to be eligible to make a claim into the rules to make the position clearer. On a practical level honest errors would likely be ineligible under the scheme in any event as an alternative remedy would most likely be available but greater clarity within the rules would be preferable moving forwards. 	<p>For reasons set out elsewhere we are consulting upon moving towards a largely insurance backed compensation scheme. By more clearly putting larger non-consumer clients beyond the scope of the scheme we are seeking to provide greater clarity but also facilitate the transition to what we consider to be a more proportionate, efficient and sustainable regime.</p> <p>The reference to dishonesty (which appears in current guidance) being brought within the rules is proposed in order to ensure that the rules are absolutely clear on this point rather than in order to make a change in policy.</p>

6(2) [general]	See tracked changes proposed.	To confirm that no grant can be made in excess of available funds and that payment of part of a claim can be made in appropriate cases.	Intended to improve clarity. No change in policy.
6(2)(f) and (g)	See tracked changes proposed.	To clarify for the avoidance of doubt that grants cannot be made (a) where the services were provided to the client outside of the CILEx regulated entity or (b) where no hardship has been suffered or where other remedies may be available (i.e. the client can claim on a policy of insurance of some form).	Intended to improve clarity.
6(3)	Presently the rules do not expressly provide for interim payments or grants being made subject to receipt of monies from an insurer in order to fund a claim.	To expressly provide for interim payments and to confirm that some awards may be made subject to actually receiving the money to fund the award from the insurers who will be backing a large part of the scheme.	<p>We currently envisage interim grants in our guidance where significant hardship is being suffered (i.e. someone needs the money very urgently) but it is felt preferable to have this in the rules. This does not represent a change of policy therefore.</p> <p>Making grants subject to payment being received from an insurer is intended to ensure that liability for claims under the scheme is mirrored by its ability to fund claims via insurance as much as possible. In practice the nature of the insurance is such that if a grant is made then we anticipate a payment to be made under the policy. Our preliminary view however is that it would be prudent to make grants under a largely or wholly insurance backed scheme expressly subject to the receipt of the appropriate monies.</p>
6(4)	No reference is currently made to the publication of guidance on exercising the discretion to award a grant. Currently we rely upon the provision in the Order which gives us power to make these rules to publish such guidance.	To list a number of factors which we would expect to be dealt with in guidance which sits under the rules.	It is proposed that certain elements should appear within the guidance, particularly if as proposed we move to a largely insurance backed model.
7(1)	Currently the rules set a one year time limit for clients to make claims under the scheme.	We are proposing to introduce a discretion where exceptional circumstances apply.	On reviewing the rules we consider that it would be beneficial to have an exceptional circumstances discretion in case unforeseen problems prevent a claim being made earlier e.g. a sustained period of incapacitation through poor health.

8(2)	Currently the rules enable CILEx Regulation to specify that lost monies should be pursued from the CILEx regulated entity before a claim is made on the fund.	<p>The proposal is to expand this to also cover the possible need to pursue claims against third parties as well as the law firm itself.</p> <p>We also proposing to modify this provision so as to make it clear that the starting point is that applicants should be required to take steps to mitigate their losses before claiming. Instead a discretion to waive these requirements has been proposed where an interim grant is being made or there is no reasonable prospect of recovering the monies in question or where it would otherwise be unreasonable to expect an applicant to pursue one or all of the steps in question.</p>	To maximise the likelihood of the compensation arrangements only being used as a fund of last resort.
8(3)	See tracked changes.	Clarifying the wording around subrogation rights.	Intended to improve clarity.
9	There is currently no aggregate limit on the financial sums for which claims can be made against one firm. There is only a limit per claim (i.e. £500,000).	To introduce a cap on the amount of money which the Fund /insurance can pay out in respect of one CILEx regulated entity to £2 million.	This is part of the changes intended to ensure that a more sustainable and largely insurance backed compensation scheme can be developed.