



Compensation Fund Operating Framework
CLC Consultation Paper
February 2015

Submission Deadline: 31 March 2015

Responding to this Consultation

1. You are invited to respond to the questions at pages 7. The CLC also welcomes comments on the proposals as a whole including alternative proposals to achieve the policy objectives outlined in this Consultation Paper.
2. When you respond could you please give your name and address and whether you are a licensed conveyancer. If you are not a licensed conveyancer, could you please state, if relevant, your status or professional qualification. The CLC reserves the right to publish any response and to refer to it specifically in any further document it publishes following this Consultation. If you wish your response to be treated as confidential could you please let us know when you respond.
3. Responses should be send by email to consultations@clc-uk.org or by post to

The Council for Licensed Conveyancers
16 Glebe Road
Chelmsford
Essex CM1 1QG

Or by to DX 121925 CHELMSFORD 6

Or you can complete our questionnaire online:
<https://www.surveymonkey.com/r/CLCCompensationFund> .

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Introduction

Statutory Framework

4. The CLC was established by the Administration of Justice Act 1985 (AJA). It licenses and regulates licensed conveyancers and CLC Practices in the provision of reserved legal activities, currently conveyancing and probate services and other non-reserved legal activities (including will writing). It is also a Licensing Authority authorised to license and regulate Alternative Business Structures (ABS). It has no representative function.
5. As an approved regulator the CLC “must, so far as is reasonably practicable, act in a way.., which is compatible with the regulatory objectives”¹ as follows:
 - a. Protecting and promoting the public interest;
 - b. Supporting the constitutional principle of the rule of law;
 - c. Improving access to justice;
 - d. Protecting and promoting the interests of consumers;
 - e. Promoting competition in the provision of services by ‘authorised persons’²;
 - f. Encouraging an independent, strong, diverse and effective legal profession;
 - g. Increasing public understanding of the citizen’s legal rights and duties;
 - h. Promoting and maintaining adherence to the professional principles³.
6. The “professional principles” are—
 - (a) that authorised persons should act with independence and integrity,
 - (b) that authorised persons should maintain proper standards of work,
 - (c) that authorised persons should act in the best interests of their clients,
 - (d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice, and
 - (e) that the affairs of clients should be kept confidential.⁴
7. The CLC is also required to “have regard to...the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed”⁵.

¹ S.28(2) LSA 2007

² defined at s.18 LSA

³ s.1(1) LSA

⁴ s.1(3) LSA

⁵ s.28(3) LSA

CLC's Approach to Regulation

8. The CLC's role is to safeguard the public interest and consumers by regulating providers to deliver high quality and accessible legal services.
9. The CLC fulfills its responsibilities by undertaking a range of activities:
 - Set educational and training standards for entry to the profession;
 - Issue licences to practise to those qualified to provide conveyancing and probate services to consumers;
 - Maintain a register of all Licensed Conveyancers and CLC Practices;
 - Set standards to regulate the professional practice, conduct and discipline of Licensed Conveyancers and CLC Practices;
 - Set standards to maintain adequate professional indemnity insurance and a compensation fund to protect consumers;
 - Monitor the work and conduct of CLC Practices and to determine whether they are meeting the required standards.
 - Provide guidance and advice to CLC Practices to maintain compliance with the standards and those regulations relevant to our duty of consumer protection;
 - Investigate allegations of misconduct against a Licensed Conveyancer, Manager and/or CLC Practice and where appropriate take disciplinary proceedings;

Managing Losses caused by CLC Practices

10. The fundamental purpose of the CLC's regulatory arrangements is to ensure that CLC Practices have robust policies and procedures (supported by professional indemnity insurance) to identify and mitigate the risk to clients⁶. The CLC considers the risk that remains with consumers and determines how it can be appropriately mitigated. The primary means of affording further protection is through the CLC's Compensation Fund.
11. The proposals primarily advance the objective set out in our Business Plan 2014/2015 to determine new arrangements for the compensation fund, itself a part of our continuing commitment to work for a compensation fund and professional indemnity approach across the legal services sector that is more responsive to the needs of consumers. The proposals are also compatible with our strategic objective of ensuring the relevant markets function well, subject to the sustainability of the Fund to meet consumer need.

Reasons for the Proposed Changes

12. The CLC's overall aim in making the amendments proposed to its Compensation Fund Operating Framework is to increase transparency and streamline process for determining grants. The benefits in taking this approach are:
 - a. the new process will be closely aligned to the better regulation principles (ie they will be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed),

⁶ Referrals may also be made to the Legal Ombudsman (<http://www.legalombudsman.org.uk/>) where there are concerns about the way in which services complaints are dealt with by CLC Practices.

- b. this in turn will lead to greater certainty on the outcome of applications for grants for the benefit of applicants,
- c. the structure of the Operating Framework has been changed so that it begins by explaining the basis on which applications for grants out of the Compensation Fund are determined. It then explains how it is managed and the powers the CLC has to recoup grants from CLC Practices and individuals associated with those practices.

Explanation of the Proposed Changes

13. The proposed framework at Annex 1 incorporates the changes proposed to the CLC's current Compensation Fund Operating Framework (at http://www.clc-uk.org/CLCSite/media/PDFs/1_Comp_Fund_Operating_Framework1.pdf) as follows:

- a) An overview statement of the CLC's scheme for the financial protection of consumers (paragraphs 1-4 of Annex 1) puts the purpose of the Compensation Fund in context. It emphasises that the CLC's licensing processes and monitoring activities are the primary safeguard for consumers. These are supported by the CLC's financial protection arrangements, which require practices to have in force professional indemnity insurance. If, for any reason, the professional indemnity insurance does not respond, it may be possible for an application to be made out of the Compensation Fund.
- b) Grants may be made out of the Compensation Fund (paragraph 5 of Annex 1) to relieve or mitigate loss suffered by a person resulting from the acts or omissions of a CLC Practice arising from the provision of legal services regulated by the CLC. This makes it clear that the CLC does not consider applications for grants caused by:
 - i. practices which are not licensed by the CLC,
 - ii. services (including legal services) provided by CLC practices which those practices have not been licensed or permitted by the CLC to provide.
- c) Following on from paragraph 5, the circumstances in which a grant will not be made (paragraph 6 of Annex 1) are set out, so providing greater certainty and underlining the CLC's policy of making grants in respect of:
 - i. losses resulting from the provision of legal services regulated by the CLC, and
 - ii. then only losses directly attributable to the services provided.

The purpose of the Fund is not to provide a complete indemnity in respect of losses which may otherwise be recoverable. It is to make payments 'to relieve or mitigate losses'⁷.

- d) The 6 month period within which applications must be made follows the current requirement (paragraph 7 of Annex 1). The CLC's experience is that, following an intervention, clients of the CLC Practice become quickly aware of the fact of the intervention and are then signposted to the CLC if they have an outstanding claim. The time limit only begins to run after the loss or likelihood of loss first comes to the attention of the Claimant.

⁷ S.21(2) Administration of Justice Act 1985

- e) The factors the CLC takes into account in determining an application are more clearly defined (paragraph 8 Annex 8) than in the current Framework by considering:
- i. the circumstances giving rise to the Claim,
 - ii. the Claimant's circumstances,
 - iii. the behaviour of the Claimant.

Indicative examples are given of each of the factors. Equally, they are defined sufficiently broadly to enable the CLC to take into account other circumstances, such as the vulnerability of a Claimant.

- f) The maximum grant (paragraph 9 of Annex 1) is set at £500,000 for any individual application and, where there are multiple applications arising out of the CLC's intervention into a practice, the total grant which may be made is limited to £1 million to be apportioned between the Claimants as the CLC is satisfied is reasonable. The funds available to the Compensation Fund are finite (even if there is a call on the profession – see paragraph 13 of Annex 1). These provisions provide an explicit mechanism for funds to be distributed where they are insufficient to relieve or mitigate loss to the extent the CLC would otherwise consider appropriate. As explained at paragraph 13(c) above the purpose of the Compensation Fund is not to provide a complete indemnity.
- g) The CLC continues to be required to give reasons in writing for any refusal within 28 days of a decision being made (paragraph 10 of Annex 1) and the Claimant has the right to request a review within 28 days of being notified of a decision (paragraph 11 of Annex 1). While retaining the entitlement to a review⁸, the review will be carried out by the CLC, rather than the Adjudication Panel which is currently the case. The purpose in transferring this responsibility is to ensure that the CLC, as the body responsible for managing, administering and protecting the Fund (see paragraphs 14-17 of Annex 1), also maintains control of payments out of the Compensation Fund and how they should be distributed, so safeguarding the sustainability of the Fund.
- h) Although the provisions are in a different order, Part 2 of the draft Framework follows the equivalent provisions in the current Framework and are not therefore strictly part of the Consultation. Paragraphs 18-20 of the Framework do, however, merit a short explanation. After a practice closes, particularly following an intervention, the CLC obtains control of the monies in the client account. Sometimes it is not possible to locate the relevant clients and the monies may then be held indefinitely in that intervention account. These rules provide for the transfer of those monies to the Compensation Fund to ease the accounting burden. This does not, however, affect the individual client's continuing entitlement to the money (paragraph 20 of Annex 1).

Next Steps

14. Subject to approval of the CLC Council following review of the responses to the Consultation and approval of the LSB, the CLC's intention is that the revised Compensation Fund Operating Framework is in force by 30 June 2015.

⁸ Compensation Fund Rules 2009 and the rules preceding those rules contained no provision for review or appeal by the CLC or any other body

Questions

1. Do you agree the revised format of the Framework (see paragraph 13(a) above)?
2. Do you agree the proposal to set a maximum limit for grants made (see paragraph 13(f) above)?
3. Do you agree the transfer of responsibility for carrying out reviews from the Adjudication Panel to the CLC (see paragraph 13(g) above)?
4. Are there any other comments you wish to make about the revised form of the Compensation Fund Operating Framework?

**Schedule 1
Draft Compensation Fund Operating Framework**



***Compensation Fund*
Operating Framework**

Part 1 How Applications for Grants are dealt with

Approach

1. As a regulator the CLC sets standards for entry and conduct in the market and so protects consumers.
2. In so far as possible financial protection of consumers should be achieved by the purchase of appropriate professional indemnity insurance by the CLC Practice.
3. The CLC should consider the risk that remains with consumers and determine how that can be appropriately mitigated.
4. The primary means of affording further protection is through a Compensation Fund.

Making a Compensation Claim

5. The **CLC** may wholly at its discretion, and without allowing to a Claimant the right to a grant enforceable at law, make a grant or other payment out of the Fund for the purpose of relieving or mitigating loss which the CLC is satisfied a Claimant has suffered or is likely to suffer in consequence of:
 - a. the negligence or fraud or other dishonesty, or
 - b. failure to accounton the part of a CLC Practice in connection with the provision of legal services regulated by the CLC.
6. A grant will not be made in respect of any of the following:
 - (a) Losses which are:
 - i. the trading debts of the CLC Practice, or
 - ii. the personal debt of the managers or owners of the CLC Practice
 - (b) Consequential loss
 - (c) Interest
 - (d) Legal costs, unless the CLC is satisfied that having taken account of the factors set out at paragraph 8 that it is reasonable to do so
 - (e) Stress, distress or inconvenience

7. A Claimant must give notice of an intent to make an application for a grant within 6 months after the loss or likelihood of loss first came or should reasonably have come to their attention.
8. In determining an application the factors the CLC will take into account may include (but is not limited to) consideration of the following:
 - (a) the circumstances giving rise to the claim, for example:
 - i. whether the Claimant is responsible for or has contributed to the loss;
 - ii. whether any other person has caused or contributed to the loss (where the Claimant has bought a property, this might be the seller or another professional, such as a surveyor);
 - iii. whether the statutory limitation period has expired (this is usually 6 years, but may be up to 15 years after the loss has been suffered);
 - (b) the Claimant's circumstances (eg the effect the loss has had on the Claimant, whether the Claimant has recovered compensation for the loss, whether the Claimant is able to make a claim under an insurance policy);
 - (c) the behaviour of the Claimant (eg if the Claimant has exaggerated the value of the claim, whether the Claimant has acted frankly and honestly in making the claim).
9. A maximum grant of £500,000 may be made in relation to any single application. Where multiple applications arise out of the CLC's intervention into an individual CLC practice, a total grant of up to £1million may be available to be shared between all Claimants in such shares as the CLC is satisfied is reasonable in the circumstances.
10. Where the **CLC** refuses to make a grant of either the whole or part of the amount claimed the **CLC** shall inform the **Claimant** in writing of the reason for its decision within 28 days of that decision.
11. The **Claimant** has the right to request the CLC to review any decision it has made. The request must be made within 28 days of being notified of the decision.

Part 2 How the Compensation Fund is managed

Contributions

12. As a condition of being authorised by the **CLC**, a body must make a contribution to the **CLC Compensation Fund** at such time and of such an amount as determined by the **CLC**. The **CLC** may require a body to make a further contribution towards the Fund at any time.
13. In its absolute discretion the **CLC** may agree that a contribution to the Fund is paid by instalments which become immediately payable on the date specified by the **CLC**. If any instalment is not paid by the due date the balance of contributions the body owes will be recoverable as a debt owed to the **CLC**.

Purpose of the Fund

14. The CLC shall place the money constituting the Fund in a separate designated account entitled "Council for Licensed Conveyancers' Compensation Fund".
15. As trustee the CLC may:-
 - (a) invest the money constituting the Fund in such a manner as it thinks fit;
 - (b) borrow for the purposes of the Fund, and may charge any investments of the Fund by way of security for such a loan;
 - (c) take out insurance with Authorised Insurers for such purposes and on such terms as it deems appropriate to the Fund.
16. The Fund will be credited with:-
 - (a) all contributions paid to the **CLC**;
 - (b) all interest, dividends and other income and accretions of capital arising;
 - (c) the proceeds of any realisation of the investments of the Fund;
 - (d) all money borrowed for the purposes of the Fund;
 - (e) all money recovered by the **CLC** either directly or following the assignment to the **CLC** of the rights of any **Claimant**;
 - (f) all recoveries under any insurance policy effected by the **CLC**;
 - (g) any other money which may belong to or accrue to the Fund or be received by the **CLC** in respect of the Fund.
17. All of the Fund's money and investments are applicable for:-
 - (a) payment of costs of establishing, maintaining, administering, protecting and applying the Fund;
 - (b) payment of any **CLC** insurance premiums or any premium relating to run off cover following the closure of a body;
 - (c) the purpose of settling any **claim** in respect of **CLC** insurance or any other **claim** relating to run off cover following the closure of a body;
 - (d) repayment of any money borrowed by the **CLC** for the purposes of the Fund, for payment of interest on any money so borrowed, and for reimbursing the **CLC** for any costs incurred in that respect;
 - (e) making grants or other payments the **CLC** determines should be paid out of the Fund;
 - (f) the refund of contributions to a body which ceases to be regulated by the **CLC** (the **CLC** may at its discretion refund a proportion of a contribution made in respect of any unexpired period).

Transfer of monies to the Fund

18. Where it has passed a resolution under paragraph 6 schedule 5 to the **1985 Act** the **CLC** may credit to the Fund any sum vested in it as a result of the passing of such a resolution.
19. Where it has passed a resolution under paragraph 6A schedule 5 to the **1985 Act** the **CLC** may credit to the Fund any sum vested in it under paragraph 6A(3) of schedule 5 to the **1985 Act**.
20. If the **Rightful Recipient** contacts the **CLC** after a credit has been made to the Fund under a resolution the **CLC** will treat the **Rightful Recipient** as a **Claimant** and invite them to make a **claim** under this Code out of the Fund.

Recovery of monies paid out of the Fund

21. The **CLC** shall not make a grant unless it has caused a letter giving notification of the **claim** or additional **claim** to be sent to the **Respondent Body** at the last known correspondence address or to any solicitor or other representative instructed by the **Respondent Body** or appointed on its behalf or in its stead and in any case not less than 8 days have elapsed since the date of such letter.
22. The **CLC** may take proceedings against the **Respondent Body** to recover the amount of any grant or other payment made in consequence of the act or omission of that **Respondent Body** in accordance with this Code:
 - (a) provided no other civil proceedings for recovery in respect of the same cause of action have already been issued;
 - (b) even if it is not possible to obtain an assignment of the cause of action from or on behalf of the **Claimant**.
23. The **CLC** may in its absolute discretion take proceedings against a **Manager** or former **Manager** of a **Respondent Body** to recover the amount of any grant or other payment made in accordance with this Code.
24. Any sum payable as a result of proceedings taken against a body, **Manager** or former **Manager** is recoverable as a debt owed to the **CLC**.

A copy of this Framework is also available in the CLC Handbook.