



## Council for Licensed Conveyancers (CLC)

### **Compensation fund - statement of policy**

1. The Council is charged with making and applying arrangements to compensate people who have suffered loss as a result of negligence, dishonesty, fraud, or failure to account for monies received, on the part of a licensed practitioner or firm; and with establishing a fund from which claims may be met.
2. The Council has issued an [operating framework](#) governing claims and sends out fuller details when prospective claims are notified. It generates the compensation fund by levy each year on firms and acts as trustee of this fund. In doing so it has to forecast the value of prospective claims in future periods to ensure that those it judges deserving when they come to decision can be paid, while not placing a disproportionate financial burden on firms (and ultimately therefore their clients).
3. The Council is reviewing its arrangements to make them simpler, clearer, and more predictable and sustainable for all parties. It will be publishing a revised scheme on which there will be consultation and will be put to the Legal Services Board for approval as required. In the meantime, the Council has adopted this policy statement, which supplements the operating framework, to set out its policy and to indicate its general approach in administering the fund and considering claims for compensation.
4. This statement focuses on conveyancing, the source of most claims made on the fund, but its principles apply equally to claims arising from licensed probate work.
5. It hopes this will be of assistance to prospective claimants. The Council reaffirms that it exercises its discretion to decide each claim on its individual facts (as far as they may be established) and merits; its overriding intention is to reach a decision on each claim which is reasonable, fair, and fitting, within its duties as trustee of the fund.

### Safeguarding the consumer - prevention better than cure

6. As a regulator CLC sets standards of entry and training, and (among other things) codes of conduct on client engagement and treatment, including requirements for holding and accounting for client monies. It supervises firms and undertakes inspections to test and bolster compliance and has powers to intervene to safeguard consumers where necessary, together with disciplinary sanctions. It seeks to promote sound culture and good practice in its sector of the profession. It thus aims to achieve substantial assurance that the consumer will not suffer through wilful or negligent wrongdoing by its licensees, but like any regulator it cannot guarantee that this will never occur.

### Safeguarding the consumer - when things go wrong

7. The consumer's first recourse is against the practitioner or firm responsible for a loss. This may be by complaint to the firm, with recourse to the Legal Services Ombudsman if dissatisfied. In exercising its regulatory authority, CLC will pay regard to complaints and claims against licensees.
8. To make action against the practitioner or firm more effective where financial redress is sought, CLC requires all firms to hold professional indemnity insurance. Additionally, to cover cases where the firm is no longer trading (including by CLC's intervention), CLC has agreed with insurers that they will provide, on terms and within limits, 'run off' cover to meet liabilities of firms. Where professional indemnity insurance is available and sufficient, CLC expects consumers to avail themselves of it. The compensation fund is properly a back-up when redress is not available by other means.
9. Claims on the compensation fund are few in relation to the number of transactions licensed firms deal with each year. The great majority arise from loss of monies entrusted to licensees by clients and will often be dealt with in connection with CLC intervention. Such losses are often not met by insurance. They usually involve modest sums and can be settled readily, with compensation paid quickly.
10. Claims arising from alleged negligence are generally more difficult but are more likely to be met by insurance. They may be inherently more arguable. If the transaction was a long time ago or the firm has ceased trading, it may be impossible to obtain documentary evidence to support a claim, for instance of what was said or not said.
11. In all cases CLC will endeavour to judge the facts fairly and sympathetically based on legislation and accepted practice at the time of the transaction, but it may not be able to satisfy itself sufficiently of pertinent facts by relying on a claimant's assertion, uncorroborated by records, and must be mindful of its obligations to ensure redress is warranted. Clients may be little concerned at the time of the transaction with a possible negligence claim, which may only come to light years later. But it will always be helpful if they have put critical instructions or decisions in writing (electronic or physical) and kept all relevant records.

### Considering the core purposes of the scheme

12. In line with its discretionary approach, CLC does not exclude any generic category of claim in relation to regulated activities leading to a potential claim. It will always consider the individual circumstances.
13. The core purpose of the fund is to answer to claims made by individuals or small businesses which arise from regulated conveyancing and probate transactions. The further a claim departs from this core purpose then the less likely the fund will make a grant or that if it does, that the claim will be met in full. In particular the fund is less likely to answer to claims involving speculative activities even though there may be a property or probate element.
14. **Circumstances** which may give rise to loss by some aspect of default by a licensee are many and varied. CLC is disposed to regard the most salient cases founding a persuasive claim on the compensation fund as:

- a person (or small business<sup>1</sup>) who has engaged the licensed conveyancing or probate lawyer, in a matter in which they are regulated by CLC, and
  - conveyancing transactions in relation to residential property for residential use
15. CLC will consider compensating for **economic loss**, of money or value, arising directly from the conveyancing or probate lawyer's conduct in the transaction in which they were engaged. This might include loss of opportunity to secure an advantage which the client could, but for the licensee's negligence, have enjoyed from the transaction, such as the benefit of a lease extension on favourable terms.
  16. CLC will not normally entertain a claim for economic loss which is secondary to the transaction. For example, CLC will normally treat a client's liability to tax on or arising from a regulated transaction - however the authorities may assess it, then or later - as the client's personal responsibility and secondary to the transaction rather than part of it.
  17. CLC will not normally compensate for consequential loss; where it is minded to, it will tend to give less weight the more removed the loss is in time or direct causal link.
  18. In determining **how much compensation** should be paid CLC may have regard to the claimant's own conduct - in how and when they bring the claim, or in failing to avoid or mitigate the loss or recover it - and may make a lower award or no award.
  19. CLC will take into account in the exercise of its discretion the overall affordability of grants bearing in mind that the cost of grants impacts on the resources of the fund and ultimately falls on the regulated community as a whole thereby impacting on the cost of providing services to clients. CLC will therefore have regard to the affordability of any award from the fund, absolutely and relative to other claims which may arise, and may reduce any award accordingly.
  20. To ensure the sufficiency of a proportionate fund to meet the full number and range of prospective claims over any future period, and to balance awards according to its judgments of their relative merits, CLC may set a limit to the value of all claims it will meet:
    - from the same claimant (in one or more transactions), or
    - in relation to the same firm, or
    - in relation to the same type of claim
 and adjust awards accordingly.
  21. If CLC identifies that claims arising from a particular class or type of failure by licensed practitioners (for instance failure to advise clients suitably where leases had provisions for doubling ground rent) may prejudice the sufficiency of the fund, as above, it may decide to apply a general reduction in awards, again having suitable regard to individual circumstances.

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<sup>1</sup>) Small business as defined by the Office for National Statistics, that is, with turnover not exceeding £6.5m a year, a balance sheet not exceeding £3.26m, and no more than 50 employees.