

Consultation response

CLC: Compensation Fund Operating Framework

Overview

1. The Panel welcomes the additional information which the CLC proposes to publish about the Operating Framework. This would make it easier for consumers to understand when the Compensation Fund could help them. The drafting is quite legalistic in places, so we suggest targeted support for applicants to the Fund to supplement the existing details on the CLC's website. There remains a lack of transparency about how well the Compensation Fund operates in practice – size of pay outs, speed of process etc. Greater information of this sort would improve accountability for the CLC.
2. The CLC is proposing to reduce the upper limit for individual awards from the Fund from £1m to £500,000 and to set an aggregate upper limit of £2m for multiple claims arising out of the CLC's intervention into a practice. The Panel cannot support these changes since the CLC has offered no rationale, analysis or quantification of benefits and costs for this change. CLC regulated practitioners operate in some of the highest risk areas of law relating to misuse of client money and there have been recent cases where the sums involved have exceeded the new proposed upper limit. Also, these changes would create an even wider
- disparity of levels of protection between CLC and SRA regulated practitioners.
3. The Panel appreciates that the costs of regulation feed through to the prices that consumers pay for legal services and we've made pragmatic choices on difficult policy issues. However, on this occasion, consistent with our approach to the SRA's indemnity insurance paper, we cannot support the CLC's proposals as there is no evidence that reducing consumers protections would lead to equivalent gains such as lower prices.
4. The proposal to transfer responsibility for carrying out reviews (appeals) from the Adjudication Panel to the CLC seems a logical move. There appears a residual risk of the CLC being subject to external influences to a greater extent than the Adjudication Panel which could lead to claims not being assessed only against the Operating Framework criteria. This underlines the role of transparency in bolstering confidence in the CLC's administration of the Fund.
5. The proposals should be seen in context of cross-regulator work on alternatives to client money and the Panel's proposal to scope the feasibility of centralised financial protection arrangements. The issues raised in our response support this overall direction of travel.

The proposals

6. The Council for Licensed Conveyancers (CLC) is proposing changes to its current Compensation Fund Operating Framework to increase transparency and streamline the process for determining grants. The principal changes suggested, include:
- Clearer explanation of the circumstances in which grants will be made and the range of factors the CLC may consider
 - A maximum limit for grants of £500,000 per claim and an aggregate limit of £2 million for multiple claims arising out of the CLC's intervention into a practice
 - A time limit of six months to make a claim
 - Transferring responsibility for carrying out reviews of decisions (appeals against a refusal by CLC to make a grant) from the Adjudication Panel to the CLC

The Panel's response

7. In developing our response, the Panel has referred to our report on financial protection arrangements published in June 2013. Further, we have considered the issues against our consumer principles framework. The most relevant principles are:
- **Access** – setting the maximum grant limit has to appropriately balance costs passed on to consumers via practitioners' annual contributions to the Compensation Fund whilst maintaining robust protections
 - **Quality** – risk is fairly apportioned between consumers and providers with consistency across regulatory systems
 - **Information** – consumers should have clear information about their rights

- **Fairness** – the Operating Framework should recognise and respond adequately to consumer vulnerability dimensions
- **Redress** – a reasonable right of appeal when applications for grants are rejected
- **Representation** – there should be transparency about how effectively the Compensation Fund operates

Q1. Do you agree the revised format of the Framework?

8. The Panel's report on financial protection arrangements identified transparency about the operation of compensation funds as a weakness across the regulatory system. Therefore, we welcome the additional information that the CLC is now proposing to publish about the Operating Framework. This should make it easier for consumers to understand how the Compensation Fund can help, whilst enabling consumer bodies to better represent consumer interests.
9. The CLC's website already contains some useful basic information about the Fund. The Operating Framework has legalistic drafting in places which would be difficult for lay persons to understand. It is unclear what information the CLC currently provides to applicants between the basic information on the website and the detailed framework document. We suggest there needs to be a middle ground which explains the key points in the simplest possible language targeted at applicants to the Fund.
10. While this extra information is welcome, there remains a lack of transparency about how the Compensation Fund operates in practice. For example, limited aggregate

data on income and grants is included within the CLC's annual accounts. Moreover, we could find no information about the number and distribution of awards, nor any performance data on the speed of payment of awards. This type of information would improve accountability and increase public confidence in the CLC.

Q2. Do you agree the proposal to set a maximum limit for grants made?

11. The existing Operating Framework does not mention an upper limit for grants and nor does the consultation document. However, after making enquiries we received notice from the CLC that there is a £1 million limit.¹ The CLC now wishes to set £500,000 limit per individual claim and an aggregate upper limit of £2 million for multiple claims arising out of the CLC's intervention into a practice.
12. It is difficult for the Panel to provide an informed view on this question due to a lack of information in the consultation document. The document does not offer any rationale for the proposed change, no analysis of the advantages or disadvantages, no quantified costs and benefits, and no historic data on claims made or grants awarded. Instead we must rely on our knowledge of clients using CLC regulated practitioners and the limited information about the Compensation Fund that exists in the public domain.
13. The CLC is a specialist regulator operating in the conveyancing and probate arenas. These are among the highest risk areas of law in relation to misuse of client money, not least due to the high sums involved.
14. It is also legitimate to compare protections available to consumers using practitioners regulated by the SRA. From a consumer perspective, people buy and sell property, or need to administer the estate of a loved one after they've died. It is unrealistic to expect consumers to seek out differences in protection across regulatory systems. Indeed, due to the role of intermediaries, for example lenders in conveyancing, choice of lawyer can be restricted in practice. People focus on the activity not professional titles. A comparison shows that consumers would be less protected when using practitioners regulated by the CLC if the proposals went ahead as currently envisaged. For example, the SRA has a maximum grant limit of £2m and no upper limit for aggregated claims. Further, consumers have 12 months to make a claim on the SRA's Compensation Fund but only 6 months on the CLC's.
15. The Panel appreciates that compensation funds must be discretionary and that the CLC cannot write blank cheques. The potential knock on effects of overregulation on access to justice are not lost on us. We appreciate too that the CLC's regulated

¹ Email from Simon Blandy, Director of Policy and Standards at the CLC, 13 March 2015.

community has a different profile to the SRA's. However, consistent with the approach we took to the SRA's proposals on professional indemnity insurance, we need to see evidence that reducing protections would lead to equivalent gains for consumers in terms of lower prices. The CLC has not provided any such evidence.

Q3. Do you agree the transfer of responsibility for carrying out reviews from the Adjudication Panel to the CLC?

16. The CLC's rationale for this change is that, as the body responsible for managing, administering and protecting the Fund, it should also maintain control of payments out of the Compensation Fund and how they should be distributed, so safeguarding the sustainability of the Fund.
17. Overall this seems a logical move. However, one risk is that the Adjudication Panel members, being independent of the CLC and focused on disciplinary matters, arguably are less susceptible to outside influence than the Council, which has to consider applications to the Fund in relation to a wider range of organisational priorities. In other words, there is a residual risk that claims will be not be assessed strictly against the criteria set out in the Operating Framework, but potentially be influenced by external factors.
18. Should the CLC proceed with the transfer, these factors underline the points we make above in response to Question 1 about the need for greater transparency around the operation of the Fund in practice.

Q4. Are there any other comments you wish to make about the revised form of the Compensation Fund Operating Framework?

19. Following the July 2014 Ministerial Summit of legal services regulators, the LSB has been facilitating cross-regulator work streams to seek further deregulation in the sector. Identification of alternatives to avoid the handling of client money is one focus area. As further context, the Panel's report on financial protection arrangements recommended that the idea of centralised arrangements should be scoped out. The CLC has supported this recommendation and is actively engaged in the LSB's work.
20. Our response to the CLC's consultation has raised issues which support this direction of travel, such as consistency across systems and the economies of scale that could be achieved by combining schemes. We look forward to continuing to provide a consumer perspective on these issues in future.

March 2015