



Attention: Vicky Purtil  
CILEx Regulation  
Kempston Manor  
Kempston, Bedford  
MK42 7AB

Sent by email only to [consultations@cilexregulation.org.uk](mailto:consultations@cilexregulation.org.uk)

13 August 2021

Dear Ms Purtil,

### **Consultation: To make interim amendments to the CILEx Compensation Arrangements Rules**

The Legal Services Panel welcomes the opportunity to comment on CILEx Regulation's interim amendments to the Compensation Arrangement Rules given that the scheme will not have insurance coverage after 2 September 2021.

#### **Introduction**

It is unfortunate that the insurance company backing CILEx Regulation's compensation scheme provided notification of the withdrawal of coverage at such short notice. In addition, the fact that CILEx Regulation cannot obtain alternative insurance arrangements after 2 September 2021 means that consumer protection is in peril. The Panel appreciates CILEx Regulation has taken quick steps to seek views on its proposed measures to deal with this difficult situation.

The Panel agrees that an interim plan for the Compensation Arrangement Rules is needed while CILEx Regulation studies relevant evidence and engages additional expertise to devise a long-term solution that ensures the compensation scheme continues to be viable. We also accept that the current arrangements may need to be reviewed and could change. Against this backdrop, it is important to remember that the compensation scheme forms an essential part of the overall system of consumer protection within the regulated legal services sector because it provides a safety net for consumers who suffer losses at the hands of legal service providers who act dishonestly or fail to have the required personal indemnity insurance.

#### **Continued Expectation of Data Transparency**

Although CILEx Regulation has not had any claims on its compensation fund, it would have been useful to review any relevant data available such as the claim histories of other legal services regulators in England and Wales and how its own risk pool differs from theirs. It would have also been useful for the actuary's opinion to set out the comparable data sets that were reviewed in arriving at his opinion. Even in the

unfortunate (and urgent) circumstances in which CILEx Regulation finds itself, it is important to be transparent with any available data and how they support the regulatory decisions being made.

### **Actuary's opinion**

The Panel has reviewed the actuary's opinion with great interest and is left with some questions. The conditions that need to be met in order to make a claim are listed as the claimant having "incurred loss, due to dishonesty, no other means of redress, in hardship", but the terms of the Compensation Arrangement Rules also allow a person to be compensated for a civil liability due to an Authorised Entity not having appropriate insurance in place contrary to the CILEx Professional Indemnity Insurance Rules. The Panel is unsure as to whether the actuary considered this additional information.

### **CILEx Regulation's previously partially funded compensation scheme**

The Panel also notes that the CILEx Regulation compensation scheme has only been operating as an entirely insurance-backed model since 2017 and therefore would have liked to hear the reasoning for not returning to the previous model that was at least partially funded. In 2017, the CILEx Regulation compensation scheme was based on a £1 million fund (with the Compensation Arrangement Rules allowing for arrangements to borrow for the purposes of the fund) and £1 million insurance coverage for a total fund of £2 million. The fund was increased to £6 million when it became fully insurance-backed. It is not clear from the consultation document whether the proposed £500,000 fund will be fully funded or whether arrangements to borrow will be made should any individual discretionary grants need to be made. Regardless, there is no reasoning provided for not returning to an arrangement similar to what was in place before the compensation scheme became wholly funded via an insurance policy.

### **Consultation question 1**

#### **Do you agree with the approach that CILEx Regulation has taken to ensure there is ongoing consumer protection for the clients of firms regulated by CILEx Regulation?**

It is difficult for the Panel to take a position on the proposed interim plan for how to administer the CILEx Regulation compensation scheme in the absence of insurance backing because we do not have any claims data nor has there been specific information provided about any comparable data available. The Panel is, however, happy to see that actuarial expertise was obtained although further clarification may be needed.

We do appreciate that CILEx Regulation has sought to maintain the same £500,000 maximum claim coverage for consumers who meet the eligibility requirements for an individual discretionary grant. The maximum individual discretionary grant available is a crucial determination for consumers because while many consumers' losses will not exceed £500,000, for those whose relevant losses do exceed this amount, the impact of reducing the amount of relief available would likely have a significant impact. Therefore, the Panel is pleased that the maximum individual discretionary grant has

not been reduced in the interim period. However, the plan for the next 12 months must be viewed as a whole.

Setting the maximum individual discretionary grant as equal to the maximum payable in the aggregate by one firm as well as being equal to the total funds available to the compensation scheme could have consequences. In the event that there is a high level loss (that approaches the limit) claimed in the interim period, that will be the only claim that can be paid at all during this interim period. While the actuary has judged this to be a very unlikely scenario, the consequences of this decision must be recognized. Legal executives offer conveyancing and probate services and due to the high cost of property, especially in London, it is not unforeseeable that one or more high level claims will be received. The lack of data presented makes it difficult to judge how many consumers who have a claim are likely to suffer a disadvantage due to the withdrawal of insurance backing to the compensation scheme. It also makes it hard to determine whether one legal executive's dishonesty or failure to carry personal indemnity insurance is more likely to affect just one client or more than one.

The Panel notes that the fund already provides consumer protection in limited circumstances because grants made under the scheme are discretionary and do not purport to put consumers back in the position they would have been in if the mischief had not occurred. Therefore, we would like to see a similar coverage level maintained. In the event this is deemed not possible, the Panel reiterates that it is not comfortable with the fact that one very large claim could wipe out the entire fund at once.

While alterations to the current coverage may need to be made in the short term, the compensation scheme should remain operational even in the face of more than one very large claim. Adjustments should not cause undue detriment to consumers who have been wronged. Finally, it is vitally important that any interim plan (including the specific numbers for each of the compensation scheme's variables) must be referred to an actuary for an opinion on viability. Such a review must include an analysis of the final proposed limits to individual claims, claims against one firm and fund total alongside transparent and detailed scrutiny of any relevant evidence.

## **Consultation question 2**

**CILEx Regulation has set out this approach to cover the next 12 months, do you have any views on the longer-term approach that CILEx Regulation may take to ensuring the protection of clients of CILEx Regulation firms?**

Maintaining the Compensation Arrangement Rules is beneficial to legal executives as well as to consumers. Beyond providing a safety net for legal services consumers, the Compensation Arrangement Rules confer added confidence to the entire profession. Consumers procure legal services for serious matters that they need help navigating, often involving great stress. Legal executives charge these consumers professional fees based on their training, competence, skills and the protection afforded by operating in a regulated sector. The consumer protection provided to the clients of legal executives must be maintained in order for the profession to continue to enjoy the trust and confidence placed in it.

When conveyancing and probate services are being provided, legal executives are trusted with significant amounts of their clients' money, even hundreds of thousands or millions of pounds. Accordingly, protection for these large sums of money must provide realistic coverage to be meaningful. Consumers of legal services expect to

have recourse if something goes wrong when they engage in the regulated sphere, and understand that there is a cost associated with this assurance. Consumers who are subjected to a legal executive's dishonest behaviour or shirking of the responsibility to procure professional indemnity insurance especially deserve appropriate levels of protection.

The benefits of the scheme to both the profession and consumers must be the central concerns for CILEx Regulation deciding how to proceed. The formation of the Compensation Arrangement Rules was a promise CILEx Regulation made to the profession as well as to consumers and one which needs to be kept over the long term. The Panel strongly encourages CILEx Regulation to make every attempt to gather all the relevant evidence it can find in order to ensure a potential claims picture that is as accurate as possible. In addition, further actuarial expertise will have to be engaged to ensure the scheme continues to be viable and adequately funded.

Taking these important steps should allow for a careful review of all the variables in the compensation scheme and how they affect the coverage offered. This analysis is needed to ensure that the benefits consumers and the legal executive profession enjoy remain intact. The Panel accepts that maximum payouts per individual and even per firm may be necessary. However, this does not justify the setting of arbitrary figures. More than anything, the Panel charges CILEx Regulation with safeguarding against a situation where applications for individual discretionary grants cannot be met. We remain open to providing further comments on any new proposals.

I hope you find these comments helpful. Please contact Heidi Evelyn, Consumer Panel Associate, with any enquiries.

Yours sincerely,



Sarah Chambers  
Chair  
Legal Services Consumer Panel