



Legal Services Compensation Scheme Regulations

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EFFECTIVE FROM TBC1

Deleted: 23 FEBRUARY 2017

1 GENERAL

Authority and commencement

- 1.1. These *regulations* are made originally by the Professional Standards Board of ICAEW, pursuant to Clause 16 of the Supplemental Royal Charter of 1948. They came into force on 22 September 2014. They were amended by the ICAEW Regulatory Board on 23 February 2017 and [TBC].
- 1.2. Any notice or document may be served on ICAEW by sending it to:
- Professional Conduct Department
ICAEW
Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ
- 1.3. Subject as herein provided, any notice, decision, order or other document which needs to be served on any *applicant*, *firm* or *accredited probate firm* under these *regulations* will be delivered by hand, or sent by email, fax or post:
- a. if it is delivered by hand to the addressee, service will take effect immediately;
 - b. if sent by email, it will be sent to the most recent email address given by the addressee and service will take effect immediately;
 - c. if sent by fax, it will be sent to the most recent fax number given by the addressee and service will take effect immediately; or
 - d. if sent by post, it will be sent to the latest address given by the addressee and service will take effect two business days after posting.
- 1.4. Any requirement of the Legal Services Committee under these *regulations* will be communicated in writing.

Interpretation

- 1.5. The words listed below shall have the meanings given:

Accreditation	The process by which ICAEW authorises or licenses persons to undertake <i>probate work</i> in accordance with the <u>Legal Services</u> Regulations.
Accredited probate firm	A <i>firm</i> authorised or licensed under ICAEW's <u>Legal Services</u> Regulations to conduct <i>probate work</i> .
Act	Legal Services Act 2007
Appeal Tribunal	The First-tier Tribunal established under the Tribunals, Courts and Enforcement Act 2007.
Applicant	A person (including an individual or a body corporate) who makes an <i>application</i> for a <i>grant</i> of compensation in accordance with these <i>regulations</i> , but excluding a person as set out in <i>regulation</i> 3.3.
Application	A claim for the <i>grant</i> of compensation made in accordance with <i>regulation</i> 7.1.
Authorised work	• <i>Probate work</i> • Following a grant of probate or letters of administration, work undertaken in collecting in the assets of an estate, settling the liabilities and distributing the remainder in accordance with a will or letters of administration.

Employee

Anyone who carries out *authorised work* for an *accredited probate firm* but excluding a *principal*.

Firm

A *firm* includes a:

- sole practice;
- partnership;
- limited liability partnership; or
- body corporate.

Grant

The payment to an *applicant* in accordance with a decision of the *Legal Services Committee* under *regulation 3*.

ICAEW

The Institute of Chartered Accountants in England and Wales.

Legal Services Committee

The committee established under chapter 9 of the Legal Services Regulations.

Legal Services Compensation Scheme

The scheme for the payment of *grants* made in accordance with these *regulations*.

Principal

- an individual in sole practice (where the *firm* is a sole practice);
- a person who is a partner (including both salaried and equity partners) (where the *firm* is a partnership);
- a member of a limited liability partnership (where the *firm* is a limited liability partnership);
- a director (where the *firm* is a company);
- a member of the governing body (where the *firm* is an unincorporated body, other than a partnership); or
- any individual or person who is held out as being a director, partner, member, or member of the governing body.

Probate work

The preparation of papers to apply for a *grant* of probate or letters of administration.

Regulations

These *Legal Services Compensation Scheme Regulations*, as modified or amended from time to time.

1.6. In these *regulations*, headings are for convenience only, and shall not affect interpretation.

1.7. In these *regulations* words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter. Words importing the neuter gender include both the masculine and feminine genders. These *regulations* will be governed by, and interpreted in accordance with, the laws of England and Wales.

Administration of the scheme

1.8. The *Legal Services Committee* is responsible for administering the *Legal Services Compensation Scheme* and for determining *applications* for compensation made under these *regulations*.

2 THE LEGAL SERVICES COMPENSATION SCHEME

- 2.1 These *regulations* apply to:
- accredited probate firms*;
 - firms* that were previously *accredited* in accordance with the Legal Services Regulations and any reference to *accredited probate firms* shall include such *firms*; and
 - applicants*.
- 2.2 An *accredited probate firm* must pay any levy for ICAEW's Legal Services Compensation Scheme (whether a periodic contribution or special levy) as ICAEW may decide from time to time. This includes levies raised after the *firm's accreditation* has ceased but excludes levies relating to claims in respect of services provided by any *firm* wholly after the date of termination of the *firm's accreditation*.
- 2.3 ICAEW may invest any money which forms part of the Legal Services Compensation Scheme in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act).
- 2.4 ICAEW may insure, in relation to the Legal Services Compensation Scheme, for such purposes and on such terms as it considers appropriate.
- 2.5 ICAEW may borrow for the purposes of the Legal Services Compensation Scheme and charge investments which form part of the Scheme as security for borrowing by ICAEW for the purposes of the Scheme.
- 2.6 The Legal Services Compensation Scheme may be applied by ICAEW for the following purposes (in addition to the making of *grants* in respect of *applications* for compensation):
- payment of premiums on insurance policies effected under *regulation 2.4*;
 - repayment of money borrowed by ICAEW for the purposes of the Legal Services Compensation Scheme and payment of interest on any money so borrowed under *regulation 2.5*;
 - payment of any other costs, charges or expenses incurred by ICAEW in establishing, investing, maintaining, protecting, administering or applying the Legal Services Compensation Scheme;
 - payment of any costs, charges or expenses incurred by the ICAEW in exercising its powers under Schedule 14 to the Act (intervention powers) or any intervention powers which it may have as an approved regulator under the Act;
 - payment of any costs or damages incurred by ICAEW or its employees, agents, any member, officer, and any member of the Legal Services Committee, as a result of proceedings against any of them for any act or omission made in good faith and in the exercise or purported exercise of any of their functions under these *regulations*.

3 GRANTS FROM THE COMPENSATION SCHEME

- 3.1 A *grant* from the Legal Services Compensation Scheme is made wholly at the discretion of the Legal Services Committee and on such terms as the Committee deems appropriate. No person has a right to a *grant* enforceable at law.
- 3.2 In particular and for the avoidance of doubt, the Legal Services Committee may only make a *grant* if, and to the extent that, funds are available in the Scheme at the time of the decision on whether to make a *grant*.
- 3.3 The Legal Services Committee will not make a *grant* in favour of an *applicant* which, if a body corporate or a registered charity, had an annual turnover in the last accounting year equal to, or exceeding, £1 million.

3.4 For a *grant* to be made from the Legal Services Compensation Scheme, an *applicant* must satisfy the Legal Services Committee that:

- a. they have suffered loss in consequence of fraud or other dishonesty on the part of an *accredited probate firm* or of any *principal* or *employee* of an *accredited probate firm*, in connection with their activities in the course of *authorised work*; or
- b. they have suffered loss in consequence of a failure to account for money which was received by an *accredited probate firm*, or the *principal* or *employee* of an *accredited probate firm*, in connection with their activities in the course of *authorised work*.

3.5 A *grant* may be made, at the sole discretion of the Legal Services Committee, as an interim measure and on such terms as the Legal Services Committee deems appropriate.

4 GRANTS IN RESPECT OF PERSONS IN DEFAULT OF REGULATORY REQUIREMENTS

4.1 At the absolute discretion of the Legal Services Committee a *grant* may be made even if at the time of the relevant act or default by the *accredited probate firm* or its *principal* or *employee*:

- a. the *accreditation* of the *accredited probate firm* had ceased under regulation 2.22 of the Legal Services Regulations; or
- b. the *accreditation* of the *accredited probate firm* was suspended under chapter 10 of the Legal Services Regulations; or
- c. the *principal* or *employee* of the *accredited probate firm* was disqualified under chapter 5 of the Legal Services Regulations,

provided that the Legal Services Committee is reasonably satisfied that the *applicant* at that time was unaware of the cessation, suspension or disqualification.

5 CASES NOT COVERED BY THE LEGAL SERVICES COMPENSATION SCHEME

5.1 For the avoidance of doubt, a *grant* will not be made in respect of losses which:

- a. are the personal debts of an *accredited probate firm* or a *principal* or *employee* of such a *firm* and where the facts would not otherwise give rise to an *application* to the Legal Services Compensation Scheme;
- b. result from, but do not form part of, any misappropriation of, or failure to account for, money or money's worth;
- c. result from the trading debts or liabilities of the *accredited probate firm*;
- d. amount to a claim for contractually agreed interest between the *applicant* and the *accredited probate firm*;
- e. were not notified to the Legal Services Committee in accordance with *regulation 7.1*;
- f. result from activities of the *accredited probate firm* other than in its performance of *authorised work*;
- g. arise solely by reason of professional negligence by an *accredited probate firm* or a *principal* or *employee* of such a *firm*; or
- h. arose at any time when the *firm* was not *accredited*, save for the circumstances set out in *regulation 4.1*.

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6 MULTI-PARTY AND MULTI-PROFESSION ISSUES

- 6.1 Where the loss has been sustained as a result of the combined activities of more than one party (eg, an *accredited probate firm* conspires with a solicitor or is assisted by a negligent solicitor), the *Legal Services Committee* will consider the role of each contributing factor in causing the *applicant's* loss. The *Legal Services Committee* will base any *grant* on its assessment of that portion of the loss primarily attributable to the acts of the *accredited probate firm*. The *Legal Services Committee* may decide to make a *grant* on a pro-rata basis in accordance with its assessment of the importance of each contributing factor in the loss, or may reject an *application* in its entirety if it is of the opinion that the loss was primarily due to factors other than the fraud or dishonesty of the *accredited probate firm*, or its *principal(s)* or *employee(s)*, or their failure to account for money which was received in connection with activities in the course of *authorised work*.
- 6.2 When an individual authorised by another approved regulator (as set out in Schedule 4 of the *Act*) is practising as the *principal* or *employee* of an *ICAEW accredited probate firm*, *ICAEW* may, in its absolute discretion, consider an *application* in respect of that individual's act or default.

7 APPLICATIONS: FORM AND TIME LIMIT

- 7.1 Every *application* must be delivered to *ICAEW*, in such form as may from time to time be prescribed by *ICAEW*, within twelve months after the loss first came, or reasonably should have come, to the knowledge of the *applicant*. The *Legal Services Committee* may extend this period if satisfied that there are exceptional circumstances which justify the extension of the time limit.

8 DOCUMENTATION IN SUPPORT

- 8.1 An *applicant* must provide such documentation as may be required by the *Legal Services Committee* including, when requested, a statement of truth. Failure to provide such documentation or to cooperate with the *Legal Services Committee* will be taken into account when determining the merits of the *application* and may be treated as a reason for withholding or reducing a *grant*.

9 EXHAUSTING OTHER REMEDIES

- 9.1 A *grant* will be refused where:
- the loss is an insured risk; or
 - in the reasonable opinion of the *Legal Services Committee*, the loss is capable of being made good by some other means.
- 9.2 A *grant* will be reduced where, and to the extent that:
- part of the loss is an insured risk; or
 - in the reasonable opinion of the *Legal Services Committee*, part of the loss is capable of being made good by some other means.
- 9.3 In particular the *Legal Services Committee* may, before deciding whether to make a *grant* or the amount of a *grant*, require the *applicant* to:
- pursue any civil remedy which may be available to the applicant in respect of the loss;
 - commence insolvency proceedings;
 - make a formal complaint to the Police in respect of any dishonesty on the part of the accredited probate firm or its principal(s) or employee(s); or
 - assist in the taking of any action against the accredited probate firm or its principal(s) or employee(s).

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- 9.4 If a *grant* is made (whether under *regulation* 3.5 or otherwise) before requiring the *applicant* to resort to other means of recovery, such *grant* will be made repayable to ICAEW in the event (and to the extent) that losses are recovered by such other means.

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10 NOTICE TO ACCREDITED FIRM

- 10.1 The *Legal Services Committee* shall not make a *grant* unless:
- a communication has been sent to the *accredited probate firm* at its last known correspondence address, as set out in *regulation* 1.3, or to its representative informing the *accredited probate firm* of the nature of the *application*; and
 - at least eight days have elapsed since the date of receipt of such communication which, notwithstanding *regulation* 1.3, shall be regarded as the day following the date of the communication.
- 10.2 If it appears to the *Legal Services Committee* that any communication sent under *Regulation* 10.1 will not come to the attention of the *accredited probate firm* or its representative, then the *Legal Services Committee* may make a *grant* notwithstanding failure to comply with the provisions of this *regulation*.

11 COSTS

Litigation costs

- 11.1 Where an *applicant* intends to institute or has already instituted civil proceedings for recovery of *their* loss and wishes to apply for a *grant* in respect of the costs of the proceedings, the *Legal Services Committee* will not consider making or increasing a *grant* in respect of such costs unless:
- they can be shown to be proportionate to the loss and the amount likely to be recovered; or
 - the proceedings are/were necessary for the making of the *application* for a *grant*.

Application costs

- 11.2 Where a *grant* is made, the *Legal Services Committee* may, in its absolute discretion, consider an *application* for a further *grant* in respect of any reasonable fees payable by the *applicant* to any professional adviser, provided that such costs were incurred wholly, necessarily and exclusively in connection with the preparation, submission and proof of the *application*.

12 MAXIMUM PAYMENT

- 12.1 Subject to *regulation* 12.2 the maximum total amount that may be granted pursuant to *applications* under this *scheme* in respect of *authorised work* in connection with any single estate is limited to £500,000 (exclusive of any interest payable under *regulation* 17.1).
- 12.2 The maximum amount which the *Legal Services Committee* may determine shall be paid out of the *Legal Services Compensation Scheme* in any calendar year shall be:
- the amount determined by the *Legal Services Committee* which may be expected not to cause the *grants* payable in that year to exceed £5,000,000; plus
 - the amount of any money recovered in that year by the *Legal Services Compensation Scheme*, net of VAT (if applicable), pursuant to the provisions of *regulation* 13.1 and available for payment in that year; plus
 - the amount of any sums so recovered in previous years and not disbursed and which are available for payment in the relevant year, net of VAT (if applicable).

Accordingly if, in the course of any such calendar year, it appears to the Legal Services Committee, in its absolute discretion, that the total of such amounts is otherwise likely to be exceeded in that calendar year, then in the remainder of that calendar year it shall not determine that the full amount shall be paid in respect of any *application*, but shall secure, as far as it reasonably can, that all *grants* it thereafter determines shall be made, taking into consideration any *grant* on account, are abated rateably one with another.

12.3 Where the Legal Services Committee has abated a *grant* under 12.2 it may, in its absolute discretion, at the end of the financial year of *ICAEW* in which the initial *grant* was made (the Grant Year) determine whether or not:

- a. the balance of the amount stated in the *application* or a part thereof; and
- b. interest on such balance;

should be paid in the next following year of *ICAEW* (the Following Year) and any such further *grant* shall be made out of funds available to the Legal Services Committee for the Following Year as provided in *regulation* 12.2.

13 RECOVERY AND SUBROGATION

13.1 Where a *grant* is made otherwise than by way of loan, or where a *grant* is made by way of a loan and repayment of the loan is waived or otherwise the borrower has failed to repay part or all of the loan, *ICAEW* shall be subrogated to the rights and remedies of the person to whom or on whose behalf the *grant* is made (the recipient) to the extent of the amount of the *grant*. In such event the recipient shall if required by *ICAEW* whether before or after the making of a *grant* and upon *ICAEW* giving to the recipient a sufficient indemnity against costs, prove in any insolvency and/or winding-up of the *accredited probate firm* and/or sue for recovery of the loss in the name of the recipient but on behalf of *ICAEW*. The recipient shall also comply with all proper and reasonable requirements of *ICAEW* for the purpose of giving effect to *ICAEW*'s rights and shall permit *ICAEW* to have conduct of such proceedings.

14 REDUCTION IN GRANTS

14.1 Where an *applicant* or the *applicant's* servant or agent has contributed to the loss as a result of their activities, omissions or behaviour whether before, during or after the event giving rise to the *application*, the Legal Services Committee may, in the exercise of its absolute discretion and to the extent that it considers that such activity, omission or behaviour has contributed to the loss, reduce the amount of any *grant* or reject the *application* in its entirety.

15 DEDUCTION FROM GRANTS

15.1 The Legal Services Committee may deduct from any *grant* the fees that would have been payable by the *applicant* to the *accredited probate firm* so that the *applicant* will not be in a better position by reason of a *grant* than he would otherwise have been in had the loss not occurred.

15.2 The Legal Services Committee may deduct from any *grant* all monies already recovered by an *applicant* and monies which in its reasonable opinion either will be or should have been recovered.

16 REFUSAL OF AN APPLICATION

- 16.1 If the Legal Services Committee refuses to make a *grant* of either the whole or part of the amount applied for, the *applicant* will be informed in writing of the reasons for the decision.
- 16.2 If an *application* is refused in whole or in part, a further *application* for the same loss (or loss which includes the same loss) may not be made unless, in the reasonable opinion of the Legal Services Committee, it is supported by substantial new relevant evidence, information or submissions in which case ICAEW may, in its absolute discretion, consider a renewed *application*.

17 INTEREST

- 17.1 The Legal Services Committee may in its absolute discretion pay interest to an *applicant* on a *grant* of compensation. Any interest shall accrue from a date three calendar months after the date on which all information necessary to determine the *application* was provided by the *applicant* to the Legal Services Committee.
- 17.2 Any interest payable under *regulation* 17.1 shall be simple interest paid at a rate which is applied by HMRC in respect of Income Tax repayments.

18 APPEALS

If an *application* is refused in whole or in part, the *applicant* may appeal to the *Appeal Tribunal* in accordance with regulations 11.5 to 11.8 of the Legal Services Regulations as if the refusal of the application were a decision of the Review Committee under the Legal Services Regulations.