



## Summary of decision

The purpose of this summary sheet is to provide a high level and accessible overview of the Legal Services Board's ("LSB") decision. Readers are recommended to read the formal decision notice below for further details. **This summary is not and should not be taken as a formal part of the LSB's decision notice under the Legal Services Act 2007 ("the Act").**

The LSB's decision is to grant in full the application from CILEx Regulation Limited ("CRL") for approval of alterations to its Compensation Arrangements Rules ("the Rules"). The changes:

- reduce the maximum discretionary grants available from the Compensation Fund for aggregate claims against an authorised entity from £2million to £500,000, while maintaining the individual claim limit of £500,000
- clarify that the compensation arrangements from which grants will be funded is the Compensation Fund
- remove references to an insurance contract being applicable in specific circumstances
- clarify that applications for grants from the Compensation Fund can only be made by eligible persons, and grants are discretionary.

The alterations reflect CRL's arrangements to fund the Compensation Fund in its entirety once the current insurance-backed compensation arrangements cease<sup>1</sup>. Although there is no sunset provision in the alterations, CRL's intention is for these arrangements to be in place for an interim period of 12 months, and possibly longer, until it can make suitable alternative arrangements. Therefore, references to a compensation insurance contract are retained in certain provisions in the Rules to provide for future access to a policy should one become available.

Following assessment of CRL's application, the LSB has concluded that the changes do not meet the conditions for refusal under paragraph 25(3) of Schedule 4 to the Act.

The decision notice explains our assessment of the main issues that we considered in reaching our decision.

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<sup>1</sup> At the date of this decision notice the policy expires on 2 September 2021.

## Decision notice

### **CILEx Regulation Limited application for approval of alterations to its regulatory arrangements relating to its Compensation Arrangements**

1. The Legal Services Board (“LSB”) has granted an application from CILEx Regulation Limited (“CRL”) for approval of alterations to the CILEx Regulation Compensation Arrangements Rules (“the Rules”).
2. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (“the Act”) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Chartered Institute of Legal Executives (CILEX) is an approved regulator and CRL is the regulatory body to which CILEX has delegated its regulatory functions.
3. This decision notice sets out the decision taken, including a description of the changes. The notes at page 7 of this notice explain the statutory basis for the decision.

## Chronology

- The LSB confirmed receipt of an application from CRL on 18 August 2021.
- The 28-day initial decision period for considering the application ends on 14 September 2021.
- This decision notice is effective from 2 September 2021.
- The decision notice will be published on the LSB’s website by 6 September 2021.

## Background

4. In 2017 CRL amended its regulatory arrangements to set up a compensation scheme that was fully insurance-backed. The LSB approved this alteration with a Decision Notice<sup>2</sup> issued on 18 August 2017.
5. Since that time CRL has had a total annual Compensation Fund of £6 million (“the Fund”) for claims made under its compensation scheme, with the following limits under the Rules:
  - Individual limit - £500,000
  - Authorised entity aggregate limit - £2million
6. No claims have been made under the scheme since it has been in place.

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[https://legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/2017/20170821\\_CILex\\_Regulation\\_Compensation\\_Arrangements\\_Rules\\_Decision\\_Notice.pdf](https://legalservicesboard.org.uk/what_we_do/regulation/pdf/2017/20170821_CILex_Regulation_Compensation_Arrangements_Rules_Decision_Notice.pdf)

7. In May 2021 CRL was informed that its insurer would no longer be willing to provide cover and that the insurance policy would expire on 4 July 2021. CRL was able to obtain an extension to the policy to 2 September 2021 and is in the process of trying to obtain a further extension.
8. As the Fund is wholly insurance-backed, without any action there will be no cover for claims made after 2 September 2021.
9. The Act requires that licensing rules of a licensing authority must contain appropriate compensation arrangements<sup>3</sup> and so CRL could not allow the policy to lapse without developing alternate arrangements.
10. CRL has taken steps to obtain alternative cover without success (Paragraphs 17-18 of the application). It has concluded there is a need to take action to ensure there is consumer protection in place in the short-term, whilst a longer-term solution is sought.
11. To find a short-term solution CRL engaged the services of an actuary for advice on the maximum discretionary grants and minimum viable level of funding for the Fund to meet claims, while also being affordable to CRL and CILEX.

#### *Current Arrangements*

12. Relevant details of the current regulatory arrangements are set out at Paragraphs 12-15 of the application. This includes confirmation that the Rules provide that where the Fund is exhausted no grants can be paid.

#### **Summary of proposed changes**

13. As CRL has not been able to obtain further insurance provision, it will instead run and maintain its own fund. This is already provided for within its current regulatory arrangements, and we are not being asked to approve this change.
14. The key proposal is to reduce the aggregate limit for claims against a firm from £2million to £500,000. The individual limit of £500,000 is unchanged.
15. CRL concluded that retaining the individual limit of £500,000 would reduce the likelihood of consumer detriment but would still be affordable in the circumstances.
16. Beyond the key proposal, CRL are proposing changes to the regulatory arrangements which are set out in Paragraphs 40 and 41 of the application. In summary these changes:
  - clarify that the compensation arrangements from which grants will be funded is the Fund
  - remove references to an insurance contract being applicable in specific circumstances

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<sup>3</sup> S.83(5)(e) <https://www.legislation.gov.uk/ukpga/2007/29/section/83>

- clarify that applications for grants from the Fund can only be made by eligible persons, and grants are discretionary.

### **Key issues considered in the assessment of the application**

#### *Actuarial advice*

17. The actuarial advice<sup>4</sup> obtained by CRL gave a view that it would be reasonable to reduce the individual limit, firm aggregate, and total Fund to £250,000. The advice stated that level of funding is expected to be viable and meet all claims in the next 6-12 months in all but the most extreme scenarios. The actuary also confirmed that the short-term scheme would enable longer-term operation, if needed, with minimal change required.
18. The advice was informed by CRL's knowledge of its regulated community of 23 firms. The information supplied to the actuary is summarised at Paragraphs 23-26 of the application.
19. We consider that it was particularly helpful that the actuary was provided with detailed information about CRL's regulated community of 23 firms.
20. CRL decided to retain the individual claim limit of £500,000 which was twice the amount specified in the actuarial advice. It chose to do this to limit the likelihood of consumer detriment as far as possible while ensuring the fund remained viable.

#### *Consumer protection*

21. The key proposal provides for a reduction in consumer protection compared to the insurance policy. Any reduction in consumer protection carries potential detriment to the regulatory objectives, in particular protecting and promoting the public interest and protecting and promoting the interests of consumers.
22. The specific set of circumstances faced by CRL has meant that, at short notice, it has had to develop arrangements to maintain consumer protection in a way that is affordable in the short-term, in the absence of insurance, while long-term plans are developed.
23. In CRL's view, informed by expert advice, the ongoing provision of an insurance backed scheme is not feasible. In these circumstances, CRL must balance the need to maintain consumer protection with the affordability and viability of its compensation arrangements. Providing a fund at the same level as the insurance-backed scheme could risk the viability of CRL as a regulator, which in turn could be prejudicial to the regulatory objectives.
24. In considering the application we have taken account of the expert actuarial advice obtained, the fact there have been no historic claims on the Fund, the information CRL holds about its regulated community and the likelihood of claims arising over the next 12 months.

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<sup>4</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2021/08/Appendix-2-Actuary-Report.pdf>

25. We are satisfied that CRL has considered the competing interests of consumer protection, affordability, and viability appropriately. The proposed measures provide a suitable short-term solution which in any case provides a higher level of consumer protection than the minimum level recommended by the actuarial analysis. We are therefore satisfied that the refusal criteria in paragraph 25(3) of Schedule 4 to the Act are not met.
26. It is important that CRL prioritises its work to ensure that a longer-term solution is found that will provide ongoing and sustainable consumer protection.

#### *Funding of the scheme*

27. The affordability of the scheme is covered in the application at Paragraphs 45-49. In summary CRL explain that an agreement has been reached for the first £250,000 of the Fund to be ringfenced from CRL reserves with CILEX acting as surety for the remaining £250,000.
28. During our assessment of the application, we asked CRL for sight of the agreement with CILEX in order to obtain assurance that the full £500,000 will be available if a grant is made from the fund in the next 12 months. CRL shared a copy of the agreement on a confidential basis and we are confident the agreement provides assurance that the proposed fund will be available and accessible over the next 12 months.

#### *Longer-term plans*

29. The application sets out at Paragraphs 34-39 the areas CRL intends to explore when developing longer term plans to provide appropriate compensation arrangements to consumers.
30. We welcome CRL's plans to carry out a comprehensive review of options to provide appropriate compensation arrangements in the longer term. We expect to follow this work closely through relationship management and expect CRL to make an application for further amendments during 2022. This planned workstream will be of particular relevance to the outcomes linked to the Regulatory Approach standard within the LSB's regulatory performance framework<sup>5</sup>.

#### *Guidance*

31. We asked CRL whether the existing CILEx Regulation Compensation Arrangements Guidance<sup>6</sup> would need to be updated in light of the proposed alterations.
32. CRL confirmed that the Guidance would need to be updated but only in relation to the fund size and how it is underwritten. Substantive changes to Guidance around applications to, or administration of the Fund are not expected to be made as no alterations are being made to the Rules that will necessitate such changes the Guidance.

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<sup>5</sup> [https://legalservicesboard.org.uk/news\\_publications/LSB\\_news/PDF/2017/Regulatory\\_Performance\\_Standards\\_December\\_2017\\_\(final\).pdf](https://legalservicesboard.org.uk/news_publications/LSB_news/PDF/2017/Regulatory_Performance_Standards_December_2017_(final).pdf)

<sup>6</sup> <https://cilexregulation.org.uk/wp-content/uploads/2018/11/Compensation-Arrangements-Guidance.pdf>

33. We have also been provided with a draft copy of updated Guidance and expect the Guidance to be updated without delay to reflect the alterations to the approved following this approval.

### **Decision**

34. The LSB has considered CRL's application against the refusal criteria in paragraph 25(3) of Schedule 4 to the Act. We consider that there is no reason to refuse this application and accordingly, the application is granted.

35. **Annex A** to this decision notice contains the amendments to the regulatory arrangements approved by the LSB.

**Matthew Hill, Chief Executive**  
**Acting under delegated authority granted by the Legal Services Board**

**2 September 2021**

*Notes:*

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that:
  - (a) granting the application would be prejudicial to the regulatory objectives
  - (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
  - (c) granting the application would be contrary to the public interest
  - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
  - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or
  - (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are:
  - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
  - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
  - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules<sup>7</sup> about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

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<sup>7</sup> LSB's Rules for applications to alter regulatory arrangements – Version 2 April 2018

[https://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/New%20folder%20\(2\)/FINAL\\_Rules\\_for\\_applications\\_to\\_alter\\_regulatory\\_arrangements.pdf](https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20(2)/FINAL_Rules_for_applications_to_alter_regulatory_arrangements.pdf)

## Annex 1

### CILEx REGULATION COMPENSATION ARRANGEMENTS RULES

#### Introduction

1. (1) These are the CILEx Regulation Compensation Arrangements Rules.
- (2) These rules are made by CILEx under the Legal Services Act 2007 (Chartered Institute of Legal Executives) (Modification of Functions) Order 2014.
- (3) These rules came into force on 5 January, 2015 and were subject to changes on 18 August, 2017, 13 August, 2019 and xx September, 2021.
- (4) Responsibility for the application and administration of these Rules and of the Fund is delegated by CILEx to CILEx Regulation.

#### Interpretation

2. In these Rules, unless otherwise provided:

<b>Applicant:</b>	means a person applying for a Discretionary Grant;
<b>Authorised Entity:</b>	means a partnership (including a limited liability partnership), company or sole principal authorised or licensed by CILEx under the Legal Services Act 2007 to: (a) carry on an activity which is a Reserved Legal Activity; or (b) provide immigration advice or immigration services;
	and where the context permits, references to acts or omissions by such a body shall include the acts or omissions of such a body's principals (including the partners in a partnership, the members in an LLP or the directors in a company) and employees;
<b>CILEx:</b>	means the Chartered Institute of Legal Executives;
<b>CILEx Regulation:</b>	means CILEx Regulation Ltd;
<b>Compensation Insurance Contract:</b>	means a contract of insurance taken out pursuant to rule 3(2)(a);
<b>Consumer:</b>	means an individual acting for purposes which are wholly or mainly outside of that individual's trade, business, craft or profession;
<b>Discretionary Grant:</b>	means a discretionary grant made under Rule 6(1)(a) or (b) out of the Fund or with a view to payment being made by virtue of a Compensation Insurance Contract;

- Eligible Person:** has the meaning given in rule 6(5);
- the Fund:** means the CILEx Compensation Fund as described in rule 4;
- Legal Services:** do not include:
- i) practising as an employee of an employer other than a sole principal or entity regulated by CILEx Regulation; or
  - ii) discharging the functions of any of the following offices or appointments:
    - a) judicial office;
    - b) Under Sheriffs;
    - c) members and clerks of such tribunals, committees, panels and boards as the CILEx Regulation Board may from time to time designate but including those subject to the Tribunals and Inquiries Act 1992, the Competition Commission, Legal Services Commission Review Panels and Parole Boards;
    - d) Justices' Clerks; or
    - e) Superintendent Registrars and Deputy Superintendent Registrars of Births, Marriages and Deaths and Registrars of Local Crematoria.
- Person:** includes a body of persons corporate or unincorporate;
- Qualifying Insurance:** has the meaning given in Rule 1(2) of the CILEx Professional Indemnity Insurance Rules;
- Regulated Legal Activity:** means:
  - (a) a Reserved Legal Activity; or
  - (b) immigration advice or immigration services;
- Reserved Legal Activity:** has the same meaning as in the Legal Services Act 2007.

### Compensation Arrangements

3. (1) CILEx shall establish and maintain compensation arrangements in accordance with these rules.
- (2) For the purposes of rule 3(1), compensation arrangements shall include arrangements for the funding of discretionary grants under rule 6 by one or more of the following:
- (a) the fund ;
  - (b) insurance provided by an authorised insurer (within the meaning of section 64 (4) of the Legal Services Act 2007).

### The Fund

4. (1) CILEx must establish and maintain the CILEx Compensation Fund (the Fund) which is to be applied to the payment of Discretionary Grants and for the other purposes provided for under these Rules.
- (2) Every Authorised Entity must make contributions to the Fund. CILEx may from time to time prescribe the rate and amount of, and payment arrangements for, those contributions which may include provision for different payments to be made by different descriptions of Authorised Entity.
- (3) Any contribution which is not paid in accordance with rule 4(2) may be recovered by CILEx as a debt.

#### **Management of the Fund**

5. (1) The Fund shall be held, managed, administered and distributed by CILEx Regulation, which may in particular:
  - (a) make discretionary grants from the Fund in accordance with rule 6;
  - (b) invest the Fund in any investments in which trustees may invest under section 3 of the Trustee Act 2000 (general power of investment) as restricted by sections 4 and 5 of that Act;
  - (c) insure in relation to the Fund, and pay premiums in respect of such insurance from the Fund, for such purposes and on such terms as it considers appropriate;
  - (d) borrow for the purposes of the Fund, pay interest on any money so borrowed, repay any money so borrowed and use investments or other property which form part of the Fund as security for such borrowing; and
  - (e) use the Fund to pay any costs, charges or expenses properly incurred by CILEx in establishing and administering the Fund (which may include such liabilities incurred by persons appointed to manage and administer the Fund on behalf of CILEx).
- (2) The payments which may be made under rule 5(1)(e) include any expenditure, including the payment of any award of costs or damages, incurred by CILEx, CILEx Regulation, their employees or agents as a result of proceedings against any of them for any good faith act or omission in the exercise or purported exercise of powers under these Rules.
- (3) For the avoidance of doubt, CILEx Regulation may delegate part or all of its functions under these rules to staff members or other persons appointed for this purpose. Any such delegation must be in writing.

#### **Discretionary Grants**

6. (1) CILEx Regulation may make Discretionary Grants from the Fund to Eligible Persons to:

- (a) compensate (in whole or in part) for losses suffered by Eligible Persons as a direct consequence of a dishonest misappropriation or a dishonest failure to account by an Authorised Entity in the course of providing to that person Legal Services of a type which that entity was authorised by CILEx Regulation to provide; or
  - (b) compensate (in whole or in part) a person in respect of the civil liability of an Authorised Entity which, contrary to the CILEx Professional Indemnity Insurance Rules, does not have in place a policy of qualifying insurance against which a claim in respect of that civil liability can be made.
- (2) A Discretionary Grant may not be made in excess of funds available under these compensation arrangements or in respect of any loss:
- (a) arising solely by reason of the professional negligence of an Authorised Entity;
  - (b) which is a personal debt or trading debt or liability of an Authorised Entity;
  - (c) arising from practice by the Authorised Entity outside of England and Wales;
  - (d) which is a claim for interest under a contract between the Applicant and an Authorised Entity;
  - (e) which did not arise from the provision of legal services performance or purported performance by an Authorised Entity of a regulated legal activity that it is authorised by CILEx to undertake;
  - (f) arising from the provision of services by an individual (including authorised individuals) other than through a sole principal or entity authorised by CILEx; or
  - (g) where the other requirements for making a Discretionary Grant under these rules have not been satisfied, including in particular as regards the Applicant suffering loss and hardship (rule 7(2)) and where other remedies may be available (rule 8).
- (3) For the avoidance of doubt, Discretionary Grants may be made on an interim basis.
- (4) CILEx Regulation shall publish guidance as to the criteria to be applied in deciding whether to make a Discretionary Grant. Such guidance may include:
- (a) the circumstances in which it might be appropriate for the time limits for making an application under these rules to be extended;
  - (b) a requirement for decision makers to take account of the affordability of each application in the context of maintaining the Fund in appropriate cases;
  - (c) guidance on when and how to distribute monies on a pro rata or nominal basis;
  - (d) guidance on making use of interim Discretionary Grants;
  - (e) guidance on acts or omissions on the part of an Applicant which may result in a claim being refused or reduced, including where the conduct of the Applicant has contributed to the loss and where the Applicant has not provided full cooperation during the course of the application;
  - (f) guidance on assessing eligibility under these rules, including the need to take a broad approach in the context of calculating assets and income and to take account of assets held or income received by any parent undertaking;

- (g) guidance on making use of interim Discretionary Grants in circumstances where there is a significant risk that the aggregate limit set for grants per Authorised Entity under rule 9(2) will be met and the period of time after which final Discretionary Grants should ordinarily be made.
- (5) For the purposes of rule 6(1), a person is eligible if that person is a client or former client of the Authorised Entity and is:
- (a) a Consumer; or
  - (b) a trustee of a trust with a net asset value of less than £2 million; or
  - (c) any other person who has annual income in the last accounting year (including annual turnover after the deduction of tax) of less than £2 million.
- (6) Any Discretionary Grant is to be made in the absolute discretion of CILEx Regulation and no person has a legally enforceable right to any grant.

### **Applications**

7. (1) An application for a Discretionary Grant must be made:
- (a) in the form CILEx Regulation may from time to time prescribe; and
  - (b) promptly and in any event, save for exceptional circumstances, not more than one year after the Applicant first knew, or with reasonable diligence should have known, about the misappropriation, failure to account or events giving rise to a civil liability (as the case may be).
- (2) An Applicant must provide evidence to satisfy CILEx Regulation that, in consequence of the misappropriation, failure to account or events giving rise to a civil liability (as the case may be), the Applicant has suffered or is likely to suffer loss and hardship.
- (3) The Applicant has the burden of proving a claim and must provide CILEx Regulation with such documents or other information as it may require in respect of that claim (though for the avoidance of doubt satisfaction of such requirements does not give a person a legally enforceable right to any Discretionary Grant).
- (4) Failure to provide documents or other information or to co-operate with CILEx Regulation may be taken into account when determining the merits of an application.

### **Other Remedies and Subrogation**

8. (1) A Discretionary Grant may be refused in respect of all or any part of a loss that is:
- (a) an insured risk; or
  - (b) capable of being made good by any other means.
- (2) Before deciding whether to make a Discretionary Grant and subject to exercising its discretion under rule 8(4) below, CILEx Regulation shall require an Applicant to:
- (a) pursue any civil remedy against:

- (i) the Authorised Entity who is the subject of the application;
    - (ii) any third party who possesses or controls the money that the Applicant seeks to recover;
  - (b) commence insolvency proceedings against that Authorised Entity;
  - (c) make a formal complaint to the Police or other agency against that Authorised Entity; and/or
  - (d) assist in the taking of any action against that Authorised Entity.
- (3) If a Discretionary Grant is made, the Fund is subrogated to any rights or remedies of the recipient in relation to the subject-matter of the Discretionary Grant-and, if required by CILEx Regulation (whether before or after the making of the Discretionary Grant) the Applicant must:
- (a) prove in any insolvency or winding-up of the Authorised Entity;
  - (b) sue for recovery of the loss or other property in the name of the Applicant but on behalf of CILEx; and
  - (c) comply with any other reasonable requirement for the purpose of giving effect to CILEx's rights.
- (4) CILEx Regulation may waive the requirement for an Applicant to pursue one or more of the steps set out in rule 8(2) above if:
- (a) a Discretionary Grant is being made on an interim basis;
  - (b) there is no reasonable prospect of such steps assisting in the recovery of the Applicant's losses; or
  - (c) it would otherwise be unreasonable to require the Applicant to do so.

#### **Grant Limits**

9. (1) A Discretionary Grant shall not exceed £500,000.
- (2) Discretionary Grants made in respect of one Authorised Entity shall not exceed a total of £500,000.

#### **Refusal of an Application**

10. If an application for a Discretionary Grant is refused, whether in whole or part, CILEx Regulation must inform the Applicant in writing of its decision and the reasons for that decision.