

Solicitors Compensation Fund (Northern Ireland) Regulations 2010

1. These Regulations may be cited as the Solicitors Compensation Fund Regulations 2010 and shall come into force on the *30th* day of *March* 2010. The Regulations were made under the powers conferred by Articles 61 and 75 of the Solicitors (Northern Ireland) Order 1976 on the 23rd day of February 2010.

2. INTERPRETATION

(a) In these Regulations the following expressions have the following meanings respectively:

"the Order" means the Solicitors (Northern Ireland) Order 1976.

"applicant" means a person applying for a grant out of the Compensation Fund under Article 56, 57 or 59 of the Order.

"defaulting practitioner" means:

- (i) a solicitor in respect of whose act or default, or in respect of whose employee's act or default, an application for a grant is made;
- (ia) a registered European lawyer in respect of whose act or default, or in respect of whose employee's act or default, an application for a grant is made;
- (ii) a recognised body in respect of whose act or default, or in respect of whose officer's or employee's act or default (in the case of a company), or in respect of whose member's or employee's act or default (in the case of a limited liability partnership), an application for a grant is made;

and the expressions "defaulting solicitor", "defaulting registered European lawyer", "defaulting recognised body" shall be construed accordingly.

(b) Other expressions in these Regulations have the meaning assigned to them by the Order.

(c) The Interpretation Act (Northern Ireland) 1954 shall apply to these Regulations in the same manner as it applies to a statutory instrument.

3. GRANTS IN RESPECT OF PERSONS NOT AUTHORISED TO PRACTISE

(a) Subject to the provisions of paragraph (b) hereof, a grant may be made notwithstanding the fact that the defaulting practitioner had not a practising certificate in force or was suspended from practice at the date of the act of default, or has since such date died or ceased to practise or had his name removed from or struck off the Roll.

(b) Where an application for a grant is received in respect of a defaulting practitioner who did not have a Practising Certificate in place, was suspended from practice, had ceased to practice or had his name removed from or struck

off the Roll at the date of the act or default in relation to which the application for a grant has been made, a grant shall not be awarded where the Council are satisfied that at that date the applicant should reasonably have been aware that the defaulting solicitor did not have a Practising Certificate or was suspended from practice or had his name removed from or struck off the Roll, or had ceased to practice as the case may be.

4. **GRANTS TO PRACTITIONERS**

No grant shall be made:

- (i) under Article 59 of the Order to any solicitor, or:
- (ii) under Article 59 to any registered European lawyer, or:
- (iii) under Article 59 to any solicitor, registered European lawyer, recognised body or any other individual or body corporate permitted under Regulation 4 of the Solicitors (Incorporated Practice) Regulations 2007 to be a member of a recognised body;

unless the Council are satisfied that no means of making good the loss are available and that he is fitted by reason of his conduct, age and experience to receive such a grant. No person or body as set out above shall in these circumstances be disqualified from receiving a grant solely by reason of the fact that he is fitted by reason of conduct and experience (or in the case of a company is fitted by reason of the conduct and experience of its officers and employees or in the case of limited liability partnership is fitted by reason of the conduct and experience of its members and employees) to receive such a grant.

5. **REGISTERED EUROPEAN LAWYERS**

- (a) If a registered European lawyer is exempted from contributing to the Compensation Fund no grant shall be made:
 - (i) under Article 56 of the Order in respect of any act or default of the registered European lawyer or his or her employee unless, in the case of an employee, the employee is:
 - (A) a solicitor, or
 - (B) the employee of a partnership which includes at least one person who is not exempted from contributing to the Compensation Fund.
 - (ii) under Article 57 of the Order in respect of any act or default of the registered European lawyer;
- (b) No grant shall be made under Article 56 or 57 of the Order in respect of any act or default of a registered European lawyer, or the employee or partner of a registered European lawyer, where such act or default took place outside the United Kingdom, unless the Council is satisfied that the act or default was, or was closely connected with, the act or default of a solicitor, or that the act or default

was closely connected with the registered European lawyer's practice in the United Kingdom.

6. **APPLICATION FORM**

Every applicant shall complete, sign and deliver to the Secretary of the Society a Notice in the form set out in the Schedule to these Regulations or in a form to the like effect approved by the Council but where the application is for a sum of £1000 or less the Council may accept a letter in lieu of such Notice, provided always that the Council reserves the right to require an application to be supported by Statutory Declaration as set out in Regulation 8 hereof.

7. **TIME LIMIT**

Every application shall be delivered to the Society within six months after the loss or likelihood of loss, or failure to account, as the case may be, first came to the knowledge of the applicant. The Council may extend this period if satisfied that there are exceptional circumstances relating to the reasons for any delay which justify the extension of the time limit.

8. **DOCUMENTATION IN SUPPORT**

The Council may require an application to be supported by the Statutory Declaration and accompanied by any relevant documents and shall cause such enquiries to be made in relation to the application as it sees fit. Failure to provide documentation or information requested or to co-operate fully in the Council's enquiries may be taken into account when the application is considered.

9. **OTHER REMEDIES**

The Council may, before deciding whether or not to make a grant, require the pursuit of any civil remedy which may be available in respect of the loss, the making of a formal complaint to the police in respect of any dishonesty on the part of a defaulting practitioner or may require the assistance of an applicant in the taking of any disciplinary action against the defaulting practitioner and such continued co-operation with them as necessary to support a prosecution.

10. **INTEREST**

The Council may entertain an application for a supplementary grant by way of a sum in lieu of interest on a principal grant in respect of the period from the date of the loss until the date of the authorisation of the principal grant, subject to such interest being calculated at such reasonable rate as the Council may deem appropriate in all the circumstances.

11. **COSTS FOR SUBMITTING APPLICATIONS**

Where a grant is made the Council may consider the application for a further grant in respect of the reasonable costs properly incurred by the applicant with a solicitor, provided that such costs were incurred wholly exclusively and necessarily in connection with the preparation, submission and proof of the application. If, in the

view of the Council, such costs were not reasonable or properly incurred then the Council may decline to pay some or all of those costs.

12. **ASSISTANCE IN RECOVERING MONEY**

- (a) An applicant to whom a grant has been made shall be required by the Council to sign an undertaking to prove, if required, the insolvency and/or winding up of the defaulting practitioner, together with a further undertaking to comply with all proper requirements of the Council in the exercise of subrogated rights under Article 58(1)(c), Article 58(1)(d), Article 60(e) and Article 60(f) of the Order.
- (b) In the event that an applicant who has received a grant, behaving in a manner likely to prejudice any action or exercise of the rights as set out in paragraph (a) above, or failing to assist the police as set out in Regulation 9, or withdrawing their complaint to the police, the Council may require repayment of all or part of the grant and may employ such civil remedies as it deems appropriate to require such repayment.
- (c) For the purposes of paragraph (b) "applicant" includes a person, a person who has control of a company within the meaning of section 416 of the Income and Corporation Taxes Act 1988, an executor, a trustee and any person possessing the authority to make the application.

13. **DISCRETION TO LIMIT GRANT**

- (a) In relation to any loss sustained, or any money which came under the control of a defaulting practitioner, after [operative date] the Council shall refuse to authorise a grant for an amount which would result in sums exceeding £750,000 (inclusive of any costs and interest paid pursuant to Regulations 10 and 11 above) being made to or on behalf of any applicant from either the Compensation Fund or any applicable Insurance cover.
- (b) All applications received from a person whether as an individual or a person who has control of a company within the meaning of section 416 of the Income and Corporation Taxes Act 1988 or a shareholder in a company in respect of which a separate claim has been made shall be treated as a single application and the total amount payable under paragraph (a) shall apply in such circumstances.
- (c) In making any grant, the Council may take into account the need to maintain sufficient monies in the Compensation Fund to meet the claims of other applicants or potential applicants against the need of any individual applicant.

14. **REFUSAL OF AN APPLICATION**

If the Council refuses to make a grant of either the whole or part of the amount applied for, then the Council shall cause the applicant to be informed in writing of the reasons for the decision.

15. **NOTICE TO DEFAULTING PRACTITIONER**

- (a) The Council shall not make a grant unless a letter has been sent:
- (i) to the defaulting practitioner at his last known correspondence address or to any solicitors instructed by him;
 - (ii) to the defaulting registered European lawyer at his last known correspondence address or to any solicitors instructed by him, as well as to the appropriate regulatory body for the defaulting registered European lawyer within his home jurisdiction or jurisdictions, whether in Europe or elsewhere;
 - (iii) to the defaulting recognised body at its registered office as last communicated to the Society pursuant to the Solicitors (Incorporated Practice) Regulations 2007;

informing him or it of the nature and value of the application and not less than eight days have elapsed since the date of such letter.

- (b) If by reason of death, insolvency or other disability, proper notification under sub paragraphs (a)(i) or (a)(ii) of this rule cannot be given to a defaulting practitioner then such notice may be given to a Personal Representative, Trustee in Bankruptcy or any other person who the Society is satisfied acts for or on behalf of the defaulter and/or his Estate.
- (c) Where the defaulting practitioner is a recognised body and it appears to the Society that any letter sent under (a)(iii) above will not come to the attention of the recognised body (or any officer or employee thereof if it is a company, or any member or employee thereof if it is a limited liability partnership) then the letter may be sent to the liquidator and/or receiver of the recognised body or to any other person for the time being accountable for the affairs of the recognised body.
- (d) If it appears to the Society that any letters sent under sub paragraphs (a)(i) to (iii) of this rule will not come to the attention of the defaulting practitioner or any other person on his behalf, then the Council may make a grant notwithstanding failure to comply with the provisions of this Rule.

16. **NOTICE OF REQUIREMENTS**

Any requirements of the Council or the Society under these Regulations may be communicated by a notice in writing signed by the Secretary or other authorised officer of the Society.

17. **GUIDELINES**

When exercising the discretions conferred on it by Articles 56 and 57 of the Order, the Council may take into consideration the Guidelines contained in the Schedule to these Regulations and decisions of the Council and any other Guidelines that the Council may

approve, although these Guidelines and decisions shall not fetter the Council's discretion.

18. **WAIVER**

The Council may waive any of the provisions of these Regulations at the request of the applicant, or with his consent, excepting Regulations 4 and 15.

19. **REPEAL AND COMMENCEMENT**

Once these Regulations come into operation the Solicitors Compensation Fund Regulations 1976 shall cease to have effect save in respect of applications submitted before the operative date.

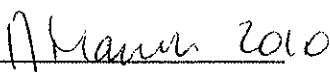
I certify that this is a true copy of the Regulations approved by the Council of the Law Society of Northern Ireland by resolution on 24th February 2010.

Signed:

Date:

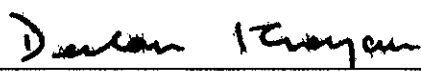


Alan Hunter, Chief Executive



Signed:

Date:



The Right Honourable Sir Declan Morgan
Lord Chief Justice of Northern Ireland



COMPENSATION FUND

NOTICE

Of loss and application for a grant

NAME (S) OF SOLICITOR(S)
IN RESPECT OF WHOM
THIS NOTICE IS SERVED

ADDRESS

I (WE)
(full name in block capitals)

of

HEREBY GIVE NOTICE that I (we) have sustained a loss/hardship of or approximately of) which I (we) believe to be due to the dishonesty of the above named solicitor(s) or his/their employee(s).

OR

which I (we) claim is due to the failure of the said solicitor(s) to account to me/us in circumstances whereby I am (we) (are) suffering hardship or likely to suffer hardship.

I (we) apply to the Council of the Law Society of Northern Ireland that in exercise of the discretion conferred upon them by the Solicitors Order 1976 that they make to me (us) a grant in respect of my/our loss of any sum which they may think proper out of the Compensation Fund for the purpose of mitigating the loss and/or hardship which I (we) have suffered in consequence of the dishonesty of or the failure to account by the above named solicitor(s) or his/their employees(s).

Full details relative to this claim are set out in the Schedule of Particulars attached to this application.

SIGNED

(NOTE:- The Council reserves the right, at its discretion, to require the applicant to make a statutory declaration in support of this application).

To: The Secretary