



Guide to making a Claim on the Authority's

Compensation Fund

March, 2021

Disclaimer

This Guide to making a claim on the Authority's Compensation Fund is governed by the Property Services (Regulation) Act 2011.

This Guide does not purport to be a full explanation of the law governing the Authority's Compensation Fund. This Guide is intended to provide factual information only regarding the Authority's Compensation Fund.

You should seek independent legal advice in the event that you require a more detailed explanation of the law governing the Authority's Compensation Fund.

Introduction

The Property Services Regulatory Authority (PSRA) maintains a "Property Services Compensation Fund" in accordance with the provisions of the Property Services Regulation Act 2011 (hereinafter referred to as "the 2011 Act").

The purpose of the Compensation Fund is to provide compensation to clients of licensees who have sustained a loss as a result of the dishonesty of a licensee, within the meaning of the 2011 Act. Sections 77 and 78 of the 2011 Act provide the statutory basis for the operation of the Fund.

The aim of this document is to set out key information for members of the public on how the Compensation Fund operates and on how to make a claim on the Compensation Fund.

This document does not purport to be a legal interpretation of the relevant provisions of the 2011 Act. In the event that you require legal advice regarding the operation of the Authority's Compensation Fund, you should seek independent legal advice.

On What Basis will a Grant be made?

In order for a grant to be made by the Authority from the Compensation Fund, the Authority must be satisfied that a client of a licensee has sustained a loss as a result of dishonesty on the part of the licensee.

- **What is a licensee?**

A licensee is a holder of a PSRA licence to provide property services within the meaning of the 2011 Act. The term “licensee” includes any partner, employee or agent, or former partner, employee or agent of that licensee.

- **Can I claim for negligence?**

In order for a claim to be made, the client of a licensee must establish that he/she has suffered loss as a result of dishonesty on the part of a licensee. Section 2 of the Act defines a client as

1. A person for whom a property service is provided by a licensee for consideration;
2. A person to whom a refund of a deposit is due in relation to a property service provided to that person or another person;
3. In the event of the death, insolvency or other incapacity of a person who falls within (1) and (2)
 - a. any person having authority to administer the estate of a person concerned,
 - b. any beneficiary under a will, intestacy or trust of the person concerned or
 - c. any other personal representative of the person concerned.

The Authority is not entitled to make a grant out of the Compensation Fund on the basis that a client suffered loss as a result of the negligence of a licensee. A claim for negligence or incompetence against a licensee may be made against the licensee’s professional indemnity insurance policy.

Independent legal advice should be obtained in the event that an allegation of negligence is being made against a licensee.

- **What monies can be claimed and to whom?**

A client of a licensee is entitled to make a claim for loss sustained as a result of the dishonesty of a licensee.

A client of a licensee may be a joint client e.g. (spouse or partner). In such circumstances, a joint claim must be submitted, signed by both parties and witnessed.

The Authority shall subject to the provisions of s.78 of the Act, make a grant from the Fund which represents, in its opinion, reimbursement of the amount of the loss actually sustained by the client of the licensee. In addition, the Authority may also make a grant in respect of reasonable costs incurred by the client in seeking to recover the loss sustained as a result of the dishonesty of the licensee.

The Authority is not entitled to grant a claim for consequential losses or damages made by a client of a licensee. The Authority can only make a grant in respect of monies actually lost.

- **Can interest be claimed?**

The Authority has a discretion to pay interest on all or any part of the amount of the loss calculated for such period of time between the date that the loss was sustained and the date that the grant is made at a rate that would be payable by a court, if the Authority considers it appropriate to do so.

Please note that any payment of interest is at the discretion of the Authority.

- **Does the Authority have discretion to make or refuse to make a grant to a client of a licensee in respect of a loss caused by dishonesty?**

The Authority has discretion to make or refuse a grant to a client in respect of a loss in certain circumstances, including where:

- The licensee although licensed did not hold the appropriate/correct licence category (A, B, C, D) in relation to the service provided for which the dishonesty occurred. *For example where a licensee holds a B category licence only (the purchase or sale of land), and provides letting services to his client (a licensee is required to hold a C category licence for letting of land) and the client sustained a loss as a result of dishonesty by the licensee in relation to the provision of letting services,*
- the client's own dishonesty/negligence contributed to the loss,
- the client contributed (including by omission) to improper conduct by the licensee.

In any such circumstances, if the Authority decides to make a grant, it has discretion to make a grant to a limited extent only.

The Authority has no discretion to make a grant from the fund in circumstances where the provision of the property services which caused the loss to the client occurred when the licensee was not licensed.

- **Can a grant be made where the Licensee subsequently dies?**

A grant may be made on the Fund as a result of dishonesty on behalf of the licensee, notwithstanding the death of the licensee or where the licensee ceases to be a licensee after the date that the dishonesty occurred.

- **What happens if I have recovered the monies elsewhere?**

A grant from the Fund will not be made where a loss has already been made good by alternative means.

- **If a grant is being made on the Fund, how is it made?**

The Authority has discretion to make a grant in a lump sum or in instalments.

In addition, the Authority, if satisfied that the financial stability of the Fund requires it, may postpone payment of any grant or any instalment of any grant.

- **The Authority to be Subrogated**

If the Authority makes a grant out of the Fund, the Authority is entitled to be substituted in place of either the client or Licensee or both regarding any lawful claim they may have against one another, including:

- a) to any rights or remedies to which the client was entitled on account of the loss against the Licensee,
- b) to any rights or remedies to which the Licensee was entitled on account of the loss against any other person, and
- c) to all other rights and remedies (if any) of that client or such Licensee in respect of the loss.

In the event that the Authority grants a claim on the Fund, the client shall have no right under bankruptcy or other legal proceedings or otherwise to receive any sum out of the assets of the Licensee (or agent or employee) in respect of the loss until the Authority has been reimbursed in respect of the full amount of the grant made.

Furthermore, if the Authority makes a grant from the Fund, the Authority may, as a condition of making such a grant, require any person to answer all questions, execute all documents and take all steps as may, in the opinion of the Authority, be necessary to protect the Authority's subrogation rights and may require the applicant to verify any document by affidavit.

As decisions taken by the Authority in relation to making a grant from the Fund may have long term financial implications for licensees (or former licensees), the Authority will make reasonable and time-bound efforts to seek submissions from the licensee (or former licensee) whose alleged dishonesty gave rise to the application for a grant. It is not intended that this consultation process be a cause of undue delay in adjudicating on an application for a

grant and the Authority retains all of the rights and entitlements granted to it under the Act. The Authority will seek to contact the licensee or former licensee using known contact details and allow a short period in which the licensee or former licensee may respond in writing.

- **Obligation to report matter to An Garda Síochána**

Please note that, under section 19 of the Criminal Justice Act 2011, it is a criminal offence to fail to disclose material information in relation to a number of criminal offences, including the offence of theft or fraud under s3 of the Criminal Justice Act 2011, without reasonable excuse.

If a client has suffered a loss as a result of a dishonest act by a licensee, this should be brought to the attention of An Garda Síochána.

How is an Application for Compensation made?

A claim for compensation from a client of a licensee must be received by the Authority in the prescribed form **PSRCF 1** and within the prescribed time.

Form PSRCF 1 seeking a grant from the Compensation Fund must be signed in writing by the applicant.

In making an application for a grant from the Fund, an applicant must formally declare that the contents of the application for a grant are true. This declaration must be sworn in the presence of a Solicitor or Commissioner for Oaths. There will be a small fee for this declaration.

- **When must a claim be made?**

A claim must be made within **12 months** after the loss comes to the knowledge of the client concerned.

- **Where do I submit a completed application for a Claim on the Fund?**

Completed sworn applications with the necessary supporting documentation should be submitted to:

**Claims Administrator
Property Services Regulatory Authority
Abbey Buildings, Abbey Road, Co Meath, C15 K7PY**

Alternatively a scanned copy of the completed sworn application can be forwarded to info@psr.ie

Please note you must retain the original form as this may be requested by the Authority.

- **False or Misleading Information Submitted**

Applicants for grants and those considering making an application for a grant from the Fund are reminded that section 94(1) of the Act makes it a criminal offence to make a false or misleading statement or to provide false or misleading information to the Authority. A person found guilty of such an offence is liable on summary conviction to a class A fine or imprisonment of a term not exceeding 12 months or both.

While the complaints and investigation process set out in Part 7 of the Act is separate to the section of the Act dealing with applications for grants from the Fund, the Authority is conscious that many applicants will also have submitted complaints of improper conduct in relation to the licensee. There will often be overlap between the investigation of improper conduct and the fact-finding process in relation to the application for a grant. Complainants and applicants are reminded that section 67(3) of the Act makes it an offence to knowingly make a false communication in relation to a complaint or an alleged contravention of the Act or its associated regulations.

In the normal course of events, the Act affords protection from liability for damages to anybody making a complaint of improper conduct or reporting a contravention of the Act and its associated regulations. Complainants and applicants for grants are reminded that, under section 67(1) of the Act, this protection is withdrawn where the person concerned submitted their opinion or information to the Authority knowing it, to be false, misleading, vexatious or being similarly reckless in relation to the opinions expressed or information supplied.

How are Claims Investigated?

On receipt of an application from a client of a licensee for a claim for compensation on the Fund, the Authority shall carry out such investigations as it considers necessary in accordance with the provisions of the 2011 Act and any rules and/or regulations made thereunder.

The Authority may require any person to answer all questions, execute all documents and take all steps as may, in the opinion of the Authority, be necessary to determine the claim in accordance with the provisions of the 2011 Act and any rules or regulations made thereunder, including requiring a claimant to verify any document by affidavit.

A person who is dissatisfied with the decision of the Authority concerning their application for a grant from the Compensation Fund may refer their claim to the Property Services Appeals Board within 30 days of the Authority's decision.

The Appeals Board will review the Authority's file relating to your claim. The Appeals Board may determine any appeal either on the basis of the papers or on foot of an oral hearing, if required.

The Property Services Appeals Board can make one of the following decisions: -

1. Affirm the decision of the Authority;
2. Direct the Authority to review the original decision;
3. Substitute its own decision for that of the Authority.

Appeals should be submitted to: -

The Secretary, Property Services Appeals Board
Email – psabsecretary@psab.ie
Website – www.psab.ie