

Fellowship of Professional Willwriters and Probate Practitioners



Fellowship of Professional Will Writers and Probate Practitioners' Compensation Fund Rules

Introductory

- 1 These Rules are the Fellowship of Professional Willwriters and Probate Practitioners Compensation Fund Rules 2009 and came into force in September 2009.
- 2 In these Rules:-
 - 2.1 unless the contrary intention appears, words importing the masculine gender include the feminine, words in the singular include the plural and words in the plural include the singular.

"Costs" includes fees incurred by the Fellowship

"the Fellowship" means the Fellowship of Professional Willwriters and Probate Practitioners.

"the Compensation Fund" means the Compensation Fund out of which grants and other payments are made for the purposes of relieving or mitigating loss suffered by a person as a result of negligence or fraud or other dishonesty on the part of Willwriters or Probate Practitioners, or of employees or associates of theirs, in connection with their practices (or purported practices) as Willwriters or Probate Practitioners, or; failure on the part of Willwriters or Probate Practitioners to account for money received by them in connection with their practices (or purported practices) as Will Writers or Probate Practitioners.

"Membership Certificate" has the meaning of a Membership Certificate which is stated to entitle a person to practice as a Willwriter or Probate Practitioner.

"Willwriter" means any person holding a practicing Membership Certificate to write wills in force granted by the Fellowship and, for the purpose of these Rules, includes a Recognised Body where the context so admits;

"Practitioner" means any person holding a practicing Membership Certificate to operate as a Probate Practitioner in force granted by the Fellowship and, for the purpose of these Rules, includes a Recognised Body where the context so admits;

"Practice" means a Willwriter or Probate Practitioner who is a sole practitioner; or two or more of either a) Willwriters, or b) Probate Practitioners in partnership; or a

Recognised Body; in each case providing Willwriting or Probate Services regulated by the Fellowship to the public;

"Probate Practitioner" means any person (including a Recognised Body) holding a Practicing Certificate issued by the Fellowship to provide Probate Services;

"Probate Services" means services limited to the drawing or preparation of any papers on which to found or oppose a grant of probate or grant of letters of administration and the administration of the estate of a deceased person;

"Respondent Practice" means a Practice or former Practice in respect of which a claim is made;

"Recognised Body" means a body corporate recognised by the Fellowship.

3. The Fellowship shall manage and maintain the Compensation Fund for the purposes provided for in these Rules.
4. Every applicant for a Practicing Certificate issued by the Fellowship and every Practice shall pay to the Fellowship a contribution to the Compensation Fund of such an amount and at such time and as the Fellowship may determine. The Fellowship may obligate a member to make a further contribution towards the Compensation Fund at any time.
5. Contributions made by installments to the Compensation Fund may be made by a Practice at the discretion of the Fellowship. Any unpaid installments in any year will become immediately due and payable and recoverable as a debt due to the Fellowship in the event that Will Writer, Practitioner or Practice ceases to be regulated by the Fellowship.
6. If a Practice ceases to be regulated by the Fellowship, the Fellowship may in its absolute discretion refund a proportion of the contribution paid under rule 4, by reference to any unexpired period in respect of which it has been paid.
7. The contribution described in rules 4 and 5 may in part or in full be applied towards the premium payable on any insurance policy maintained by the Fellowship by virtue of rule 11.
8. There shall be credited to the Compensation Fund:-
 - (a) all contributions paid to the Fellowship in pursuance of rule 4;

- (b) all interest, dividends and other income and accretions of capital arising;
 - (c) the proceeds of any realisation of the investments of the Compensation Fund;
 - (d) all money borrowed for the purposes of the Compensation Fund;
 - (e) all money recovered by the Fellowship either directly or following the assignment to the Fellowship of the rights of any Claimant as provided for in rule 17;
 - (f) all recoveries under any insurance policy effected by the Fellowship in accordance with rule 11;
 - (g) any other money which may belong to or accrue to the Compensation Fund or be received by the Fellowship in respect of the Compensation Fund.
9. The Fellowship shall place the money constituting the Compensation Fund in a separate designated account entitled "Fellowship of Professional Will writers and Probate Practitioners' Compensation Fund".
10. As trustee the Fellowship may:-
- (a) invest the money constituting the Compensation Fund in such a manner as it thinks fit;
 - (b) borrow for the purposes of the Compensation Fund, and may charge any investments of the Compensation Fund by way of security for such a loan.
11. The Fellowship shall obtain an insurance policy from an insurance company for such purposes and on such terms as the Fellowship may deem expedient in relation to the Compensation Fund.
12. All money from time to time forming part of the Compensation Fund and all investments of the Compensation Fund shall be applicable:-
- (a) for payment of any costs of establishing, maintaining, administering and applying the Compensation Fund;
 - (b) for payment of any premiums on insurance effected by the Fellowship under rule 11;
 - (c) for repayment of any money borrowed by the Fellowship for the purposes of the Compensation Fund and for payment of interest on any money so borrowed and for reimbursing the Fellowship for any costs incurred in that respect;

- (d) for payment of any grants which the Fellowship may make under rule 13 or 16;
 - (e) for payment to the Fellowship of all Costs, charges and expenses incurred by it in the exercise of the powers when such powers are exercised for the purposes of avoiding or minimising a claim on the Compensation Fund;
 - (f) for payment to the Fellowship of any Costs incurred by it for the purpose of inspecting and monitoring the practices and accounts of Willwriters and Recognised Bodies and the practices and accounts of Probate Practitioners;
 - (g) for refund of contributions under rule 6.
13. The Fellowship may in its absolute discretion make a grant out of the Compensation Fund for the purpose of relieving or mitigating loss which the Fellowship is satisfied any person has suffered or is likely to suffer in consequence of: -
- (a) the negligence, fraud or other dishonesty on the part of a Willwriter or a Probate Practitioner or of any employee, associate of his in connection with his practice (or purported practice) as a Probate Practitioner
 - (b) the failure on the part of a Willwriter or a Probate Practitioner to account for money received by him in connection with his practice (or purported practice) as a Probate Practitioner,
14. The Fellowship may make interim or final payments by way of a grant or grants at any time before, during or after the investigation by the Fellowship or any of its committees of a claim against a Respondent Practice provided that it is satisfied in every such case that the payment falls within the circumstances for which a grant may be made under these Rules.
15. After a grant has been made under rule 13 if a Claimant wishes to seek an additional grant in respect of interest or Costs, the Claimant must submit a further claim in accordance with rule 17. A claim for both interest and Costs may be made in a single application.
16. On receipt of a claim under rule 15 the Fellowship will consider it and may in its absolute discretion make an additional grant or grants out of the Compensation Fund under this provision as follows:
- (a) in lieu of interest on the amount of a grant in every case for such a period and at such rate as determined by the Fellowship at its absolute discretion;
 - (b) a sum in respect of the amount of reasonable Costs incurred by any person making a claim wholly and exclusively in connection with the preparation, submission and proof of the rule 13 claim.
17. (a) Where any person makes a claim for a grant under rule 13 or 15 of these Rules he shall complete, sign and deliver to the Fellowship a notice of claim as prescribed by the Fellowship. Such notice shall provide for:-

- (i) the assignment to the Fellowship of all rights of action the Claimant has against the Respondent Practice or any other person liable for the loss;
 - (ii) retention by the Compensation Fund of all money recovered by the Fellowship whether or not in excess of any grant made by the Fellowship to the Claimant after deduction of the Costs incurred by the Fellowship in making such recoveries;
 - (iii) the Claimant to covenant to do all such further things and produce such documents as may be required by the Fellowship for the purpose of pursuing any claim against the Respondent Practice or any other person liable for the loss;
- (b) the claim under rule 13 shall be delivered to the Fellowship within 6 months (or such longer period as the Fellowship may allow in a particular case) after the loss or likelihood of loss first came or should reasonably have come to the knowledge of the Claimant;
- (c) a claim under rule 15 shall be delivered to the Fellowship within 56 days of the making of the grant (or the date of receipt of notification by the Fellowship that no further grant is to be made beyond that made by way of interim grant or grants under rule 14);
- (d) the Fellowship may:-
- (i) require a claim to be supported by a statutory declaration made by the Claimant;
 - (ii) require the production of any relevant documents; and
 - (iii) cause such enquiries to be made in relation to the claim as the Fellowship thinks fit.
18. The Fellowship may before deciding whether or not to make a grant require a Claimant to pursue any civil remedy which may be available in respect of the loss.
19. Without limiting the absolute discretion of the Fellowship, the Fellowship may take into account when deciding whether a claim for a grant should be paid in full, reduced or rejected:-
- (a) whether the Claimant has complied with rules 17(b) or 17(c) as the case may be and, if required by the Fellowship, rule 17(d)(i) and rule.
 - (b) whether sufficient information has been provided promptly in support of the claim;
 - (b) whether the Claimant: -
 - (i) _____ has any responsibility for the loss, or

- (ii) directly or indirectly hoped to profit or did profit, whether wholly or otherwise, from the circumstances giving rise to the loss;
 - (d) whether the Claimant is protected in respect of his loss by any other scheme or any contract of insurance or indemnity or guarantee;
 - (e) whether the Claimant has recovered damages or compensation in respect of the loss which had been suffered including any interest recovered as a result of any available civil remedy or in criminal proceedings or is likely to make such recovery in the future;
 - (f) the assets available to the Compensation Fund;
 - (g) any representations made to the Fellowship by the Respondent Practice, his personal representative, trustee in bankruptcy or the liquidator of a Recognised Body as the case may be;
 - (h) whether any statutory limitation period has expired;
 - (i) whether the Claimant has taken all reasonable steps to mitigate loss;
 - (j) whether the claim has been exaggerated by the Claimant;
 - (k) whether the Fellowship has reason to suspect fraud or other dishonesty on the part of the Claimant in respect of the loss or in respect of the claim.
20. Where the Fellowship refuses to make a grant of either the whole or part of the amount claimed the Fellowship shall inform the Claimant in writing of the reason for its decision within 28 days of that decision.
21. The Fellowship shall not make a grant unless it has caused a letter giving notification of the claim or additional claim to be sent to the Respondent Practice at his last known correspondence address or to any solicitor or other representative instructed by him or appointed on his behalf or in his stead and in any case not less than 8 days have elapsed since the date of such letter.
22. The Fellowship may take proceedings against the Respondent Practice to recover the amount of any grant or other payment made in consequence of the act or omission of that Respondent Practice in accordance with these Rules:
- (a) provided no other civil proceedings for recovery in respect of the same cause of action have already been issued;
 - (b) even if it is not possible to obtain an assignment of the cause of action from or on behalf of the Claimant.
23. Any sum payable in accordance with rule 22 is recoverable as a debt owed to the Fellowship.