



## **Guide to making a claim on the Authority's**

## **Compensation Fund**

**March, 2017**

## **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 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;
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?**

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

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.

- **What criteria does the Authority use to decide on a claim?**

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

- the licensee did not have a licence at the time the loss was sustained,
- 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.

- **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.

- **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**

### 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 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 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  
51 St Stephens Green  
Dublin 2

**SCHEDULE 1.**

**Form PSRCF 1.**

**CLAIM FROM PSRA COMPENSATION FUND**

**Property Services (Regulation) Act 2011**

**Part I**

**APPLICANTS DETAILS**

Surname(s)	
First Name:	
Address:	
Email Address:	
Contact/Mobile Number:	

**Part II**

**PROPERTY SERVICES PROVIDERS DETAILS**

Name of Service Provider:	
Name of Company:	
Address:	
Provide details of your relationship with Licensee (to include any necessary proof)	

**Part III**

**AMOUNT OF LOSS**

Level of Grant applied for:	€
Outline breakdown of claim eg. Actual loss, Costs incurred, Interest	

**Part IV****OTHER SOURCES FROM WHICH LOSS CAN BE RECOVERED**

Has the loss (or any part) been recovered from other sources (e.g. insurance)? Yes:\_\_\_\_ No:\_\_\_\_

If "Yes" please give details:

**REPORT MATTER TO AN GARDA SÍOCHANA**

Have you reported the loss to the Garda Síochána?

Is a criminal investigation ongoing?

**Part V****STATEMENT OF CLAIM PARTICULARS TO BE PROVIDED**

**THIS INFORMATION MAYBE SUBMITTED ON AN ADDITIONAL SHEET OF PAPER CLEARLY MARKED "PART V" PARTICULARS TO BE GIVEN**

1. Date on which you became aware of loss
2. Please provide details of
  - (a) A written contract for service (Letter of Engagement) provided
  - (b) What amount of money was paid to the service provider
3. The circumstances in which and the date or dates upon which the money or other property in respect of which the loss is alleged to have been sustained came into the possession of the Property Services Provider or his clerk or agent and full particulars of such money or property.
4. The facts relied upon in support of the allegations of dishonesty.
5. The date upon and the circumstances in which the loss first became known to the applicant.
6. Particulars of any relevant documents which can be produced in support of this application.
7. Details of any civil, criminal or disciplinary proceedings which have been taken or are in train in respect of the facts set out in this application.
8. Any other relevant particulars.

**PLEASE ATTACH DOCUMENTATION SUPPORTING YOUR CLAIM**

**Part VI**

**DECLARATION**

I, \_\_\_\_\_ the applicant,  
confirm that I have suffered a financial loss, as set out hereunder, which I believe is due to the  
dishonesty of the Property Services Provider referred to in Part III, and in consequence, I am  
now applying to you for a grant out of the Compensation Fund to compensate me for my loss.

I acknowledge that the Authority will be entitled to any rights I may have against the Property  
Services Provider to the extent of any grant paid to me, under section 78(6) of the  
Property Services (Regulation) Act 2011 and that you may sue in my name.

[I transfer to you any rights I may have to recover the loss from the Property Services  
Provider.]

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

# Commissioner for Oaths Declaration

DECLARED before me by

Who is/are personally known to me or, who is/are, identified to me by

Who is personally known to me or whose identity I have established  
before taking this declaration by seeing their passports:

Passport number

Issued on (date of issue)

By the authorities of (issuing state)

Or see below\*

At

In the City or County of

This      day of                      20

Commissioners for Oaths / Practising Solicitor

**\*\* If another form of identification, as allowed by the Civil Law (Miscellaneous Provisions) Act 2008, such as a national identification card is being used, amend this form as necessary and use a separate declaration for each person.**