

IPReg Compensation Arrangements Rules 2021

(Regulations of the Patent Regulation Board of the Chartered Institute of Patent Attorneys and the Trade Mark Regulation Board of the Chartered Institute of Trade Mark Attorneys (working jointly as the Intellectual Property Regulation Board) regarding claims under their compensation arrangements)

Preamble:

The Patent Regulation Board of the Chartered Institute of Patent Attorneys and the Trade Mark Regulation Board of the Chartered Institute of Trade Mark Attorneys working jointly as the Intellectual Property Regulation Board (IPReg) now make the following provisions under:

- (i) Part 5 of, and Schedule 11 to, the Legal Services Act 2007;
- (ii) an Order made under section 69 of the Legal Services Act 2007, S.I. 2014 No. 3238.

These Regulations make provision as to:

- *the establishment of appropriate compensation arrangements by the Chartered Institute of Patent Attorneys and the Chartered Institute of Trade Mark Attorneys;*
- *the procedures for, and the circumstances in which, claims may be made under those compensation arrangements of the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys.*

Rule 1 – Interpretation

1. In these Rules, unless otherwise provided:

“ABS” means a Licensed Body;

“Applicant” means a person applying for a Discretionary Grant;

“Authorised Insurer” means a person who:

- (a) has permission under Part 4A of FSMA to effect or carry out contracts of insurance of a relevant class;
- (b) carries on an insurance market activity, within the meaning of section 316(3) of FSMA;
- (c) is an EEA authorised body of the kind mentioned in paragraph 5(d) of Schedule 3 to FSMA, and which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance of a relevant class; or
- (d) does not fall within paragraph (a), (b), or (c) and who may lawfully effect or carry out contracts of insurance of a relevant class in a member state other than the United Kingdom

where “relevant class” has the meaning set out in section 87(1B) of the Act and provided that this definition must be read with section 22 of FSMA, any relevant order under that section and Schedule 2 to FSMA

“Corporate work” means professional work undertaken by an employed regulated person acting solely as an agent on behalf of:

- (a) their employer;
- (b) a company or organisation controlled by their employer or in which their employer has a substantial measure of control;
- (c) a company in the same group as their employer;
- (d) a company which controls their employer;
- (e) an employee (including a director or a company secretary) of a company or organisation under (a) to (d) above, where the matter relates or arises out of the work of that company or organisation; or
- (f) another person with whom a person under (a) to (e) above has a common interest;

“Compensation Arrangements” means an insurance policy or a compensation fund under which grants may be made to compensate for losses or hardship suffered by persons in consequence of dishonesty, by a Registered Body or its employees or Managers, or a Sole Practitioner or their employees to the extent that such losses are not covered by professional indemnity insurance or otherwise recoverable from another source;

“Discretionary Grant” means a Discretionary Grant made by IPReg under Rule 4;

“FSMA” means the Financial Services and Markets Act 2000;

“the Fund” means an IPReg Compensation Fund established under Rule 3;

“Micro-entity” means a company which has any two of the following: (a) a turnover of £632,000 or less; (b) £316,000 or less on its balance sheet; or (c) 10 employees or fewer.;

“in private practice” means undertaking professional work which is not solely Corporate Work;

“IPReg” means the Patent Regulation Board of the Chartered Institute of Patent Attorneys and the Trade Mark Regulation Board of the Institute of Trade Mark Attorneys working jointly as the Intellectual Property Regulation Board;

“Licensed body” means a Registered Body licensed under Part 5 of the 2007 Act.

“Patent Attorney Register” in respect of Registered persons other than ABS, means the Register kept under section 275 of the Copyright Designs and Patents Act 1988 as amended and, in respect of ABS, is part of IPReg’s Register of licensed bodies for the purpose of section 87 of the 2007 Act;

“the Register” means the combined register kept by IPReg comprising, as sub-registers, the Patent Attorney Register and the Trade Mark Attorney Register and, in respect of ABS, is IPReg’s Register of licensed bodies for the purpose of section 87 of the 2007 Act;

“Registered Body” means a body (corporate or unincorporated) entered in the Patent Attorney Register and/or the Trade Mark Attorney Register, and:

- (a) a body which is an ABS and is entered in the Register, becomes upon that entry, a Licensed Body under the 2007 Act; and
- (b) “Registration” and “Registered” shall be construed accordingly and shall mean, in respect of ABS, “licensing” and “being licensed” for the purpose of the 2007 Act;

“Registered Person” means:

- (a) a patent attorney on the Patent Attorney Register;
- (b) a trade mark attorney on the Trade Mark Attorney Register;

“Sole Practitioner” means a Registered Person who is practising as a sole principal in private practice;

“Trade Mark Attorney Register” in respect of Registered persons other than ABS, means the Register kept under section 83 of the Trade Marks Act 1995 as amended, and in respect of ABS, is part of IPReg’s Register of licensed bodies for the purpose of section 87 of the 2007 Act;

“the 2007 Act” means the Legal Services Act 2007.

Rule 2 – Compensation Arrangements

2.1 IPReg will establish and maintain Compensation Arrangements which shall be applied to the payment of Discretionary Grants and for the other purposes provided for under these Rules. Such Compensation Arrangements may take the form either of:

- (a) a compensation fund or funds; or
- (b) one or more policies of insurance with Authorised Insurers.

- 2.2 The Compensation Arrangements made under Rule 2.1 provide for grants or other payments for the purposes of relieving or mitigating losses or hardship suffered by persons in consequence of:-
- (a) dishonesty on the part of:
 - (i) a Registered Body or former Registered Body in connection with the body's activities as a Registered Body, or
 - (ii) a manager or employee (or former manager or employee) of a Registered Body or former Registered Body in connection with the body's activities as a Registered Body;
 - (iii) a Sole Practitioner or former Sole Practitioner in connection with the Sole Practitioner's activities as a Registered Person;
 - (iv) an employee (or former employee) of a Sole Practitioner or former Sole Practitioner in connection with the Sole Practitioner's activities as a Registered Person;
 - (b) fraudulent or dishonest failure on the part of any person referred to in subparagraph (a)(i) to (iv) to account for money received by them in connection with the Registered Body's activities as a Registered Body or the Sole Practitioner's activities as a Registered Person.
- 2.3 Every:
- (a) Registered Body; and
 - (b) Sole Practitioner
- shall make contributions to the Compensation Arrangements. The rate, amount and payment arrangements for those contributions shall be such as IPReg may from time to time prescribe.
- 2.4 Any contribution in accordance with Rule 2.3 is recoverable by IPReg as a debt due from the relevant person.

Rule 3 - Management of the Fund

- 3.1 In the event that the Compensation Arrangements established pursuant to Rule 2.1 shall take the form of a compensation fund, the Fund shall be managed by IPReg, which may:
- (a) hold and distribute any monies raised for the purposes of the Fund;
 - (b) invest the Fund in any investments in which trustees may invest under section 3 of the Trustee Act 2000 (general power of investment);
 - (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 which form part of the Fund as security for such borrowing; and
 - (e) use the Fund to pay any other costs, charges or expenses incurred by in establishing and administering the Fund.

- 3.2 The payments which may be made under Rule 3.1(e) include any expenditure, including the payment of any award of costs or damages, incurred by IPReg, 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.

Rule 4 - Discretionary Grants

- 4.1 Any Discretionary Grant shall be made in the absolute discretion of IPReg and no person shall have a right to such a grant which is enforceable at law.
- 4.2 IPReg may set out in guidance the factors it will take into account in exercising its discretion.

Rule 5 – Eligible Applicants

- 5.1 Applications for Discretionary Grants may only be made by:
- (a) a current or former individual client, or
 - (b) a Micro-entity:
 - (i) who is or was a client; and
 - (ii) where IPReg is satisfied that hardship has been caused to that entity.

Rule 6 – Applications

- 6.1 An application for a Discretionary Grant shall be made:
- (a) in such form as IPReg may from time to time prescribe; and
 - (b) not more than one year after the Applicant first knew, or with reasonable diligence should have known, about the misappropriation or failure to account.
- 6.2 An Applicant must provide evidence to satisfy IPReg that, in consequence of any of the matters referred to in Rule 2.2, the Applicant has suffered loss and hardship.
- 6.3 The Applicant has the burden of proving an application and must provide IPReg with such documents or other information as it may require in respect of that claim.
- 6.4 Failure to provide documents or other information or to co-operate with IPReg may be taken into account when determining the merits of a claim.

Rule 7 - Other remedies and subrogation

- 7.1 A Discretionary Grant may be refused in respect of all or any part of a loss that is:
- (a) an insured risk; or
 - (b) a risk that would have been insured if professional indemnity insurance had been in place as required by Rule 17 of the IPReg Code of Conduct; or
 - (c) capable of being made good by any other means.

- 7.2 Before deciding whether to make a Discretionary Grant, IPReg will require an Applicant to:
- (a) pursue any civil remedy against the Registered Body or Sole Practitioner who is the subject of the application to the extent that it is reasonably practicable to do so;
 - (b) commence insolvency proceedings against that Registered Body or Sole Practitioner (if they have not already been commenced) where possible;
 - (c) make a formal complaint to the Police or other agency against that Registered Body or Sole Practitioner; and
 - (d) assist in the taking of any action against that Registered Body or Sole Practitioner to the extent that it is reasonably practicable to do so.
- 7.3 If a Discretionary Grant is made, any rights or remedies of the recipient shall be subrogated to IPReg and, if required by IPReg (whether before or after the making of the grant), the Applicant shall:
- (a) prove in any insolvency or winding-up of the Registered Body or Sole Practitioner;
 - (b) sue for recovery of the loss in the name of the Applicant but on behalf of IPReg; and
 - (c) comply with any other reasonable requirement for the purpose of giving effect to IPReg's rights.

Rule 8 - Grant Limits

- 8.1 A Discretionary Grant may not exceed £25,000.

Rule 9 - Refusal of an application

- 9.1 If an application for a Discretionary Grant is refused, whether in whole or part, IPReg will inform the Applicant in writing of its decision and the reasons for that decision within 28 days of the date of the decision.

Rule 10 – Commencement

- 10.1 These regulations apply from 31 October 2021.