



# *Probate Compensation Scheme Regulations*

EFFECTIVE FROM 23 FEBRUARY 2017

# 1 GENERAL

## Authority and commencement

- 1.1. These *regulations* are made by the Council of *ICAEW*, pursuant to Clause 16 of the Supplemental Royal Charter of 1948. They came into force on 22 September 2014 and were amended on 23 February 2017.
- 1.2. Any notice or document may be served on *ICAEW* by sending it to:
- Professional Conduct Department  
ICAEW  
Metropolitan House  
321 Avebury Boulevard  
Milton Keynes  
MK9 2FZ
- 1.3. Subject as herein provided, any notice, decision, order or other document which needs to be served on any *applicant*, *firm* or *accredited probate firm* under these *regulations* will be delivered by hand, or sent by email, fax or post:
- if it is delivered by hand to the addressee, service will take effect immediately;
  - if sent by email, it will be sent to the most recent email address given by the addressee and service will take effect immediately;
  - if sent by fax, it will be sent to the most recent fax number given by the addressee and service will take effect immediately; or
  - if sent by post, it will be sent to the latest address given by the addressee and service will take effect two business days after posting.
- 1.4. Any requirement of the *Probate Committee* under these *regulations* will be communicated in writing.

## Interpretation

- 1.5. The words listed below shall have the meanings given:

Accreditation	The process by which <i>ICAEW</i> authorises or licenses persons to undertake <i>probate work</i> in accordance with the Probate Regulations.
Accredited probate firm	A <i>firm</i> authorised or licensed under <i>ICAEW</i> 's Probate Regulations to conduct <i>probate work</i> .
Act	Legal Services Act 2007
Appeal Tribunal	The First-tier Tribunal established under the Tribunals, Courts and Enforcement Act 2007.
Applicant	A person (including an individual or a body corporate) who makes an <i>application</i> for a <i>grant</i> of compensation in accordance with these <i>regulations</i> , but excluding a person as set out in <i>regulation</i> 3.3.
Application	A claim for the <i>grant</i> of compensation made in accordance with <i>regulation</i> 7.1.
Authorised work	<ul style="list-style-type: none"><li><i>Probate work</i></li><li>Following a grant of probate or letters of administration, work undertaken in collecting in the assets of an estate, settling the liabilities and distributing the remainder in accordance with a will or letters of administration.</li></ul>
Employee	Anyone who carries out <i>authorised work</i> for an <i>accredited probate firm</i> but excluding a <u>principal</u> .

Firm	A <i>firm</i> includes a: <ul style="list-style-type: none"> <li>• sole practice;</li> <li>• partnership;</li> <li>• limited liability partnership; or</li> <li>• body corporate.</li> </ul>
Grant	The payment to an <i>applicant</i> in accordance with a decision of the <i>Probate Committee</i> under <i>regulation 3</i> .
ICAEW	The Institute of Chartered Accountants in England and Wales.
Principal	<ul style="list-style-type: none"> <li>• an individual in sole practice (where the <i>firm</i> is a sole practice);</li> <li>• a person who is a partner (including both salaried and equity partners) (where the <i>firm</i> is a partnership);</li> <li>• a member of a limited liability partnership (where the <i>firm</i> is a limited liability partnership);</li> <li>• a director (where the <i>firm</i> is a company);</li> <li>• a member of the governing body (where the <i>firm</i> is an unincorporated body, other than a partnership); or</li> <li>• any individual or person who is held out as being a director, partner, member, or member of the governing body.</li> </ul>
Probate Committee	The committee established under chapter 9 of the Probate Regulations.
Probate Compensation Scheme	The <i>scheme</i> for the payment of <i>grants</i> made in accordance with these <i>regulations</i> .
Probate work	The preparation of papers to apply for a grant of probate or letters of administration.
Regulations	These <i>Probate Compensation Scheme Regulations</i> , as modified or amended from time to time.

- 1.6. In these *regulations*, headings are for convenience only, and shall not affect interpretation.
- 1.7. In these *regulations* words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter. Words importing the neuter gender include both the masculine and feminine genders. These *regulations* will be governed by, and interpreted in accordance with, the laws of England and Wales.

### **Administration of the scheme**

- 1.8. The *Probate Committee* is responsible for administering the *Probate Compensation Scheme* and for determining *applications* for compensation made under these *regulations*.

## **2 THE PROBATE COMPENSATION SCHEME**

- 2.1 These *regulations* apply to:
- accredited probate firms*;
  - firms* that were previously *accredited* in accordance with the Probate Regulations and any reference to *accredited probate firms* shall include such *firms*; and
  - applicants*.
- 2.2 An *accredited probate firm* must pay any levy for ICAEW's *Probate Compensation Scheme* (whether a periodic contribution or special levy) as ICAEW may decide from time to time. This includes levies raised after the *firm's accreditation* has ceased but excludes levies

relating to claims in respect of services provided by any *firm* wholly after the date of termination of the *firm's accreditation*.

- 2.3 *ICAEW* may invest any money which forms part of the *Probate Compensation Scheme* in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act).
- 2.4 *ICAEW* may insure, in relation to the *Probate Compensation Scheme*, for such purposes and on such terms as it considers appropriate.
- 2.5 *ICAEW* may borrow for the purposes of the *Probate Compensation Scheme* and charge investments which form part of the *Scheme* as security for borrowing by *ICAEW* for the purposes of the *Scheme*.
- 2.6 The *Probate Compensation Scheme* may be applied by *ICAEW* for the following purposes (in addition to the making of *grants* in respect of *applications* for compensation):
  - a. payment of premiums on insurance policies effected under *regulation 2.4*;
  - b. repayment of money borrowed by *ICAEW* for the purposes of the *Probate Compensation Scheme* and payment of interest on any money so borrowed under *regulation 2.5*;
  - c. payment of any other costs, charges or expenses incurred by *ICAEW* in establishing, investing, maintaining, protecting, administering or applying the *Probate Compensation Scheme*;
  - d. payment of any costs, charges or expenses incurred by the *ICAEW* in exercising its powers under Schedule 14 to the *Act* (intervention powers) or any intervention powers which it may have as an approved regulator under the *Act*;
  - e. payment of any costs or damages incurred by *ICAEW* or its employees, agents, any member, officer, and any member of the *Probate Committee*, as a result of proceedings against any of them for any act or omission made in good faith and in the exercise or purported exercise of any of their functions under these *regulations*.

### 3 GRANTS FROM THE PROBATE COMPENSATION SCHEME

- 3.1 A *grant* from the *Probate Compensation Scheme* is made wholly at the discretion of the *Probate Committee* and on such terms as the *Committee* deems appropriate. No person has a right to a *grant* enforceable at law.
- 3.2 In particular and for the avoidance of doubt, the *Probate Committee* may only make a *grant* if, and to the extent that, funds are available in the *Scheme* at the time of the decision on whether to make a *grant*.
- 3.3 The *Probate Committee* will not make a *grant* in favour of an *applicant* which, if a body corporate or a registered charity, had an annual turnover in the last accounting year equal to, or exceeding, £1 million.
- 3.4 For a *grant* to be made from the *Probate Compensation Scheme*, an *applicant* must satisfy the *Probate Committee* that:
  - a. he has suffered loss in consequence of fraud or other dishonesty on the part of an *accredited probate firm* or of any *principal* or *employee* of an *accredited probate firm*, in connection with their activities in the course of *authorised work*; or
  - b. he has suffered loss in consequence of a failure to account for money which was received by an *accredited probate firm*, or the *principal* or *employee* of an *accredited probate firm*, in connection with their activities in the course of *authorised work*.
- 3.5 A *grant* may be made, at the sole discretion of the *Probate Committee*, as an interim measure and on such terms as the *Probate Committee* deems appropriate.

## 4 GRANTS IN RESPECT OF PERSONS IN DEFAULT OF REGULATORY REQUIREMENTS

- 4.1 At the absolute discretion of the *Probate Committee* a *grant* may be made even if at the time of the relevant act or default by the *accredited probate firm* or its *principal* or *employee*:
- the *accreditation* of the *accredited probate firm* had ceased under regulation 2.22 of the Probate Regulations; or
  - the *accreditation* of the *accredited probate firm* was suspended under chapter 10 of the Probate Regulations; or
  - the *principal* or *employee* of the *accredited probate firm* was disqualified under chapter 5 of the Probate Regulations,
- provided that the *Probate Committee* is reasonably satisfied that the *applicant* at that time was unaware of the cessation, suspension or disqualification.

## 5 CASES NOT COVERED BY THE PROBATE COMPENSATION SCHEME

- 5.1 For the avoidance of doubt, a *grant* will not be made in respect of losses which:
- are the personal debts of an *accredited probate firm* or a *principal* or *employee* of such a *firm* and where the facts would not otherwise give rise to an *application* to the *Probate Compensation Scheme*;
  - result from, but do not form part of, any misappropriation of, or failure to account for, money or money's worth;
  - result from the trading debts or liabilities of the *accredited probate firm*;
  - amount to a claim for contractually agreed interest between the *applicant* and the *accredited probate firm*;
  - were not notified to the *Probate Committee* in accordance with *regulation 7.1*;
  - result from activities of the *accredited probate firm* other than in its performance of *authorised work*;
  - arise solely by reason of professional negligence by an *accredited probate firm* or a *principal* or *employee* of such a *firm*; or
  - arose at any time when the *firm* was not *accredited*, save for the circumstances set out in *regulation 4.1*.

## 6 MULTI-PARTY AND MULTI-PROFESSION ISSUES

- 6.1 Where the loss has been sustained as a result of the combined activities of more than one party (eg, an *accredited probate firm* conspires with a solicitor or is assisted by a negligent solicitor), the *Probate Committee* will consider the role of each contributing factor in causing the *applicant's* loss. The *Probate Committee* will base any *grant* on its assessment of that portion of the loss primarily attributable to the acts of the *accredited probate firm*. The *Probate Committee* may decide to make a *grant* on a pro-rata basis in accordance with its assessment of the importance of each contributing factor in the loss, or may reject an *application* in its entirety if it is of the opinion that the loss was primarily due to factors other than the fraud or dishonesty of the *accredited probate firm*, or its *principal(s)* or *employee(s)*, or their failure to account for money which was received in connection with activities in the course of *authorised work*.
- 6.2 When an individual authorised by another approved regulator (as set out in Schedule 4 of the *Act*) is practising as the *principal* or *employee* of an *ICAEW accredited probate firm*, *ICAEW* may, in its absolute discretion, consider an *application* in respect of that individual's act or default.

## 7 APPLICATIONS: FORM AND TIME LIMIT

- 7.1 Every *application* must be delivered to *ICAEW*, in such form as may from time to time be prescribed by *ICAEW*, within twelve months after the loss first came, or reasonably should have come, to the knowledge of the *applicant*. The *Probate Committee* may extend this period if satisfied that there are exceptional circumstances which justify the extension of the time limit.

## 8 DOCUMENTATION IN SUPPORT

- 8.1 An *applicant* must provide such documentation as may be required by the *Probate Committee* including, when requested, a statement of truth. Failure to provide such documentation or to cooperate with the *Probate Committee* will be taken into account when determining the merits of the *application* and may be treated as a reason for withholding or reducing a *grant*.

## 9 EXHAUSTING OTHER REMEDIES

- 9.1 A *grant* will be refused where:
- a. the loss is an insured risk; or
  - b. in the reasonable opinion of the *Probate Committee*, the loss is capable of being made good by some other means.
- 9.2 A *grant* will be reduced where, and to the extent that:
- a. part of the loss is an insured risk; or
  - b. in the reasonable opinion of the *Probate Committee*, part of the loss is capable of being made good by some other means.
- 9.3 In particular the *Probate Committee* may, before deciding whether to make a *grant* or the amount of a *grant*, require the *applicant* to:
- a. pursue any civil remedy which may be available to the applicant in respect of the loss;
  - b. commence insolvency proceedings;
  - c. make a formal complaint to the Police in respect of any dishonesty on the part of the accredited probate firm or its principal(s) or employee(s); or
  - d. assist in the taking of any action against the accredited probate firm or its principal(s) or employee(s).
- 9.4 If a *grant* is made (whether under *regulation 3.5* or otherwise) before requiring the *applicant* to resort to other means of recovery, such *grant* will be made repayable to *ICAEW* in the event (and to the extent) that losses are recovered by such other means.

## 10 NOTICE TO ACCREDITED FIRM

- 10.1 The *Probate Committee* shall not make a *grant* unless:
- a. a communication has been sent to the *accredited probate firm* at its last known correspondence address, as set out in *Regulation 1.3*, or to its representative informing the *accredited probate firm* of the nature of the *application*; and
  - b. at least eight days have elapsed since the date of receipt of such communication which, notwithstanding *Regulation 1.3*, shall be regarded as the day following the date of the communication.
- 10.2 If it appears to the *Probate Committee* that any communication sent under *Regulation 10.1* will not come to the attention of the *accredited probate firm* or its representative, then the

*Probate Committee* may make a *grant* notwithstanding failure to comply with the provisions of this *regulation*.

## 11 COSTS

### Litigation costs

- 11.1 Where an *applicant* intends to institute or has already instituted civil proceedings for recovery of his loss and wishes to apply for a *grant* in respect of the costs of the proceedings, the *Probate Committee* will not consider making or increasing a *grant* in respect of such costs unless:
- they can be shown to be proportionate to the loss and the amount likely to be recovered; or
  - the proceedings are/were necessary for the making of the *application* for a *grant*.

### Application costs

- 11.2 Where a *grant* is made, the *Probate Committee* may, in its absolute discretion, consider an *application* for a further *grant* in respect of any reasonable fees payable by the *applicant* to any professional adviser, provided that such costs were incurred wholly, necessarily and exclusively in connection with the preparation, submission and proof of the *application*.

## 12 MAXIMUM PAYMENT

- 12.1 Subject to *regulation* 12.2 the maximum total amount that may be granted pursuant to *applications* under this *scheme* in respect of *authorised work* in connection with any single estate is limited to £500,000 (exclusive of any interest payable under *regulation* 17.1).
- 12.2 The maximum amount which the *Probate Committee* may determine shall be paid out of the *Probate Compensation Scheme* in any calendar year shall be:
- the amount determined by the *Probate Committee* which may be expected not to cause the *grants* payable in that year to exceed £5,000,000; plus
  - the amount of any money recovered in that year by the *Probate Compensation Scheme*, net of VAT (if applicable), pursuant to the provisions of *regulation* 13.1 and available for payment in that year; plus
  - the amount of any sums so recovered in previous years and not disbursed and which are available for payment in the relevant year, net of VAT (if applicable).

Accordingly if, in the course of any such calendar year, it appears to the *Probate Committee*, in its absolute discretion, that the total of such amounts is otherwise likely to be exceeded in that calendar year, then in the remainder of that calendar year it shall not determine that the full amount shall be paid in respect of any *application*, but shall secure, as far as it reasonably can, that all *grants* it thereafter determines shall be made, taking into consideration any *grant* on account, are abated rateably one with another.

- 12.3 Where the *Probate Committee* has abated a *grant* under 12.2 it may, in its absolute discretion, at the end of the financial year of *ICAEW* in which the initial *grant* was made (the Grant Year) determine whether or not:
- the balance of the amount stated in the *application* or a part thereof; and
  - interest on such balance;
- should be paid in the next following year of *ICAEW* (the Following Year) and any such further *grant* shall be made out of funds available to the *Probate Committee* for the Following Year as provided in *regulation* 12.2.

## 13 RECOVERY AND SUBROGATION

- 13.1 Where a *grant* is made otherwise than by way of loan, or where a *grant* is made by way of a loan and repayment of the loan is waived or otherwise the borrower has failed to repay part or all of the loan, *ICAEW* shall be subrogated to the rights and remedies of the person to whom or on whose behalf the *grant* is made (the recipient) to the extent of the amount of the *grant*. In such event the recipient shall if required by *ICAEW* whether before or after the making of a *grant* and upon *ICAEW* giving to the recipient a sufficient indemnity against costs, prove in any insolvency and/or winding-up of the *accredited probate firm* and/or sue for recovery of the loss in the name of the recipient but on behalf of *ICAEW*. The recipient shall also comply with all proper and reasonable requirements of *ICAEW* for the purpose of giving effect to *ICAEW*'s rights and shall permit *ICAEW* to have conduct of such proceedings.

## 14 REDUCTION IN GRANTS

- 14.1 Where an *applicant* or the *applicant's* servant or agent has contributed to the loss as a result of his activities, omissions or behaviour whether before, during or after the event giving rise to the *application*, the *Probate Committee* may, in the exercise of its absolute discretion and to the extent that it considers that such activity, omission or behaviour has contributed to the loss, reduce the amount of any *grant* or reject the *application* in its entirety.

## 15 DEDUCTION FROM GRANTS

- 15.1 The *Probate Committee* may deduct from any *grant* the fees that would have been payable by the *applicant* to the *accredited probate firm* so that the *applicant* will not be in a better position by reason of a *grant* than he would otherwise have been in had the loss not occurred.
- 15.2 The *Probate Committee* may deduct from any *grant* all monies already recovered by an *applicant* and monies which in its reasonable opinion either will be or should have been recovered.

## 16 REFUSAL OF AN APPLICATION

- 16.1 If the *Probate Committee* refuses to make a *grant* of either the whole or part of the amount applied for, the *applicant* will be informed in writing of the reasons for the decision.
- 16.2 If an *application* is refused in whole or in part, a further *application* for the same loss (or loss which includes the same loss) may not be made unless, in the reasonable opinion of the *Probate Committee*, it is supported by substantial new relevant evidence, information or submissions in which case *ICAEW* may, in its absolute discretion, consider a renewed *application*.

## 17 INTEREST

- 17.1 The *Probate Committee* may in its absolute discretion pay interest to an *applicant* on a *grant* of compensation. Any interest shall accrue from a date three calendar months after the date on which all information necessary to determine the *application* was provided by the *applicant* to the *Probate Committee*.
- 17.2 Any interest payable under *regulation* 17.1 shall be simple interest paid at a rate which is applied by HMRC in respect of Income Tax repayments.

## 18 APPEALS

If an *application* is refused in whole or in part, the *applicant* may appeal to the *Appeal Tribunal* in accordance with regulations 11.5 to 11.8 of the Probate Regulations as if the refusal of the application were a decision of the Review Committee under the Probate Regulations.