

## GUARANTEE FUND CLAIMS

### Introduction

The Guarantee Fund is for the protection of those who have lost money as a result of their solicitor acting dishonestly. It is operated by the Law Society of Scotland and those who have suffered loss in this way can apply to the Society for a grant of compensation. All solicitors in Scotland who handle clients' money contribute to the Fund each year.

A justifiable claim must satisfy a number of conditions.

- The solicitor must have acted dishonestly in the course of their legal practice.
- The claimant must have suffered monetary loss.
- There must be no other means of recovering the money; for example, by suing the solicitor directly or making a negligence claim.

### Who can make a claim

- Anyone who has suffered loss as a result of a solicitor's dishonesty can make a claim. In most cases this will be the client but this does not have to be. For example, a beneficiary named in a Will may be eligible to make a claim.
- Most claims are against sole practitioners as those who work in a partnership are likely to be covered by the Master Policy of Insurance for solicitors for the dishonesty of one of their partners. Where a loss has occurred, and there are other partners in the firm, they should be contacted first.
- No claim may be made by the solicitor concerned nor a partner of that solicitor.

### How to make a claim

To make a claim write to the Guarantee Fund Department of the Society giving details of the amount of the claim and the solicitor involved. An application form will then be forwarded for completion. The application must be made in the approved form which is forwarded. The form will assist in setting out the nature of the claim giving details of the circumstances. An application form is attached below. Documentation to support the claim should also be forwarded where appropriate.

- A claim must be made known to the Guarantee Fund Department within one year of it coming to the attention of the claimant.

### How much can be claimed

- The total amount of the losses in relation to the dishonest actings of the solicitor. (An amount of interest may be payable on that sum.)
- The applicant may also be able to claim all or part of their present solicitor's fee in bringing the claim to the Society. A simple claim does not normally require the assistance of a solicitor but if the claim is complex then consideration will be given to a payment of reasonable legal fees. Any fee of more than £250 will be considered in detail and may not be paid in full. Any fees in excess of £500 must be approved in advance of the work being carried out.

## **Notification of claim**

Any claim on the Fund must be notified to the Society within one year of the loss coming to the applicant's attention.

## **Procedure**

On receiving the application, the Society will consider the claim and, if appropriate, there may be further investigation by way of an exchange of correspondence.

At this stage the claim may be rejected if it does not fulfil the conditions required to make a grant.

If the claim is to go ahead then a report will be prepared setting out the details of the claim.

The report along with the relevant supporting documentation will be presented to the Guarantee Fund Committee which will consider and decide on claims up to a value of £50,000 on behalf of the Council of the Society.

The Council is the governing body for solicitors in Scotland. The members of the Committee are drawn from the Council. The decision as to whether a claim for more than £50,000 should be paid will be made by the Council. The Committee will consider the claim first and will make a recommendation to Council as to whether the claim should be accepted but the final decision lies with the Council.

The Council or the Committee can ask for any documentation it feels necessary to consider the claim. It is open for evidence to be given on oath. In most cases, it will be a condition of the grant that any rights to recover the money from the solicitor are assigned or passed over to the Society. The Grant may also be paid in instalments. The Council may refuse a grant if they consider that there has been negligence on the part of the applicant or that the applicant has been partly to blame for the loss.

If the claim is rejected then there is no right of appeal against the Council's decision.

If the claim is accepted the applicant will be expected to sign a document to pass their rights to recover the money from the solicitor to the Society. Once the necessary documentation has been signed and returned to the Society then the compensation is payable.

Enquiries should be directed to: -

The Guarantee Fund Department  
The Law Society of Scotland  
26 Drumsheugh Gardens  
Edinburgh  
EH3 7YR

**THE LAW SOCIETY OF SCOTLAND**  
**THE SCOTTISH SOLICITORS' GUARANTEE FUND**

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**APPLICATION FORM FOR A GRANT OUT OF THE  
SCOTTISH SOLICITORS' GUARANTEE FUND**

To: THE LAW SOCIETY OF SCOTLAND  
26 Drumsheugh Gardens  
Edinburgh, EH3 7YR

LP-1, Edinburgh-1

I, [full name of applicant] .....

Designation .....

Address .....

.....

Post Code .....

Telephone Number .....

hereby apply to the Council of the Law Society of Scotland that, in the exercise of the absolute discretion conferred upon them by the Solicitors (Scotland) Act 1980, they make to me a grant of £.....

or such other sum as they may think proper out of the Scottish Solicitors' Guarantee Fund by way of compensation for a pecuniary loss sustained by me by reason of the dishonesty of:-

Name .....

Designation .....

Address .....

.....

Firm .....

Status in firm, if known .....

Date the original Notice of claim was sent to the Secretary .....

**SCHEDULE OF PARTICULARS**

**Please state as clearly and concisely as you can the answers to the following questions:-**

1. Please give the date or dates upon which the money or other property in respect of which your loss has been sustained came into the possession of the Solicitor, or his or her employee.

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2. Please give full particulars of such money or property.

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3. Please explain why you allege dishonesty.

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4. State the date which your loss first came to your attention .....

5. Explain briefly how this happened.

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6. If you have any documents which you think would help your claim, please list them here and enclose a copy of each.

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7. Are you aware of any other application that may be made in respect of this loss?  
Yes/No \*please delete as appropriate

If Yes, please give name and address of other applicant.

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8. Are you aware of any civil, criminal or disciplinary hearings arising out of this matter?  
Yes/No \*please delete as appropriate

If Yes, please give the details, including the result, if known.

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9. Have you taken court or other proceedings in respect of your loss?

Yes/No \*please delete as appropriate

(a) If Yes, please give brief details.

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(b) If No, are you considering taking court or other proceedings in respect of your loss?

Yes/No \*please delete as appropriate

10. Do you have a Solicitor acting on your behalf?

Yes/No \*please delete as appropriate

If Yes, please give his name, firm, address and telephone number

Name .....

Firm .....

.....

Address .....

.....

Post Code .....

Telephone Number .....

11. Is there **any other relevant information** which you think would be of assistance to the Guarantee Fund Committee in considering your application?

If so, please detail.

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I solemnly and sincerely declare that the information given by me in this application is true to the best of my knowledge and belief, and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

..... Claimant

Declared at .....  
on (date) .....  
before me .....

(this application should be signed in the presence of a Notary Public, Commissioner for Oaths, Justice of the Peace or other person authorised to administer oaths).