



## **GUARANTEE FUND CLAIMS**

### **Introduction**

The Guarantee Fund is for the protection of those who have lost money as a result of their solicitor or a member of their staff 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 principles in private practice in Scotland contribute annually.

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 Financial Compliance 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 standard form. The form will assist in setting out the nature of the claim giving

details of the circumstances. Please refer to the Guarantee Fund Guidelines to help you decide what evidence you require to have.

You can download a copy of an Application Form from the Law Society website [www.lawscot.org.uk](http://www.lawscot.org.uk)

- A claim must be made known to the Financial Compliance 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.
- 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.

In most cases, a Judicial Factor will have been appointed by the Courts to protect the interest of clients. If a Judicial Factor has been appointed, you should contact him or her in the first instance. The Judicial Factor's office should be able to assist you to establish the amount of your claim. If no Judicial Factor has been appointed, or you are not sure of the circumstances, then you should contact the Financial Compliance Department directly.

### **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. Those handling the claim can ask for any documentation they feel is necessary to consider the claim. It is open for evidence to be given on oath.

The report along with the relevant supporting documentation will be considered. Depending upon the size and urgency of the claim, it may be decided upon by either the Guarantee Fund Committee, a small sub-Committee of the Guarantee Fund Committee, the Professional Conduct Committee or a Director of the Society.

These groups will make a decision on behalf of the Council which is the governing body for solicitors in Scotland.

- (a) If the claim is less than £1,000, it will be considered by a Director of the Society. Any dispute as to the amount to be paid can be reviewed by the Guarantee Fund Committee.
- (b) If it is for £1,000 or more then it will be considered by either the Guarantee Fund Committee or a sub-Committee of the Guarantee Fund Committee. Again, any dispute as to the amount to be paid or refusal can be reviewed by the Professional Conduct Committee. 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.

To aid administration or, in an emergency, these claims may be considered by a sub-Committee of the Guarantee Fund.

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

Enquiries should be directed to: -

Solicitor to the Guarantee Fund  
The Law Society of Scotland  
26 Drumsheugh Gardens  
Edinburgh EH3 7YR