



Client Protection Fund Guidelines

The Client Protection Fund (the Fund) is the operating name for the Scottish Solicitors' Guarantee Fund.

The Fund is used to reimburse clients and some others who have suffered monetary loss because of the dishonesty of a solicitor or their staff. All Scottish solicitors' firms contribute to the Fund, which is administered by the Law Society of Scotland. It is a unique consumer protection. Grants from the Fund are made at the discretion of our ruling Council and our Client Protection Sub-Committee.

In these guidelines, "solicitor" includes a solicitor, a firm of solicitors, an incorporated practice, a registered foreign lawyer and a multi-national practice.

1 Key factors

- (a) The Fund is used to reimburse those who have suffered monetary loss because of the dishonesty of a solicitor or their staff. The applicant will usually have been the solicitor's client but not always. For example, a beneficiary named in a will may be eligible to make a claim.
- (b) Grants are made at our discretion. We administer the Fund in an even-handed and consistent way. Every case is considered on its individual merits and circumstances. By law, no-one is automatically entitled to a grant but, in exercising its discretion, we will give priority to the most pressing claims.
- (c) Grants are only paid if the loss cannot be reimbursed by any other means. A grant could be limited or refused to an applicant if the loss is an insured risk or is capable of being recovered from another source. Exceptionally, applicants can argue that the options for recovering a loss are not practical or do not offer a reasonable chance of success. We will consider any such arguments on their merits.
- (d) Responsibility for satisfying us that a loss has been suffered rests with each applicant, but we will give guidance.
- (e) A solicitor's dishonesty must have occurred within the course of a usual solicitor/client relationship.
- (f) The claim form (available on our website or from the Financial Compliance Department) must be used when making an application, subject to the following:
 - An application for over £5,000 must be signed by an authorised legal professional, such as a notary public, unless we exercise our discretion to waive that requirement. For more information about notaries public, please contact your solicitor or go to the European e-Justice Portal (www.e-justice.europa.eu).
 - If a Judicial Factor is appointed, claims from clients who urgently need access to funds that are effectively frozen in the solicitor's client account will be treated as a priority.
- (g) No claim can be made by the solicitor concerned or a partner of that solicitor.

2 Requirements to be satisfied

Every applicant for a grant must show that:

- (a) He or she has lost money or property.
- (b) The loss was caused by the dishonesty of a solicitor (or their staff) during his or her practice or while a professional trustee of a trust.
- (c) The allegation of dishonesty is supported by the conviction of the solicitor (or their staff), or by a finding of fraud in a civil action, or by other evidence that proves dishonesty.

- (d) The loss is not recoverable from any other source. In some cases, an applicant may have to take civil action, such as insolvency proceedings, against the solicitor to recover all or part of the alleged loss or to quantify the amount of the loss.

3 Losses not covered by the Fund

In certain circumstances, we have no power to make a grant.

Examples include:

- (a) Losses from the misappropriation of money by a solicitor outside his or her practice, or by a solicitor's employee outside his or her employment.
- (b) Losses arising solely from the professional negligence of a solicitor.
- (c) Losses from the personal or trading debts of a solicitor.
- (d) Losses which arose at a time when a solicitor was suspended from practice.
- (e) Losses where no evidence of dishonesty is available.

4 Losses that will not normally result in payment of a grant

In certain circumstances, we will not normally make a grant.

Examples include:

- (a) Losses that were indirectly connected to misappropriation by a solicitor or their staff.
- (b) The loss was in any way due to the applicant's own dishonesty.
- (c) The applicant contributed to the loss by his or her activities, omissions or behaviour before, during or after the transaction that forms the basis of the application.
- (d) We were not notified of the applicant's loss within a year of it coming to their attention and there were no exceptional circumstances that justified the delay.
- (e) The application is based on the failure by a solicitor to comply with a legal promise or guarantee known as an undertaking. A solicitor's failure to comply with an undertaking could amount to professional misconduct but would not normally lead to payment of a grant.
- (f) Losses where the solicitor is or was in a partnership. In these instances, applicants should make a claim against the remaining partners who, in turn, will make a claim against their professional indemnity insurance which is arranged by us for all Scottish solicitors in private practice, known as the Master Policy.



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5 Claims involving more than one profession

If more than one profession has contributed to the loss – such as a dishonest solicitor acting with an accountant or surveyor – we will take into account the role of each individual. A grant will be based on the portion of the loss caused by the solicitor. An application could be rejected if the loss is considered to be primarily due to factors other than the solicitor's dishonesty.

6 Criminal proceedings

In appropriate cases, the applicant will be expected to help the police with criminal enquiries into alleged dishonesty.

7 Has the applicant contributed to the loss?

When considering an application, we will take into account whether the applicant, or their staff or agents, may have contributed to the loss, for instance, by failing to exercise a reasonable standard of care, or by failing to meet the timescales in these guidelines. In these circumstances, the application could be rejected or the amount of any grant substantially reduced.

8 The grant

The maximum grant from the Fund is set at £1.25 million. The grant may be paid in instalments.

9 Interest on claims

Interest is not normally paid on claims but we may consider an application for a grant in lieu of interest in exceptional cases.

10 Expenses

Applicants will not normally need a solicitor to make a claim for a grant. If you choose to use a solicitor, we will consider payments for reasonable legal fees. Proof of fees paid and the work carried out must be provided. Any fee of more than £500 plus VAT must be cleared by us in advance of the work being carried out. Other losses and expenses included in a claim will be considered on their individual merits.

11 Deductions from grants

We may deduct the costs that would have been due to the solicitor had the work been properly completed so that the applicant will not receive more than the losses suffered. We will normally deduct any amount already recovered, or due to be recovered, by an applicant.

12 Timescales

Applications for grants must be submitted within one year of the loss coming to the applicant's attention. In certain circumstances, this time limit may be extended by us.

We aim to respond to correspondence within 14 days. Unless a longer period has already been agreed, the applicant must produce any documents and other evidence requested by us within three months. If these are not received, we will write and ask for a response within 21 days. If no response is received, a reminder letter will be sent allowing a further 14 days for a response. If no response is received, the claim will be considered to have been abandoned and will not normally be reopened.

13 Recovery rights

If the claim is accepted, we will confirm the amount that will be paid. By signing the declaration on the application form, the applicant transfers to the Law Society his or her right to recover the loss from the solicitor. This is known as assigning rights of recovery.

By signing the declaration, the applicant authorises and instructs that any of the loss recovered from another source must be passed to the Law Society so that it can be repaid to the Fund. This is known as a mandate. The mandate cannot be revoked.

14 Decisions and Appeals

If a grant is not approved or is only partially approved, the applicant can appeal the decision to the Appeals and Reviews Sub-Committee, which may:

- Uphold the original decision.
- Vary all or part of the original decision.
- Overturn all or part of the original decision and substitute the original decision with an alternative decision.
- Overturn the original decision and tell us to reconsider the application.

Our consideration of the claim is complete when the decision of the Appeals and Reviews Sub-Committee has been carried out.

Further information

The Fund is operated in accordance with section 43 and part 1 of schedule 3 of the Solicitors (Scotland) Act 1980.

Please contact the Solicitor to the Client Protection Fund at clientprotectionfund@lawscot.org.uk or on 0131 476 8127.