

Client Protection Fund

Review

June 2025

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The Client Protection Fund is the operating name of the Scottish Solicitors' Guarantee Fund. It exists to protect clients who have lost money because of the dishonesty of a solicitor or a member of their staff. The fund is maintained by the Law Society of Scotland via contributions from solicitors.

Legislative basis for the Fund

The requirement for the Fund is set out in [section 43 of the Solicitors \(Scotland\) Act 1980](#) which states it shall be vested in the Society and shall be under the control and management of the Council. This section also sets out that the Fund is “for the purpose of making grants in order to compensate persons who in the opinion of the Council suffer pecuniary¹ loss by reason of dishonesty on the part of [solicitors or their staff]”.

The section sets out:

- the limits of the Fund and where no grant can be made
- the scope of decision-making available to the Council
- the arrangements for the making of contributions to the Fund by solicitors, and
- the administration and management of the Fund (set out in more detail in [Part I of Schedule 3](#)).

The 1980 Act, as amended by the [Legal Services \(Scotland\) Act 2010](#), requires that the Council of the Law Society must “arrange [...] for their regulatory functions to be exercised on their behalf by a regulatory committee” for the purpose of “ensuring that the Council's regulatory functions are exercised independently of any other person or interest [and] properly in other respects (in particular, with a view to achieving public confidence)”.

It also sets out specific requirements for the regulatory committee – and its sub-committees – including that at least 50% of its membership is to comprise lay persons. Finally, the 2010 Act defined the Council's ‘regulatory functions’ as “their functions of regulating in respect of any matter the professional practice, conduct and discipline of solicitors (including firms of solicitors) and incorporated practices, [and] other legal practitioners” including, “(in particular) their functions as to setting standards of qualification, education and training, admission of persons to the profession, keeping the roll and other registers, administering the Guarantee Fund, [and] making regulatory rules under any relevant enactment”.

[Section 39 of the Legal Profession and Legal Aid \(Scotland\) Act 2007](#) gave the SLCC powers to monitor the effectiveness of the Fund. It states that the SLCC “may make recommendations to the relevant professional organisation concerned about the effectiveness (including improvement) of the Guarantee Fund” and “may request

¹ financial

from the relevant professional organisation such information as the Commission considers relevant to its functions”.

Society rules and guidance

Law Society of Scotland [Rule B6: Accounts, Accounts Certificates, Professional Practice & Guarantee Fund](#) (Part VI) sets out requirements for:

- Payments into and out of the Fund
- Timescales for making an application to the Fund
- The ability of the Council to treat an application as having been abandoned if documents or evidence are not produced on time
- The ability of the Council to require the institution of civil proceedings before deciding whether or not to make a grant.

A [dedicated public-facing page on the Law Society website](#) sets out the Fund’s purpose, associated guidance and how to make an application, along with contact details for enquiries.

Governance and management

The Client Protection Sub-Committee sits as a sub-committee of the Regulatory Committee. At the time of writing, it is described on the Law Society website as having 7 solicitor members and 4 lay members and is chaired by a solicitor member. We understand that a recent recruitment round has taken place, but the sub-committee has struggled to attract and appoint sufficient lay members.

While the 2010 Act does state that nothing done by a regulatory sub-committee is invalid solely because of a temporary shortfall in the number of its lay members, and we understand that further recruitment is planned, the sub-committee must address this issue as a matter of urgency. It may be that interim measures are required to remedy the situation while further recruitment takes place, and the Society should consider what steps might be possible to allow the sub-committee to operate appropriately within the spirit as well as the letter of the legal framework.

The aims and functions of the sub-committee are to:

- Oversee the fulfilment of the statutory obligations of the Law Society of Scotland regarding the Client Protection Fund (the operating name for the Scottish Solicitors' Guarantee Fund) and financial compliance.
- Ensure that risks to the Client Protection Fund are managed to an agreed and acceptable level.
- Ensure that Client Protection Fund operations are in accordance with stated Client Protection Fund policy.

- Protect the Client Protection Fund, the profession and the public interest by dealing properly and promptly with significant cases of non-compliance with accepted financial compliance standards (e.g. accounts rules).
- Influence strategic developments regarding financial compliance and the Client Protection Fund to ensure that processes remain up to date and fit for purpose.
- Enable effective communications with the profession, public and other stakeholders regarding financial compliance standards and Client Protection Fund claims.
- Benefit the Client Protection Fund/financial compliance processes by acting as a source of expertise on relevant working practices and issues within the legal profession.
- Monitor financial compliance activity (planning, progress, quality & approach).
- Review outputs from financial compliance activity (including the conducting of interviews) and where appropriate (e.g. as a result of breaches in accounts rules), refer matters of professional conduct to the Scottish Legal Complaints Commission and Complaints Investigation Team for investigation or recommend other actions (e.g. interventions, judicial factories etc.) in accordance with the scheme of delegation.
- Monitor the consistency and quality of Client Protection Fund claims and intimations processing.
- Decide upon Client Protection Fund claims (as detailed in the delegated powers).
- Consider and approve strategic policy matters related to financial compliance and Client Protection Fund matters.
- Consider the continuing adequacy of accounts rules and other guidance to protect the Client Protection Fund, the profession and the public; monitor the development of new or amended rules and recommend these for approval.
- Review financial compliance activity to inform and influence the profession, public and other stakeholders about relevant financial standards, compliance requirements and claims issues.
- Monitor Client Protection Fund risk management procedures and approve.
- Decide key policies related to insurance arrangements, financial reserve levels, investment decisions and firms which pose a risk to the fund.
- Monitor the financial position of the Client Protection Fund and recommend approval of the annual budget and annual subscriptions to the Council.
- Be made aware of operational developments in the workings of the financial compliance and Client Protection Fund functions.

The Client Protection Sub-Committee has delegated authority for all claims and investment decisions. It further delegates minor claims to the Director of Financial

Compliance, with these decisions being sample checked by the sub-committee regularly.

The sub-committee [reports annually to the AGM](#) on the operation of the Fund and its financial performance including subscription income, grants made, the value of the investment portfolio, reserves and key risks. Subscriptions were last collected in 2019/2020.

The Society also produces a standalone Annual Report and Financial Statements for the Fund. According to the [report for the year ended 31 October 2023](#) the volumes of new claims received and claims paid has been very low and the Fund also now has very few open claims. It also noted that the sub-committee had undertaken a comprehensive review to assess the appropriateness of the going concern basis of preparation for the financial statements and to guide future decision making regarding the fund's financial position.

The review considered key risks facing the fund and the risk-management arrangements in place to manage these risks. This exercise was reviewed by the Law Society Council which was content there was no material uncertainty over the going concern basis of preparation for the financial statements of the Client Protection Fund. The basis upon which that view was taken is reviewed annually as the financial statements are prepared to identify any material changes.

The number of claims is small. Four grants to compensate applicants were approved by the sub-committee in 2022/23, amounting to £22,000. This was an increase from the one claim approved in 2021/22 at a cost of £16,800.

How the Fund sits within the wider consumer protection landscape

Given the regulated nature of solicitors' work, the Client Protection Fund sits within a wider consumer protection landscape. That includes the right to make complaints to the SLCC and to have any complaints about a firm's service investigated and, where upheld, to receive appropriate redress. In addition, all firms are required to hold professional indemnity insurance which provides insurance against losses caused by a solicitor's negligence.

In most cases, the Client Protection Fund will only compensate those who have tried all other options to recover their losses, and only in certain specified circumstances.

The Fund is therefore a small, but crucial part of the wider consumer protection landscape.

Applying to the Fund

The application form for the Fund can be found easily on the [Client Protection Fund](#) page of the Society's website. The form is short, clear and easy to complete. The webpage and form contain phone, email and postal contact details for enquiries or to request the form in a different format. The associated guidelines provide helpful information on who can make a claim, how decisions to award grants are reached, what is normally covered and not covered by the Fund, timescales and other rights. The guidance also makes clear that, despite the slightly misleading trading name of the 'Client Protection Fund', "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".

An initial assessment of the claim is made by the sub-committee secretary, who is then able to request any further information required from the claimant in order to allow the sub-committee to fully consider the claim.

Claimants are kept updated on the progress of their claim after every sub-committee involvement in it. That may involve being asked for further information, being given an update on matters not yet concluded which prevent the sub-committee from reaching a final decision on the claim (e.g. a Judicial Factory concluding), or being given a final decision on their claim. The small number of claims means communications with claimants is specific to each individual claim.

When the sub-committee makes a decision on a claim, the sub-committee Secretary will write to the claimant to share that decision. That will include sharing an extract from the meeting minute which details the sub-committee's decision and the reasoning for that decision, with reference to the Client Protection Fund Guidelines. If the decision is not to accept the claim, then the correspondence will also include details of how to appeal the decision to the Appeals and Reviews Sub-Committee.

We have not been able to see any template or anonymised correspondence or decisions and therefore cannot comment on their tone, content or accessibility.

If the decision is to accept the claim, then the claimant will be asked for bank details to allow the payment to be made.

The differing circumstances of claims mean that reaching a decision on a claim can take anything from a few months to a number of years. Factors affecting the timescale for a decision can include the nature and complexity of the claim, the evidence available to support it, any linked proceedings which may be ongoing, and the need to await the conclusion of a Judicial Factory.

Proposals for reform

The Regulation of Legal Services (Scotland) Bill proposes some limited changes to the Client Protection Fund. These build on the existing position of the Fund as set out in [section 25 of the Legal Services \(Scotland\) Act 2010](#).

As part of the requirement to set up a compensation fund, the Bill will require a category 1 regulator (including the Law Society of Scotland) to produce compensation rules which provide detail and structure as to how the compensation fund will operate, and these should detail:

- the monetary amount to be contained in the fund
- how the fund is to be administered
- the criteria for qualifying for payment from the fund
- the procedure for making claims for payment and how such claims are to be determined
- provision for the making of contributions to the fund by regulated members, and
- how the fund will be dealt with in the event that the statutory regulator ceases to operate.

The Bill will continue to allow the SLCC to monitor the effectiveness of the compensation funds maintained by relevant legal services regulators and consult on any improvements it considers appropriate. Section 70 of the Bill sets out that the SLCC will be able to issue guidance which may set minimum standards in respect of the operation and effectiveness of the compensation funds. This would replace the power to make recommendations under the 2007 Act. Regulators would be under a duty to comply with any minimum standards we set. Where we do not agree we can consider arbitration or we may direct the regulator to take appropriate steps.

Similar funds in other jurisdictions

The Solicitors Regulation Authority (SRA) operates the equivalent fund, the Compensation Fund, in England and Wales. It works on a broadly similar basis to the Client Protection Fund and is funded through contributions from regulated firms and individual professionals.

The SRA has been [consulting](#) on the Compensation Fund as part of a wider set of linked [consultations on client money in legal services](#). The consultation looks at both how it sets the contribution levels for those who pay into the Fund and the ways it allocates grants from the Fund to reimburse consumers.

In contrast to the situation described in Scotland, this consultation is partly due to the fact that the SRA has reported that the potential liabilities of the Fund are changing, with increasing numbers of claims on the Compensation Fund alongside an increase in the number and size of failing firms. As part of this work the SRA is consulting with

the regulated sector and with stakeholders. It has also commissioned public polling and focus groups.

A number of other jurisdictions operate similar funds. For example, both [South Africa](#) and [Victoria, Australia](#) operate 'Fidelity Funds' with broadly similar purposes to the Client Protection Fund.

Conclusion and recommendations

The Client Protection Fund plays an important role in the wider consumer protection landscape. Although access to the Fund is restricted to very specific circumstances, it is available to compensate claimants who may well have no other way of recovering their losses. As such, it's vital that it operates effectively and within the legislative requirements set out for it.

From what we have been able to see, the Fund operates well. The public facing information about the Fund is clear and easy to understand and guidance is offered to claimants to support them to make claims which the Client Protection Sub-Committee can consider and assess.

While timescales for dealing with claims can vary significantly, this is primarily due to the need for specific evidence to be provided or for related proceedings to conclude, and claimants are kept updated. However, we would urge the sub-committee to ensure that regular updates are provided to claimants, even where there is nothing new to report, to keep them informed of progress on their claim.

We have not been able to assess the tone, content or accessibility of correspondence with claimants, including decisions. We therefore urge the sub-committee to consider the accessibility of those communications. Seeking feedback from claimants would provide a useful check of the quality and accessibility of the communications and could provide suggestions for improvements to be made.

As appropriate, given its work, the sub-committee sits as a sub-committee of the Regulatory Committee. That means it is subject to the requirement that at least 50% of its membership should be lay members. The current membership means that the sub-committee is not currently operating within the spirit of the legislative requirements set out for it and it must address this issue as a matter of urgency. It may be that interim measures are required to remedy the situation while further recruitment takes place and the sub-committee should consider what steps might be possible to allow it operate appropriately within the legal framework.

Our recommendations are:

- The sub-committee should urgently address the balance of lay and legal membership to ensure it is operating appropriately within the spirit of the legislative requirements set out for it, including considering interim measures to remedy the situation while further recruitment takes place

- The sub-committee should ensure that regular updates are provided to claimants to keep them informed of progress on their claim
- The sub-committee should seek feedback on correspondence from claimants and consider any improvements which might improve understanding and accessibility.

Our thanks go to the Client Protection Sub-Committee and its secretariat for their positive and constructive engagement with us throughout this review. We look forward to discussing these recommendations further with the sub-committee and to hearing its plans to address them.

The changing landscape resulting from the Regulation of Legal Services (Scotland) Bill means we will consider when and how to next reflect on this key area of consumer protection.