

Report of Further Research on Law Society of Scotland Guarantee Fund

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Executive Summary

1 The research reported below was commissioned by the Scottish Legal Complaints Commission (SLCC) following the report of earlier research carried out by Frank Stephen and Angela Melville (2009) on the Master Policy and Guarantee Fund of the Law Society of Scotland (LSS). The earlier study did not carry out any statistical investigation of the Master Policy or Guarantee Fund's operation because no data was provided by LSS or its insurers under conditions which were acceptable to the researchers or the Chief Executive of SLCC.

2 The Law Society of Scotland has now provided Frank Stephen with an electronic version of the Register of Claims on the Guarantee Fund for statistical analysis. SLCC commissioned the University of Manchester through Frank Stephen to carry out the statistical analysis reported here.

3 Over many years, individuals and claimant interest groups have made accusations which might be summarised as asserting that the operation of the Master Policy and the Guarantee Fund are unduly influenced by the financial interests of the LSS and its members to the detriment of solicitors' clients who have suffered a loss due to the negligence or dishonesty of a solicitor. The data contained in the Register of Claims on the Guarantee Fund makes it possible to test whether such claims concerning the administration of the Guarantee Fund have any empirical basis.

4 It is to be expected that the decision by the LSS Guarantee Fund Committee with respect to an individual claim against the Fund should be based entirely on 'the merits of the claim' and not influenced by the number or value of claims being made against the Fund. The statistical analysis reported below, however, suggests that decisions on individual claims may be influenced by the number and total value of claims being received in the same year as the individual claim: whether liability is denied or the proportion of a claim admitted have a robust statistical relationship with these measures which are unrelated to the merits of the claim concerned. A similar relationship is also found for the number of days taken to reach a decision. However, this is based on a smaller number of claims because crucial data is missing from the Register. This last result is less reliable than the others because the missing data may have biased the statistical results.

5 The conclusion of this study is that the outcomes of individual claims on the Law Society of Scotland's Guarantee Fund are statistically related to factors beyond the 'merits of the individual claim'.

1 Introduction

1.1 The research reported below was carried out at the request of the Scottish Legal Complaints Commission (SLCC) following the report of earlier research carried out by Frank Stephen and Angela Melville (2009) on the Master Policy and Guarantee Fund of the Law Society of Scotland (LSS). The earlier study did not carry out any statistical investigation of the Master Policy or Guarantee Fund's operation because no data was provided by LSS or its insurers under conditions which were acceptable to the researchers or the Chief Executive of SLCC.

1.2 Following the publication of the earlier report discussions took place between Frank Stephen, representatives of SLCC, representatives of LSS and its insurers to examine what data was available that might be used to assess the efficacy of administration of the Master Policy and the Guarantee Fund. Following these discussions LSS provided Frank Stephen with an electronic version of the Register of Claims on the Guarantee Fund for further statistical analysis. Following this SLCC commissioned the University of Manchester through Frank Stephen to carry out the statistical analysis reported here.

2 Complaints/Issues

2.1 Over many years individuals and claimant interest groups have made accusations which might be summarised as asserting that the operation of the Master Policy and the Guarantee Fund are unduly influenced by the financial interests of the LSS and its members to the detriment of solicitors' clients who have suffered a loss due to the negligence or dishonesty of a solicitor. Stephen and Melville (2009) concluded that statements issued by LSS on the role and purpose of the Master Policy and Guarantee Fund were potentially misleading because both schemes involved significant barriers to claimants receiving payments.

2.2 The major barrier in the case of the Master Policy was seen to be the need to prove professional negligence on the part of the solicitor and also that there had been no opportunity for the claimant to mitigate the loss. Stephen and Melville (2009) concluded that the purpose of the Master Policy was to indemnify solicitors against claims of professional negligence rather than to indemnify clients against loss.

2.3 Stephen and Melville (2009) also concluded that the Guarantee Fund's status as a fund of last resort whose use was at the total discretion of the LSS belied the title 'Guarantee Fund' which unduly raised expectations of clients. This was further bolstered by the requirement under the rules of the Fund that injured clients were required to mitigate their loss.

2.4 The earlier research was unable to evaluate the substantive complaint that the two schemes were operated in the financial interests of the LSS and its members due to lack of data. This lack of data has now been remedied by LSS in respect of the Guarantee Fund. We report below on the analysis of this data.

2.5 An alternative approach to the statistical approach taken here would be for the files on each claim or on a sample of claims to be evaluated by someone qualified to assess whether the treatment of a claim has been reasonable according to some criteria. It would be costly to carry out such a study and even if such evaluations were non-contentious it would provide no insight into what interests were being

served where a decision made by the LSS's Guarantee Fund Committee diverged from that which the evaluator deemed appropriate. We believe that the statistical approach has the potential to provide such insights.

3 The Guarantee Fund Data

3.1 The Law Society of Scotland has made available an electronic copy of its Claims Register for the Guarantee Fund. This register contains details of all claims made against the Guarantee Fund such as:

Date claim received	Claim reference number	Amount claimed
Interest claimed	Expenses claimed	Amount admitted
Interest admitted	Expenses admitted	Date of Fund Committee decision
Date cheque paid	Amount paid	Amount outstanding
Firm concerned	Number of Partners in firm	Whether claim withdrawn or abandoned
Name of judicial factor	Name of trustees in sequestration	

3.2 The copy of the register which we received was in an anonymous format with the name of each claimant removed and the name of the solicitors firm involved in each claim replaced by a code number. This data has been used to examine factors that effect the success or otherwise of a claim.

4 Testing

4.1 One would expect that the success or otherwise of a claim against the Guarantee Fund would be determined strictly on the merits of the claim. From a statistical point of view this would imply that when looking at the outcomes of claims over a period of time it is unlikely that a statistical study would reveal any pattern or that variations in measures of the scheme's characteristics (volume of claims, value of claims etc.) would have no influence on the success or otherwise of a claim or the length of time taken to resolve claims or the size of payout relative to size of claim. In other words claim outcomes would bear no statistical relationship with scheme characteristics. On the other hand, if the administration of the fund was influenced by concerns within the Law Society of Scotland for the level of reserves held or the need to raise additional levies from members there might be a statistical relationship between admission of liability or amount paid and the total value of claims against the fund. This suggests that a test of whether or not there is a statistically significant relationship between the number or value of claims on the Fund and the probability of a claim being admitted would be a good test of whether or not claims are dealt with on their merits.

4.2 Before moving to test whether such a relationship exists account must be taken of other factors which might influence the treatment of a claim. First, if more resources have been devoted to the administration of the Fund over time it might be that there is a secular change in performance over time (either admitting or not admitting more claims as the process of evaluation becomes more accurate). Secondly, statistical tests of performance may be biased if account is not taken of underlying relationships in the data which are not related to the administration of the Fund. An important example of this is that the outcomes of multiple claims involving a single firm of solicitors are likely to be highly correlated. These highly correlated

claims are likely to exercise an undue effect on any statistical analysis carried out on this data which does not take account of this factor. Adjustment can be made for this by regression techniques using panel data methods. Such a method will be used below. Thirdly, it may be the case that the administration of the Fund may be affected by whether or not the solicitors firm concerned is subject to a judicial factory. Account will be taken of this in the statistical analysis.

4.3 The statistical analysis which we now report on involves selecting a 'performance variable' that is a variable whose value might reasonably be thought to reflect how the Guarantee Fund is administered. We will use three such performance variables:

- The ratio of the amount of liability admitted to the amount claimed (*Admitrat*), if the Fund was being administered in a way which sought to minimise payments from the Fund this ratio might be likely to fall when the number or financial value of claims rose.
- The number of days which it takes for claims to be resolved (*nresoldys*) may also be regarded as a performance measure which could be affected by attempts to manage claims in a way which reduced payments from the Fund in any year. The number of days might rise when the number of claims rise or when the value of claims rise. If the number of claims rises it might be the case that the length of time might rise due to staffing constraints. However, a strong correlation between the *value* of claims and the number of days to resolution would be less likely to be due to staffing constraints.
- The probability of zero liability being admitted might also vary as the number and value of claims rises. If the Fund was being administered in a way which minimised the value of successful claims we might expect that it would be more likely that zero liability would be admitted in a specific claim when the value of claims being made was high. We create the performance variable *Admzero* which takes on the value 1 when zero liability is admitted and zero when some level of liability is admitted.

4.4 We run a series of regressions to identify whether the value of claims made in a calendar year influences each performance variable when account is taken of the other factors which we discuss above. In each case we begin with a very general specification which includes a number of plausible factors which might influence the performance variable. We then use exclusion tests to test for the removal of statistically insignificant explanatory variables. In the Appendix we provide the initial estimates, the exclusion tests and the final estimated equations. We now summarise and interpret the final results.

4.5 Results

1. ***Admitrat*: the ratio of amount admitted to amount claimed**

We find that there is a statistically significant negative relationship between the ratio of the amount admitted in a claim and the total value of the claim on the one hand and the total value of claims in the calendar year in which the claim is made. It should be noted that this result holds after account has been taken of the fact that the ratio has increased over time: on average the ratio of the amount admitted to the amount claimed has risen by 9% per year. These results are obtained after having taken account of any correlation between the outcomes involving the same firms. The statistical tests rejected any statistically significant relationship between the value of the individual claim, the existence of a judicial factory and the total number of claims made in the calendar year in which the

individual claim was made. These exclusion restrictions were imposed simultaneously.

The estimated results suggest that (on average) an increase in the total value of claims in a year of £100,000 results in a reduction in the proportion of the value of a claim admitted of 3.5 percentage points. This result is significant at the 3.1% level of significance which is well within the conventionally accepted level of 5%.

2. *Nresoldys*: the number of days from the claim being received till a decision is made by the Guarantee Fund Committee

We find that there is a statistically significant positive relationship between the number of days to resolution and the total value of the individual claim and the total value of claims paid in the year in which the claim was made. The result holds after account is taken of the existence of multiple claims involving the same solicitors firm and the volume of claims in the calendar year. A 10% increase in the size of a claim leads to a 1.8% increase in the number of days to resolution. However, a 10% increase in the value of payments made from the Fund in a calendar year results in a 3.9% increase in the number of days to resolution. Both results are statistically significant at the 1% level which suggests a particularly robust statistical relationship.

These results suggest that the value of a claim has an influence on the time it takes to reach a decision on a claim as does the value of claims paid in the calendar year in which the claim was received. Note that both of these take no account of the 'merits' of a case. It should be noted that the number of claims made in the calendar year did not have a statistically significant effect on the number of days to resolution.

However, closer examination of the data revealed that there were a number of gaps in the register where, in particular, individual dates concerning claims or decisions had been omitted. Thus the statistical analysis of days to resolution could not include every claim. If these gaps are purely random the statistical analysis below can be relied upon. However to the extent that they are not random the statistical analysis will be statistically unreliable. We have no way of knowing whether the omissions are random. Nor did the project have sufficient resources to go back to the original files to fill in the gaps in the electronic copy of the register passed to us. Consequently interpretation of the statistical results concerning the number of days to resolution must recognise that the results may be statistically biased.

3. *Admzero*: Whether or not there was no admission of liability

This performance variable takes the value one when no liability is admitted and zero if liability is admitted. Regressing this performance variable against other variables estimates the effects of those variables on the probability of there being zero admission of liability in a claim. We find that the total value of claims made in the year is statistically significantly related to the probability of zero liability being admitted. This is while simultaneously taking account of multiple claims relating to individual solicitors firms and finding all other variables not statistically significant. The estimated marginal effect of the Total Value of Claims in the year is such that a £1M increase in the value of claims raises the probability of zero liability being admitted by 9.5 percentage points.

5 Conclusions

5.1 The statistical results discussed above and reported on more fully in the Appendix provide evidence that decisions on individual claims against the Guarantee Fund are statistically related to factors beyond the merits of the claim. These factors appear to include the total value of claims made in the year in which the individual claim was received (admission of liability, ratio of amount admitted to amount claimed), the total value of payments in the year in which the claim was made (number of days to decision) and the total value of the individual claim (number of days to decision).

5.2 Whilst these results are statistically sound for the claims on which we have data we must recognise that, as discussed earlier, the electronic copy of the Register sent to us contains some gaps. However, these gaps only materially affect the analysis of number of days to resolution of a claim. There are very few gaps in the data used to analyse the other two performance variables and the inferences drawn above concerning them can be taken to be robust.

References

Frank H Stephen and Angela Melville (2009), *Report to the Scottish Legal Complaints Commission on the Master Policy and Guarantee Fund Research*, Manchester: Institute for Law, Economy and Global Governance; Edinburgh: Scottish Legal Complaints Commission, 30th June 2009.

A Wald test was carried out to test for the joint exclusion of cons, jf, number and totalclaim. The Chi square statistic with four degrees of freedom was 5.89 which is not significant indicating that the exclusion restrictions were statistically valid.

The result of the Tobit regression with the valid restrictions imposed is shown below.

```

Random-effects tobit regression          Number of obs   =       250
Group variable (i): firm                Number of groups =        36

Random effects u_i ~ Gaussian          Obs per group:  min =         1
                                           avg =         6.9
                                           max =         50

Log likelihood = -233.23755             Wald chi2(2)    =       33.52
                                           Prob > chi2     =       0.0000

```

admitrat	Coef.	Std. Err.	z	P> z	[95% Conf. Interval]	
yr dum	.0901836	.0173749	5.19	0.000	.0561293	.1242378
totalclaims	-3.51e-07	1.63e-07	-2.16	0.031	-6.70e-07	-3.20e-08
/sigma_u	.6998758	.1330212	5.26	0.000	.439159	.9605926
/sigma_e	1.424113	.1825087	7.80	0.000	1.066402	1.781823
rho	.1945358	.0770726			.079271	.3772876

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Observation summary:      82 left-censored observations
                          42 uncensored observations
                          126 right-censored observations

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2. Determinants of the natural logarithm of *nresoldys*

In this case a fixed effects panel regression is used. Again the groups are firms. The use of the natural logarithms means that the estimated coefficients are elasticities.

The new explanatory variables are:

Lntotcl – the natural logarithm of the value of the claim including interest and expenses;

Lntotpyr – is the natural logarithm of the total payments made on all claims in the year in which the claim was made.

```

Fixed-effects (within) regression      Number of obs   =       155
Group variable (i): firm                Number of groups =        28

R-sq:  within = 0.1623
        between = 0.0137
        overall = 0.1760

corr(u_i, Xb) = -0.0014                 F(4,123)       =       5.96
                                           Prob > F        =       0.0002

```

lnnresdys	Coef.	Std. Err.	t	P> t	[95% Conf. Interval]	
yr dum	.0956125	.1208371	0.79	0.430	-.1435772	.3348022
lntotcl	.1793162	.0606694	2.96	0.004	.0592249	.2994075
lntotpyr	.4956436	.1983784	2.50	0.014	.1029658	.8883213
number	-.0086232	.0150331	-0.57	0.567	-.0383803	.0211339
_cons	-2.95537	3.276657	-0.90	0.369	-9.441312	3.530572
sigma_u	1.0840506					
sigma_e	1.1584642					
rho	.4668534	(fraction of variance due to u_i)				

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F test that all u_i=0:      F(27, 123) =      1.26          Prob > F = 0.1963

```

The test for the joint exclusion of *yr dum* and *number* yields a chi square statistics with 2 degrees of freedom of 0.32 which is not significant at the conventional levels. Thus the joint restrictions are valid.

When the valid exclusion restrictions are imposed the regression results are as below.

```

Fixed-effects (within) regression                Number of obs   =       155
Group variable (i): firm                       Number of groups =        28

R-sq:  within = 0.1579                          Obs per group: min =         1
        between = 0.1357                          avg =             5.5
        overall = 0.2490                          max =            30

                                                F(2,125)        =       11.72
corr(u_i, Xb) = 0.1678                          Prob > F        =       0.0000

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lnnresdys |          Coef.   Std. Err.      t    P>|t|     [95% Conf. Interval]
-----+-----
    lntotcl |    .1754111     .0569324     3.08  0.003     .0627348   .2880875
    lntotpyr |    .3889702     .1435152     2.71  0.008     .1049358   .6730045
      _cons |   -.7788233     1.558554    -0.50  0.618    -3.863396   2.305749
-----+-----
    sigma_u |    .93370324
    sigma_e |    1.1521203
      rho   |    .39642073   (fraction of variance due to u_i)
-----+-----
F test that all u_i=0:      F(27, 125) =      1.93          Prob > F = 0.0083

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3. Determinants of *admzero*

Here a probit regression is carried out which includes dummy variables for firms. This is technically equivalent to a fixed effects panel analysis. No new explanatory variables are used. The initial probit regression yields the following results.

```

Probit regression                Number of obs   =       246
LR chi2(16)                     =       57.26
Prob > chi2                      =       0.0000
Log likelihood = -134.49438      Pseudo R2      =       0.1755

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admzero |          Coef.   Std. Err.      z    P>|z|     [95% Conf. Interval]
-----+-----
    yrdum |   -.0688772     .0464108    -1.48  0.138    -.1598407   .0220864
totalclaim |   6.43e-07     1.30e-06     0.50  0.619    -1.90e-06   3.18e-06
    jf    |   -.0340537     .3518335    -0.10  0.923    -.7236347   .6555272
    number |   .0082113     .0126797     0.65  0.517    -.0166404   .0330631
totvalclaims |  2.79e-07     1.28e-07     2.19  0.029     2.92e-08   5.29e-07
    firm3 |  -1.294682     .663382     -1.95  0.051    -2.594887   .0055227
    firm13 |  -1.369296     .4883977    -2.80  0.005    -2.326538   -.4120545
    firm14 |  -1.956698     .551213     -3.55  0.000    -3.037055   -.8763401
    firm20 |  -.5107677     .4319359    -1.18  0.237    -1.357347   .335811
    firm21 |  -.7867258     .3871469    -2.03  0.042    -1.54552    -.0279318
    firm22 |  -.8041179     .3130444    -2.57  0.010    -1.417674   -.1905622
    firm23 |  -.1403603     .6911068    -0.20  0.839    -1.494905   1.214184
    firm26 |  -1.502002     .6287475    -2.39  0.017    -2.734324   -.2696795
    firm27 |  -.410573     .3980418    -1.03  0.302    -1.190721   .3695746
    firm34 |  -1.499632     .5972027    -2.51  0.012    -2.670128   -.3291361
    firm35 |  -.7658329     .7876595    -0.97  0.331    -2.309617   .7779514
      _cons |   .6673715     .3684201     1.81  0.070    -.0547187   1.389462
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```

The test statistic for the joint exclusion of yr dum, totalclaim, jf, number and the constant term is a chi square statistic with four degrees of freedom and a value 3.27 which is not significant. Thus the joint restrictions are valid.

The estimation results with the valid exclusion restrictions imposed is given below.

```

Probit regression                               Number of obs =      250
                                                LR chi2(12)      =      53.93
                                                Prob > chi2      =      0.0000
Log likelihood = -139.53171                    Pseudo R2       =      0.1620

```

admzero	Coef.	Std. Err.	z	P> z	[95% Conf. Interval]	
totvalclaims	2.55e-07	1.23e-07	2.08	0.038	1.46e-08	4.96e-07
firm3	-1.426493	.6488048	-2.20	0.028	-2.698127	-.1548584
firm13	-1.3884	.4397199	-3.16	0.002	-2.250235	-.5265645
firm14	-2.068373	.4903047	-4.22	0.000	-3.029353	-1.107394
firm20	-.6398223	.3593893	-1.78	0.075	-1.344212	.0645678
firm21	-1.062493	.3344778	-3.18	0.001	-1.718058	-.4069289
firm22	-.9519021	.246864	-3.86	0.000	-1.435747	-.4680575
firm23	-.2979164	.6519647	-0.46	0.648	-1.575744	.9799109
firm26	-1.472465	.579076	-2.54	0.011	-2.607433	-.3374972
firm27	-.4343669	.32078	-1.35	0.176	-1.063084	.1943504
firm34	-1.626344	.5625444	-2.89	0.004	-2.728911	-.5237774
firm35	-.6447204	.767048	-0.84	0.401	-2.148107	.858666
_cons	.1746403	.1738394	1.00	0.315	-.1660787	.5153593

However, the estimated coefficients in a probit regression are not the marginal effects of each variable these are:

```

Probit regression, reporting marginal effects   Number of obs =      250
                                                LR chi2(12)      =      53.93
                                                Prob > chi2      =      0.0000
Log likelihood = -139.53171                    Pseudo R2       =      0.1620

```

admzero	dF/dx	Std. Err.	z	P> z	x-bar	[95% C.I.]	
totval~s	9.50e-08	4.59e-08	2.08	0.038	900298	5.1e-09	1.8e-07
firm3*	-.3274081	.0634956	-2.20	0.028	.02	-.451857	-.202959
firm13*	-.3382105	.05444	-3.16	0.002	.056	-.444911	-.23151
firm14*	-.4128871	.0384541	-4.22	0.000	.088	-.488256	-.337518
firm20*	-.2042347	.0929822	-1.78	0.075	.06	-.386476	-.021993
firm21*	-.3004681	.0642243	-3.18	0.001	.088	-.426345	-.174591
firm22*	-.299538	.0630232	-3.86	0.000	.2	-.423061	-.176015
firm23*	-.1037728	.2091845	-0.46	0.648	.016	-.513767	.306221
firm26*	-.3384121	.0572835	-2.54	0.011	.036	-.450686	-.226139
firm27*	-.1478355	.097489	-1.35	0.176	.08	-.33891	.043239
firm34*	-.353008	.04864	-2.89	0.004	.04	-.448341	-.257675
firm35*	-.201409	.1856463	-0.84	0.401	.012	-.565269	.162451
obs. P	.384						
pred. P	.3551402	(at x-bar)					

(*) dF/dx is for discrete change of dummy variable from 0 to 1
z and P>|z| correspond to the test of the underlying coefficient being 0