



GUIDELINES ON COMPENSATION FUND CLAIMS PROCEDURES

Overview

These Guidelines outline the general principles that will guide the Law Society of Ireland (the “**Society**”) in the exercise of its functions regarding claims on the Compensation Fund under Section 21 of the Solicitors Act 1960, as substituted by Section 29 of the Solicitors (Amendment) Act 1994. These Guidelines are not rules, are not exhaustive and will not necessarily apply to every conceivable situation. The facts and circumstances of each case will be carefully considered as part of the decision-making process. The Guidelines are not intended to be a statement of the law or to change the substantive considerations in determining a claim. Instead, the Guidelines are intended to restate and clarify, in plain language, the underlying principles and process that apply to the determination of Compensation Fund claims.

1. THE COMPENSATION FUND

- i. The Compensation Fund (the “**Fund**”) was established on a statutory basis under the 1954 Solicitors Act and continues to be governed by the Section 21 of the Solicitors Act 1960, as substituted by Section 29 of the Solicitors (Amendment) Act 1994 (the “**1994 Act**”) and Solicitors (Compensation Fund) Regulations, 2013 (SI 442/2013).
- ii. The Society is responsible for the maintenance and administration of the Fund.
- iii. All practising solicitors must contribute to the Fund on an annual basis.
- iv. The purpose of the Fund is to provide compensation where a client of a solicitor has suffered a loss due to the dishonesty of a solicitor or the clerk or servant of a solicitor arising from that solicitor’s practice as a solicitor within the jurisdiction of the State.
- v. The payment made out of the Fund is referred to as a grant.

2. REGULATION OF PRACTICE COMMITTEE

- i. The Society has delegated its functions in relation to the adjudication of claims on the Fund to the Regulation of Practice Committee (the “**Committee**”).
- ii. The Committee is responsible for the adjudication of all claims for grants out of the Fund made by or on behalf of clients of solicitors who claim to have sustained loss in consequence of dishonesty on the part of their solicitors or employees of their solicitors (that is clerks or servants of the solicitor).
- iii. To assist the Committee in carrying out its function in respect of the Fund, the Society has established a Claims Administration section. This section provides administrative and investigative support to the Committee and liaises with claimants at the direction of the Committee.

3. REQUIREMENTS TO BE SATISFIED BY CLAIMANT

The claimant must prove to the satisfaction of the Society that they have **sustained a loss in consequence of dishonesty** on the part of that solicitor or any clerk or servant of that solicitor **arising from that solicitor's practice as a solicitor** within the jurisdiction of the State. Once the aforementioned criteria are met, subject to the restrictions and/or exclusions set out elsewhere in these Guidelines, the Society shall make a grant.

Therefore, every claimant must satisfy the Society that:

- i. They have sustained a financial loss.
- ii. They were a client of the solicitor.
- iii. That such loss was as a result of the dishonesty of the solicitor.
- iv. The solicitor was acting in the course of his/her practise as a solicitor within the jurisdiction of the State.

4. BURDEN OF PROOF

- i. The onus is on the Claimant to satisfy the Society that the loss they have suffered is a loss that fulfils the aforementioned criteria.
- ii. The burden of proving a claim rests with the claimant who must provide documentation in support of their claim. The claimant may be invited to provide further documentation/information in support of a claim during the investigative process until a final determination is made by the Committee.
- iii. Failure to provide such documentation/information may result in the Committee being unable to be satisfied that a grant from the Fund is due.

5. TIME LIMITS

- i. Claimants should note that a claim may be refused if the notice of loss is not received by the Society in the prescribed manner within six months of the alleged loss coming to the knowledge of the claimant.

- ii. The prescribed form is the application form which is set out in the schedule of Solicitors Compensation Fund Regulation 2013 SI No. 442/2013 a copy of which can be [downloaded here](#).
- iii. The six month time limit begins to run from the date that the loss first comes to the claimant's knowledge. Therefore, the date of knowledge is when the time period begins to run. The day that the claimant first becomes aware of the loss is deemed to be included in the six month time period.
- iv. Upon application by the claimant the Committee may at its discretion extend the six month time limit where there are, in the opinion of the Committee, exceptional circumstances which merit such an extension being granted.

6. APPLICATION FORM

- i. The application form is a sworn document, provided under oath.
- ii. The application form must be completed in full and submitted within six months of the date upon which the alleged loss first came to the claimant's knowledge.
- iii. Claimants should note that incomplete application forms will be returned. If an application form is returned to a claimant the clock continues to run during that period. Therefore, a claimant should return his/her completed application form as soon as possible so as to stay within the six month time limit.
- iv. The application form must specify the amount being claimed. If the amount of loss is not specified, the application form will be returned to the claimant and the clock also continues to run during that period.
- v. If the loss has not crystallised the claimant must set this out clearly in the application form. The claimant should also set out an informed estimate of the time at which and the circumstances in which the loss will crystallise and a confirmation that they will submit further information when this information comes to hand.

7. DOCUMENTATION WHICH WILL BE CONSIDERED

- i. The Committee will consider the claimant's application form as well as documentation submitted by the claimant in support of their claim.
- ii. The Committee may also consider information retrieved from the Society's file in relation to the solicitor.
- iii. The Committee may consider documentation submitted in respect of a complaint made to the Society and may have regard to the finding of the Complaints and Client Relations Committee, but the Committee is not bound by any such findings.
- iv. The Committee may have regard to findings of the Solicitors Disciplinary Tribunal against the solicitor the subject matter of the claim, but the Committee is not bound by any such findings within the context of a claim on the Fund.
- v. The Committee may review information received from banks.

- vi. The Committee may have regard to accounts information or an Accountant's Report prepared in respect of the solicitor the subject matter of the claim.
- vii. The Committee reserves the right to have regard to other relevant information from sources other than those outlined above depending on the circumstances of the claim before it.
- viii. In the event that the Committee has regard to information that is not referred to in a written submission by a claimant on foot of which it proposes making a finding to refuse a grant in whole or in part, it shall notify the claimant of that matter and invite further submissions from the claimant in that regard. In notifying a claimant of such relevant information, the claimant shall be provided with as much information as is consistent with any conflicting obligations as to confidentiality or otherwise the Society may have to have regard to in disclosing such information.

8. FURTHER INFORMATION

- i. The Committee may decide that it has insufficient information to make a final determination as to:
 - (a) whether to make or refuse to make a grant from the Fund; and/or
 - (b) the amount of any grant, in the event that it determines to make a grant from the Fund.

In such circumstances, the Committee can make a preliminary determination in relation to certain matters and may invite further submissions from a claimant to enable it to make a final decision.

- ii. Such invitations for further information will primarily be by means of a request for further written submissions within a specified time frame. The request for further information shall include a statement of the material facts, if any, that have already been determined by the Committee and an identification of the specific matters in respect of which the Committee requests further information.
- iii. A claimant who fails to provide further information in respect of claim within a specified time frame may be deemed to have foregone his/her opportunity to provide such information, and the Committee may proceed to make a final determination in respect of the claim on the information available to it.
- iv. For the purposes of inquiry into any matters which may affect the making or refusal of a grant, the Committee may take evidence on oath. For the avoidance of doubt, the taking of evidence on oath by the Committee does not amount to the holding of an oral hearing.

9. QUANTUM OF LOSSES IN RESPECT OF WHICH GRANT MAY BE MADE

- i. In the event that it makes a grant, the Committee shall make a grant such as represents in its opinion the reimbursement of the amount or value of the loss sustained in consequence of the dishonesty of the solicitor.

- ii. The Committee may make a grant that includes its measure of the interest that arose in respect of the loss between the date when such loss was sustained and the date of the making of the grant.
- iii. The Committee shall exclude from its quantification of the loss damages or any other form of loss consequent on the claimant being deprived of the amount or value of the loss sustained (consequential loss).
- iv. The grant to any one client cannot exceed €700,000. The Committee may at its discretion increase this amount if it is of the opinion that a grave hardship would be caused if a grant of a larger amount was not made. The Committee will have regard to the circumstances of the claim in considering whether grave hardship would be caused in refusing a larger amount.

10. GROUNDS FOR REFUSAL OF A GRANT

The Committee shall have the discretion to refuse a grant, or to make a grant in a lesser amount than the amount claimed, if the Society is of the opinion that, inter alia:

- i. The loss arose due to a solicitor's negligence and/or breach of contract alone.
- ii. The solicitor did not have a practising certificate in force at the time when the loss was sustained.
- iii. There has been dishonesty or negligence on the part of the claimant or of any person for whom that claimant is responsible which has contributed to the loss in question.
- iv. The claimant has assisted (whether by act or omission) in the commission of misconduct by the solicitor.
- v. The loss sustained has arisen otherwise than as a result of the dishonest misappropriation or dishonest conversion of moneys, securities or other property of a claimant entrusted by the claimant, or by any other person for or on behalf of the claimant, to that solicitor or to any clerk or servant of that solicitor.
- vi. Having regard to all the circumstances, the loss sustained by the claimant of the solicitor did not arise from, or was not directly related to, the provision of services of a legal nature to the client by the solicitor.
- vii. The loss has been made good.
- viii. The notice of loss was not received within the prescribed time.
- ix. The notice of loss was not received in the prescribed form or the claimant submits an incomplete application form.

11. FINAL DECISION

- i. The Committee shall evaluate the submissions by the claimant whether they are in writing or given orally and issue a Final Decision.
- ii. A Final Decision issued by the Committee

- a. will be in writing;
- b. will state the reasons on which the decision is based;
- c. may direct or deny grant;
- d. may establish any conditions for issue of the grant as deemed appropriate.

12. REFUSAL OF AN APPLICATION: THE INDEPENDENT ADJUDICATOR

- i. The Independent Adjudicator deals with complaints about any decision by the Committee concerning an application for a grant from the Law Society's Compensation Fund.
- ii. The Independent Adjudicator can only examine the Law Society's handling of a claim, and does not examine evidence at first hand.
- iii. A complaint to the Independent Adjudicator must be within the three year period immediately following the Committee's decision.
- iv. Complaints must be in writing and should contain the following information:
 - a) The reference used by the Law Society on its correspondence.
 - b) The date on which the Committee made its decision (a copy of the letter conveying the Committee's decision should be enclosed if available).
 - c) Confirmation that the subject matter of the complaint to the Adjudicator has not already been considered by the Solicitors Disciplinary Tribunal.
- v. If the Adjudicator is satisfied that the complaint made falls within his/her terms of reference he/she will examine the Committee's file, make whatever enquiries are considered necessary and, having completed his investigation, he/she may, if appropriate, direct the Committee to re-examine the claim.
- vi. Claimants can contact the Independent Adjudicator by writing to him/her at:
The Independent Adjudicator, 26/27 Upper Pembroke Street, Dublin 2.