



Solicitors  
Regulation  
Authority

## **Comparative study**

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# COMPARATIVE STUDY OF OTHER JURISDICTIONS

## Historical perspectives

The idea of developing of a Compensation Fund was first considered at the beginning of the 20<sup>th</sup> century, at a time of economic turbulence. Historically, solicitors commonly mixed their own funds with client funds, resulting in significant losses to clients if a firm became insolvent.

On 27 April 1900, the Law Society of England and Wales established a Committee to consider measures to prevent the defalcation of client money. The Committee recommended that solicitors and clients' funds should be held separately. This recommendation was echoed by a Solicitors Practice Committee in December 1906. Although the proposals were accepted at the Law Society General Meeting in July 1907, the requirement to hold client money separately to the solicitor's own funds was only formalised in the Solicitors Act 1933<sup>1</sup>.

Parliament's response to the defalcation of client money was to create a new criminal offence of converting funds or property held in trust, under the Larceny Act 1901. Between 1929 and 1939, around 100 solicitors were convicted in the criminal courts. These dishonest solicitors comprised an extremely small minority (less than 0.6%) of the approximately 17,000 practising solicitors in England and Wales. However, the losses caused by these individuals were estimated to be in the region of £1 million (an average of £58.82 for each person).

Public concern at the continuing problem of led Parliament to revisit the case for further client protection measures in 1939 and a Special Joint Select Committee of both Houses expressed interest in establishing a fund to reimburse client losses.

The Council of the Law Society felt that no action should be taken until the end of the war. Alternatively, it proposed that if the Bill became law it should not take effect until the end of the war. Both arguments were rejected to at the general meeting of the Law Society and the proposal to establish a carried by a "*practically unanimous vote.*"

The Solicitors Act 1941 established the Compensation Fund with effect from 1 November 1942. The purpose of the Act was twofold:

- to protect those who suffered loss at the hands of dishonest solicitors.
- to protect the reputation of solicitors and "*to disperse a locus of mischief which has done their good name so much harm.*"

It sought to achieve these goals by:

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<sup>1</sup> [A concise history](#) of the Solicitors Guarantee Fund

- Requiring solicitors to produce an annual certificate from an accountant to confirm that their accounts were in order.
- Giving the Society powers to establish a Compensation Fund, obtained by a compulsory levy on each practising solicitor, to assist the victims of dishonest solicitors.

The Act made membership of the Law Society compulsory for all practising solicitors, to ensure that all solicitors contributed to Compensation Fund.

England and Wales was not the first jurisdiction to adopt a fund for the financial protection of solicitors' clients.

The Solicitors' Fidelity Guarantee Fund was established in New Zealand in 1929. It was funded by annual contributions from each practitioner of £5 to £10 and the contributions were held on trust by the New Zealand Law Society. Additional levies of up to £10 per annum could be sought from each practitioner annually, to a maximum of £50 of additional levies in the lifetime of any single practitioner. The Fund was intended to reimburse those who suffered monetary losses because of theft, by the solicitor or his servant or agent, of any money or other valuable property entrusted to the solicitor in the course of practice.

In Queensland, Australia, the Legal Practitioners' Fidelity Guarantee Fund was established in December 1930. The Queensland Law Society was granted powers to impose annual subscriptions and levies on the profession to establish a fund of £50,000. Practitioners who did not subscribe to the fund he would be refused a certificate to practise and would therefore be unable to sue for recovery of fees. Similar Funds followed in Western Australia, Southern Australia and New South Wales during the 1930s. Meanwhile, in Canada, the first Assurance Fund was established in Alberta in 1939.

Following the creation of the Compensation Fund in England & Wales, funds were established in Scotland in 1949 and in Ireland in 1954.

The first client protection fund in the USA was established in Vermont in January 1959 by the Vermont Bar Association. In February 1959, the American Bar Association House of Delegates adopted a resolution approving such funds in principle and urging all state bar associations to appoint study committees to consider the creation of a client protection fund. By August 1959, a meeting of the American Bar Association Clients' Security Fund Committee reported that 34 state bar associations were examining the feasibility of creating Funds and by 1976, 47 US jurisdictions had established some form of client protection fund. By 1998, all North American jurisdictions had established a fund.

It has become commonplace for a majority of the jurisdictions who operate a client protection funds to publish annual reports, but what is actually published and how it is published remain important issues. The availability of this information in some cases acts as an obstacle to assessing stakeholder satisfaction as such reports can prove difficult to understand and in some cases only provide statistical data.

In addition it has been noted that of the jurisdictions considered, fund sizes differ significantly and this is linked to the number of lawyers in the jurisdiction and which contribute to the fund. It has been noted that in some cases, the client is required to bring civil proceedings against the defaulting lawyer and these proceedings must be concluded before any claim is concluded. Other jurisdictions on the other hand,

operate a system whereby claims are directed to the regulator or body responsible for the management of the fund.

The comparative element of this review is ongoing and further discussions will be had with other legal and non-legal professional regulators in the United Kingdom and legal professional regulators in the European Union, America and Commonwealth states. Further research will allow the SRA to compare the:

- a) Nature of schemes;
- b) Nature of "harm" covered under each scheme;
- c) Categories of potential claimants and justification for categorisation;
- d) Efficiency of the different schemes - achieving steady, secure and adequate funding;
- e) Flexibility of the scheme so that it can respond to change.

The SRA has commenced a comparison of the arrangements in other jurisdictions and these are referred to later. In 2006 the International Bar Association ('IBA') carried out a comprehensive survey of client compensation arrangements in member jurisdictions which has helped understand the level of protection there is available for consumers of legal services<sup>2</sup>.

The IBA survey report suggests various standards for client compensation schemes based on the standards set by the American National Client Protection Organisation ('ANCPO'). These standards will assist in identifying the most effective and appropriate arrangements for client protection.

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<sup>2</sup> Protecting Clients of a Globalised Profession: Implications of Members' Responses to the International Bar Association Survey of Client Compensation Arrangements: 2004-05  
Adrian Evans and John Moorhouse [as at 31 July 2006]

### Overview

The Law Society of Ireland operates a client compensation fund which has been in existence since 1954 and was established primarily as a 'widows and orphans' fund to ensure that the 'ordinary' clients of a solicitor were not at a loss due to misappropriation by the solicitors.

The fund was established on a statutory basis under the 1954 and 1960 Solicitors Acts and now continues to be governed by section 29 of the Solicitors (Amendment) Act 1994.

The Act states that the fund should be maintained to provide compensation "*...where it is proved to the satisfaction of the Society that any client of a solicitor has sustained loss in consequence of dishonesty on the part of a solicitor...*"

Irish legislation initially provided a limit of IR£350,000 to any claim which was then amended to €700,000 in 2002. The legislation clearly states that in order for a claim to be entertained dishonesty must be proven.

### Financing the fund

The fund is financed each year by a portion of the practising certificate fee being allocated to the fund. In 2013, the amount allocated to the fund was €760 per solicitor with estimated practising certificates of 8,700 a sum of approximately €6.5 million would be allocated to the compensation fund.

The allocation of €6.5 million is applied to cover overheads which include insurance, wages of the investigating accountants and other staff and legal costs.

For the year 2012/2013, the compensation fund held assets of €16.5 million which had accumulated over the years. So as to ensure the fund is protected, the Law Society of Ireland operates a loss insurance policy each year - the policy has an excess of €5 million and cover of €50 million in place to cover the excess.

### Criteria for claiming

A claimant must in all cases prove that loss has occurred due to the dishonesty of the solicitor and any claim must be made within six months of realisation.

The Law Society of Ireland's rules and information which they make available to consumers confirms that claims in respect of negligence are not considered and that any such claim must be referred to the solicitor's professional indemnity insurers.

### Practical operation of the fund

Where a solicitor's practice has been closed by an order of the High Court due to a deficit being discovered, the Society's Practice Closure section takes possession of the files and they are then redistributed to clients so that they may reinstruct another lawyer of their choice.

If a client considers that monies have been misappropriated they may make a claim on the Compensation Fund. However, in all cases, the client must demonstrate that the loss has occurred due to the dishonesty of the solicitor originally instructed.

The process for claiming requires an individual to complete the relevant claim form with all supporting documentation. Based on the information which has been provided and supporting documentation, a decision will be made. These decisions are made by the Society's Regulation of Practice Committee who will either recommend full payment/partial payment or refusal. If the claim is partially paid or refused then the client has the option of referring their claim to an independent adjudicator for consideration.

The Law Society of Ireland has confirmed that it receives approximately 275 claims each year on the Fund - these numbers can vary up or down depending on the number of High Court orders obtained in a year to close a solicitor's practice.

The nature of misappropriation ranges in the main from failing to pay stamp duty, misappropriation of monies from probate and misappropriation from litigation/accident cases.

The Law Society of Ireland considers that their biggest risk is the potential for misappropriation of client monies in probate matters.

## The Finnish Bar

The compensation fund of the Finnish Bar Association was established in 1989. The capital of the fund is collected during two years from its members in a form of an extra membership fee - similar to practising fees.

According to the rules of the compensation fund the aim of the fund is to provide to the Bar Association a possibility to help in compensating damages based on a criminal act of a lawyer against clients assets.

The decision to use the compensation fund in order to pay compensation to a client is made by the Finnish Bar's Board of Association according to the following principles:

- the available assets of the compensation fund;
- the financial status of the party suffering the damage (as a rule compensation is paid only to natural persons who are really in need of the compensation, sometimes the compensation is called "the widow's mite"); and,
- compensation may only be paid if the party suffering the damage assigns his claim towards the lawyer to the Bar Association.

The Finnish Bar confirm that generally, compensation is paid approximately once in 24 months. In all these cases the ground for the payment has been a lawyer's criminal act - namely misappropriation of client monies.

The Finnish Bar say that the largest sum paid is a little more than €100.000 and the smallest amount is about €4.000.

## The Danish Bar and Law Society

The Danish Bar and Law Society, in accordance with their Articles of Association, state that it is mandatory for all practising lawyers in Denmark to draw an insurance against malpractice. This insurance must be in place to provide cover for any damages suffered due to negligence on the part of the lawyer - the insurance will not however, cover gross negligence or wilful misconduct. The prerequisite for compensation is therefore, that the negligence can be characterised as ordinary, and in this regard, the insurance companies have been quite liberal when interpreting the definition of 'ordinary'.

## The Liability insurance

All lawyers must have an insurance of at least 2.500.000 million DKK.

The insurance must cover liability for damages inflicted on a third part by an act of negligence by the lawyer.

The run-off cover must be at least 5 years and the insurance may only be terminated if the insurance company notify the Danish Bar and Law Society. The insurance company must accept that the Danish Bar and Law Society can keep the insurance running for 1 year.

## The Warranty

All lawyers must keep a warranty of at least 5 million DKK. The warranty covers acts of fraud committed by the lawyer himself or his staff.

The warranty may only be terminated if the guarantor notify the Danish Bar and Law Society. The guarantor must accept that the Danish Bar and Law Society can keep the insurance running for 1 year.

## The Compensation Fund

Consumers of legal services in Denmark can apply to the Danish Compensation Fund. The Fund was established by the Danish Bar and Law Society to help consumers in cases of misappropriation or other criminal behaviour on the part of lawyers. The Fund also pays where ordinary insurance for whatever reason will not pay in the cases of malpractice. Usually the Fund will pay up to the current minimum of the mandatory insurance and no further, regardless of the actual damages which may have been suffered.

Compensation can be given if the loss is not covered by the liability insurance or the warranty (both mentioned above). The loss shall be either a result of:

- the lawyers or his staff member's mistake, neglect or other liability in connection with practicing law; or,
- the lawyers or his staff member's misappropriation of entrusted funds.

The fund must receive the application for compensation within 6 months after the applicant knew or should have known about the alleged loss.

The purpose of the fund is to make it possible for the Council of the Danish Bar and Law Society to estimate if full or partial compensation should be given.

The Council of the Danish Bar and Law Society appoints five lawyers who constitute the Compensation Committee and determines whether the applicant will receive compensation and if so, what amount the applicant will receive.

If the loss is a result of a lawyer's mistake, neglect or other liability the highest amount of compensation is 2.500.000 million DKK. If the loss is a result of a lawyer's theft of client money the fund can compensate the applicant with 5 million DKK. The numbers also cover the amount that can be compensated per lawyer per year.

### Some statistics

The number of cases and paid compensation varies a lot. Some years the fund pays around 5-8 million DKK and other years less. The statistics often depend on larger cases regarding one lawyer but concerning several applicants. The larger, more complex cases revolving several applicants often concern a lawyers theft or misappropriation of client money. As at the 31<sup>st</sup> December 2011 the fund had 11 ongoing cases mostly concerning a lawyer's mistake, neglect or other liability. In March 2013 the fund had 14 ongoing cases mostly concerning the same as the cases from 2011.



## Washington State Bar Association (WSBA)

The Lawyers' Fund for Client Protection Board is established by the Washington State Bar Association and the Washington Supreme Court. Its sole purpose is to make gifts to persons in compensation in those cases where clients suffer a direct financial loss caused by the dishonest conduct of a lawyer in connection with the practice of law.

All of the active lawyers in Washington state make a contribution to the Fund every year. This sum is reviewed periodically.

The Fund is available to consumers of legal services, if they have lost money or property because a Washington lawyer was dishonest or mishandled their money. However, the Fund is a source of last resort. Before the Lawyers' Fund for Client Protection Board can approve a gift, the client must have exhausted all other means of getting their money back. This may include recovering money from:

- a bank that honored a forged endorsement;
- bonds or insurance;
- negligent partners of the lawyer; or
- the lawyer, if he or she has assets.

The Lawyers' Fund for Client Protection Board will not compensate a client for losses caused by a lawyer's malpractice, or fee disputes between the client and the lawyer. Any disputes concerning a lawyer's fee must be resolved directly with the lawyer.

The Fund will only provide compensation for actual losses suffered i.e. the amount the lawyer took or mishandled. The Fund cannot compensate for damages such as lost interest, lawyers fees you paid in attempting to recover the lost money, or other consequential or punitive damages.

In order for an application to be considered by the Washington State Bar Association, a client will need to submit an application to the Fund and file a disciplinary grievance. Generally, any application for a claim on the Fund must be made within three years after the client discovers the loss. Before any application is considered, the client will agree to repay the Fund if they later recover the lost money from another source.

The Bar Association determines if the loss was caused by the lawyer's dishonest conduct. In most cases, a gift will not be made until the lawyer has been convicted of a crime or found to have violated the Rules of Professional Conduct. The Lawyers' Fund for Client Protection Board and the WSBA Office of Disciplinary Counsel will work together in investigating applications to the Fund.

The application for compensation is reviewed by the Lawyers' Fund for Client Protection Board. The Board comprises both lawyers and non-lawyers. If the Fund Board agrees that a gift should be made from the Fund, the Fund Board may make gifts up to \$25,000. Gifts over \$25,000 must be approved by the WSBA Board of Governors. Approved gifts will be paid up to \$5,000 upon final approval; any remaining balance on the approved gift will not be disbursed until fiscal year end and may be subject to proration. The maximum gift which can be made by the WSBA is \$75,000.

## Bar of Maryland

The Client Protection Fund of the Bar of Maryland, formerly known as the Client's Security Trust Fund, was created by an order of the Court of Appeals on July 6, 1966. The main purpose of the Fund is to maintain the integrity and protect the good name of the legal profession by reimbursing, to the extent authorised by the rule and deemed proper and reasonable by the Trustees, losses caused by theft of money by members of the Bar of the State of Maryland when acting either as attorneys or fiduciaries.

In July 2002, the Fund changed its name from the "Clients' Security Trust Fund" so it would better convey the purpose of the Fund and better inform the public about what the Fund does.

The Client Protection Fund is supported entirely by attorneys in the State of Maryland who are required by law to pay an annual assessment for the right to practice law.

The Fund is generally set up to reimburse people whose attorney has wrongfully taken money from them. The Fund does not handle malpractice claims. With regards to fee disputes, however, The Bar of Maryland consider that there is a fine line between fee disputes and theft. If the client considers that the attorney may have wrongfully taken money from you i.e. by overcharging, then clients are advised to lodge a claim with the Client Protection Fund.

Claims for losses must be presented to the Trustees of the Client Protection Fund of the Bar of Maryland within six months after the discovery by the claimant of the defalcation, or at a later date at the discretion of the Trustees.

The process for dealing with the claim, requires an investigator of the Bar of Maryland discussing with all claimants details of their claim and explaining what needs to be done before the Trustees can consider the claim. The Trustees usually meet four times a year, and consider all claims where the investigation has been completed. Typically, the average time for a decision to be made on a claim is 3-4 months.

Clients are not charged by the Client Protection Fund for filing a claim. However, if an attorney/lawyer assists the client in filing the claim, they are not allowed to take a fee for assisting the client.

In most cases, the client can claim the full amount that was wrongfully taken. The amount reimbursed, however, cannot exceed 10 percent of the value of the Fund as of the close of the prior fiscal year. The Fund does not pay interest.

In all cases, before the claim is decided by the Trustees, a complaint must be filed with the Attorney Grievance Commission, which considers attorney discipline. Oftentimes, an attorney is disciplined before the claim is approved by the Trustees.

If the claim is refused for any reason, the client can appeal the decision which is made. All claimants have the right to have their claim reconsidered by the Trustees if they are not satisfied with the Trustees' initial decision. If they are still not satisfied with the decision after reconsideration, all claimants have the right to seek judicial review in the circuit court for the county where the claimant resides or has a principle place of business.

## The State Bar of Arizona

The Supreme Court of Arizona requires the State Bar of Arizona to create and maintain the Client Protection Fund. The purpose of the Fund is "*...to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses caused by the dishonest conduct of lawyers admitted and licensed to practice in Arizona, occurring in the course of the client-lawyer or fiduciary relationship between the lawyer and the claimant...*".

The Fund is a trust that exists as a separate entity from the State Bar of Arizona. The Fund's Board of Trustees receives, holds, manages, and disburses money from the Fund. The Fund is a charitable organisation and is not funded by taxpayer dollars. Each lawyer licensed to practice law in Arizona contributes a yearly assessment to the Fund. That money is invested, which allows the Fund to pay more claims. The Trustees can pay up to \$100,000 on one individual claim, and up to \$250,000 total in claims against one lawyer.

The Fund is administered by a Board of Trustees. There are five Trustees-four lawyers and one layperson-who are appointed by the State Bar of Arizona Board of Governors. The Trustees evaluate claims, determine if they are eligible for payment, and compensate eligible claimants.

Each year, the State Bar of Arizona issues its annual report on the Client Protection Fund - for 2012 the report can be seen at:  
[http://www.azbar.org/media/6939/final\\_word\\_fs\\_client\\_protection\\_fund\\_pdf.pdf](http://www.azbar.org/media/6939/final_word_fs_client_protection_fund_pdf.pdf)

The basic requirements that must be met in order for a claim to be eligible for consideration by the Fund require (but may not be limited to) the lawyer to be admitted and licensed to practice in Arizona and the claimant must have had a lawyer-client relationship with the lawyer, or a fiduciary relationship with the lawyer that is related to the practice of law, such as an administrator, personal representative, executor, trustee, guardian, or conservator.

Any claim on the Fund must be filed within five years from the time the claimant knew, or should have known, of the lawyer's dishonest conduct.

The claimant must demonstrate that the loss was caused by the "dishonest conduct" of the lawyer. For the purpose of the Fund, the State Bar of Arizona consider "dishonest conduct" to mean:

- Wrongful acts in the nature of theft or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value;
- Failure to refund unearned fees received in advance when no work was performed; or,
- A lawyer's act of intentional dishonesty or deceit that proximately leads to the loss of money or property.

Before a claim can be entertained by the Compensation Fund, the lawyer must have been either:

- Suspended for longer than six months by Supreme Court order;
- Disbarred by Supreme Court order;
- Placed on Interim Suspension by Supreme Court order;

- Transferred to disability inactive status;
- Deceased; or,
- Convicted of a felony arising out of the facts of the claim.

It is note that if the lawyer has received no disciplinary sanction, or has received less than a six month and one day suspension or disbarment, any claim filed against the lawyer will not be eligible for consideration.

The criteria for claiming on the Fund requires claimants to have exhausted all possible remedies against any reasonable source of possible recovery from the attorney prior to filing a Client Protection Fund claim. If the attorney is deceased, it may be, in certain circumstances, possible for the client to make a claim against the attorney's estate.

There are restrictions on who is able to make a claim on the Fund. These will include relatives of the lawyer and any partners, associates, co-shareholders, or employees of the lawyer. In addition, the right to claim on the Fund is not available to any business entity controlled by the lawyer or any governmental entity or agency.

Claims which are based upon negligence, incompetence, or malpractice by a lawyer or are to do with a disputes about fees charged will not be entertained by the Fund. In addition, if monies are provided for the purposes of investment or any other purpose that did not arise from a lawyer-client relationship, the client will not have any recourse through the Compensation Fund.

On submission of a claim, which is regarded and dealt with separately to any complaint against the lawyer, the application will be reviewed by a Fund Administrator. If the Administrator determines that the claim is eligible for consideration, the claim will be sent to the Board of Trustees. If the Trustees approve the claim and the lawyer has been in one of the following categories for a period of six months: (1) deceased, (2) disbarred, (3) transferred to disability inactive status, (4) suspended by the Supreme Court, (5) placed on interim suspension by the Supreme Court, or (6) convicted of a felony arising out of the facts of the claim, then payment will be issued and sent to the claimant.

## Germany

The legal profession in Germany is made up of "Rechtsanwälte" (comparable to solicitors) and "Notare" (civil-law notaries, not to be confused with common law notaries public). In Germany, "Notare" deal with substantial aspects of a conveyancing transaction which involves the handling of client monies.

"Rechtsanwälte" do not have a central client compensation fund, instead they are under an obligation to carry professional indemnity insurance in the minimum amount of 250.000 EUR per claim and 1 Million EUR covering all claims per year. Professional indemnity insurance however, does not cover intentional or criminal misconduct. Even though most instances of handling client monies involve "Notare", Rechtsanwälte will on occasions handle client money, for example in personal injury matters a Rechtsanwalt may directly negotiate with the third party's insurer, receive the compensation, subtract their fees and pass on the remaining amount to the client.

In effect, the clients of a German Rechtsanwalt are unprotected against

theft/misappropriation of client monies. However, there is no easily available statistic on criminal proceedings against Rechtsanwälte or even total claims against professional indemnity insurance providers.

"Notare" are also under an obligation to carry professional indemnity insurance. For "Notare" the minimum amount is 500.000 EUR per claim and again 1 Million EUR covering all claims per year. The same restriction applies: theft or misappropriation of client monies falls outside the scope of professional indemnity insurance. "Notares" are members of a chamber (there are 21 of them in Germany and every Notar belongs to one of them, they should however, not be confused with a barristers chamber in England & Wales) there is additional insurance cover explicitly covering intentional or criminal misconduct. The minimum cover in cases of intentional misconduct however is only 250.000 EUR per claim. As a third level of protection the 21 German notaries chambers together operate a client compensation fund whose aim it is to address the gaps left by individual professional indemnity insurance and the chamber's additional insurance.

There is however, no information publicly available on the financial situation of the fund or the number of claims made against the fund.

## The State Bar of California

The Client Security Fund is a public service of the California legal profession. The State Bar sponsored the creation of this fund to help protect consumers of legal services by alleviating losses resulting from the dishonest conduct of attorneys. The amount the fund may reimburse for theft committed by a California lawyer depends on when the loss occurred. A maximum of \$50,000 is reimbursable if the loss occurred before January 1, 2009. A maximum of \$100,000 is reimbursable rules if the loss occurred on or after January 1, 2009.

Applications for reimbursement are considered under rules that govern the Fund. apply. For applications filed on or after January 1, 2010, the new Client Security Fund rules apply.

Reimbursement covers the loss of money or property resulting from lawyer dishonesty (but not because the lawyer acted incompetently, committed malpractice or failed to take certain actions). The Fund may not reimburse interest or a consequential loss, a loss covered by an indemnity, or attorney fees and other costs paid to recover a reimbursable loss (unless the applicant submits clear and convincing proof that the payments were reasonable and they reduced the amount otherwise reimbursable).

To qualify for reimbursement, applicants must be able to show that the money or property actually came into the lawyer's possession and that the loss was caused by the lawyer's dishonest conduct.

The types of dishonest conduct that may lead to reimbursement from the fund are:

- Theft or embezzlement of money or the wrongful taking or conversion of money or property;
- Failure to refund unearned attorney fees paid to the lawyer in advance where the lawyer performed no services, or an insignificant portion of the services;

- The borrowing of money from a client without the intention or reasonably anticipated ability to repay the money;
- Obtaining money or property from a client by representing that it would be used for investment purposes when no investment is made; and
- An act of intentional dishonesty or deceit that directly leads to the loss of money or property that actually came into the lawyer's possession.

The fund may reimburse fees the client paid the lawyer, but only in very limited cases. Fees are not reimbursable simply because the client is dissatisfied with the services, or because the work was not completed.

No person or entity has a right to reimbursement, and no person or entity, including a creditor or third-party beneficiary, has any right to the fund.

The fund is administered by the Client Security Fund Commission which has sole authority to determine whether to grant an application for reimbursement from the Fund and the extent and manner of any payment.

To qualify for reimbursement, the applicant must establish that the attorney who dishonest conduct is alleged has:

- been disbarred, disciplined, or voluntarily resigned from the State Bar;
- died or adjudicated mentally incompetent; or
- become a judgement debtor of the applicant in a contested proceeding because of their dishonest conduct, or been convicted of a crime.

An applicant is excluded from receiving reimbursement from the fund for the following:

- is or was related to the attorney as a spouse or domestic partner;
- has a family relationship with the attorney;
- lived or lives with the attorney;
- has had a business relationship with the attorney as an associate, partner, employee or employer;
- is or was an insurer, surety, or bonding entity seeking reimbursement for a payment made under a contract or bond covering the dishonest conduct

## The Florida Bar

The Clients' Security Fund was created by The Florida Bar to help compensate persons who have suffered a loss of money or property due to misappropriation or embezzlement by an attorney.

Florida lawyers developed the program, which is funded solely by a portion of the annual membership fees of each member of The Florida Bar. The Fund is discretionary, therefore applications can be denied.

## How much can be recovered?

If fees to the lawyer were paid yet they did not provide any useful services, applicants may be reimbursed the amount of the fees you paid up to \$5,000. Approved fee claims are paid throughout the year as they are approved.

If the lawyer misappropriated or embezzled the applicants money held in trust, they may recover the amount of misappropriated or embezzled funds up to a total of \$250,000. All claim payments are held until the end of each fiscal year (June 30) and if the funds exist to pay all approved claims in full those payments are made. If there are not enough funds available to pay all approved claims in full, payments are made on a pro rata (partial) basis.

### **What losses are covered?**

The loss must have occurred during the lawyer and client relationship or while the lawyer was providing services customary to the practice of law. Fees paid to a lawyer for legal services are reimbursed only after it is determined that no useful services were provided.

### **What losses are not covered?**

The Clients' Security Fund does not reimburse for losses as a result of negligence or malpractice on the part of the lawyer. Business or investment relationships between applicant and the lawyer are also not covered. The reimbursable loss is limited to the actual amount taken by the lawyer and does not include damages, expenses incurred, lost interest, etc. caused by the lawyer taking or mishandling of the applicants funds or property.

Losses as a result of family relationships, partnerships or other associations may be denied. Normally, claims by governmental agencies, publicly owned corporations, institutional lenders, and insurance companies are not considered.

### **Who should apply to the Fund?**

If fees have been paid to the lawyer yet no useful services were provided, or if the attorney misappropriated or embezzled money or property, a claim may be filed to the Fund.

If the claim is made on behalf of an estate or trust, the proper party to file is the personal representative of the estate or trustee of the trust.

### **How long do I have to file a claim?**

Claims must be filed with the Bar within two years of the date of the final disciplinary action or the date of death of the lawyer. Any claim filed after for years of the date of the final disciplinary action or the date of death of the lawyer is time barred and will be closed without further action.

### **How is a claim processed?**

An application to the Clients' Security Fund is reviewed by the staff of The Florida Bar. Once the investigation into a claim is complete, the claim is reported to the

Clients' Security Fund Committee. The recommendation from the committee to pay a claim or to deny a claim then goes to a member of the Board of Governors of The Florida Bar called a Designated Reviewer (DR). The DR's recommendation then goes to the full Board who makes the final decision on whether or not a claim will be approved.

### **How is a claim processed?**

Claims are usually processed between six to eighteen months. The meeting schedules of the Clients' Security Fund Committee and the Board of Governors also are part of the time consideration.

## **The State Bar of Texas**

The Client Security Fund was established by the State Bar of Texas to protect the integrity of the legal profession through discretionary grants to clients who have been harmed by their lawyers' theft or failure to refund an unearned fee. Unless a lawyer is already deceased, disbarred, or resigned, a client must file a grievance which results in a disciplinary sanction to become eligible to apply to the Fund.

It provides financial relief to clients who have lost their money, property, or other things of value as a result of a lawyer's dishonest conduct. Dishonest conduct is defined as a wrongful taking of money or property or acceptance of a legal fee with no intent to render the services.

### **Who is eligible to apply for the fund?**

Any client who has lost money, property or other things of value due to a lawyer's dishonest conduct or can demonstrate through the grievance process that the lawyer did not earn his or her fee. The lawyer must have been hired by the client or otherwise appointed to perform services customary to the practice of law at the time the loss occurred.

### **Does the fund cover malpractice?**

No, the lawyer was paid a fee in advance and did not perform the critical legal services to earn the fee.

### **What is involved in filing an application?**

Unless the lawyer is already deceased, disbarred, adjudged mentally incompetent, resigned in lieu of discipline or becomes a judgement debtor of the applicant, the application begins with the client filing a grievance against the lawyer who is alleged to have committed acts of dishonest conduct, or has not earned his or her fee. If the grievance results in disciplinary sanction to the lawyer, this may constitute sufficient evidence to support the application for relief to the Fund. The findings in the grievance process must be final and all appeals must be exhausted prior to the Client Security Fund Committee's consideration of the application.



### **What evidence must the client provide?**

A client must provide sufficient evidence to support any allegations of dishonest conduct or unearned fee and a resulting loss of money, property, or other things of value. Examples of such evidence include contracts, cancelled checks, receipts, or other documents related specifically to the grievance.

### **How much money can be recovered by a client?**

The maximum payment allowable under the rules is \$30,000.00. The Client Security Fund Committee has the sole and final discretion to determine whether and to what extent any application shall be granted. At the time of payment, the Committee may pay a percentage of each approved claim, depending on the resources of the Fund during the year of the payment.

### **What amounts can be reimbursed?**

Only funds that came into the hands of the lawyer can be reimbursed. Amounts related to collateral losses or expenses, such as damages that might have been obtained in a successful lawsuit, or legal fees paid to other lawyers to finish an abandoned representation, for example, are not covered by the Fund.

## **New York State**

The New York Lawyers' Fund protects legal consumers from dishonest conduct in the practice of law, preserves the integrity of the bar, safeguards the good name of lawyers for their honesty in handling client money, and promotes public confidence in the administration of justice in the Empire State. The Trustees of the Lawyers' Fund attempts to secure these goals by reimbursing client money that is misused in the practice of law.

The Fund was established in 1982 to provide reimbursement to law clients who have lost money or property as a result of a lawyer's dishonest conduct in the practice of law. The Lawyers' Fund is a remedy for law clients who cannot get reimbursement from the lawyer who caused the loss, or from insurance or other sources. It also develops proposals to change legal practices that provide opportunities for dishonest practitioners to exploit the trust of clients. Other efforts focus on helping lawyers comply with their fiduciary and escrow obligations. The Trustees also develop consumer education programs with the hope that informed clients will avoid situations and transactions with lawyers that can result in losses.

Typical losses reimbursed by the Lawyers' Fund include the theft of estate and trust assets, escrow deposits in real property transactions, settlements in personal injury litigation, debt collection receipts, money embezzled in investment transactions with law clients, and unearned fees paid in advance to lawyers who falsely promise their legal services.

There is a \$300,000 maximum limit, per law client loss, on awards from the Fund, fixed by regulation of the Trustees. There is no aggregate maximum on awards involving one lawyer.

The fund is financed by the 271,000 members of the legal profession in New York State through a registration fee required by law. Since 1982, upwards of \$132 million in awards of reimbursement have been paid to deserving law clients.

Clients must apply for reimbursement within two years after they discover their loss. Each application is screened to see if the loss is eligible for reimbursement. Ineligible claims are dismissed promptly with an explanation why the loss cannot be reimbursed. Eligible claims are investigated and reports prepared for the Trustees. The Trustees meet four times each year to evaluate claims, and determine the amounts of reimbursement that will be allowed.

Losses are not generally reimbursed by the Trustees until a lawyer is disbarred by the New York court system. It's important that clients cooperate fully in all official investigations involving dishonesty in the practice of law.

### The Law Society of Upper Canada (Ontario)

The Law Society's Compensation Fund helps people who have lost money as a result of their lawyer or paralegal's dishonesty. The Compensation Fund is entirely funded by Ontario's lawyers and paralegals.

The Fund, which was established in 1953, was extended to include paralegals licensed by the Law Society in 2008.

#### What losses can the Fund cover?

The Compensation Fund can consider a grant if the claimant has lost money due to a lawyer or paralegal's dishonesty. The loss must arise in connection with the lawyer or paralegal's authorised practice. To qualify, claimants must be able to show that the money or property came into the lawyer or paralegal's hands.

Fees paid to a lawyer or paralegal may be reimbursed only after it is determined that few or no useful services were provided and if there is evidence of dishonesty.

#### What losses are not covered?

The Fund covers losses due to a lawyer or paralegal's dishonesty. It does not cover losses resulting from malpractice or negligence.

Losses on mortgage investments caused by a decline in real estate values are not compensated. Losses arising out of a business venture between a lawyer or paralegal and a client are also not covered. Similarly, the Fund will not compensate clients in situations where the lawyer or paralegal has failed to repay a loan given by a client who knew it was for personal use.

Reimbursement is limited to the actual amount taken by the lawyer or paralegal and does not include damages, expenses incurred or lost interest. For example, if a lawyer or paralegal takes money that should have been used to prevent a foreclosure on a home, the fund can reimburse the claimant for the lost money but not the lost house.

### **Is there a time limit?**

Claimants must notify the Law Society in writing about their loss within six months from the time that they first learned of the loss. In some cases, the Law Society may decide to extend this six-month period to two years, but the granting of an extension is not guaranteed and should not be relied upon.

### **How much can be recovered?**

Claimants may be reimbursed for a portion or the full amount of their loss. They may not be reimbursed for more than the per claimant limit. If the claim is due to a paralegal's dishonesty, the present limit is \$10,000 per claimant. If the claim is due to a lawyer's dishonesty, the present limit is \$150,000 per claimant for claims involving funds advanced to a lawyer on or after April 24, 2008. (The per claimant limit for funds advanced prior to April 24, 2008 is \$100,000.) Compensation is limited to money received by the lawyer or paralegal for which he or she fails to properly account. In determining the amount of the loss, all payments received by the claimant, including interest payments, are deducted from the claim. The fund is discretionary and therefore no one has an absolute right to recover money from it.

### **Who can apply?**

Claimants may apply if they have lost money due to a lawyer or paralegal's dishonesty, in connection with their law or legal services practice. Claimants need not be Canadian citizens. Eligible claimants include trusts and estates. The fund does not pay grants to banks or financial institutions in the business of lending money. The fund can only deal with claims involving the conduct of lawyers and paralegals licensed by the Law Society of Upper Canada.

### **Who decides whether a claim will be paid?**

The Compensation Fund Committee, which is a standing committee of Convocation (the Law Society's Board of Directors), considers grants over \$5,000. The Committee decides whether to pay the claim and how much to pay. Law Society staff may determine grants under \$5,000.

The guidelines for the determination of grants guide includes information for the claimant about the pre-requisites that must be met before a grant may be paid and factors that may affect the amount of any potential grant. For example, where a claim involves having left funds for investment with a lawyer, the degree of risk accepted by the claimant and any carelessness on the part of the claimant that may have contributed to the loss, are factors that may reduce the amount of payment. Hardship on the part of the claimant is also a factor that may be taken into account when the amount of the payment is determined.

All claims to the fund are assigned to a staff lawyer. If the case is straightforward and is eligible for a grant, the staff lawyer may recommend approval of the grant to senior

management, if it is under \$5,000. If the amount of the grant is \$5,000 or more, the staff lawyer may recommend payment of the grant to the committee.

In less straightforward cases or where eligibility is in doubt, a referee may hear the claim. The referee is like a judge and will hold a hearing. The claimant's case is heard and witnesses may be called. The referee prepares a written report on the claim with recommendations as to whether a grant should be paid. Members of the Compensation Fund Review Committee consider the report and make a final decision on the claim.

### **What other steps should claimants take?**

The fund is a fund of last resort. The claimant must try to recover the loss from the lawyer or paralegal and from any other sources including insurance or the lawyer or paralegal's partners, if any. However, notice of a claim should be filed with the fund as soon as possible. The Compensation Fund staff will determine whether all reasonable steps have been taken to recover the funds from other sources.

If a claim strongly suggests criminal conduct on the part of the lawyer or paralegal, the claimant must report the facts to the relevant police authority for investigation before a grant may be considered.

### **How long does the claims process take?**

The entire process may take anywhere from six months to eighteen months or more.

## **Northern Ireland**

The Fund is there to replace clients' money that has been misappropriated by a practitioner / solicitor or his or her employee(s). The applicant for a grant does not necessarily have to be or have been the practitioner/solicitor's client. The Fund is made wholly out of the discretion of the Council of the Law Society of Northern Ireland. The Fund is administered as a last resort, therefore the grant may be limited or refused to an applicant where the loss is an insured risk or where the loss is capable of being made good by recourse to another person.

### **Examples of losses which cannot be subject of a grant**

- as a result of misappropriation of money by a practitioner/solicitor outside his or her practice as such or by a practitioner/solicitor's employee acting outside the scope of his or her employment.
- losses arising solely by reason of professional negligence by a practitioner/solicitor
- by reason of the failure of a practitioner/solicitor to satisfy a money judgement against him or where the facts of the judgement would not otherwise give rise to a claim on the Compensation Fund
- losses where the Council is satisfied that either no evidence of dishonesty is available or, where in the case of failure to account, an applicant is not suffering material hardship.

### Examples of losses in respect of which a grant may not be made

- the applicant contributed to their own loss as a result of their activities, omissions or behaviour either before, during or after the transaction giving rise to the application or thereafter
- the loss amounts to a claim for contractually agreed interest between the applicant and the practitioner.
- the Society was not notified of the applicant's loss within six months of the date upon which the loss first came or ought to have come to the applicant's knowledge, and there are not exceptional circumstances relating to the delay which justify the delay.
- the application is based on the failure by a practitioner to comply with an undertaking. Failure on the part of a practitioner/solicitor to comply with an undertaking may be the subject of a complaint but does not itself entitle the recipient to make a successful application for a grant out of the Fund.

Every applicant for a grant out of the Compensation Fund must satisfy the Council that:

- they have suffered or are likely to suffer actual loss of money
- that loss has been caused by the dishonesty of a solicitor/practitioner or through the failure of a practitioner/solicitor to account for money received in the course of their practice.
- that any alleged dishonesty is evidence either by the conviction of the practitioner/solicitor (or by an employee) or by a finding of fraud in a civil action or by evidence leading to an inevitable presumption of theft.
- that the loss is not reasonably recoverable from another source

It is the Council's policy not to authorise a grant to any applicant which would result in an aggregate sum exceeding £750,000. The Council may also take into account the need to maintain sufficient funds in the Compensation Fund to meet the claims of other applicants.

### National Federation of Property Professionals

The Client Money Protection (CMP) Scheme is a compensation scheme run by the National Federation of Property Professionals (NFoPP) which provides compensation to landlords, tenants and other clients should an agent misappropriate their rent, deposit or other client funds.

The Scheme will compensate a landlord or tenant up to £25,000. However, landlords are limited to a maximum of three months rent. Then total payable in respect of a member company would be £500,000. In any one year the scheme has a limit of £3m.

Claimants must file a claim within the NFoPP within a period of 12 months from the date of notification of the misappropriation occurring. They only need to prove that they have not received monies to which they were legal entitled.

It is a mandatory requirement of association membership for Principal, Partner, Director (PPD) members that they must have CMP in place for every company that

acts as an agency in property (including the auctioning of chattels), and that handles client money.

Professional Indemnity Insurance does not fully cover client money. There is an element of fidelity bonding in professional indemnity insurance policies, but this only provides protection should staff misappropriate client funds. Only a CMP scheme can provide the public with protection should the agent do so.

There is a one-off fee of £180 to join the scheme. For 2012 the annual levy for each company holding client money was £359. This was a reduction of £73 on the 2011 levy. In 2013 the annual levy is £297. This is a reduction of £62 on last year's levy. An introduction to the 2013 scheme can be found in an open letter from the MDs of ARLA and the NAEA.

Late submission of documentation concerning professional indemnity insurance, accountant's reports and declarations, and late payment of the client money protection scheme levy, may be pursued as a disciplinary matter. Such matters will be dealt with outside of the disciplinary procedures. In these circumstances members may not have an opportunity to explain the reasons for their delay. Instead, late submission is likely to result in an automatic fine of up to £200 per breach of every separate requirement.

## Financial Services Compensation Scheme

The Financial Services Compensation Scheme (FSCS) is the UK's statutory fund of last resort for customers of financial services firms. This means that FSCS can pay compensation to consumers if a financial services firm is unable, or likely to be unable, to pay claims against it. The FSCS is an independent body, set up under the Financial Services & Markets Act 2000 (FSMA). Individual consumers are not charged for using the service.

The FSCS deals with claims against authorised firms (those regulated by the Financial Conduct Authority or the Prudential Regulation Authority) that are unable, or likely to be unable, to pay claims against them. This will generally be because a firm has stopped trading and has insufficient assets to meet claims, or is in insolvency.

To be eligible for compensation the claimant must have lost money due to their dealings with a regulated financial services firm. The FSCS can pay compensation only for financial loss. For example, for investment claims the total compensation would try to take account of the financial position the claimant would have been in had they not invested.

The FSCS can pay compensation only for financial loss. For example, for investment claims the aim of compensation is generally to put you back in the position you would have been in had you not invested.

As a fund of last resort, the FSCS can only consider claims if they cannot be paid by anyone else. If the firm is no longer trading but still has assets that could meet the claim, the FSCS unlikely to be able to help.

The rules of the Scheme set no time limit for making a claim for compensation.

Small companies can also apply for compensation provided that: turnover does not exceed £6.5m; the balance sheet total is no more than £3.26m; and there are no more than 50 employees.

## Levels of compensation

The actual level of compensation you receive will depend on the basis of the claim. The FSCS only pays compensation for financial loss. Compensation limits are per person per firm, and per claim category. The maximum levels of compensation are:

- Deposits: £85,000 per person per firm (for claims against firms declared in default from 31 December 2010). 100% of £85,000.
- Investments: £50,000 per person per firm (for claims against firms declared in default from 1 January 2010). 100% of the first £50,000.
- Home Finance (e.g. mortgage advice and arranging): £50,000 per person per firm (for claims against firms declared in default from 1 January 2010). 100% of the first £50,000
- Insurance Business: unlimited. Protects 90% of the claim with no upper limit. Compulsory insurance is 100%.
- General insurance advice and arranging: unlimited (for business conducted on or after 14 January 2005). Protects 90% of the claim with no upper limit. Compulsory insurance is 100%.

## When is FSCS cover triggered?

### Deposits

FSCS is triggered when an authorised deposit taker (such as a bank, building society or credit union) is unable, or likely to be unable, to repay its depositors. Joint account holders are each entitled to claim compensation.

### General insurance

Policyholder protection is triggered if an authorised insurer is unable, or likely to be unable, to meet claims against it, for example if it has been placed in provisional liquidation or administration.

### Long-term insurance (e.g. pensions and life assurance)

Policyholder protection is triggered if an authorised insurer is unable, or likely to be unable, to meet claims against it, for example if it has been placed in provisional liquidation or administration.

### General insurance advice and arranging

FSCS will safeguard policyholders if an authorised firm is unable, or likely to be unable, to pay claims against it, for example if it has been placed in provisional liquidation or administration.

### Investments

FSCS provides protection if an authorised investment firm is unable to pay claims against it.

### **Home finance (e.g. mortgage) advice and arranging**

The main area of mortgage advice that may give rise to a claim falling within the remit of FSCS relates to the suitability of that advice for the customer's circumstances at the time.

### **Bar Standards Board**

There is no compensation fund scheme in place as the BSB does not consider this necessary as its regulated entities are prohibited from holding client funds.

### **Council for Licensed Conveyances**

As a condition of being authorised by the Council for Licensed Conveyances (CLC), a body must make a contribution to the CLC Compensation Fund. CLC determines the amount which must be made, and may require a body to make a further contribution towards the Fund at any time.

### **Making a Compensation Claim**

The CLC may at its absolute discretion make a grant or other payment out of the Fund for the purpose of relieving or mitigating loss which the CLC is satisfied any person has suffered or is likely to suffer in consequence of:

- negligence or fraud or other dishonesty on the part of a licensed conveyancer, or their employees or associates in connection with their practices or licensed conveyances;
- failure on the part of a licensed conveyancer to account for money received by them in connection with their practices as licensed conveyances;
- the negligence, fraud or other dishonesty on the part of a body or of any of its employees or managers in connection with its practice;
- the failure on the part of a body to account for money received by it in connection with its practice

The claimant must deliver the claim to the CLC within 6 months (or a longer period if the CLC allows in an individual case) after the loss or likelihood of loss first came or should reasonably have come to their attention

On receipt of a claim the CLC may require the claimant to:

- support their claim with a statutory declaration;
- produce any relevant documents;
- assist with any enquiries the CLC thinks fit to pursue.

### **Determining Claims**



The CLC may take into account the following when making a claim (not complete list):

- whether the Claimant has any responsibility for the loss or directly / indirectly hoped to profit or did profit from the circumstances giving rise to the loss;
- whether the Claimant is protected in respect of their loss by any other scheme or any contract of insurance or indemnity or guarantee;
- whether the Claimant has recovered damages or compensation in respect of the loss which had been suffered including any interest recovered as a result of any available civil remedy or in criminal proceedings or is likely to make such a recovery in the future;
- whether the Claimant has taken all reasonable steps to mitigate loss
- whether the claim has been exaggerated by the Claimant;
- whether the CLC has reason to suspect fraud or other dishonesty on the part of the Claimant in respect of the loss or in respect of the claim.

The CLC will consider such a claim in its absolute discretion may make an additional grant or grants out of the Fund under this provision as follows:

- in lieu of interest on the amount of a grant for such a period and at such rate as determined at the CLC's discretion;
- a sum in respect of the amount of reasonable costs incurred by making a claim

## The Law Society of Scotland

### **The Law Society of Scotland announced on 21/11/13 that it will be undertaking a review of its own compensation fund scheme**

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. It is administered as a fund of last resort.

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.

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.

The total amount of the losses in relation to the dishonest actings of the solicitor can be claimed.

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.

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.

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.

If the claim is less than £1,000, it will be considered by a Director of the Society. Any dispute regarding the amount to be paid can be reviewed by the Guarantee Fund Committee.

If the claim is for more than £1,000 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.

All applications for grants require to be submitted within one year of the loss coming to the applicant's attention. The Council may extend this period if satisfied that there are circumstances which justify the extension of the time limit.

## Clients' Money Protection Scheme

This is a free service provided by RICS to clients of firms that are regulated by RICS. RICS purchases insurance to protect its exposure under the scheme.

Each claim per member of the public is limited to a maximum of £50 000 subject to an overall aggregate limit for the scheme of £5,300 000 for any one calendar year.

The scheme covers the direct loss of money held by a RICS regulated firm on behalf of clients.

### Exclusions

There are a number of exclusions as RICS applies the same terms to any claim under the scheme as apply to RICS under its insurance policies. The five that are usually most relevant are:

- All amounts due, or which might become due, in respect of interest or loss of profits or any other loss.
- Monies in the form of secured loan received by the firm whether such monies are fraudulently obtained or not.
- Monies held in an account that, with the client's agreement, has gone into overdraft.
- Any monies lost due to market fluctuations in any investment, trust or similar made with the client's consent.
- Any money lost that is held with the clients consent in a non FSA registered bank or building society due to the failure of such bank or building society.

### Conditions

Conditions are kept to a minimum but two of the more important conditions are that:

- known or suspected must be reported within 6 months of the client becoming aware of it. Even if the client does not know the full extent or details of the loss, they should advise the RICS as soon as they become aware of a problem, and:
- where a fraud or dishonesty is suspected then the details must also be reported to the police and other relevant authorities.

## Institute of Chartered Accountants of England and Wales (ICAEW) / and Scotland (ICAS) / and Ireland (ICAI)

The ICAEW, ICAS and ICAI operate a compensation scheme for members of the public who have incurred a financial loss as a result of investment advice given by a firm of chartered accountants which, at the time the advice was given, was authorised to give such advice by one of the three institutes.

The scheme can pay a maximum of £50,000 if the investment advice was given on or after 28 August 1988 (or if the claim relates to advice given by a licensed firm, on or after 1 December 2001).

If the claim relates to advice given on or after 1 December 2001, the scheme can consider claims relating to firms licensed by one of the institutes, though only if the advice was given in relation to a limited range of financial products.

The scope of the scheme is set out in the compensation scheme regulations. These stipulate that:

- the firm must have been authorised or licensed by one of the institutes at the time the financial advice was provided;
- the loss must have arisen from the advice given;
- the firm must be insolvent; and
- there must be no other way of recovering compensation.
- 

An independent panel decides whether the claim falls within the terms of the scheme and the amount of compensation due.

Chartered Accountants Compensation Scheme Ltd administers the scheme on behalf of the three institutes and they each bear a proportionate amount towards the costs.

All other claims for compensation for business conducted after 1 December 2001 are covered by the Financial Services Compensation Scheme (FSCS).

Organisation / Regulator	What losses are covered?
The Law Society of Ireland	<p><b>Covered:</b> The Solicitors (Amendment) Act 1994 states that the fund should be maintained to provide compensation "...where it is proved to the satisfaction of the Society that any client of a solicitor has sustained loss in consequence of dishonesty on the part of a solicitor..."</p> <p><b>Not covered:</b> Claims in respect of negligence are not considered and that any such claim must be referred to the solicitor's professional indemnity insurers.</p>
The Finnish Bar	In all cases the ground for the payment has been a lawyer's criminal act - namely misappropriation of client monies.

<p>The Danish Bar and Law Society</p>	<p><b>Covered:</b> The Fund was established to help consumers in cases of misappropriation or other criminal behaviour on the part of lawyers. The Fund also pays where ordinary insurance for whatever reason will not pay in the cases of malpractice. The loss shall be either a result of:</p> <ul style="list-style-type: none"> <li>• the lawyers or his staff member's mistake, neglect or other liability in connection with practicing law; or,</li> <li>• the lawyers or his staff member's misappropriation of entrusted funds</li> </ul> <p>The prerequisite for compensation is therefore, that the negligence can be characterised as ordinary, and in this regard, the insurance companies have been quite liberal when interpreting the definition of 'ordinary'.</p> <p><b>Not covered:</b> The insurance will not however, cover gross negligence or wilful misconduct</p>
<p>Washington State Bar Association</p>	<p><b>Covered:</b> The sole purpose of the Lawyers' Fund for Client Protection Board is to make gifts to persons in compensation in those cases where clients suffer a direct financial loss caused by the dishonest conduct of a lawyer in connection with the practice of law.</p> <p>The Fund will only provide compensation for actual losses suffered i.e. the amount the lawyer took or mishandled.</p> <p><b>Not covered:</b> The Lawyers' Fund for Client Protection Board will not compensate a client for losses caused by a lawyer's malpractice, or fee disputes between the client and the lawyer. Any disputes concerning a lawyer's fee must be resolved directly with the lawyer.</p> <p>The Fund cannot compensate for damages such as lost interest, lawyers fees you paid in attempting to recover the lost money, or other consequential or punitive damages.</p>

<p><b>Bar of Maryland</b></p>	<p><b>Covered:</b> The Clients' Security Trust Fund is generally set up to reimburse people whose attorney has wrongfully taken money from them. With regards to fee disputes, however, The Bar of Maryland consider that there is a fine line between fee disputes and theft. If the client considers that the attorney may have wrongfully taken money from you i.e. by overcharging, then clients are advised to lodge a claim with the Client Protection Fund.</p> <p><b>Not covered:</b> The Fund does not handle malpractice claims</p>
<p><b>The State Bar of Arizona</b></p>	<p><b>Covered:</b> The purpose of the Fund is "<i>...to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses caused by the dishonest conduct of lawyers admitted and licensed to practice in Arizona, occurring in the course of the client-lawyer or fiduciary relationship between the lawyer and the claimant...</i>".</p> <p>The claimant must demonstrate that the loss was caused by the "dishonest conduct" of the lawyer. For the purpose of the Fund, the State Bar of Arizona consider "dishonest conduct" to mean:</p> <ul style="list-style-type: none"> <li>• Wrongful acts in the nature of theft or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value;</li> <li>• Failure to refund unearned fees received in advance when no work was performed; or,</li> <li>• A lawyer's act of intentional dishonesty or deceit that proximately leads to the loss of money or property.</li> </ul> <p><b>Not covered:</b> Claims which are based upon negligence, incompetence, or malpractice by a lawyer or are to do with a disputes about fees charged will not be entertained by the Fund. In addition, if monies are provided for the purposes of investment or any other purpose that did not arise from a lawyer-client relationship, the client will not have any recourse through the Compensation Fund.</p>

## Germany

"Rechtsanwälte" (comparable to solicitors) do not have a central client compensation fund, instead they are under an obligation to carry professional indemnity insurance in the minimum amount of 250.000 EUR per claim and 1 Million EUR covering all claims per year. Professional indemnity insurance however, does not cover intentional or criminal misconduct. In effect, the clients of a German Rechtsanwalt are unprotected against theft/misappropriation of client monies.

"Notare" (civil-law notaries) are also under an obligation to carry professional indemnity insurance. For "Notare" the minimum amount is 500.000 EUR per claim and again 1 Million EUR covering all claims per year. The same restriction applies: theft or misappropriation of client monies falls outside the scope of professional indemnity insurance.



The State Bar of California

**Covered:** Reimbursement covers the loss of money or property resulting from lawyer dishonesty (but not because the lawyer acted incompetently, committed malpractice or failed to take certain actions).

To qualify for reimbursement, applicants must be able to show that the money or property actually came into the lawyer's possession and that the loss was caused by the lawyer's dishonest conduct.

The types of dishonest conduct that may lead to reimbursement from the fund are:

- Theft or embezzlement of money or the wrongful taking or conversion of money or property;
- Failure to refund unearned attorney fees paid to the lawyer in advance where the lawyer performed no services, or an insignificant portion of the services;
- The borrowing of money from a client without the intention or reasonably anticipated ability to repay the money;
- Obtaining money or property from a client by representing that it would be used for investment purposes when no investment is made; and
- An act of intentional dishonesty or deceit that directly leads to the loss of money or property that actually came into the lawyer's possession.

**Not covered:** The Fund may not reimburse interest or a consequential loss, a loss covered by an indemnity, or attorney fees and other costs paid to recover a reimbursable loss (unless the applicant submits clear and convincing proof that the payments were reasonable and they reduced the amount otherwise reimbursable).

Fees are not reimbursable simply because the client is dissatisfied with the services, or because the work was not completed.

<p>The Florida Bar</p>	<p><b>Covered:</b> The loss must have occurred during the lawyer and client relationship or while the lawyer was providing services customary to the practice of law. Fees paid to an lawyer for legal services are reimbursed only after it is determined that no useful services were provided.</p> <p><b>Not covered:</b> The Clients' Security Fund does not reimburse for losses as a result of negligence or malpractice on the part of the lawyer. Business or investment relationships between applicant and the lawyer are also not covered. The reimbursable loss is limited to the actual amount taken by the lawyer and does not include damages, expenses incurred, lost interest, etc. caused by the lawyer taking or mishandling of the applicants funds or property.</p> <p>Losses as a result of family relationships, partnerships or other associations may be denied. Normally, claims by governmental agencies, publicly owned corporations, institutional lenders, and insurance companies are not considered.</p>
<p>The State Bar of Texas</p>	<p>It provides financial relief to clients who have lost their money, property, or other things of value as a result of a lawyer's dishonest conduct. Dishonest conduct is defined as a wrongful taking of money or property or acceptance of a legal fee with no intent to render the services.</p>
<p>New York State</p>	<p><b>Covered:</b> The Fund provides reimbursement to law clients who have lost money or property as a result of a lawyer's dishonest conduct in the practice of law. The Lawyers' Fund is a remedy for law clients who cannot get reimbursement from the lawyer who caused the loss, or from insurance or other sources.</p> <p>Typical losses reimbursed by the Lawyers' Fund include the theft of estate and trust assets, escrow deposits in real property transactions, settlements in personal injury litigation, debt collection receipts, money embezzled in investment transactions with law clients, and unearned fees paid in advance to lawyers who falsely promise their legal services.</p>

<p>The Law Society of Upper Canada (Ontario)</p>	<p><b>Covered:</b> The Compensation Fund can consider a grant if the claimant has lost money due to a lawyer or paralegal's dishonesty. The loss must arise in connection with the lawyer or paralegal's authorised practice. To qualify, claimants must be able to show that the money or property came into the lawyer or paralegal's hands.</p> <p>Fees paid to a lawyer or paralegal may be reimbursed only after it is determined that few or no useful services were provided and if there is evidence of dishonesty.</p> <p><b>Not covered:</b> The Fund covers losses due to a lawyer or paralegal's dishonesty. It does not cover losses resulting from malpractice or negligence.</p> <p>Losses on mortgage investments caused by a decline in real estate values are not compensated. Losses arising out of a business venture between a lawyer or paralegal and a client are also not covered. Similarly, the Fund will not compensate clients in situations where the lawyer or paralegal has failed to repay a loan given by a client who knew it was for personal use.</p> <p>Reimbursement is limited to the actual amount taken by the lawyer or paralegal and does not include damages, expenses incurred or lost interest. For example, if a lawyer or paralegal takes money that should have been used to prevent a foreclosure on a home, the fund can reimburse the claimant for the lost money but not the lost house.</p>
<p>Northern Ireland</p>	<p><b>Not Covered:</b></p> <ul style="list-style-type: none"> <li>• as a result of misappropriation of money by a practitioner/solicitor outside his or her practice as such or by a practitioner/solicitor's employee acting outside the scope of his or her employment.</li> <li>• losses arising solely by reason of professional negligence by a practitioner/solicitor</li> <li>• by reason of the failure of a practitioner/solicitor to satisfy a money judgement against him or where the facts of the judgement would not otherwise give rise to a claim on the Compensation Fund</li> <li>• losses where the Council is satisfied that either no evidence of dishonesty is available or, where in the case of failure to account, an applicant is not suffering material hardship.</li> </ul>
<p>National Federation of Property Professionals</p>	<p>The Client Money Protection (CMP) Scheme is a compensation scheme run by the National Federation of Property Professionals (NFoPP) which provides compensation to landlords, tenants and other clients should an agent misappropriate their rent, deposit or other client funds.</p>

<b>Financial Services Compensation Scheme</b>	<p>To be eligible for compensation the claimant must have lost money due to their dealings with a regulated financial services firm. The FSCS can pay compensation only for financial loss. For example, for investment claims the aim of compensation is generally to put you back in the position you would have been in had you not invested.</p>
<b>Council for Licensed Conveyances</b>	<p>The CLC may at its absolute discretion make a grant or other payment out of the Fund for the purpose of relieving or mitigating loss which the CLC is satisfied any person has suffered or is likely to suffer in consequence of:</p> <ul style="list-style-type: none"> <li>• negligence or fraud or other dishonesty on the part of a licensed conveyancer, or their employees or associates in connection with their practices or licensed conveyances;</li> <li>• failure on the part of a licensed conveyancer to account for money received by them in connection with their practices as licensed conveyances;</li> <li>• the negligence, fraud or other dishonesty on the part of a body or of any of its employees or managers in connection with its practice;</li> <li>• the failure on the part of a body to account for money received by it in connection with its practice</li> </ul>
<b>The Law Society of Scotland</b>	<p>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. There must be no other means of recovering the money; for example, by suing the solicitor directly or making a negligence claim.</p>
<b>Royal Institute of Chartered Surveyors</b>	<p>The scheme covers the direct loss of money held by a RICS regulated firm on behalf of clients.</p>

<p>Institute of Chartered Accounts of England and Wales (ICAEW); Scotland (ICAS); and Ireland (ICAI)</p>	<p>The ICAEW, ICAS and ICAI operate a compensation scheme for members of the public who have incurred a financial loss as a result of investment advice given by a firm of chartered accountants which, at the time the advice was given, was authorised to give such advice by one of the three institutes.</p>
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<p><b>Organisation / Regulator</b></p>	<p><b>Is there any other eligibility criteria?</b></p>
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<p>Washington State Bar Association</p>	<p>Before the Lawyers' Fund for Client Protection Board can approve a gift, the client must have exhausted all other means of getting their money back. This may include recovering money from:</p> <ul style="list-style-type: none"> <li>• a bank that honored a forged endorsement;</li> <li>• bonds or insurance;</li> <li>• negligent partners of the lawyer; or</li> <li>• the lawyer, if he or she has assets.</li> </ul>
<p>The State Bar of Arizona</p>	<p>Before a claim can be entertained by the Compensation Fund, the lawyer must have been either:</p> <ul style="list-style-type: none"> <li>• Suspended for longer than six months by Supreme Court order;</li> <li>• Disbarred by Supreme Court order;</li> <li>• Placed on Interim Suspension by Supreme Court order;</li> <li>• Transferred to disability inactive status;</li> <li>• Deceased; or,</li> <li>• Convicted of a felony arising out of the facts of the claim.</li> </ul> <p>It is note that if the lawyer has received no disciplinary sanction, or has received less than a six month and one day suspension or disbarment, any claim filed against the lawyer will not be eligible for consideration.</p> <p>The criteria for claiming on the Fund requires claimants to have exhausted all possible remedies against any reasonable source of possible recovery from the attorney prior to filing a Client Protection Fund claim. If the attorney is deceased, it may be, in certain circumstances, possible for the client to make a claim against the attorney's estate.</p> <p>There are restrictions on who is able to make a claim on the Fund. These will include relatives of the lawyer and any partners, associates, co-shareholders, or employees of the lawyer. In addition, the right to claim on the Fund is not available to any business entity controlled by the lawyer or any governmental entity or agency.</p>

<p>The State Bar of California</p>	<p>To qualify for reimbursement, the applicant must establish that the attorney who dishonest conduct is alleged has:</p> <ul style="list-style-type: none"> <li>• been disbarred, disciplined, or voluntarily resigned from the State Bar;</li> <li>• died or adjudicated mentally incompetent; or</li> <li>• become a judgement debtor of the applicant in a contested proceeding because of their dishonest conduct, or been convicted of a crime.</li> </ul> <p>An applicant is excluded from receiving reimbursement from the fund for the following:</p> <ul style="list-style-type: none"> <li>• is or was related to the attorney as a spouse or domestic partner;</li> <li>• has a family relationship with the attorney;</li> <li>• lived or lives with the attorney;</li> <li>• has had a business relationship with the attorney as an associate, partner, employee or employer;</li> <li>• is or was an insurer, surety, or bonding entity seeking reimbursement for a payment made under a contract or bond covering the dishonest conduct</li> </ul>
<p>The Florida Bar</p>	<p>If fees have been paid to the lawyer yet no useful services were provided, or if the attorney misappropriated or embezzled money or property, a claim may be filed to the Fund.</p> <p>If the claim is made on behalf of an estate or trust, the proper party to file is the personal representative of the estate or trustee of the trust</p>
<p>The State Bar of Texas</p>	<p>Unless a lawyer is already deceased, disbarred, or resigned, a client must file a grievance which results in a disciplinary sanction to become eligible to apply to the Fund.</p> <p>Any client who has lost money, property or other things of value due to a lawyer's dishonest conduct or can demonstrate through the grievance process that the lawyer did not earn his or her fee can make a claim. The lawyer must have been hired by the client or otherwise appointed to perform services customary to the practice of law at the time the loss occurred.</p>

<p>The Law Society of Upper Canada (Ontario)</p>	<p>Claimants may apply if they have lost money due to a lawyer or paralegal's dishonesty, in connection with their law or legal services practice.</p> <p>Claimants need not be Canadian citizens. Eligible claimants include trusts and estates. The fund does not pay grants to banks or financial institutions in the business of lending money. The fund can only deal with claims involving the conduct of lawyers and paralegals licensed by the Law Society of Upper Canada.</p>
<p>Northern Ireland</p>	<p>Every applicant for a grant out of the Compensation Fund must satisfy the Council that:</p> <ul style="list-style-type: none"> <li>• they have suffered or are likely to suffer actual loss of money</li> <li>• that loss has been caused by the dishonesty of a solicitor/practitioner or through the failure of a practitioner/solicitor to account for money received in the course of their practice.</li> <li>• that any alleged dishonesty is evidence either by the conviction of the practitioner/solicitor (or by an employee) or by a finding of fraud in a civil action or by evidence leading to an inevitable presumption of theft.</li> <li>• that the loss is not reasonably recoverable from another source</li> </ul>
<p>Financial Services Compensation Scheme</p>	<p>To be eligible for compensation the claimant must have lost money due to their dealings with a regulated financial services firm. The FSCS can pay compensation only for financial loss. For example, for investment claims the total compensation would try to take account of the financial position the claimant would have been in had they not invested.</p> <p>The FSCS can pay compensation only for financial loss. For example, for investment claims the aim of compensation is generally to put you back in the position you would have been in had you not invested.</p> <p>As a fund of last resort, the FSCS can only consider claims if they cannot be paid by anyone else. If the firm is no longer trading but still has assets that could meet the claim, the FSCS unlikely to be able to help.</p> <p>Small companies can also apply for compensation provided that: turnover does not exceed £6.5m; the balance sheet total is no more than £3.26m; and there are no more than 50 employees.</p>



<p>The Law Society of Scotland</p>	<p>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.</p>
<p>Royal Institute of Chartered Surveyors</p>	<p>There are a number of exclusions as RICS applies the same terms to any claim under the scheme as apply to RICS under its insurance policies. The five that are usually most relevant are:</p> <ul style="list-style-type: none"> <li>• All amounts due, or which might become due, in respect of interest or loss of profits or any other loss.</li> <li>• Monies in the form of secured loan received by the firm whether such monies are fraudulently obtained or not.</li> <li>• Monies held in an account that, with the client's agreement, has gone into overdraft.</li> <li>• Any monies lost due to market fluctuations in any investment, trust or similar made with the client's consent.</li> <li>• Any money lost that is held with the clients consent in a non FSA registered bank or building society due to the failure of such bank or building society.</li> </ul>
<p>Institute of Chartered Accounts of England and Wales (ICAEW); Scotland (ICAS); and Ireland (ICAI)</p>	<p>The scope of the scheme is set out in the compensation scheme regulations. These stipulate that:</p> <ul style="list-style-type: none"> <li>• the firm must have been authorised or licensed by one of the institutes at the time the financial advice was provided;</li> <li>• the loss must have arisen from the advice given;</li> <li>• the firm must be insolvent; and</li> <li>• there must be no other way of recovering compensation.</li> </ul> <p>All other claims for compensation for business conducted after 1 December 2001 are covered by the Financial Services Compensation Scheme (FSCS).</p>

Organisation / Regulator	How much can be recovered? How is it financed?
The Law Society of Ireland	<p><b>Coverage:</b> Irish legislation initially provided a limit of IR£350,000 to any claim which was then amended to €700,000 in 2002.</p> <p><b>Finance:</b> The fund is financed each year by a portion of the practising certificate fee being allocated to the fund. In 2013, the amount allocated to the fund was €760 per solicitor with estimated practising certificates of 8,700 a sum of approximately €6.5 million would be allocated to the compensation fund.</p> <p>The allocation of €6.5 million is applied to cover overheads which include insurance, wages of the investigating accountants and other staff and legal costs.</p> <p>For the year 2012/2013, the compensation fund held assets of €16.5 million which had accumulated over the years. So as to ensure the fund is protected, the Law Society of Ireland operates a loss insurance policy each year - the policy has an excess of €5 million and cover of €50 million in place to cover the excess.</p>
The Finnish Bar	<p><b>Coverage:</b> The Finnish Bar say that the largest sum paid is a little more than €100.000 and the smallest amount is about €4.000.</p>

<p>The Danish Bar and Law Society</p>	<p><b>Coverage:</b> If the loss is a result of a lawyer's mistake, neglect or other liability the highest amount of compensation is 2.500.000 million DKK. If the loss is a result of a lawyer's theft of client money the fund can compensate the applicant with 5 million DKK. The numbers also cover the amount that can be compensated per lawyer per year.</p> <p>Usually the Fund will pay up to the current minimum of the mandatory insurance and no further, regardless of the actual damages which may have been suffered.</p> <p><b>Finance:</b> The number of cases and paid compensation varies a lot. Some years the fund pays around 5-8 million DKK and other years less. The statistics often depend on larger cases regarding one lawyer but concerning several applicants. The larger, more complex cases revolving several applicants often concern a lawyers theft or misappropriation of client money.</p>
<p>Washington State Bar Association</p>	<p><b>Coverage:</b> The application for compensation is reviewed by the Lawyers' Fund for Client Protection Board. The Board comprises both lawyers and non-lawyers. If the Fund Board agrees that a gift should be made from the Fund, the Fund Board may make gifts up to \$25,000. Gifts over \$25,000 must be approved by the WSBA Board of Governors. Approved gifts will be paid up to \$5,000 upon final approval; any remaining balance on the approved gift will not be disbursed until fiscal year end and may be subject to proration. The maximum gift which can be made by the WSBA is \$75,000.</p> <p><b>Finance:</b> All of the active lawyers in Washington state make a contribution to the Fund every year. This sum is reviewed periodically.</p>

<p>Bar of Maryland</p>	<p><b>Coverage:</b> In most cases, the client can claim the full amount that was wrongfully taken. The amount reimbursed, however, cannot exceed 10 percent of the value of the Fund as of the close of the prior fiscal year. The Fund does not pay interest.</p> <p><b>Finance:</b> The Client Protection Fund is supported entirely by attorneys in the State of Maryland who are required by law to pay an annual assessment for the right to practice law.</p>
<p>The State Bar of Arizona</p>	<p><b>Coverage:</b> The Fund's Board of Trustees can pay up to \$100,000 on one individual claim, and up to \$250,000 total in claims against one lawyer.</p> <p><b>Finance:</b> The Fund is a trust that exists as a separate entity from the State Bar of Arizona. The Fund's Board of Trustees receives, holds, manages, and disburses money from the Fund. The Fund is a charitable organisation and is not funded by taxpayer dollars. Each lawyer licensed to practice law in Arizona contributes a yearly assessment to the Fund.</p>
<p>Germany</p>	<p>"Rechtsanwälte" (comparable to solicitors) do not have a central client compensation fund, instead they are under an obligation to carry professional indemnity insurance in the minimum amount of 250.000 EUR per claim and 1 Million EUR covering all claims per year. Professional indemnity insurance however, does not cover intentional or criminal misconduct.</p> <p>"Notare" (civil-law notaries) are also under an obligation to carry professional indemnity insurance. For "Notare" the minimum amount is 500.000 EUR per claim and again 1 Million EUR covering all claims per year</p>

<p>The State Bar of California</p>	<p><b>Coverage:</b> The amount the fund may reimburse for theft committed by a California lawyer depends on when the loss occurred. A maximum of \$50,000 is reimbursable if the loss occurred before January 1, 2009. A maximum of \$100,000 is reimbursable rules if the loss occurred on or after January 1, 2009.</p> <p><b>Finance:</b> The Client Security Fund is a public service of the California legal profession. The State Bar sponsored the creation of this fund to help protect consumers of legal services by alleviating losses resulting from the dishonest conduct of attorneys.</p>
<p>The Florida Bar</p>	<p><b>Coverage:</b> If fees to the lawyer were paid yet they did not provide any useful services, applicants may be reimbursed the amount of the fees you paid up to \$5,000. Approved fee claims are paid throughout the year as they are approved.</p> <p>If the lawyer misappropriated or embezzled the applicants money held in trust, they may recover the amount of misappropriated or embezzled funds up to a total of \$250,000. All claim payments are held until the end of each fiscal year (June 30) and if the funds exist to pay all approved claims in full those payments are made. If there are not enough funds available to pay all approved claims in full, payments are made on a pro rata (partial) basis.</p> <p><b>Finance:</b> Florida lawyers developed the program, which is funded solely by a portion of the annual membership fees of each member of The Florida Bar.</p>
<p>The State Bar of Texas</p>	<p>The maximum payment allowable under the rules is \$30,000.00. The Client Security Fund Committee has the sole and final discretion to determine whether and to what extent any application shall be granted. At the time of payment, the Committee may pay a percentage of each approved claim, depending on the resources of the Fund during the year of the payment.</p> <p>Only funds that came into the hands of the lawyer can be reimbursed. Amounts related to collateral losses or expenses, such as damages that might have been obtained in a successful lawsuit, or legal fees paid to other lawyers to finish an abandoned representation, for example, are not covered by the Fund.</p>

<p>New York State</p>	<p><b>Coverage:</b> There is a \$300,000 maximum limit, per law client loss, on awards from the Fund, fixed by regulation of the Trustees. There is no aggregate maximum on awards involving one lawyer.</p> <p><b>Finance:</b> The fund is financed by the 271,000 members of the legal profession in New York State through a registration fee required by law. Since 1982, upwards of \$132 million in awards of reimbursement have been paid to deserving law clients.</p>
<p>The Law Society of Upper Canada (Ontario)</p>	<p><b>Coverage:</b> Claimants may be reimbursed for a portion or the full amount of their loss. They may not be reimbursed for more than the per claimant limit. If the claim is due to a paralegal's dishonesty, the present limit is \$10,000 per claimant.</p> <p>If the claim is due to a lawyer's dishonesty, the present limit is \$150,000 per claimant for claims involving funds advanced to a lawyer on or after April 24, 2008. (The per claimant limit for funds advanced prior to April 24, 2008 is \$100,000.)</p> <p>Compensation is limited to money received by the lawyer or paralegal for which he or she fails to properly account. In determining the amount of the loss, all payments received by the claimant, including interest payments, are deducted from the claim.</p> <p>The Compensation Fund Committee, which is a standing committee of Convocation (the Law Society's Board of Directors), considers grants over \$5,000. The Committee decides whether to pay the claim and how much to pay. Law Society staff may determine grants under \$5,000.</p> <p><b>Finance:</b> The Compensation Fund is entirely funded by Ontario's lawyers and paralegals.</p>

Northern Ireland	<p><b>Coverage:</b> It is the Council's policy not to authorise a grant to any applicant which would result in an aggregate sum exceeding £750,000. The Council may also take into account the need to maintain sufficient funds in the Compensation Fund to meet the claims of other applicants.</p>
National Federation of Property Professionals	<p><b>Coverage:</b> The Scheme will compensate a landlord or tenant up to £25,000. However, landlords are limited to a maximum of three months rent. Then total payable in respect of a member company would be £500,000. In any one year the scheme has a limit of £3m.</p> <p><b>Finance:</b> There is a one-off fee of £180 to join the scheme. For 2012 the annual levy for each company holding client money was £359. This was a reduction of £73 on the 2011 levy. In 2013 the annual levy is £297. This is a reduction of £62 on last year's levy. An introduction to the 2013 scheme can be found in an open letter from the MDs of ARLA and the NAEA</p>
Financial Services Compensation Scheme	<p><b>Coverage:</b> The actual level of compensation you receive will depend on the basis of the claim. The FSCS only pays compensation for financial loss. Compensation limits are per person per firm, and per claim category. The maximum levels of compensation are:</p> <ul style="list-style-type: none"> <li>• Deposits: £85,000 per person per firm (for claims against firms declared in default from 31 December 2010). 100% of £85,000.</li> <li>• Investments: £50,000 per person per firm (for claims against firms declared in default from 1 January 2010). 100% of the first £50,000.</li> <li>• Home Finance (e.g. mortgage advice and arranging): £50,000 per person per firm (for claims against firms declared in default from 1 January 2010). 100% of the first £50,000</li> <li>• Insurance Business: unlimited. Protects 90% of the claim with no upper limit. Compulsory insurance is 100%.</li> <li>• General insurance advice and arranging: unlimited (for business conducted on or after 14 January 2005). Protects 90% of the claim with no upper limit. Compulsory insurance is 100%.</li> </ul> <p><b>Finance:</b> The Financial Services Compensation Scheme (FSCS) is the UK's statutory fund of last resort for customers of financial services firms. The FSCS is an independent body, set up under the Financial Services &amp; Markets Act 2000 (FSMA). Individual consumers are not charged for using the service.</p>

<p>Council for Licensed Conveyances</p>	<p><b>Finance:</b> As a condition of being authorised by the Council for Licensed Conveyances (CLC), a body must make a contribution to the CLC Compensation Fund. CLC determines the amount which must be made, and may require a body to make a further contribution towards the Fund at any time.</p>
<p>The Law Society of Scotland</p>	<p><b>Coverage:</b> All principles in private practice in Scotland contribute annually.</p> <p><b>Finance:</b> The total amount of the losses in relation to the dishonest actings of the solicitor can be claimed. The applicant may also be able to claim all or part of their present solicitor's fee in bringing the claim to the Society.</p> <p>If the claim is less than £1,000, it will be considered by a Director of the Society. Any dispute regarding the amount to be paid can be reviewed by the Guarantee Fund Committee.</p> <p>If the claim is for more than £1,000 then it will be considered by either the Guarantee Fund Committee or a sub-Committee of the Guarantee Fund Committee.</p>
<p>Royal Institute of Chartered Surveyors</p>	<p><b>Coverage:</b> Each claim per member of the public is limited to a maximum of £50 000 subject to an overall aggregate limit for the scheme of £5,300 000 for any one calendar year.</p> <p><b>Finance:</b> This is a free service provided by RICS to clients of firms that are regulated by RICS. RICS purchases insurance to protect its exposure under the scheme.</p>



<p>Institute of Chartered Accounts of England and Wales (ICAEW); Scotland (ICAS); and Ireland (ICAI)</p>	<p><b>Coverage:</b> The scheme can pay a maximum of £50,000 if the investment advice was given on or after 28 August 1988 (or if the claim relates to advice given by a licensed firm, on or after 1 December 2001).</p> <p><b>Finance:</b> Chartered Accountants Compensation Scheme Ltd administers the scheme on behalf of the three institutes and they each bear a proportionate amount towards the costs.</p>
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<p><b>Organisation / Regulator</b></p>	<p><b>What time limits are involved?</b></p>
<p>The Law Society of Ireland</p>	<p>Any claim must be made within six months of realisation.</p>
<p>The Danish Bar and Law Society</p>	<p>The fund must receive the application for compensation within 6 months after the applicant knew or should have known about the alleged loss.</p>

Washington State Bar Association	Generally, any application for a claim on the Fund must be made within three years after the client discovers the loss.
Bar of Maryland	Claims for losses must be presented to the Trustees of the Client Protection Fund of the Bar of Maryland within six months after the discovery by the claimant of the defalcation, or at a later date at the discretion of the Trustees.
The State Bar of Arizona	Any claim on the Fund must be filed within five years from the time the claimant knew, or should have known, of the lawyer's dishonest conduct.
The Florida Bar	Claims must be filed with the Bar within two years of the date of the final disciplinary action or the date of death of the lawyer. Any claim filed after for years of the date of the final disciplinary action or the date of death of the lawyer is time barred and will be closed without further action.
New York State	Clients must apply for reimbursement within two years after they discover their loss.
The Law Society of Upper Canada (Ontario)	Claimants must notify the Law Society in writing about their loss within six months from the time that they first learned of the loss. In some cases, the Law Society may decide to extend this six-month period to two years, but the granting of an extension is not guaranteed and should not be relied upon.

<p><b>National Federation of Property Professionals</b></p>	<p>Claimants must file a claim within the NFoPP within a period of 12 months from the date of notification of the misappropriation occurring. They only need to prove that they have not received monies to which they were legal entitled.</p>
<p><b>Financial Services Compensation Scheme</b></p>	<p>The rules of the Scheme set no time limit for making a claim for compensation.</p>
<p><b>Council for Licensed Conveyances</b></p>	<p>The claimant must deliver the claim to the CLC within 6 months (or a longer period if the CLC allows in an individual case) after the loss or likelihood of loss first came or should reasonably have come to their attention</p>
<p><b>The Law Society of Scotland</b></p>	<p>Any claim on the Fund must be notified to the Society within one year of the loss coming to the applicant's attention.</p>
<p><b>Royal Institute of Chartered Surveyors</b></p>	<p>Known or suspected losses must be reported within 6 months of the client becoming aware of it. Even if the client does not know the full extent or details of the loss, they should advise the RICS as soon as they become aware of a problem</p>

<b>Organisation / Regulator</b>	<b>How are the claims processed?</b>
<p>The Law Society of Ireland</p>	<p>Where a solicitor's practice has been closed by an order of the High Court due to a deficit being discovered, the Society's Practice Closure section takes possession of the files and they are then redistributed to clients so that they may reinstruct another lawyer of their choice.</p> <p>If a client considers that monies have been misappropriated they may make a claim on the Compensation Fund. However, in all cases, the client must demonstrate that the loss has occurred due to the dishonesty of the solicitor originally instructed.</p> <p>The process for claiming requires an individual to complete the relevant claim form with all supporting documentation. Based on the information which has been provided and supporting documentation, a decision will be made. These decisions are made by the Society's Regulation of Practice Committee who will either recommend full payment/partial payment or refusal. If the claim is partially paid or refused then the client has the option of referring their claim to an independent adjudicator for consideration.</p>

<p><b>The Finnish Bar</b></p>	<p>The decision to use the compensation fund in order to pay compensation to a client is made by the Finnish Bar's Board of Association according to the following principles:</p> <ul style="list-style-type: none"> <li>• the available assets of the compensation fund;</li> <li>• the financial status of the party suffering the damage (as a rule compensation is paid only to natural persons who are really in need of the compensation, sometimes the compensation is called “the widow’s mite); and,</li> <li>• compensation may only be paid if the party suffering the damage assigns his claim towards the lawyer to the Bar Association.</li> </ul>
<p><b>The Danish Bar and Law Society</b></p>	<p>The Council of the Danish Bar and Law Society appoints five lawyers who constitute the Compensation Committee and determines whether the applicant will receive compensation and if so, what amount the applicant will receive.</p> <p>If the loss is a result of a lawyer’s mistake, neglect or other liability the highest amount of compensation is 2.500.000 million DKK. If the loss is a result of a lawyer’s theft of client money the fund can compensate the applicant with 5 million DKK. The numbers also cover the amount that can be compensated per lawyer per year.</p>

<p><b>Washington State Bar Association</b></p>	<p>In order for an application to be considered by the Washington State Bar Association, a client will need to submit an application to the Fund and file a disciplinary grievance. Generally, any application for a claim on the Fund must be made within three years after the client discovers the loss. Before any application is considered, the client will agree to repay the Fund if they later recover the lost money from another source.</p> <p>The Bar Association determines if the loss was caused by the lawyer's dishonest conduct. In most cases, a gift will not be made until the lawyer has been convicted of a crime or found to have violated the Rules of Professional Conduct. The Lawyers' Fund for Client Protection Board and the WSBA Office of Disciplinary Counsel will work together in investigating applications to the Fund.</p> <p>The application for compensation is reviewed by the Lawyers' Fund for Client Protection Board. The Board comprises both lawyers and non-lawyers.</p>
<p><b>Bar of Maryland</b></p>	<p>The process for dealing with the claim, requires an investigator of the Bar of Maryland discussing with all claimants details of their claim and explaining what needs to be done before the Trustees can consider the claim. The Trustees usually meet four times a year, and consider all claims where the investigation has been completed. Typically, the average time for a decision to be made on a claim is 3-4 months.</p> <p>In all cases, before the claim is decided by the Trustees, a complaint must be filed with the Attorney Grievance Commission, which considers attorney discipline. Oftentimes, an attorney is disciplined before the claim is approved by the Trustees.</p> <p>If the claim is refused for any reason, the client can appeal the decision which is made. All claimants have the right to have their claim reconsidered by the Trustees if they are not satisfied with the Trustees' initial decision. If they are still not satisfied with the decision after reconsideration, all claimants have the right to seek judicial review in the circuit court for the county where the claimant resides or has a principle place of business.</p>

<p><b>The State Bar of Arizona</b></p>	<p>The Fund is administered by a Board of Trustees. There are five Trustees-four lawyers and one layperson-who are appointed by the State Bar of Arizona Board of Governors. The Trustees evaluate claims, determine if they are eligible for payment, and compensate eligible claimants.</p> <p>On submission of a claim, which is regarded and dealt with separately to any complaint against the lawyer, the application will be reviewed by a Fund Administrator. If the Administrator determines that the claim is eligible for consideration, the claim will be sent to the Board of Trustees. If the Trustees approve the claim and the lawyer has been in one of the following categories for a period of six months: (1) deceased, (2) disbarred, (3) transferred to disability inactive status, (4) suspended by the Supreme Court, (5) placed on interim suspension by the Supreme Court, or (6) convicted of a felony arising out of the facts of the claim, then payment will be issued and sent to the claimant.</p>
<p><b>The State Bar of California</b></p>	<p>The fund is administered by the Client Security Fund Commission which has sole authority to determine whether to grant an application for reimbursement from the Fund and the extent and manner of any payment.</p>
<p><b>The Florida Bar</b></p>	<p>An application to the Clients' Security Fund is reviewed by the staff of The Florida Bar. Once the investigation into a claim is complete, the claim is reported to the Clients' Security Fund Committee. The recommendation from the committee to pay a claim or to deny a claim then goes to a member of the Board of Governors of The Florida Bar called a Designated Reviewer (DR). The DR's recommendation then goes to the full Board who makes the final decision on whether or not a claim will be approved.</p>

<p><b>The State Bar of Texas</b></p>	<p>The application begins with the client filing a grievance against the lawyer who is alleged to have committed acts of dishonest conduct, or has not earned his or her fee. If the grievance results in disciplinary sanction to the lawyer, this may constitute sufficient evidence to support the application for relief to the Fund. The findings in the grievance process must be final and all appeals must be exhausted prior to the Client Security Fund Committee's consideration of the application.</p> <p>A client must provide sufficient evidence to support any allegations of dishonest conduct or unearned fee and a resulting loss of money, property, or other things of value. Examples of such evidence include contracts, cancelled checks, receipts, or other documents related specifically to the grievance.</p>
<p><b>New York State</b></p>	<p>Each application is screened to see if the loss is eligible for reimbursement. Ineligible claims are dismissed promptly with an explanation why the loss cannot be reimbursed. Eligible claims are investigated and reports prepared for the Trustees. The Trustees meet four times each year to evaluate claims, and determine the amounts of reimbursement that will be allowed.</p> <p>Losses are not generally reimbursed by the Trustees until a lawyer is disbarred by the New York court system. It's important that clients cooperate fully in all official investigations involving dishonesty in the practice of law.</p>



<p>The Law Society of Upper Canada (Ontario)</p>	<p>Guidelines for the determination of grants guide the committee and staff's decisions. The guidelines include information for the claimant about the pre-requisites that must be met before a grant may be paid and factors that may affect the amount of any potential grant. For example, where a claim involves having left funds for investment with a lawyer, the degree of risk accepted by the claimant and any carelessness on the part of the claimant that may have contributed to the loss, are factors that may reduce the amount of payment. Hardship on the part of the claimant is also a factor that may be taken into account when the amount of the payment is determined.</p> <p>All claims to the fund are assigned to a staff lawyer. If the case is straightforward and is eligible for a grant, the staff lawyer may recommend approval of the grant to senior management, if it is under \$5,000. If the amount of the grant is \$5,000 or more, the staff lawyer may recommend payment of the grant to the committee.</p> <p>In less straightforward cases or where eligibility is in doubt, a referee may hear the claim. The referee is like a judge and will hold a hearing. The claimant's case is heard and witnesses may be called. The referee prepares a written report on the claim with recommendations as to whether a grant should be paid. Members of the Compensation Fund Review Committee consider the report and make a final decision on the claim.</p>
<p>The Law Society of Scotland</p>	<p>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.</p> <p>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.</p> <p>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.</p>

<p>Institute of Chartered Accounts of England and Wales (ICAEW); Scotland (ICAS); and Ireland (ICAI)</p>	<p>An independent panel decides whether the claim falls within the terms of the scheme and the amount of compensation due.</p> <p>Chartered Accountants Compensation Scheme Ltd administers the scheme on behalf of the three institutes and they each bear a proportionate amount towards the costs.</p>
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## **Compensation Fund accounts - summary**

Compensation fund accounts – snap shot (we are waiting for Accounts to confirm £ details re: other purposes the fund is used for)

All (£'000)						
	Opening Year Balance	Contributions	Grant Recoveries	Residual Balance from Stat. Fund	Grants Paid Out	Closing Balance
<b>2002</b>	37,172	21,447 from domestic solicitors 20,946 from foreign lawyers 144 in respect of previous years 357	1,186		(19,512)	
<b>2003</b>	28,673	32,715 from domestic solicitors 32,214 from foreign lawyers 224 in respect of previous years 277	1,357		(13,092)	
<b>2004</b>	37,299	29,480 from domestic solicitors 28,535 from foreign lawyers 249 in respect of previous years 696	666		(11,673)	

<b>2005</b>	41,087	23,300 from domestic solicitors 22,521 from foreign lawyers 211 in respect of previous years 568	4,824		(13,282)	
<b>2006</b>	40,963	23,661 from domestic solicitors 23,156 from foreign lawyers 203 in respect of previous years 302	9,888		(9,466)	
<b>2007</b>	52,047	16,096 from domestic solicitors 15,593 from foreign lawyers 146 in respect of previous years 357	8,378		(10,218)	
<b>2008</b>	54,235	8,410 from domestic solicitors 8,271 from foreign lawyers 101 in respect of previous years 38	7,455		(8,977)	

<b>2009</b>	56,262	21,072	19,235		(14,272)	
<b>2010</b>	64,655	2,098 from individual solicitors 1,089 from firms 1,009	16,574	14,450	(27,101)	70,676
<b>2011</b>	52,723	538 from individual solicitors 252 from firms 286	11,243	6,325	(15,161)	55,668
<b>2012</b>	45,000	35,314 from individual solicitors 18,530 from firms 16,784	5,416	2,929	(18,547)	70,112

## **Columns explained**

### **Contributions**

Annual contributions received into the Fund from domestic and foreign lawyers.

### **Grant Recoveries**

Where grants are made and subsequent investigation identifies a related client account, usually held by the Law Society as Statutory Trustee, funds may be subrogated from the related client money in order to re-instate the Fund, provided that certain procedures are followed. Such subrogated fund receipts are reflected under grants recovered.

### **Residual Balance from Statutory Fund**

Remaining funds held in Statutory Trust Accounts are transferred to the Fund once all reasonable efforts to establish and trace beneficiaries have been exhausted. Income from dormant Statutory Trust Accounts is recognised when the cash is received.

### **Grants Paid Out**

Grants paid by the Fund are discretionary in nature and are accounted for when paid. Grant authorisation is given by an Adjudication Panel or an authorised Adjudicator under delegated authority from the Board.