

LEGAL CONTRIBUTION TRUST

The Legal Contribution Trust administers the Solicitors' Guarantee Fund (Fidelity Fund under section 222 of Legal Profession Uniform Law (WA)).

PROCESS TO MAKE A CLAIM ON THE FIDELITY FUND

A claim can be made on the Fidelity Fund by completing a Statutory Declaration and providing any supporting documentation so that claim can be assessed. Please provide as much information as possible. It may be necessary for the Trustees of the Legal Contribution Trust to request further information from you (or your solicitor if you are represented).

You may prepare and lodge your claim on the Fidelity Fund yourself or seek assistance from a law practice/solicitor. Your reasonable costs of doing so will be paid from the Fidelity Fund if the claim is wholly or partly allowed. If the Trustees wholly disallow your claim, your reasonable legal costs in making and attempting to prove the claim may be paid from the Fidelity Fund if the Trustees consider it is appropriate.

Once the Statutory Declaration is completed it should be sent to lct@lawsocietywa.asn.au.

WHAT IS THE FIDELITY FUND

The Fidelity Fund is a fund administered by the Legal Contribution Trust under Legal Profession Uniform Law (WA) (LPUL). It is not an insurance scheme.

WHAT DOES THE FIDELITY FUND COVER?

The Fidelity Fund is a source of compensation to persons who suffer pecuniary loss due to defaults by law practices arising from dishonest acts or omissions of associates of the law practice relating to trust money or trust property.

WHAT IS PECUNIARY LOSS?

Pecuniary loss is either:

- The amount of trust money or value of trust property that was not paid or delivered; or
- The amount of money that a person loses or is deprived of, or the loss of value of trust property, as a result of a fraudulent dealing.

WHAT ARE THE REQUIREMENTS FOR A DEFAULT?

All of the following requirements must be satisfied for a default to be proven:

1. A failure by a law practice to pay or deliver trust money or trust property or a fraudulent dealing with trust property.
2. The trust money or trust property must have been received by the relevant law practice (or an associate of the law practice) in the course of legal practice.
3. The law practice's failure to pay or deliver trust money or trust property, or the fraudulent dealing with trust property, must have arisen from an act or omission of an associated that involved fraud or other dishonesty.

An **associate of a law practice** is a person who is a principal, partner, director, employee or agent of the practice (and would include a non-lawyer employee or agent of the practice). An Australian legal practitioner acting as a consultant to a law practice is also an associate of that law practice.

Trust money is defined to include money held in a controlled money account as well as general trust account, and also transit money and money received on account of legal costs in advance of providing legal services. Trust money is limited to money received while providing legal services and does not include investment moneys, except as explained below. The LPUL specifies that money paid to a law practice for legal services that have been provided and in respect of which a bill was issued by the law practice, is not trust money.

Trust property means property entrusted to a law practice in the course of providing legal service but does not include trust money.

Legal services means work done, or business transacted, in the ordinary course of legal practice.

WHAT DOESN'T THE FIDELITY FUND COVER?

The Fidelity Fund does not cover claims for negligence by a solicitor or law practice.

Claims will generally not be allowed under the LPUL for any money or property received by a law practice for investment purposes (unless specific conditions are met).

Claims are not allowed for losses arising from a financial service or mortgage financing activities of a law practice. Where mortgage financing activities include acting as an intermediary to match prospective lender and borrower, arranging the loan and receiving or dealing with payments under the loan, but does not include providing legal advice or preparing a mortgage for a loan.

The Fidelity Fund does not generally cover disputes about the amount of legal costs deducted by a lawyer from trust money under a bill given to the client. If you consider that the legal costs charged by a law practice are excessive, those disputes must be dealt with by means of the cost assessment process (further information can be found under Supreme Court of WA [Factsheet: Requesting a review of your solicitor's Bill of Costs](#)).

The Fidelity Fund does not cover consequential loss, otherwise known as "indirect" loss, which is loss that was not a direct result of the law practice's default.

WHO CAN MAKE A CLAIM?

Any person (whether real or corporate) who has suffered a loss because of a default or a fraudulent dealing with trust property, by a law practice, may make a claim on the Fidelity Fund by completing a Statutory Declaration and providing any supporting documentation to lct@lawsocietywa.asn.au.

WHAT ARE THE TIME LIMITS FOR MAKING A FIDELITY FUND CLAIM?

Claims must be lodged within six months of the person becoming aware of the default or by not later than 5pm on the date set in the advertisement for claims.

If the notification of the claim is not made within the required time, the claimant will be asked to provide an explanation as to why the notification was not made in time. If further time is not allowed by the Trustees of the Legal Contribution Trust, the Supreme Court of Western Australia may do so.

INVESTIGATION OF CLAIMS

Claims are investigated by legal representatives of the Trustees of the Legal Contribution Trust pursuant to LPUL. A claim may be determined by the Trustees wholly or partly allowing it or disallowing it.

Further information of the determination of claims is provided in the Fidelity Authority Statement.

HOW LONG DO CLAIMS TAKE TO BE DETERMINED?

The time taken to investigate and determine claims depends on the following:

1. The material available, such as whether any files were maintained by the law practice.
2. The volume of any available material which may need to be considered.
3. The cooperation of the claimant and/or third parties, including how promptly and satisfactorily any requests for information are responded to by the claimant and/or third parties, who may have information which may assist the investigation/determination of the claim.

Claims are generally finalised within 12 months. However, the timeframe can be shorter or longer depending on the circumstances.

CAN THE DETERMINATION OF THE TRUSTEES BE APPEALED?

If a claim is disallowed, there is a right of appeal to the Supreme Court of Western Australia within 30 days of receiving written notice of the disallowance.

WHAT CAN I RECOVER FROM THE FIDELITY FUND?

The loss for which the Fidelity Fund compensates a claimant in relation to a successful claim is generally as follows:

- The specific sum for which there has been a default (or the value of trust property fraudulently dealt with); and
- Interest on the amount allowed at the Reserve Bank of Australia Cash Target Rate plus 1% as at the date the claim was received by the Trustees of the Legal Contribution Trust paid from the date on which the claim was made up to the date that the claim has been allowed; and
- Reasonable costs of a solicitor acting for you regarding your Fidelity Fund claim.

- The amount that can be recovered from the Fidelity Fund is subject to a \$1,000,000 cap per individual claim and per law practice.

SHOULD I TAKE STEPS TO RECOVER MY LOSS BEFORE APPROACHING THE FIDELITY FUND?

The Fidelity Fund is a fund of last resort. Prospective claimants should first take steps to recover their loss from all other available sources before lodging a claim.

CAN MY CLAIM BE REDUCED BY THE TRUSTEES OF THE LEGAL CONTRIBUTION TRUST?

Section 240 of the LPUL outlines circumstances where a claim may be disallowed, partly disallowed or reduced by the Trustees of the Legal Contribution Trust. These include but are not limited to:

- A claimant unreasonably hindering the investigation of the claim;
- A claimant knowingly assisting or contributing towards the act or omission giving risk to the claim;
- A claimant's negligence contributing to the loss the claimant has suffered;
- A claimant's dealing/transaction with a law practice being illegal and the claimant knew or ought to have reasonably known of that illegality; and
- A claimant failing to take steps to mitigate losses arising from the act or omission that gave rise to the claim (referred to above).

Reductions may also occur where:

- Monies subject to the claim on the Fidelity Fund have been repaid by the solicitor/law practice;
- The Trustees consider that the money might have been receivable by the claimant from a source other than the Fidelity Fund, but for the neglect or failure by the claimant.

FURTHER INFORMATION

If you require further information, please contact the Legal Contribution Trust on lct@lawsocietywa.asn.au or call Law Society of Western Australia on 08 9324 8600.

DISCLAIMER

This document is not intended as legal advice. The purpose of this document is to provide potential claimants with information in relation to Fidelity Fund claim processes.