

## Quick Guide to Claims Procedure

### Purpose of the Fund

The primary purpose of the Legal Practitioners Fidelity Fund ('the Fund') is:

- to reimburse members of the public who may suffer pecuniary loss, not exceeding the amount determined by the Minister from time to time by notice in the Gazette, as a result of theft of any money or other property given in trust to a trust account practice in the course of the practice of a legal practitioner, where the legal practitioner acts as executor or administrator in a deceased estate, or as a trustee in an insolvent estate. Section 55 of the Legal Practice Act, 28 of 2014 (the Act)

### Fund of last resort

The Fund is a fund of last resort. If it is apparent that stolen money or property can be recovered from another source, the Fund will require a claimant to first exhaust all available legal remedies against all persons liable in law.

Section 79(1) of the Act.

Claimants are strongly advised to ensure that any rights of action which they might have, do not become prescribed.

### Requirements for establishing a claim

To establish a claim against the Fund, a claimant must prove:-

- that he/she has suffered pecuniary loss;
- by reason of theft committed by a legal practitioner, candidate legal practitioner or an employee of the legal practitioner;
- of money entrusted by or on behalf of the claimant to the legal practitioner; and
- in the course of the practitioner's practice as such.

Typical losses covered by the Fund include the theft of:-

- money from deceased or insolvent estates
- money held pending registration of the transfer of immovable property
- settlements in personal injury claims.

The Fund does not reimburse the following losses arising from:-

- negligence by a legal practitioner in the conduct of his or her practice
- business transactions with the legal practitioner.
- money that is handed to the legal practitioner for investment purposes
- loans to the legal practitioner.
- certain relationships such as family, business or partnership associations will also preclude a person from claiming.

### The procedure for the presentation of claims against the Fund

Prospective claimants should note the following:-

- Notice of the claim should be given to the Legal Practice Council of the province in which the legal practitioner practises and to the Fund, within a period of three months after the claimant:
  - became aware of the theft; or
  - by the exercise of reasonable care should have become aware of the theft. Section 78(1)(a) of the Act.
- Such proof as the Fund might reasonably require should be furnished within 6 (six) months after receipt of written demand requesting the submission of such proof. Section 78(1)(b) of the Act.
- The claim should be submitted to the Fund by way of an affidavit. Such affidavit will serve a dual purpose:
  - firstly, for the purpose of proving a claim against the Fund, and
  - secondly, to assist the SAPS in instituting a criminal investigation and prosecution. (See "Framework for a Sworn Affidavit")
- The defaulting legal practitioner's entire office file (cover and contents) should accompany the affidavit.
- Except where the Board of Control has directed that a formal inquiry be held, consideration of the claim will be confined to the affidavit submitted.
- Any allegations in the affidavit in connection with amounts entrusted to the legal practitioner must therefore be corroborated. In this regard it is usual for the affidavit to be accompanied by a copy of the claimant's ledger account, or other relevant ledger accounts in the practitioner's accounting records.

- In addition, other evidence such as paid cheques, receipts or correspondence should be submitted.
- The Fund will require the original documents where available, particularly paid cheques.
- Where the amount of the capital sum that the Board has admitted as a claim against the Fund falls within the jurisdiction of the High Court, the Fund will contribute to 25% of the claimant's cost incurred in establishing a claim, having regard to party and party tariff applicable in the High Court.
- Where the amount of the capital sum that the Board has admitted as a claim against the Fund falls within the jurisdiction of the Magistrate Court, the Fund will contribute to 25% of the claimant's costs incurred in establishing a claim, having regard to party and party tariff applicable in the Magistrate Court.
- The Fund will only contribute to a claimant's costs if the account is submitted within a period of 3 months from the date of which the claim was paid.
- The Fund's Board of Control will pay interest on claims that have not been finalised within 90 days of the Fund having been duly provided with all the evidence it may have required in terms of section 78 (1) (b) of the Act, provided that all other statutory requirements have been met.
- Interest will be paid based on a rate that is 1% less than what the Fund receives on its cash deposits from time to time and will be calculated pro rata from the expiry of the aforesaid 90 day period to the date of payment.
- The total amount of interest due to the claimant shall not exceed the amount of

capital sum that the Board has admitted as a claim against the Fund.

legal practitioner, with a detailed description as to how such entrustment occurred.

### Framework for a sworn affidavit

All affidavits should contain the following:-

- Full names (first name(s) and surname) of the deponent(s).
- Identity number, full residential address, home telephone number, work address and telephone number, cellular phone number, email address, fax number, occupation and particulars of post occupied. (Attach a copy of the claimant's identity document to the affidavit)
- A declaration that the affidavit is intended:
  - to serve as a statement for the submission of a claim against the Fund; and
  - for the purpose of registering a case dossier to enable the SAPS to investigate a criminal case. The deponent should explicitly request the SAPS to investigate a criminal complaint.
- A statement by the deponent that he/she is aware that the affidavit may be made available to the accused's legal representatives, at their request, during the course of a criminal prosecution and that that the accused's legal representatives may consult him/her prior to the Court proceedings, and that he/she has the right to accede to or decline such request. The affidavit shall record his/her intention to consent to or refuse such consultation.
- Full particulars of the fact giving rise to the claim and/or criminal charge, including:-
  - An allegation that there was an entrustment of money or property to the

- Precise details as to how the amount claimed is arrived at, by deducting from the amount entrusted to the legal practitioner any payments made by the legal practitioner to or on behalf of the deponent, as also any fees due to the legal practitioner by the deponent.
- An allegation that the amounts claimed was stolen by the legal practitioner and that the deponent will suffer pecuniary loss if such amount is not reimbursed to him/her.

Kindly note that the affidavit should in all respects comply with the provisions of the Justices of the Peace and Commissioners of Oaths Act, No. 16 of 1963, and any regulations made there under.

Correspondence with respect to every claim should bear the claim reference number of the Fund and be addressed to:

The Claims Executive, Attorneys Fidelity Fund,  
P O Box 3062, Cape Town, 8000 or Docex 154,  
Cape Town

Tel: (021) 424 5351, Fax: (021) 423 4819 or email:  
attorneys@fidfund.co.za

For more information visit: [www.fidfund.co.za](http://www.fidfund.co.za)