

**Consultation Paper on Legal Services
issued by the Attorney General's Chambers in 1995**

Insurance and fidelity funds

7.19 In some situations, a consumer with a valid claim for compensation may be unable to recover it. It may be because the amount of damages is more than the individual lawyer or firm can afford, or because the lawyer has disappeared with the client's money. The problem has led to the setting up of compulsory insurance schemes and "fidelity funds" in many common law jurisdictions.

7.20 Solicitors in Hong Kong are required to contribute to an Indemnity Fund. This fund ensures that, where a solicitor has acted negligently, the client will receive full compensation.

7.21 The Fund does not, however, compensate clients for money lost by reason of the fraudulent act of solicitors who are sole practitioners or partner of a firm. Moreover, if a fraud is perpetrated by employee of a firm, compensation from the Fund is not available if the partners could have prevented the fraud by exercising ordinary care and skill in the management of the practice. It is unsatisfactory that clients who are cheated by solicitors or their employees may recover no compensation.

7.22 In England, the public has been protected from solicitors' dishonesty since 1942, when a compensation fund was established by the Law Society. The main purpose of the fund is to replace clients' money misappropriated by a solicitor or a solicitor's employee. It is financed by an annual contribution imposed on all solicitors' who take out practising certificates. Although payments out of the fund are discretionary, every valid claim is in practice paid in full. In 1992, almost £15 million were paid out of the fund. The English Royal Commission on Legal Services considered this scheme to be satisfactory.

7.23 In Hong Kong, the Administration suggested to the Law Society several years ago that the Society should establish a "fidelity fund" to compensate those who suffer from the dishonesty of solicitors or their employees. It is considered that such a fund is needed in the public interest. The Law Society has been considering this question for some time but has made no commitment to establishing such a fund. In the circumstances, it is considered that legislation should be introduced to set up a fund, to be financed by a levy on solicitors.

7.24 It is the Administration's view that there should be a statutory fidelity fund to protect consumers from the dishonesty of solicitors or their employees, which should be financed by a levv on solicitors.