

Client money

23 November 2020

Why this risk matters

Consumers' money is 'sacrosanct', and losses have 'severely and incalculably undermined public trust [...] in the profession.' Solicitors Disciplinary Tribunal (SDT)¹ [#n1]

People and businesses trust solicitors to keep their money safe. Solicitors' client accounts often support life-changing events, such as buying a house, planning for retirement, covering costs for care or setting up a business.

The economic changes, (see market landscape section

[<https://www.sra.org.uk/sra/research-publications/risk-outlook-2020-21/market-landscape-in-2020/>]), have increased financial difficulties for the public and for many firms.

This heightens the risk to client money and means firms need to stay vigilant about keeping money safe.

If money is not kept safe, this can:

- devastate people's lives and wellbeing
- cause great distress and inconvenience for them, their families and third parties.

Not all of this money is held in a law firm's client account. There are also some solicitors who have access to people's personal bank account, for instance, those appointed as attorneys (under a power of attorney) or trustees.

Misuse of people's money has very serious consequences for solicitors, such as:

- A referral to the Solicitors Disciplinary Tribunal (SDT) and the possibility of being struck off.
- Missing client money is also a reason for us to intervene into a solicitor's practice. Solicitors will be personally liable for the costs of an intervention into their practice, which will also, normally, result in a suspension of their practising certificates.
- Professional indemnity insurance (PII) does not cover solicitors against losses from their own dishonesty. In those cases, the insurer can refuse payment and the solicitor has to personally remedy the consequences of their own actions.

Lost or stolen money is expensive and damaging for the whole solicitors' profession. For example:

- A large part of the costs of disciplinary proceedings, interventions and the compensation fund are carried by the whole profession.
- Indemnity insurance claims for lost money also make insurance premiums more expensive for all solicitors.
- The profession's reputation is damaged if people cannot trust solicitors to safeguard their money.

Who is most at risk?

This risk applies to all those who hold, or have access to, consumers' money. It is the responsibility of all firms and individuals we regulate to act with honesty and keep money safe. Their money should not be used by firms or solicitors for their own use.

Firms are at additional risk if they have changed their working practices but have not updated their systems and controls to support those changes.

People's money is at high risk when a firm or individual solicitor is in financial difficulty.² [n2]

Case example: Strike off for using disbursement money to keep firm in business

A solicitor used £500,000 of client money to cover their firm's expenses after they had cashflow difficulties. The solicitor, who owned the firm, did not take advice from their accountants. They also failed to tell us about their serious financial difficulty. Instead, they delayed paying disbursements and used the money to cover their firm's costs for five years.

When the solicitor began negotiations to sell their firm, the proposed buyer found the issue during their due diligence. The solicitor said that they did not realise that delaying payment of disbursements breached the Account Rules. The SDT struck off the solicitor.

Case example: Solicitor struck off for misusing proceeds of estate

A solicitor was struck off and ordered to pay costs of £10,000 after using the proceeds of an estate to cover their business expenses. They distributed £240,000 to beneficiaries but held back £200,000. They used much of this to pay their own bills, including to HMRC.

The solicitor said that they had delegated all responsibility to their accountant, but that they could not contact them. The SDT noted that it was the solicitor's 'ultimate responsibility' and found that the solicitor's actions had harmed trust in the profession. The firm's insurer declined to cover the loss, as the solicitor had been

dishonest. The compensation fund paid the money owed to beneficiaries.

Case example: Solicitor struck off for stealing money to fund lifestyle

A solicitor was struck off after stealing more than £600,000 from their clients and sentenced in the criminal courts to four years in prison. The solicitor had a power of attorney over many of the affected people, who were vulnerable for reasons such as dementia. At least one person's estate was left without the funds for their funeral.

The solicitor used the money to fund what was described by the Crown Court as 'various absurd extravagancies' over a two-year period. The solicitor said that a side effect of some medication included compulsive and addictive behaviour. The SDT, however, noted that the solicitor should have sought help if this were the case and that they were competently conducting other parts of their business.

We recommend

Know your obligations

Our Code of Conduct for Solicitors, registered European lawyers (RELs) and registered foreign lawyers (RFLs) [<https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/>] has clear expectations that you must safeguard money entrusted to you. These apply whether or not you work in a regulated firm.

Our Accounts Rules [<https://www.sra.org.uk/solicitors/standards-regulations/accounts-rules/>] show how we expect firms to safeguard money held in a firm's client account or other accounts that solicitors are signatory to. This includes trust money or money held for third parties. The rules apply to everyone in firms.

You must promptly tell us:

- any lost or stolen money belonging to a client or third party, even where the money has been replaced
- if you use a third-party-managed account (TPMA) (our guidance [<https://www.sra.org.uk/solicitors/guidance/third-party-managed-accounts/>] has more information)
- if your firm is in serious financial difficulty.

Firms must tell us if they cannot trace someone to return their money [<https://www.sra.org.uk/solicitors/guidance/general-granting-authority-withdraw-residual-client->

balances/] (over £500), so we can authorise withdrawing the money and paying it elsewhere.

Firms must also:

- vet, train and supervise staff
- make sure everyone knows their responsibilities to keep consumers' money safe
- have a business succession plan and contingency plans for accounting staff
- have systems for good account management and auditing
- have strong IT systems with good backups
- reconcile accounts that are signed off by the compliance officer for finance and administration or the manager of the firm at least every five weeks
- not allow the firm's client account to be used as a banking facility.

Have the right controls

Ask yourself	Actions to help you control the risk
Are you confident that all staff know their obligations for keeping consumers' money safe and separate from the office account?	It is important to have a culture of absolute integrity about people's money. You might need to update your staff training if your working practices have recently changed, as consumers' money could be at higher risk.
Do all staff know where to get help if your firm is in financial difficulty?	It is important that you seek help if needed – to protect you, your staff and consumers.
Do all staff know what to do about any lost or stolen money?	You have a duty to correct any breaches of our Accounts Rules without delay. Any money improperly withheld or withdrawn from a client account must be immediately paid into the account or replaced as appropriate.

Do you apply the recommendations of your reporting accountant?	These recommendations will help to protect you and consumers. And we will take this into account if we have to investigate reports about your handling of consumers' money.
Do you have a plan that keeps people's money safe if you have to stop practising or close your firm?	Having a contingency plan for closure is an important part of keeping money safe. Our checklist [https://www.sra.org.uk/solicitors/guidance/closing-down-your-practice/] will help you to plan.
Are the appropriate checks being made to protect consumers' money from accidental loss and theft?	You might find that you need to add more safeguards to protect money. Having reliable systems to verify that people's financial details, ID and instructions are up to date and accurate will protect against both theft and accidental loss. The information and cyber security section [#_Information_and_cyber] has details about protecting money from cybercrime.
Do you have financial software that helps you to monitor bank accounts?	Software can help to verify transactions that have been made and will help with your record keeping.

As a freelance solicitor doing reserved work, you can hold money for fees and disbursements so you need systems and checks to keep money safe too.

Get more information

We have a range of warning notices and guidance

[<https://www.sra.org.uk/solicitors/guidance/topic/accounts-and-finance/>] on accounts and finance which is helpful for all firms that hold consumers' money. For example, our:

- warning notice on the improper use of a client account as a banking facility
[<https://www.sra.org.uk/solicitors/guidance/improper-client-account-banking-facility/>]
- guidance on TPMAs [<https://www.sra.org.uk/solicitors/guidance/third-party-managed-accounts/>]
- guidance about taking money from the client account
[<https://www.sra.org.uk/solicitors/guidance/taking-money-for-your-firms-costs/>] for your costs and disbursements.

The Law Society also has guidance about the Accounts Rules

[<https://communities.lawsociety.org.uk/july-2019/be-prepared/5067741.article>] . And the

Law Society's practice note on residual client balances

[<https://www.lawsociety.org.uk/support-services/advice/practice-notes/residual-client-balances/>]

gives more advice on what to do if you cannot trace a client.

Our guidance [<https://www.sra.org.uk/solicitors/guidance/firm-closures-due-financial-difficulties/>] about financial difficulties lists other sources of help for financial and personal support, including:

- The Solicitors Assistance Scheme [<http://www.thesas.org.uk/>]
- Lawcare [<http://www.lawcare.org.uk/>]
- The Law Society's Pastoral Care helpline [<http://www.lawsociety.org.uk/support-services/help-for-solicitors/>]
- The Solicitors' Charity [<https://thesolicitorscharity.org/>]

What we are doing

Helping firms and solicitors

We have made it easier for firms to use TPMAs. This will mean more firms can avoid holding consumers' money altogether, if it benefits them.

We engage with firms who struggle to get PII cover. Sometimes, this might include helping them to close their business in an orderly way, if this is needed. We updated our guidance on closing down your practice [<https://www.sra.org.uk/solicitors/guidance/closing-down-your-practice/>] and have further guidance on what to do if you are in financial difficulties that might mean you can no longer trade [<https://www.sra.org.uk/solicitors/guidance/firm-closures-due-financial-difficulties/>] , including the support that we can offer.

Taking appropriate action

Our enforcement strategy [<https://www.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/>] makes it clear that we treat misuse of consumers' money very seriously.

Solicitors who we refer to the SDT for misuse of people's money risk serious sanctions, including striking off if they have been dishonest.

Helping consumers

We investigate both open and closed firms, and the conduct of individual solicitors, where there is a threat to consumers' money.

Our PII requirements protect the public from loss in most cases. Solicitors that work as freelancers should also consider the PII cover they need.

We help some people who have lost money through no fault of their own after engaging with a solicitor or firm, or when the solicitor has been dishonest. People can make a claim on the compensation fund if the claim falls under our rules. It is a discretionary fund and we decide whether to make a grant on a case-by-case basis.

Notes

1. Solicitors Disciplinary Tribunal, Solicitors Regulation Authority v Cabeer Ahmed, Case No 12020-2019, 2019
2. LexisNexis, Bellwether 2020: Covid-19 and the legal industry, 2020 [<https://www.lexisnexis.co.uk/bellwether/covid-19-and-the-legal-industry.html>]