



## Guidance

## Guidance

### Firm closures due to financial difficulties - Guidance

## Firm closures due to financial difficulties - Guidance

Published: 5 August 2020

[Print this page](#) [#1 [Save as PDF](#) [<https://higher-rights.sra.org.uk/pdfcentre/?type=ld&data=1946512367>]

### Related guidance

This guidance should be read in conjunction with the case studies on [Firm closures due to financial difficulties](#) [<https://higher-rights.sra.org.uk/solicitors/guidance/firm-closure-due-to-financial-difficulties---case-studies/>]

This guidance sets out our approach and the support we can provide to firms which are experiencing financial or other difficulties that threaten their ability to carry on trading. This guidance applies whenever firms find themselves unable to trade viably over a foreseeable period, owing to economic circumstances and suggests what actions the managers and compliance officers ought to consider and take.

We explain how we can help firms achieve a closure in an orderly and compliant way and minimise any need for an intervention. We also remind firms of their regulatory responsibilities to report such matters to us.

It complements our existing guidance on:

- **[Closing down your practice](#)** [<https://higher-rights.sra.org.uk/solicitors/guidance/closing-down-your-practice/>]: this provides practical guidance about how to close down your firm in an orderly way, how to deal with client matters and money, issues around insurance, successor practices and insolvency. It contains a closing down checklist and a list of organisations that you might need to notify.
- **[Reporting and notification obligations](#)** [<https://higher-rights.sra.org.uk/solicitors/guidance/firm-closure-due-to-financial-difficulties---case-studies/>]: this explains your obligations around reporting matters to us.
- **[How we approach a decision to intervene](#)** [<https://higher-rights.sra.org.uk/sra/decision-making/guidance/consumer-intervening-protect-clients/>]: this explains how we approach decisions to intervene into (or close down) a solicitor's practice or a firm. It sets out the



purpose of an intervention and the legal requirements to be satisfied before we undertake an intervention.

## **General**

We appreciate that the Covid-19 pandemic has placed significant pressures upon the global and UK economies. These and other economic pressures may mean that some firms face an uncertain future with financial instability issues and a growing threat of insolvency. However, this guidance is equally applicable in a range of other scenarios which may necessitate closing down a firm.

We recognise that dealing with serious financial difficulties and closing down your practice can be stressful. At the end of this document, we signpost to sources of help for individuals and firms. Making the decision to close your firm can be one of the hardest decisions you might have to make. As your regulator, we want you to know that where possible you will have our guidance and support.

We are aware of a misplaced perception within the profession that any contact with us regarding financial difficulties or the potential closure of a firm will automatically lead to us exercising our intervention powers, with all the significant liability and cost consequences that this involves, or that these will automatically be invoked where firms are facing regulatory issues, for example relating to their accounting processes. This is not the case.

Intervention is only undertaken in the most serious cases where it is necessary to protect both clients and the public from the risks posed by individuals or firms. We can only intervene when we are satisfied that one or more of the statutory grounds for intervention exists and that it is in the public interest to do so. This is a high bar and in practice, interventions are relatively rare. Most interventions are due to suspected dishonesty or missing client money.

To help us investigate such concerns, we expect firms to act transparently and realistically so that we, the regulator, only have cause, for example, to suspect dishonesty in firms where dishonesty is genuinely present. Co-operate with us and we will do our utmost to guide and support you where appropriate in return.

For more detail on how we approach such decisions see our [guidance on interventions](https://higher-rights.sra.org.uk/sra/decision-making/guidance/consumer-intervening-protect-clients/) [https://higher-rights.sra.org.uk/sra/decision-making/guidance/consumer-intervening-protect-clients/].

## **Duties to monitor and report**

Our rules (paragraph 2.4 of our Code of Conduct for Firms) require firms we regulate (including their managers and compliance officers) to



monitor the financial stability and business viability of their firm. This includes a requirement that, once the firm is aware that it will cease to operate, it effects the orderly wind-down of its activities.

In addition (paragraph 3.6) requires firms to notify us promptly of:

- any indicators of serious financial difficulty
- an [insolvency event](https://higher-rights.sra.org.uk/solicitors/standards-regulations/glossary/) [https://higher-rights.sra.org.uk/solicitors/standards-regulations/glossary/] as defined in our glossary, including appointment of administrators or a winding up order
- an intention to stop operating as a legal business.

We want to be told this information so that we can monitor the situation and provide support to firms which are in difficulties and protect client interests where necessary. We do this so that, where possible, firms can continue to trade and work in their clients' best interests. Where continued trading is not possible, in the overwhelming majority of cases we are able to work with firms so that they can close in an orderly way without the need for us to consider using our intervention powers.

Similar considerations apply to the individuals we regulate. So for example, when we are informed of a solicitor's imminent bankruptcy (as is required under our Code of Conduct for individuals) we can work with them to consider reinstating their practising certificate with conditions (which is suspended by law on the bankruptcy order being made).

## Engagement and support

We know that there are situations where firms experience problems which threaten their ability to carry on trading and need to close down in an orderly way. For example closure might be necessary due to prevailing economic situations, a death within a practice or an inability to renew PI insurance at a reasonable and viable cost, or indeed at all.

There is currently widespread coverage of concerns about potential pressures on firms in the light of the Covid-19 pandemic and the risk of closures. If you do have difficulties, we want to encourage you to engage with us as soon as possible. Disclosure of a problem with relevant and transparent information allows us to work with you as part of a collaborative approach.

We have published a range of support and guidance to firms directly arising from the impacts of the Covid-19 pandemic. This explains our overall approach and sets out some situations where we have relaxed our regulatory requirements in response to the pandemic, such as waiving our requirements in order to allow for an extension of the Extended Indemnity Period if the firm's insurer agrees. It also sets out our response to the most commonly asked compliance questions arising from the impact of the pandemic.



There are also a number of other organisations that we have signposted below and which you can use to support you if you are in difficulties. It is important that you seek help if needed - to protect you and your partners, members, staff and clients.

In order to notify us that your firm is suffering serious financial difficulties or that you are considering closing down please [email us \[https://higher-rights.sra.org.uk/contactus/\]](https://higher-rights.sra.org.uk/contactus/).

We will then contact you to discuss the position and see what help and support we can give you. We will aim to do this as quickly as we can, especially if your situation is urgent. Where we think this would be helpful, we will give you a named point of contact.

We will then engage with you and if necessary, help you to bring about an orderly closure of the firm which protects the interests of both clients and the firm without the need for an intervention.

Typical actions which we might take to help support a firm include:

- Speaking with the firm's managers to understand the position and support them by agreeing steps that might help them to remedy problems which threaten their ability to carry on trading. This might include, for example, agreement of a compliance plan which we can monitor with the firm to review the progress and effectiveness of steps to address the financial difficulties and be satisfied that clients' interests are being properly protected throughout the process;
- If this is not possible and a firm needs to close, drawing up a closure plan with the firm which covers areas such as:
  - notification to all clients of the pending closure of the firm
  - the completion of existing cases or the transfer of cases to other firms with the informed consent of clients
  - the proper distribution of all client money held by the firm
  - arrangements for the return or continued safekeeping of wills
  - arrangements for the ongoing storage of archived files
  - indemnity insurance run - off cover.
- In some instances, it may be necessary to visit the firm to better understand any risks arising from the issues that have been raised with us by the firm so that we can assess whether and how best they can be remedied. This would only be undertaken if considered necessary to protect client interests.

Where this work and engagement are successful, the firm will either have remedied the problems and so be able to continue trading, or with our help, will close in a proper, compliant and orderly manner.

Some examples of this are provided in [case studies \[https://higher-rights.sra.org.uk/solicitors/guidance/firm-closure-due-to-financial-difficulties---case-studies/\]](https://higher-rights.sra.org.uk/solicitors/guidance/firm-closure-due-to-financial-difficulties---case-studies/)



## If further action becomes necessary

Our aim is that with our guidance and monitoring, coupled with an open, co-operative, and constructive approach by the firms involved, we will help support them to either trade through their financial difficulties or close in an orderly way.

It is only where these actions fail or serious new issues come to light that we may have to consider our enforcement approach or possibly intervene into the firm. So where, for example, serious problems with the firm's accounts emerge during the closure process; or a firm, and hence its clients, are abandoned; or if a sole principal of a firm becomes seriously ill and is unable to make any arrangements at all for the firm, we may have to consider intervention. If you are in any doubt about your position the organisations signposted below are experienced in providing independent advice and assistance.

We know that a disorderly closure can be very damaging to clients' interests and we may need to take action if the managers of a firm fail to take proper steps to protect their clients' interests. By way of example, in one recent case before the Solicitors Disciplinary Tribunal (SDT), a sole practitioner was suspended for one year after we intervened into his practice because of his significant failure over a prolonged period to deal with client matters when winding down his firm. In that case the SDT also found that he had acted with a lack of integrity.

However, we will always seek to use our powers proportionately, including, if we need to use them, our intervention powers. There may be occasions where a firm is able to manage most risks as it moves towards an orderly closure, and we only need to use our intervention powers to take possession of its archive of closed files - [see our case studies 2 and 3](https://higher-rights.sra.org.uk/solicitors/guidance/firm-closure-due-to-financial-difficulties---case-studies/) [<https://higher-rights.sra.org.uk/solicitors/guidance/firm-closure-due-to-financial-difficulties---case-studies/>]. The costs in carrying out the intervention are recoverable from the intervened solicitors but they are much reduced compared with intervening into a live firm whose managers have not taken steps to close compliantly and in an orderly fashion.

We also have powers in some circumstances to intervene into the practice of one or more individual solicitors within a firm only, so that we may not need to close down the whole firm - [see our case study 4](https://higher-rights.sra.org.uk/solicitors/guidance/firm-closure-due-to-financial-difficulties---case-studies/) [<https://higher-rights.sra.org.uk/solicitors/guidance/firm-closure-due-to-financial-difficulties---case-studies/>].

More broadly, we will always seek to exercise our powers practically and proportionally. So where a firm runs into difficulties notwithstanding any ongoing investigation into regulatory or conduct issues, we will still, where appropriate, engage with the firm on its future and the best way for it to close in an orderly way, if that is what it wants to do.



We will not automatically 'shut the door' to a conversation about the best way forward and we will aim to make sure that any such conversations will take place at an appropriate level of seniority. If you wish to have any such conversation, please [email us \[https://higher-rights.sra.org.uk/contactus\]](https://higher-rights.sra.org.uk/contactus) with your request and we will refer it to an appropriate member of our staff. You could also alternatively or in addition contact one of the signposted organisations below.

## Sources of help

Help and support is available from the following sources:

### Within the SRA:

[Professional Ethics \[https://higher-rights.sra.org.uk/contactus/\]](https://higher-rights.sra.org.uk/contactus/) – for advice on our Standards and Regulations

By [emailing our dedicated inbox \[https://higher-rights.sra.org.uk/contactus\]](https://higher-rights.sra.org.uk/contactus) to discuss how best to help and support your firm, tell us that you are considering closing down or to report serious financial difficulties.

### Externally:

**The Law Society** - For guidance on a wide range of related issues, including [Coronavirus Information for Members \[https://www.lawsociety.org.uk/topics/coronavirus/\]](https://www.lawsociety.org.uk/topics/coronavirus/), and possible sources of financial support. See the Law Society website or call the [Practice Advice Service \[https://www.lawsociety.org.uk/contact-or-visit-us/helplines/practice-advice-service/\]](https://www.lawsociety.org.uk/contact-or-visit-us/helplines/practice-advice-service/)

If your reasons for closing down are financial, or you are facing the possibility of being struck off or suspended, your local law society may also be able to assist in providing you with details of firms interested in a merger or buying your practice.

**The Solicitors Assistance Scheme** [\[http://www.thesas.org.uk/\]](http://www.thesas.org.uk/) - for confidential legal advice from experienced practitioners on a range of issues, including financial problems, practical and regulatory matters and compliant practice closures.

**Lawcare** [\[http://www.lawcare.org.uk/\]](http://www.lawcare.org.uk/) - for pastoral support on matters such as stress, depression or health issues, employment options.

**Pastoral Care helpline** [\[http://www.lawsociety.org.uk/support-services/help-for-solicitors/\]](http://www.lawsociety.org.uk/support-services/help-for-solicitors/) - for information on personal, financial, professional or employment problems.

**The Solicitors Charity** [\[https://thesolicitorscharity.org/\]](https://thesolicitorscharity.org/) - for personal financial assistance.



**Your Insurers** – It may be your insurers offer closure support as a service as part of any existing risk management resources they make available to their insured firms. If you have taken out Directors and Officers Insurance then further help may be available. The insurance position is likely to be a key concern for you on closure.

**Your bank** – Many of the leading banks have dedicated Relationship Managers with experience of helping firms in distress in the legal sector. It is likely that they also know other professionals who can help with the financial issues arising.

**Other sources** - If you subscribe to an electronic library or compliance service then depending on your chosen supplier it may contain checklists and guidance notes for your use on closure. Whilst these resources are paid for services, if you have already paid for them, they can be very useful and may contain practical 'How to' documents.