Guidance

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This guidance is for applicants who have made an application between 25 November 2019 and 5 July 2021. If we received your application before 25 November 2019, please read the archived guidance [https://higher-rights.sra.org.uk/solicitors/guidance/consumer-payments-compensation-fund-2019/] . If we received it after 5 July 2021 please read the new guidance [https://higher-rights.sra.org.uk/consumers/compensation-fund/resources/] .

Status

This guidance sets out the approach we will take when deciding to make a payment from the SRA Compensation Fund.

Who is this guidance for?

The public.

All SRA-regulated firms, their managers, role holders and employees.

All solicitors, registered European lawyers (RELs) or registered foreign lawyers (RFLs).

Purpose of this guidance

We operate a compensation fund which can make payments to people:

- whose money has been stolen or not been accounted for by a regulated person
- who have suffered a loss for which a regulated person should have been insured under our rules, but was not.

This is funded by contributions from individuals and firms we regulate. Our powers to operate the compensation fund are set out in legislation (principally section 36 and 36A of the Solicitors Act 1974) and the SRA Compensation Fund Rules (the Rules).

This guidance sets out how we make decisions on applications for payment from our compensation fund.

This guidance should be read in the context of decision making at the SRA and other guidance documents listed at the end. We may update this from time to time.

General

The SRA Compensation Fund is a discretionary fund, no-one is entitled to a payment from it. The following points apply generally to how we deal with applications:

- We expect applicants to be open and honest in their dealings with us, and to provide us with all relevant evidence in support of their application.
- The onus of providing sufficient evidence to substantiate a payment rests with the applicant.
- We will carry out an investigation to collect evidence to help us decide an application. In addition, we may have access to information that an applicant does not, for instance, the accounting records of a firm or a report from an on-site investigation carried out by our Forensic Investigation Team. If so, we may also use this evidence in reaching a decision.

Find out more on how to make a claim [https://higher-rights.sra.org.uk/consumers/compensation-fund/] , as well as how we can help applicants with the process and to understand what you might be entitled to.

Overview of decisions to make a payment

We consider two stages when deciding whether to make a payment:

- Do we have legal power to make a payment?
- If so, should we use our discretion to make a payment?

These two stages are considered in detail below.

Stage 1 - Do we have legal power to make a payment?

The first thing we consider on any application is whether we have the legal power to make a payment. This can be complex and involves considering several points, for example: whether the applicant is eligible, whether the loss was due to dishonesty or failure to account and whether it involved the usual business of a solicitor.

Is the type of applicant eligible?

Three groups of applicants (private individuals, businesses, charities/trusts) may be eligible to claim from the compensation fund. In the case of businesses and charities/trusts, eligibility may depend on turnover.

Some points to note:

- A private individual is someone dealing with a regulated person on a personal matter, eg buying or selling their own home.
- The term "businesses" includes companies, sole traders, partnerships, unincorporated associations and mutual associations. It also includes individuals not dealing with the law firm on a personal matter, for instance, if they are buying an investment property.
- In some cases, we may investigate who the correct applicant is and who has suffered the loss. For example, if a company has been created for particular transaction (sometimes known as a 'special purpose vehicle' or 'SPV'), we may, in certain circumstances, treat the individuals or businesses behind the SPV as the applicant.

The applicant must provide evidence to prove they are eligible. We will normally ask for a company to provide its annual accounts so we can see its turnover figure. If an applicant refuses to provide this evidence, we are very likely to reject their claim as we will not be able to establish that they are eligible for a payment.

If we are satisfied that an applicant is eligible to claim, we will then consider whether the application comes under one of the three claim categories where we can make payments.

Three claim categories

The three claim categories are dishonesty, failure to account and uninsured loss. Below are the eligibility of each different applicant to claim under the categories:

Applicant Type	Loss due to the dishonesty of a regulated person	Failure to account for money causing hardship	Loss where regulated person should have had insurance
Private Individual	Eligible	Eligible	Eligible
Business with a turnover of **less than £2m a year**	Eligible	Eligible if able to show hardship	Eligible
Business with a turnover of **more** than £2m a year	Not eligible	Not eligible	Not eligible

Charity with an annual income or Trust with an asset value of **less** than £2m a year	Eligible	Eligible if able to show hardship to its beneficiaries	Eligible
Charity with an annual income or Trust with an asset value of **more** than £2m a year	Eligible if able to show hardship to its beneficiaries	Eligible if able to show hardship to its beneficiaries	Eligible

1. Loss as a result of dishonesty (rule 3.1(a) of the Rules)

For an application to fall within this category, we need to be satisfied on three elements:

- Dishonesty by a regulated individual or firm (or employee, manager or owner).
- The applicant suffered, or is likely to suffer, loss as a direct consequence of that dishonesty.
- The activity causing the loss was of a kind which is a usual part of a regulated person's legal business.

A point to note:

- We make decisions on the balance of probabilities, so we do not need the same level of evidence that would be needed, for example, for a criminal prosecution.

Is there dishonesty?

We need to make a finding of dishonesty to be able to make a payment under this heading.

To decide whether there has been dishonesty we apply a two stage test. This requires us to ask the following questions (Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67):

- First, what was the regulated individual's genuine knowledge or belief as to the facts at the time?
- Second, in view of their knowledge or belief at the time, was their conduct dishonest by the standards of ordinary decent people?

We do not need to know whether the regulated person, knew, by those standards, they were acting dishonestly, but we will look at the regulated person's knowledge and belief of the facts.

If there has already been a finding of dishonesty against the regulated person (for example from the Solicitors Disciplinary Tribunal (SDT) or a

criminal court) we may consider this as evidence of dishonesty when considering an application.

The consequences of a finding of dishonesty against a regulated person are serious and may lead to disciplinary action against them. For this reason, we ensure we are fair by giving the regulated person a chance to comment on the application. These comments will be taken into account in reaching a decision.

Typical examples of dishonesty include:

- excessive overcharging
- stealing money from a trust or an estate
- stealing the sale proceeds in a property transaction.

Did the dishonesty cause the loss?

If we are satisfied that there has been dishonesty, we then consider whether the applicant's loss was caused directly by that dishonesty. Sometimes, this is clear. For instance, where the firm's accounts show a client's money being improperly paid into a solicitor's private account, or where a solicitor has excessively overcharged and taken payment from money held for a client.

However, this may not always be the case and we may need to investigate further.

Example 1

A solicitor routinely takes money from clients on account of his costs. However, we investigate and find that often the work is not actually done. We bring proceedings against him before the SDT on the basis of several cases where clients have lost out and been lied to. He is found guilty of dishonesty and struck off.

We receive an application for £3,000 which a company had paid on account of costs. The company has a turnover of less than £2m and is therefore eligible to make a claim. No work has been done by the solicitor. The facts relating to the application are very similar to those which the SDT has found to be dishonest, although there is less documentation to support this application.

In light of the similarity in the cases and the SDT finding, we decide on the balance of probabilities that the solicitor has acted dishonestly in this case and we make a payment.

Was the activity in the usual course of a regulated person's legal business?

Where a claim is based on loss caused by dishonesty or by a failure to account causing hardship (set out below), the applicant also needs to show that the activity was a kind which is in the usual course of a regulated person's legal business.

In most cases, it will not be difficult to show this. However, the more a transaction differs from the usual types of legal services provided by firms we regulate (for example, conveyancing, probate, litigation or matrimonial cases), the more likely it is that the activity is not usual legal business or any legal business at all.

For licensed bodies (or Alternative Business Structures) we will only cover losses caused in performance of the activities that we regulate, as opposed to other activities that the body may undertake.

Typical indicators that the matter is not usual business can include:

- there is no underlying transaction
- the firm's client account is being used solely as a banking facility
- the firm is only acting as an escrow agent
- the firm is providing tax avoiding schemes (such as SDLT mitigation)
- funds paid to the firm's client account without any instructions to complete legal work
- funds held in the firm's client account to hide a client's true financial position
- involvement in dubious investment schemes.

Example 2

A client paid £300,000 to a solicitor to hold in anticipation of a future property deal he said he was working on. However, nothing then happened for two months when the client told the solicitor to pay the money to a third party. Only half of the money was paid. We intervened and found that there was no money in the client account.

The client made a claim on the Compensation Fund for the balance of the money. We reject the claim after we investigate and find that the client was in fact a fraudster, who was intending to money launder the funds through the solicitor's client account. There was never any actual transaction which could have formed the usual part of a regulated person's legal business.

Example 3

An applicant made payments to her solicitor to invest in art works via a company. The solicitor's involvement was only to facilitate payment to the third party and no legal advice was given. The money was paid to the company, but the applicant did not receive the artwork. The whole deal was in fact a fraud. We reject the applicant's claim on the compensation

fund as the solicitor was only providing banking facilities to the client and that is not part of the usual legal business of a regulated person.

Failure to account for money causing hardship (rule 3.1(b) of the Rules)

2. For an application to fall within this category, we need to be satisfied on three elements:

- A failure to account for money by a regulated individual or firm (or employee, manager or owner).
- The applicant suffered, or is likely to suffer, hardship as a direct consequence of that failure to account.
- The activity causing the failure to account was of a kind which is part of the usual course of a regulated person's legal business.

Is there a failure to account?

We need to establish that the regulated person has failed to account for money belonging to the applicant. This means showing that the money was being held on behalf of the applicant and that the regulated person did not use it for the intended purpose. This can include, for example, not paying the money from a house sale to the seller, not paying beneficiaries of an estate, or not paying damages won in litigation to the client.

The Rules also expressly state that where a client pays for work which is not completed, we can treat it as a failure to account (rule 3.1(b) and rule 11.1(b) of the Rules). A common example of this is not dealing with Land Registry formalities after a property purchase.

We need evidence of the transaction being dealt with, that the regulated person held the money claimed, and that the applicant suffered a loss as a direct consequence of the regulated person failing to account to them.

Can the applicant show hardship?

The table on eligibility (above) shows when it is necessary for an applicant to prove they, or their beneficiaries, will suffer hardship.

Where private individuals have dealt with the regulated person on a personal matter, we will assume that hardship will be suffered (rule 3.2(a) of the Rules). Therefore, they do not need to prove hardship.

Typical examples of personal matters are:

- buying or selling your own home
- personal injury claims
- divorce.

Typical examples of individuals acting in business matters are:

- buying or selling an investment property
- counsel fees
- medical expert fees.

In the case of a business applicant, we adopt a materiality test and assess hardship. We do this by considering evidence of the applicant's financial position. We look at their assets and liabilities, the proportion of their income/profit the loss represents and the impact a refusal to make a payment might have on them financially.

For instance, whether it would affect their ability to continue operating by not being able to pay suppliers or employees or cause them problems in meeting debt payments. We will consider all relevant evidence to assess if the applicant can prove that hardship has been, or will be, suffered.

Where the applicant is a charity or a trust, we consider whether the beneficiaries will suffer hardship. For example, a local homeless charity may be able to show that without a payment from the compensation fund, their ability to provide food and accommodation will be directly limited. This will be evidence of hardship to the beneficiaries of the charity. A national charity is unlikely to be able to show that their beneficiaries will suffer a loss unless the amount is substantial.

The applicant must provide sufficient evidence to prove hardship. We are likely to require the following as a minimum although additional evidence may be needed:

- a completed personal financial statement, showing income, assets, debts, expenditure etc (for individuals)
- 3 years financial accounts (for businesses, charities and trusts)
- A statement explaining the hardship that has been or will be suffered.

If the applicant refuses to provide this evidence, then we are very likely to reject the claim as we will not have the evidence needed to show hardship as required to make a payment under this category.

Example 4

A sole trader paid £800 on account of costs to a solicitor to deal with a licensing matter. We intervened into the firm. The solicitor had done some of the work, but it was not completed. The sole trader makes a claim to the compensation fund for a return of the costs paid. There is no suggestion of dishonesty by the solicitor and so the only basis for the sole trader to make a claim is a failure to account causing hardship.

We treat uncompleted work which has been paid for as a failure to account, so that part of the test is met. However, the sole trader's accounts show a very healthy profit and they are unable to demonstrate

how hardship would be caused by the loss of £800. The claim is rejected on that basis.

We also need to be satisfied that the failure to account was in the usual course of a regulated person's legal business (as explained above).

3. Uninsured losses

The final claim category where we may be able to make a payment is where a regulated person should have had professional indemnity insurance to cover a claim resulting from a loss but did not (rule 3.4 of the Rules).

An example would be where a solicitor negligently failed to obtain a local search when advising on a house purchase and as a result of this failure the client's house was found to be worth much less due to a proposed new road bypass. The client tries to recover the money from the solicitor who reveals he is not insured and does not have the funds to compensate the client.

For a payment to be made an applicant will need to show that:

- they have suffered a loss
- the loss was caused by something for which the regulated person (or their employee or manager) has civil liability
- the regulated person should have had insurance for the type of loss sustained, under our professional indemnity insurance requirements, but they had no such insurance.

Payments will not be made where an insurer refuses to pay under the policy terms or its exclusions or where a claim is made to an insurer which subsequently becomes insolvent.

Stage 2 - Should we make a payment?

The compensation fund is a discretionary fund. Therefore, even if any of the categories for payment are satisfied, we still need to consider whether we should make a payment in the particular case.

The key factors we consider when deciding how to exercise that discretion are set out in the Rules and explained below.

Is it a type of loss we will not cover (rule 11 of the Rules)?

This rule contains several situations where we will not make a payment. The most common ones we encounter include:

- A loss caused by negligence by the regulated person. This is because the firm will be insured against negligence so the applicant should be able to claim on the insurance. If the firm does not have

insurance then, as explained above, it may be possible to apply to the Fund.
- Trading debts or personal liabilities of the regulated person. We aim to protect people where a regulated person is dealing with a legal matter. Where a loss is for a debt which is outside of that, for instance, for unpaid rent, or money owed to a supplier, we will not cover these.
- Interest payable to the applicant.
- The applicant is bankrupt, has entered a voluntary arrangement or is in liquidation.
- A loss caused by the dishonesty or failure to account but which is not part of the money lost (i.e. indirect or consequential losses).

Example 5

A client had agreed to buy a property for £100,000. He intended to renovate it and sell on for an expected profit of £40,000. The client paid £100,000 to a solicitor who stole the money. The client was then not able to buy the property. The client claims £140,000. This is the £100,000 purchase price, plus the £40,000 potential profit.

The compensation fund pays £100,000 to the client, as that amount is a direct loss caused by the solicitor's dishonesty. However, the claim for an additional £40,000 is rejected as, while this is caused by the theft of the money, it is not part of the money stolen but an indirect loss.

Are other people responsible for the loss (rule 15 of the Rules)?

Sometimes an applicant will have used other advisers as well as their solicitor, or other people may have been involved in the transaction. This could be, for instance, an accountant, a surveyor, an introducer or another third party. The compensation fund is intended to protect against loss caused by people we regulate doing work which we regulate. Therefore, if the applicant's loss (or some of it) was caused by another person, we will take that into account, and we may reduce any payment or even refuse to make a payment if the loss was mainly caused by someone else.

Where we license a company that has several different professionals working in it, we will only consider a payment for a loss relating to an activity we regulate. For example, where a solicitor and a surveyor are in partnership and a client is caused loss because of a fraudulent valuation by the surveyor, we will not consider an application for loss because we do not regulate that activity.

Example 6

A solicitor and an accountant are named as joint trustees on a family trust. Over a period of years, they take £20,000 in costs between them

from the trust, although no work is done.

The beneficiaries of the trust claim £20,000. We establish that the solicitor and accountant shared the costs equally and that each is therefore equally responsible for the loss of the money. We make a payment of £10,000 relating to the solicitor's responsibility for the loss.

Was the application made within the time limit (rule 16 of the Rules)?

An applicant must send their application to us within 12 months of becoming aware of their loss, or from when they should reasonably have become aware of it. We can allow a late application and will consider all the circumstances when deciding whether to do so. The applicant must provide a reasonable explanation of why they did not make an application in the 12-month period.

Examples of when we may allow a late application. If the applicant:

- suffered from a serious illness
- suffered a recent bereavement to a partner or close relative
- was trying to recover their loss from other avenues
- previously put us on notice of a potential claim (within 12 months)

Examples of when it is unlikely we will allow a late application. If the applicant:

- failed to provide evidence of date of knowledge
- has no reasonable explanation for the late application
- tried to conceal their true date of knowledge
- failed to take reasonable steps to pursue their loss
- has relevant professional knowledge or experience
- failed to bank a cheque in 6 months
- was unaware of the compensation fund

Example 7

A solicitor had not accounted to the applicant for £11,000 proceeds of a house sale. Two years later, the applicant sends in her Compensation Fund claim to us. She is elderly and has been ill. She also says she was distressed and did not know what to do. As soon as she was well enough, she took advice from the Citizens Advice Bureau who told her what to do and she made a claim straightaway. We accept her application.

Does the applicant have other ways of recovering the loss (rule 13 of the Rules)?

We are a fund of last resort. We may refuse or reduce a payment where the applicant can recover their money in another way, for example, by claiming against the professional indemnity insurer of the firm, taking

legal action against the regulated person, reporting dishonest behaviour to the police or taking bankruptcy/insolvency proceedings.

We can require applicants to take action but will only do so when we consider that such action is proportionate. When assessing this, we may consider the following issues:

- Does the applicant have insurance which may cover the loss? Increasingly, people have protection in their household insurance or from their credit card provider.
- Could the regulated person's professional indemnity insurer cover any of the loss? For instance, we may know that an insurer is making payments on claims from clients where the firm delayed in paying Stamp Duty Land Tax (SDLT), leading to penalties. If an applicant sent a claim to us on similar facts, we would inform them of the insurance position and expect them to make a claim on the insurance before we considered the claim.
- If there is no insurance or the regulated person's professional indemnity insurer refuses to pay the claim (for example, because of dishonesty), we may consider the situation of the regulated person when deciding if it is proportionate to expect the applicant to first take legal action against them to recover their losses. For example, if the regulated person has moved abroad, or their whereabouts are unknown, then any potential action against them for recovery becomes more difficult and expensive and is not likely to be proportionate.
- Who is the applicant? For example, is it a private individual with little experience of legal matters, or a business client with solicitors acting for them? We may expect the represented business applicant to take more steps to recover the loss than the individual.
- What is the likely timescale for any alternative recovery action and what are the prospects of success? If any action is likely to be very lengthy, or has little prospect of success, we are not likely to require an applicant to take it.

We can in certain circumstances make a payment to the applicant for the costs of litigation to recover the loss if the costs are proportionate to the amount of the loss, or it was necessary to incur them for the purposes of the application (rule 20.1 of the Rules). We will usually consider such costs to have been necessary where, for example, we have specifically told the applicant that they must take such legal action before we will consider the claim. In order to make such a payment we must be satisfied that the loss is within the remit of the Fund and that the proposed action is likely to result in the loss being recovered.

Example 8

A solicitor stole money from a number of clients and bought a number of properties with the money. We receive two similar claims, one from an

elderly person living in a care home with little experience of the legal process, the other from a successful businesswoman with considerable experience of legal matters and with solicitors acting for her.

We require the businesswoman to take steps to try to recover the money from the solicitor. They bring a claim through the courts and ultimately succeed in recovering the money stolen. We do not ask the elderly person to do the same and consider their claim without requiring any further steps to be taken.

Has the applicant contributed to their own loss (rule 10 of the Rules)?

If an applicant has contributed to their own loss, we can reduce or reject their application. We will consider how far the applicant caused the loss themselves. Our decision will be specific to the facts of each case, but examples include:

- entering into transactions without proper investigation
- not pursuing a loss promptly and therefore missing a chance to recover the money
- dishonest or reckless behaviour by the applicant
- receiving a cheque from a firm, but failing to pay it in before the cheque expires
- using a SDLT avoidance/mitigation scheme, which the applicant knows, or ought to have known, is unlikely to work, or is unlawful.

Do we need to make a deduction from any payment to make sure the applicant is not in a better position as a result (rule 14 of the Rules)?

We may deduct any amount we see fit, so that an applicant is not in a better position by reason of a payment than the applicant would have been if no loss had been sustained.

Example 9

We receive a claim for £2,000 from an applicant who had instructed a solicitor on a personal injury matter. The personal injury claim settled for £2,000 but due to an intervention in the firm, the applicant did not receive his damages. When reviewing the evidence, it is clear that the applicant was not expecting to receive the full £2,000 as a success fee of 25% was to be deducted. We therefore deduct £500 from the applicant's claim and make a payment of £1,500.

Maximum payment (rule 9 of the Rules)

Unless we are satisfied that there are exceptional circumstances in the public interest that justify a higher sum, the maximum total payment that may be made for any application is £2million. This includes any costs or interest that may be payable.

Costs (rule 20 of the Rules)

We can consider paying costs to the applicant in three situations.

1. Costs of litigation

We can in certain circumstances make a payment to the applicant for the costs of litigation, if the costs are proportionate to the amount of the loss, or it was necessary to incur them for the purpose of the application (see example 8 above).

Costs of making the application to the compensation fund

Most applications to the fund are straightforward and do not need a professional, such as a solicitor, to be involved. However, where we make a payment, we can consider paying the reasonable costs of a professional adviser who has helped with the application.

We will only consider costs which are proportionate to the loss and incurred necessarily and exclusively in connection with the application (rule 20.2 of the Rules). We will look at each case individually, but we do apply the following guideline rates and it is unlikely that a payment for costs will depart from these.

Type of application	Maximum amount likely to be paid
Claim for unpaid SDLT and failure to register at the Land Registry	£140 plus VAT
All other claims that we consider to be straightforward	£140 per hour plus VAT (up to a maximum of 3 hours)
Claims we consider to be the most complex in nature	Up to £170 per hour plus VAT

Points to note:

- Applicants cannot claim for their own time in making an application.
- We will need a simple invoice or an email from the professional adviser detailing the costs claimed.

- If the professional adviser has liaised with other organisations (such as the Police or an insurer) or carried out other work, we are unlikely to pay the costs of this.
- We may consider paying more than our guideline rates in exceptional circumstances
- Costs for completing legal work already paid for

An application may include the legal costs of putting right or finishing something that the regulated person should have done and had been paid for (rule 3.1(b) and rule 11.1(b) of the Rules). For instance, if the

applicant paid for work which was not done or not completed and has to pay someone else to complete the work, we may reimburse some or all of those additional legal costs. We will only pay such costs which are reasonable and if the work was necessary.

A common example is where an applicant has completed a property purchase and paid the costs in full. The costs would usually include dealing with SDLT and Land Registry requirements. If these were not done, the applicant will need a new solicitor to finish the work and will therefore pay twice for this.

This is straightforward and routine work. We would not expect to see, for example, a partner spending several hours on work that can be done by a junior person fairly quickly.

The table below sets out our guidelines rates where the claim is for costs of completing legal work. The points noted above (in application costs) will also apply.

Work to be completed	Maximum amount we will pay
Submitting form and payment of SDLT to HMRC and completing registration at the Land Registry	£280 plus VAT
The property is leasehold and a deed of covenant is required and notices to landlord / management company need to be served	An additional £140 plus VAT
The intervened firm's file or essential documentation is missing, so that the new solicitor is required to fully reconstitute the title to enable registration	An additional £280 plus VAT

Emergency payments

We try to deal with applications as quickly as possible, but sometimes it can take several weeks to gather and consider evidence before making a decision. Complicated cases can take much longer.

In certain circumstances we can make a payment more quickly under our emergency process (rule 3.3 and rule 17 of the Rules). We can only do this where the payment is needed very urgently. For example, there may be clients who are due to complete on a house purchase and we have closed their law firm and their money is frozen in the firm's accounts. We will use our emergency process to make a payment to them so that they can complete their house purchase.

Many of the points above still apply:

- An emergency payment can only be made to someone who is eligible for a payment from the Compensation Fund. The criteria

above for private individuals and businesses still apply.
- We still need to have legal power to make an emergency payment. Usually, it is clear that the money is in the frozen accounts and we will treat this as a failure to account.
- We will still need evidence of the transaction and proof of the solicitor receiving the money. We may be able to obtain this ourselves if we have closed the firm down.

Payments in respect of Statutory Trusts (rule 7 of the Rules)

When we close a law firm, we freeze all its accounts. The money in these accounts becomes vested in the SRA and is held on a 'statutory trust'. Our team of financial investigators will review the accounts and try to determine who the money in the accounts belongs to. Once they have done this, they will try to pay the money to its rightful owner.

Sometimes there is not enough money in the statutory trust to pay everyone who is entitled, in other words there is a shortfall. This can happen, for example, where a solicitor has taken money for costs without raising bills.

In some cases, we may make a payment from the Compensation Fund to replace a shortfall. This would mean that the people who the money belongs to would not need to make separate applications to the fund.

We are more likely to do this where the shortfall is small and the people who the money belongs to are individuals who had personal dealings with the intervened firm. This is because those individuals would be eligible for a payment from the compensation fund and hardship would be assumed due to the nature of the matters.

Conversely, we are less likely to make a payment to replace a large shortfall or where the people who the money belongs to are businesses.

Example 10

We close down a firm that deals solely with immigration work. The clients of the firm are all individuals who paid money on account for their cases. We determine that the firm's client account (now held by us on statutory trust) should have held £100,000 but only has £95,000.

The fund makes a payment of £5,000 to the statutory trust to replace the shortfall. The clients of the firm can then receive all their money back without having to make applications to the compensation fund.

Payments to regulated persons (rule 6 of the Rules)

We can make a payment from the compensation fund to a regulated person in some situations (rule 6 of the Rules). This will usually be by

way of a loan, but we will look at the ability of the regulated person to repay the loan and the likelihood of them doing so. In very exceptional circumstances we may consider making a payment if we are, for example, satisfied that the regulated person will not be able to repay any loan.

In making a loan or payment, we need to be satisfied that:

- The regulated person has suffered or is likely to suffer loss because of a liability to clients.
- The loss has been caused by a current or former employee or manager/fellow manager. This means that a payment cannot be made where the loss is caused by a party outside the firm, for instance via a cyber-attack.
- They are fit and proper to receive a payment, by which we mean that they have not received a benefit from any misappropriation or failure to account.
- There is no other way they can make good the loss.

Example 11

A partner in a two-partner firm steals money from client account and disappears. The applicant (the other partner) is not involved in any way and is cooperating with us and the police. He has made a claim to the firm's insurer, but the insurer has not yet accepted liability. The partner is trying to re-mortgage his own property to replace the money. However, some client matters need money urgently and any re-mortgage or insurance is not going to be available in time. He applies to the compensation fund for a loan. We consider the following:

- The test is satisfied as the theft was by the applicant's partner and the applicant is liable for the loss. He has no other way to replace the money in time to prevent harm to the clients.
- The applicant has acted properly in trying to deal with the situation. He was not involved in the theft and has not benefitted from it in any way.
- Any payment is likely to be repaid shortly either through the insurer or the re-mortgage.

We agree to make a loan to the partner. We agree interest with him and an appropriate repayment plan. We secure this loan with a charge on his house.

Further help

If you require further assistance, please contact the Proffesional Ethics helpline [https://higher-rights.sra.org.uk/contactus] .