Guidance

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Status

This guidance is to help you understand your obligations and how to comply with them. We will have regard to it when exercising our regulatory functions.

Who is this guidance for?

All SRA-regulated firms

Purpose of this guidance

We explain how we approach decisions to intervene into a solicitor's practice or a firm.

An intervention is a protective step we take to safeguard money and documents. A decision to intervene is driven by the need to protect clients and the public from risks posed by individuals or firms. It prevents further harm being caused by the individual or firm and preserves evidence for future disciplinary action.

We have the power to intervene into an individual's practice (including freelancers) as well as into firms under:

- Schedule 1 of the Solicitors Act 1974
- Schedule 14 of the Courts and Legal Services Act 1990
- Schedule 2 of the Administration of Justice Act 1985
- Schedule 14 of the Legal Services Act 2007).

Sometimes we will intervene into an individual solicitor's practice as well as into the firm (for example, when we are dealing with a limited liability partnership (LLP). This is explained in more detail in section 6.

This guidance should be read in the context of how we make decisions at the SRA and the criteria we apply [https://beta.sra.org.uk/solicitors/guidance/investigations-decisions-investigate-concerns/]

and other guidance listed at the end. It may be updated from time to time.

1. What is an intervention?

An intervention is sometimes referred to as "closing down" a firm or practice, because that is commonly the practical effect of the steps we take.

When we intervene, all money held by the firm or individual automatically becomes legally owned by us. This includes money that the individual or firm should be holding. We can take legal action to recover money including debts due to the individual or firm, or client money improperly released to someone else by the individual or firm.

We take possession of the files and documents held by the individual or firm. We do not, however, become the legal owner of them. We can take legal action to recover files and documents held by someone other than the individual or firm, for example, if given to a third party in an attempt to stop those files coming into our possession or to hide evidence.

We contact clients to tell them that their case is being dealt with. We can give them their file and, if the firm's accounts are reliable, release their money to them. We often have to rebuild the firm's accounts [https://beta.sra.org.uk/solicitors/guidance/consumer-intervening-protect-clients/] and cannot safely release money to clients until we have done that. Clients who need their money, particularly if they need it quickly, will be referred to our compensation fund. We may not release a file if we are concerned about the behaviour of the person requesting it. For more information, see our guidance on dealing with money when we intervene [https://beta.sra.org.uk/solicitors/guidance/consumer-money-intervene/] and making payments from the compensation fund [https://beta.sra.org.uk/consumers/compensation-fund/] .

In most, but not all, cases, the practising certificate of the solicitor is suspended when we intervene, for example, because we have reason to suspect dishonesty on the part of that solicitor related to their practice. We can, however, decide that the solicitor's practising certificate is not suspended upon intervention. This will depend upon the specific circumstances of the case.

In practice, we usually appoint another law firm as "intervention agent" to act for us in dealing with what is often a major exercise to make sure that clients' interests are protected.

2. What an intervention is not

An intervention is not a liquidation or administration of a company. We have no power to carry on or sell the business. We do not take on the

firm's employees and we have no obligations to them. The intervention may mean that their jobs are redundant but that is a matter between them and the firm.

3. The legal requirements for an intervention

As stated above, our power to intervene is set out in statute. There is a long list of circumstances when we can intervene, including the bankruptcy of a solicitor, the insolvency of a firm and mental incapacity. The three most common grounds are:

- there is "reason to suspect dishonesty" by a person in the firm
- there have been breaches of our rules
- intervention is necessary to protect clients, former clients or potential clients of the law firm.

It must also be necessary to intervene in the public interest. We balance the need to intervene to protect clients and others, against the impact on the firm or individual whose practice we close down. For example, if we have found breaches of our rules but they are minor and have been corrected by the firm, it would not be necessary or proportionate to intervene. Similarly, if there is reason to suspect dishonesty by someone who has left the firm, it may not be necessary to intervene into the firm, but may be necessary to do so into a new firm they have set up.

Dishonest solicitors are a serious risk to their clients, the courts and the public and are likely to be subject to intervention where necessary.

> The courts have indicated that our powers to intervene are "plainly" powers that are intended to enable [us] "to nip in the bud, so far as possible, cases of dishonesty by solicitors" (Buckley v Law Society (No 2) [1984 3 All ER 313).

The standard of proof we apply in intervention decisions is the balance of probabilities.

4. The most common issues giving rise to the decision to intervene

In cases where we uncover serious concerns about how a solicitor or firm has operated, we consider if we should use our powers to protect clients and the public interest. It can take some time for formal allegations of misconduct to be dealt with at the Solicitors Disciplinary Tribunal (SDT), so in the meantime we have to do what we properly can to reduce, or remove, the risk of wrongdoing.

Where a firm has managers, we expect them to deal with wrongdoing by, for example, dismissing or removing a person suspected of dishonesty or of serious misconduct. But if the dishonest person is the main or only owner of the firm, it may not be possible to remove them.

Reason to suspect dishonesty

The clearer the evidence of dishonesty, the more likely it is that we will intervene. This is because of the damage a dishonest solicitor can cause to many people.

Since the test is "reason to suspect" that someone has acted dishonestly, we do not decide that the person acted dishonestly, but simply that we suspect it. The SDT will usually decide later if the person actually acted dishonestly (Sritharan v Law Society [2005] EWCA Civ 476 and Sheikh v Law Society [2006] EWCA Civ 1577). We explain our approach to dishonesty in separate guidance [https://beta.sra.org.uk/solicitors/guidance/general-dishonesty/] .

> The courts recognise that intervention is a power that carries risk to both the firms into which we intervene and to us; but Parliament has decided that it is a power we should have (Buckley v Law Society (No 2) [1984] 3 All ER 313).

A particularly serious form of dishonesty is overcharging. By this we do not mean that a bill to a client is on the high side, but that it is improper by charging much more than is justified. This is a major concern because it can be a way of hiding what is actually theft of money. Evidence of significant overcharging is likely to lead to intervention because it indicates that the firm is a serious risk to clients. A particularly strong indicator is when a bill is substantially reduced by the court, following challenge by a client.

We are particularly concerned about overcharging when the firm is acting in a trusted capacity such as executor, trustee or under a power of attorney, such as was the case in Law Society v Elsdon [2015] EWHC 1326 (Ch). This is because there may not be a client checking up on what the firm is doing. We also see law firms which overcharge in probate cases (or simply steal) deliberately not contacting beneficiaries in the hope that they do not know they are due some money. If the beneficiary is not aware of their entitlement, the firm can take the money without anyone knowing. The hidden nature of this misconduct means that if we suspect it has been happening, we are very likely to intervene.

Case Study 1

Mrs A is a solicitor practising alone. She is the executor of the estate of Miss Y who died five years ago. She has not finished dealing with the estate. A distant relative who thought they might be left a legacy by Miss Y obtains a copy of the will from the Probate Registry and sees that they were not left anything, but that Miss Y left £100,000 to a charity, the Cats Protection League. They contact the legacy officer at the charity who says he will look into it. The charity contacts us because they have not received any money from Mrs A. We find that Mrs A has prepared bills

for £1,000, £3,000, £7,000 and other sums, almost every other month for the last two years. Most of the money left by Miss Y has been taken by Mrs A. We look at other files where Mrs A has acted as executor and find a similar pattern. We intervene.

Missing client money

It is very serious misconduct for someone in a firm to take client money. Money may also be missing because proper records have not been kept. The solicitor may not have acted dishonestly, but incompetently. That too, is a very serious matter if client money has been lost or misused.

If money is missing from its client account, the firm must replace it. If it is not replaced, the firm is very likely to be closed down. It is very difficult for them to operate a client account that has money missing from it, because it has obligations to all of the clients. If there is only half of the money due to clients still in the client account, it may be necessary to pay everyone half of what they are due. If the firm pays the full amount of money due to some clients, it will leave less money available for others. For more information, see our guidance on dealing with money when we intervene [https://beta.sra.org.uk/solicitors/guidance/consumer-intervening-protect-clients/] .

Even if the firm replaces the missing money, we may still intervene if we are concerned about how money went missing in the first place, or if we think there is a risk of more being lost.

Unreliable accounts

Sometimes firms have no proper accounts, or those they have are incomplete or unreliable. That causes serious risk to clients' money and can also make it difficult for accountants or us to be sure whether any money is missing.

Any business that does not keep proper accounts will soon find that it loses track of money and does not notice mistakes. Mistakes that lead to money going missing include:

- making double payments
- paying out money for a client which is more than is actually held for that client
- using client money to pay the law firm's bill when there is not enough money held for that client to cover the bill.

This can lead to large amounts of client money being lost. Unreliable accounts are a very serious matter and may lead to an intervention. This can be reported by our investigators as:

- there are no accounts records

- the accounts records are incomplete
- the accounts records cannot be relied on because too many errors (or worse) have been seen.

Helping wrongdoing by others

> Criminals use firms to help them commit fraud. There have been many cases of law firms helping clients carry out suspected mortgage frauds (Law Society v Emeana and others [2013] EWHC 2130 (Admin)) or investment frauds.

The courts have confirmed that solicitors must not act in a transaction which is dubious or carries the "hallmarks" or indicators of fraud (Bryant v Law Society [2007] EWHC 3043 (Admin) and Merralls SDT Case No. 11309-2014) and it is therefore not necessary to prove that the client was actually committing a crime or fraud. To do so is serious misconduct and whether that can be proved will be decided by the SDT. If we see firms acting in this way, we are very likely to intervene because the risks to the public are very high.

Examples include:

- Acting for a client who is misleading a bank or building society about the true value of a property they are buying. This has been very common, particularly during property booms, and can be done deliberately or negligently, but will usually give rise initially to a reason to suspect dishonesty.
- Allowing a client who is operating a dubious investment scheme to say that a law firm is involved and so it is safe. This often also involves the investment money being paid to the firm which sends them on to its client.
- Working with a claims referrer or car repairer to bring false claims for personal injury or damage to cars.

Case Study 2

A solicitor's client applies for a mortgage to buy a property for £300,000. The bank agrees to lend him £280,000. The solicitor is aware that the bank believes the price of the property to be £300,000. The client tells his solicitor that the seller has agreed to a "gifted deposit" of £50,000, so only £250,000 needs to be paid for the property. The solicitor does not tell the bank that her client now needs to borrow less money. So, when the bank's loan for £280,000 comes to the solicitor, she immediately sends the client £250,000 and retains the £30,000. A "gifted deposit" is meaningless since it is simply a reduction in the price to be paid. This transaction was dubious and carried the hallmarks of a mortgage fraud, particularly as the bank provided a mortgage loan higher than the price being paid for the property. We would intervene.

Death or incapacity of sole practitioner

Not all interventions are a result of wrongdoing by a solicitor or firm. Occasionally we need to intervene to protect clients in other circumstances, such as where a sole practitioner has died or become incapacitated and there is no one else to take over. In this situation it is vital that clients' interests are protected so we may intervene to obtain the clients' files and any money the sole practitioner was holding on their behalf.

5. Giving notice to the individual/firm

There are various stages in a case that may lead to intervention where the solicitor has an opportunity to provide an explanation: to our investigator in interview, in response to formal letters from us and in representations on the report we provide to our adjudicator, who will decide whether or not we intervene. If we think it is important to intervene in the public interest at an early stage, we may not give notice. Firms under investigation should therefore explain their conduct and, if possible, correct any problems quickly.

6. The scope of an intervention

We can intervene into an individual solicitor's practice, into a firm regulated by us, or both.

We can also intervene into a freelance solicitor's practice. Our powers to intervene in this way and their scope are set out in:

- Section 35 and Schedule 1 to the Solicitors Act 1974 (relating to individual solicitor / freelancer)
- paragraph 32(1) of Schedule 2 to the Administration of Justice Act 1985 (relating to a recognised body)
- Part II para 5 of the Courts and Legal Services Act 1990 (relating to Registered Foreign Lawyers)
- Schedule 14 of the Legal Services Act 2007 (relating to licensed bodies).

Any decision on how to approach intervention will be fact sensitive. Factors we will consider include; why we need to intervene and how we can best deal with risks to clients and to the public.

We may choose to intervene only into an individual solicitor's practice, leaving other individuals and the firm to continue as usual, although this is quite rare (see Simms v Law Society [2005] EWCA Civ 849).

Equally, sometimes a firm is run and owned effectively by one solicitor, even though there are a number of other employees and non-solicitor

managers. In this situation, it is likely that we will consider the firm as a whole to be that individual solicitor's practice.

Where a law firm is a sole practice or a partnership, it is likely we will intervene into both the firm and the individual solicitor's practice(s). This is because it might be possible for us to identify the cases individual solicitors are responsible for, and the money the firm holds in relation to specific cases.

Where a firm is set up as a company or as a LLP, it is more likely that we will prioritise intervention into the firm and only after doing that, will we consider whether it is necessary to intervene into the practice(s) of individual solicitors.

It is to be noted, though, that we have no power to intervene into a firm that we do not regulate, even if that firm employs solicitors acting as such as part of its business. We can, however, intervene into the individual solicitor's practice, including freelancers, within that business if one of the relevant grounds for doing so is made out. In practice though, this could prove to be very difficult, as it might not be clear which cases the solicitor has been working on and client money is likely to be held by the firm, over which we have no power to intervene.

We have other statutory powers we can rely upon to obtain information and documents from the firm itself to assist an investigation [https://beta.sra.org.uk/solicitors/guidance/investigations-parallel/] .

7. Where intervention may not be considered necessary

Firms under investigation may be able to reduce the risk of intervention by dealing with the problem themselves, for example, by removing a dishonest partner or employee and replacing missing money. A sole practitioner may choose to close down their firm and if they intend to carry on practising as a solicitor, join another firm. These steps reduce future risk but will not necessarily prevent intervention, particularly where the misconduct is very serious, and intervention will decisively reduce risk and preserve evidence.

In some cases, usually those that do not involve suspected dishonesty, for a sole practitioner, closing down the firm and moving to another may be sufficient protection for the public. We may require the solicitor to do this by imposing conditions on their practising certificate. These could be preventing them from practising on their own and only allow them to practise as an employee or perhaps as a partner or director in a firm where they will be properly overseen. This may be proportionate where the solicitor is competent in cases they deal with, but has not managed their firm well, such as by not keeping proper accounts. In a larger firm, they may be able to concentrate on their cases while an accounts department deals with client money.

Businesses such as law firms sometimes go into administration or liquidation and this means that we may not need to intervene.

8. Challenging an intervention

Our decision to intervene can be challenged in the High Court. Anyone challenging our decision must issue proceedings very promptly, since there is a time limit of eight days from service of the notice of intervention. The case must also be pursued promptly, because it may become academic if we have already released files and money to clients in the meantime.

Further guidance

How we make decisions and the criteria we apply (high-level DM guidance) [https://beta.sra.org.uk/solicitors/guidance/investigations-decisions-investigate-concerns/]

Guidance on how we gather evidence in our regulatory and disciplinary investigations [https://beta.sra.org.uk/solicitors/guidance/investigations-gathering-evidence/]

Guidance on how we deal with money when we intervene [https://beta.sra.org.uk/solicitors/guidance/consumer-money-intervene/]

Further help

If you require further assistance, please contact the Professional Ethics helpline [https://beta.sra.org.uk/contactus] .