

## Warning notice

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## Money missing from client account

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## Status

Whilst this document does not form part of the SRA Standards and Regulations, we may have regard to it when exercising our regulatory functions.

## Who is this notice relevant to?

This warning notice is aimed at all those we regulate but is particularly relevant to you if you are a manager of a firm or a firm's COFA or COLP.

Any deficiency on client account exposes clients and others to a risk of financial loss and damage to public confidence. Missing money must be replaced with extreme urgency.

## Our Standards and Regulations

You have a duty to ensure that client money is safe. Operating a deficient client account may cause you to breach one or more of the SRA Principles, including:

### SRA Principles

**Principle 2** - act in a way that upholds public trust and confidence in the solicitors' profession and in legal services delivered by authorised persons.

**Principle 4** - act with honesty.

**Principle 5** - act with integrity.

**Principle 7** - act in the best interests of each client.

You should also have regard to the following provisions within the Standards and Regulations:

## **SRA Code of Conduct for Solicitors, RELs and RFLs**

**4.2** - you safeguard money and assets entrusted to you by clients and others.

**6.4** - where you are acting for a client on a matter, you make the client aware of all information material to the retainer of which you have knowledge.

## **Code of Conduct for Firms**

**3.5** - you are open and honest with clients if things go wrong, and if a client suffers loss or harm as a result, you put matters right.

**5.2** - you safeguard money and assets entrusted to you by clients and others.

**6.4** - where you are acting for a client on a matter, you make the client aware of all information material to the retainer of which you have knowledge.

**8.1** - if you are a manager, you are responsible for compliance by your firm with this Code.

**9.2** - if you are a COFA you must take all reasonable steps to:

- a. ensure that your firm and its managers and employees comply with any obligations imposed upon them under the SRA Accounts Rules.
- b. ensure that a prompt report is made to the SRA of any facts or matters that you reasonably believe are capable of amounting to a serious breach of the SRA Accounts Rules which apply to them.

## **SRA Accounts Rules 2019**

It is your duty to remedy breaches of the SRA Accounts Rules 2019. The following rules apply:

**1.2** - the authorised body's managers are jointly and severally responsible for compliance by the authorised body, its managers and employees with these rules.

**6.1** - you correct any breaches of these rules promptly upon discovery. Any money improperly withheld or withdrawn from a client account must be immediately paid into the account or replaced as appropriate.

## **Case law**

The courts have held that client money is sacrosanct and proper stewardship of it is vital. Client money can only be used for clients'

matters. There must be proper systems and controls in compliance with the accounts rules and it is for a firm's principals to ensure that.

You should make sure you are fully aware of the relevant case law which underpins these principles, including:

In *Bolton v The Law Society* [1993] EWCA Civ 32 (per Lord Bingham):  
'People trust solicitors and firms to look after their money. Failing to keep their money safe has wider consequences for clients and the reputation of the profession. A loss of client money could affect anyone who places their money in a client account. The client account of a solicitor is sacrosanct.'

In *Levy v SRA* [2011] EWHC 740 Admin 30 (per Mr Justice Cranston):

'...Client money is sacrosanct, and a proper stewardship in relation to it is vital. Client money can only be used for that client's matters. There must be proper systems and controls to ensure compliance with the account rules and it is for a firm's principals to ensure that. Errors must be promptly remedied. Transfers from the client account to the office account can only be made when properly required for payment of the solicitors' costs, the firm first notifying the client that payment is to be made from moneys held for the client. No transfer should ever be made from the client account unless a solicitor is satisfied that there are funds to meet it. Each of these simple rules is not merely good practice but is critical to the lawful operation of the client account by any solicitor.'

## **The implications of missing money**

It is important that all managers and employees of a firm fully understand the implications of money being missing from client account, including:

- There is a clear duty in the SRA Accounts Rules to replace a deficiency in a client account. The managers of a firm are jointly and severally responsible for replacing the shortage.
- In the general law, trustees in breach of trust also have a duty to replace a deficiency. Operating the client account when it is deficient may make you liable for breach of trust and failure to act in the best interests of your clients. If you cannot replace the missing money and your insurers do not do so very promptly, you may be unable lawfully to operate the account. You will have to consider the position as a matter of trust law including whether you need to apply to court for directions as trustee.
- A shortage on client account impacts all clients of the firm. A firm that continues to transact with a shortage on its client account risks using other clients' funds to facilitate those transactions.



- Ultimately, a deficient client account is likely to be distributed pro rata.
- You may well breach your duty to act in the best interests of clients if you pay client money into an already deficient account without fully informed consent – it is highly unlikely a properly advised client would pay funds into a deficient account with the risk of only receiving a proportion back. Failing to inform clients exposes them to a risk of loss.
- Until missing money is replaced, you should not take costs from the client account – you cannot 'properly' require payment of your fees from money held in a client account in such circumstances. It is not in the best interests of the firm's clients to do so and risks using other clients' money to subsidise a client's costs. Any money taken for costs in these circumstances is serious misconduct which may give rise to disciplinary action.
- If you or your insurers do not replace the money promptly, [you are at serious risk of intervention by the SRA](https://news.sra.org.uk/solicitors/enforcement/intervention-reasons-costs/) [<https://news.sra.org.uk/solicitors/enforcement/intervention-reasons-costs/>]. Even if the money is replaced there is a risk of intervention if there is reason to suspect dishonesty and/ or serious breaches of the Accounts Rules.
- There may be circumstances where a shortage has occurred due to circumstances beyond the firm's control. This includes a theft or a cyber-attack. In these situations, there is still an obligation on the firm and its managers to replace the shortage.
- Offences under the Fraud Act 2006 may be committed once you are on notice that money is missing if you do not act properly and honestly.

## **Complying with the Standards and Regulations**

It is critical that to protect your clients, you do not operate a deficient client account and that you keep client money safe.

If you are the firm's COFA, you must take all reasonable steps to ensure compliance with the SRA Accounts Rules 2019 and record any failure to comply. You also have an obligation to report material breaches to the SRA as soon as reasonably practicable.

If you are a manager, the COFA is not a substitute for you and your firm's responsibilities and obligations.

Systems and actions that should aid compliance include:

- having appropriate accounting procedures for your business
- maintaining accurate and contemporaneous accounting records in compliance with the Accounts Rules. This includes undertaking reconciliations every five weeks, keeping ledgers and the cashbook up to date and obtaining an accountant's report every 12 months.



- having clear reporting lines to encourage appropriate reporting by all members of staff
- ensuring that your systems only allow appropriate individuals to authorise payments from client account and that there are appropriate supervision arrangements and controls in place to ensure any payments are properly monitored.
- immediately investigating and taking action against any member of staff who may have acted dishonestly or committed any financial impropriety whether in relation to client account or not
- taking regular steps to monitor, review and manage risks.

Behaviours of concern that you should be alert to in your firm include:

- failure to deliver bills or provide written notification of costs
- any suggestions of over-charging
- borrowing from clients in the capacity of trustee or attorney, which is unsecured
- borrowing that remains outstanding, in breach of any agreement to pay
- delay or failure to account for monies due
- sweeping up of residual balances. Any residual balances need to be dealt with [in a way that is compliant with the Accounts Rules](https://news.sra.org.uk/solicitors/guidance/general-granting-authority-withdraw-residual-client-balances/) [<https://news.sra.org.uk/solicitors/guidance/general-granting-authority-withdraw-residual-client-balances/>]
- any accumulation or pattern of one or more of the above.

## **If you identify that money is missing**

If you identify that money is missing, you have a duty to take steps to ensure it is replaced, in full, immediately.

If you are a manager of the firm, you have a duty to replace missing client money from your own resources. It may be necessary for you to obtain a loan to do this. It is irrelevant that fault may not lie with you personally.

You need to notify your insurer. You may be able to make a claim on your professional indemnity insurance. The obligation to remedy a breach of the SRA Accounts Rules 2011 is treated as civil liability for the purposes of clause 1 of the Minimum Terms and Conditions.

Should you identify a shortage, you should report the matter to the SRA in line with your obligations under paragraph 7.7 of the Code of Conduct for Solicitors, RELs and RFLs and paragraph 3.9 of the Code of Conduct for Firms.

## **Enforcement action**

While we are committed to working constructively with you, we will take enforcement action if missing money is not replaced. Failure to replace

missing money will usually lead to an intervention. It should not be assumed that replacing the money means that an intervention is not necessary since the conduct giving rise to the shortage may evidence reason to suspect dishonesty or other breaches giving rise to a need to intervene to protect clients and the public.

## **Closing down your practice**

The SRA's guidance on [closing down your practice](https://news.sra.org.uk/solicitors/guidance/closing-down-your-practice/) [<https://news.sra.org.uk/solicitors/guidance/closing-down-your-practice/>] states that prior to closing you should look to deal with all client money including sending money to clients, paying counsel fees and billing for outstanding costs. If your client account has a shortage, you cannot undertake any of these actions and therefore you cannot close your firm until the shortage is replaced. If you are unable to replace the shortage, you are at risk of insolvency and/or us intervening.

## **Further assistance**

If you require further assistance with understanding your obligations in relation to anything contact the [Professional Ethics Guidance Team](https://news.sra.org.uk/contact-us/) [<https://news.sra.org.uk/contact-us/>].