

Guidance

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How we deal with money when we intervene (Statutory Trusts)

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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 and individuals practising on their own account.

Purpose of this guidance

In some cases, we have the power to close down a law firm (known as an "intervention [<https://www.sra.org.uk/solicitors/guidance/consumer-intervening-protect-clients/>] "). One of the consequences of an intervention is that all of the firm's money (both client and practice money) becomes legally vested in us and we hold it on trust for the people it belongs to.). This is a type of trust called a 'statutory trust'. The people that the money belongs to are 'beneficiaries' of the trust.

The court clarified our duties as a trustee and provided detailed guidance on those duties in *Re Ahmed* [2006] EWHC 480. In 2007, the Legal Services Act 2007 inserted a new paragraph 6A into Schedule 1 of the Solicitors Act 1974, which gave us the power to write rules to govern how we deal with statutory trust money. The Statutory Trust Rules reflect the guidance given by the court and are based on a proportionate and reasonable approach to dealing with the money we hold.

This guidance sets out how we establish what money we are holding in a statutory trust, who it belongs to, and how we try to return the money to its owner.

This guidance should be read in the context of how we make decisions at the SRA and the criteria we apply, and other guidance listed at the end of

this document. It is a living document and we will update it from time to time.

1. General points about a statutory trust

Statutory trusts vary in size and complexity. Some contain millions of pounds from numerous bank accounts which relate to hundreds of beneficiaries. Others contain a small amount of money from one bank account due to a handful of beneficiaries. The accounting records taken from intervened firms can also vary in quality, or there may be none at all.

These factors affect the amount of work we need to carry out to establish who should be paid the money in a statutory trust and, therefore, how long it will take to pay people. However, we do try to follow the same processes in each case and some general points apply:

- We will gather and consider relevant information to try to establish whose money we are holding.
- We will consider all claims for money held in a statutory trust. We expect people making a claim to provide enough evidence to support their claim and to be open and honest in their dealings with us.
- We assume that money from the firm's client account belongs to the firm's clients unless there is evidence to the contrary, such as costs that have been properly billed but not transferred.
- We assume that money from the firm's office account belongs to the firm unless there is evidence to the contrary. For example, evidence that money has been taken inappropriately from a client account.
- We always act in a reasonable and proportionate way when dealing with a statutory trust. This means that we will only take steps which we think are proportionate to the amount of money we hold and reasonable in the circumstances.
- We may incur costs in dealing with a statutory trust, for example, instructing an external agent to prepare the reconciliation in a complex matter. The intervened individual or firm is liable for these costs (for more information, see our guidance on recovering costs and payments from third parties).
- We do not usually disclose our payment reports given the amount of people they cover and the confidential information that they contain. However, we may disclose reports on single balances where two or more parties are involved, and they dispute who the actual beneficiary is. We may also consider any comments from the parties when deciding on the payments to be made (see section 7 below).

When making decisions, we apply the balance of probabilities as the evidential standard.

2. Dealing with the accounting records (accounts)

In a well-run firm, the accounts will show the money that belongs to each client and for which matter. The total of these amounts, or 'balances', should match the total amount of client money held by the firm. Firms are meant to confirm the accuracy of their accounts by regularly checking their balances. This is known as a 'reconciliation'. However, in intervened firms the accounts are often out of date or inaccurate. Our first step, therefore, is to work on the accounts to see if we can reach a position where the balances match the money held (ie where the accounts are reconciled).

The approach we take depends on the state of the firm's accounts and the amount of money held.

2.1 Where there are good accounts

If the intervened firm has good accounts, we may be able to rely on them. We still test the accuracy of the accounts by checking a sample of balances to make sure that they are correct. If the sample confirms that the accounts are reliable, then we may only need to update them to show any payments and receipts since the firm's last reconciliation.

However, as most interventions involve firms with poor accounts, this is not common, and we often need to take a different approach.

2.2 Where there are poor accounts

If the intervened firm has poor accounts, we decide whether it is reasonable and proportionate to try to reconcile them. To do this, we assess the amount of information available, the reliability of it and the amount of work needed. Each case is different, but these are some of the factors that we consider in making the decision of whether to attempt to reconcile the accounts:

- **The state of existing accounting records.** If the firm has reliable records of its financial transactions (such as chits, ledgers, chequebook stubs, notes on bank statements or files), this can be useful information. However, if there are no such records, a reconciliation will be more difficult.
- **When the last reconciliation was carried out.** If a reconciliation was done in the previous 12 months, or the firm has only recently started trading, then the amount of work needed to reconcile the accounts may be reasonable and proportionate. However, if there has been no recent reconciliation then there will be no starting point.
- **The number of relevant transactions.** If there has been a low number of payments and receipts, then there is likely to be less work needed to reconcile the accounts. Conversely, a large number of transactions is likely to mean that substantial work is needed to attempt the reconciliation.



- **The amount of money involved.** The more money there is in the statutory trust, the more likely it is to be proportionate to try to reconcile the accounts.
- **Third party evidence.** If information is available from third parties, then there is a better prospect of a reconciliation. Third parties may include the Legal Aid Agency where the firm dealt with legal aid cases, or clients.

Once we have decided whether it is possible to reconcile the accounts, we will create a list of balances with the best evidence available. This is called a distribution list.

2.3 Where there are no accounts

If we have no accounts following an intervention, either because the records have been destroyed or because the firm never kept any, a reconciliation will not be possible. We will still create a distribution list from the best evidence available.

3. Distribution list

A distribution list is a list of possible beneficiaries (i.e. people who may be entitled to some of the money we hold) and how much is due to them. Rules 2.1 and 2.2 of the Statutory Trust Rules refer to the a "best list" and a "reconciled list". These terms are types of distribution list that reflect the position of the accounts on an intervention.

We may use several different sources of information to create a distribution list:

- Any attempted reconciliation by us.
- Claims already made on the statutory trust. Immediately after an intervention, we notify clients what has happened and tell them they can make a claim if they think the firm is holding money due to them. We therefore may already have received potential claims before we reach this stage. Any claims will be investigated and, if proven, will be added to the distribution list. Any proven claims will not be paid until the distribution list has been finalised.
- Claims made on the Compensation Fund. All claims will be considered in producing the distribution list, whether the Compensation Fund has made a payment or not. If the evidence shows that an amount of money was in the client account at the date of the intervention, then that amount will be added to the distribution list.

If we have used an attempted reconciliation to create the distribution list, we will check to see how reliable the list is. This is usually done by comparing a sample of distribution list balances against the information in the related client files to see if they match.

The sample size will vary depending on the size and complexity of the statutory trust. It will usually include the highest 10 or so balances and some other balances to ensure a reasonable and proportionate approach is taken. The total value of the sample balances will be a significant proportion of the funds held within statutory trust (often in excess of 50%) and should therefore confirm the reliability of the distribution list.

As highlighted below, we can make certain assumptions when dealing with a reliable distribution list that we cannot make if it is not reliable.

Does the list of balances match the money held?

Once we have created a distribution list, we then compare the total of the balances on the list to the amount of client money we are holding. There are three possible outcomes:

- **Intact** - Where the total of the balances matches the money held, we refer to it as 'intact'. In this case, we can move on to the next stage.
- **Surplus** - Where we hold more money than the total of the balances, we refer to it as a 'surplus'. Although this is uncommon, it does happen occasionally. We treat the surplus as a balance due to an unknown person. If no-one comes forward to claim it, and no further information comes to light, it will be treated as a 'residual balance' (see paragraph 7.3 below).
- **Shortfall** - Where we hold less money than the total of the balances, we refer to it as a 'shortfall'. Under Rule 6.1 of the Statutory Trust Rules, where there is a shortfall, we may be able to make it up from other money we hold on behalf of the intervened firm. This can include money in office accounts, money in a client account identified as costs due to the firm, or costs received after the intervention. This may not be possible where the intervened person, or firm, is insolvent. A grant may also be made from the Compensation Fund to make up a shortfall where appropriate under Rule 7.1 of the Compensation Fund Rules (<https://www.sra.org.uk/solicitors/standards-regulations/compensation-fund-rules/>) 202 (<https://www.sra.org.uk/solicitors/standards-regulations/compensation-fund-rules/>) 1 (<https://www.sra.org.uk/solicitors/standards-regulations/compensation-fund-rules/>) .

4. Dealing with small balances

It can take a lot of work to confirm a balance, identify the right beneficiary, find and pay them. For a small balance, the cost of that work can be more than the balance held. For that reason, we usually set a figure below which we will not take active steps to deal with a balance. This is known as the 'small balance threshold'. Although we do not invite claims for these balances we still deal with any claims that are received for them (see section 5 below).

When we set the small balance threshold, we consider the size and complexity of the statutory trust and the approximate cost to us to distribute those balances. We then look at other factors to set the appropriate level, such as:

- **Reliability of the distribution list** - If the distribution list is reliable, we are likely to set a lower small balance threshold because less work will be required to make payments. Conversely, if the distribution list is unreliable, we will need to do more work to identify and pay people so are likely to set a higher figure.
- **Number of balances** - Where the number of balances is low, we are likely to set a lower small balance threshold. This is because we are then able to maximise the distribution of the statutory trust while ensuring the work required to identify beneficiaries and make payments remains proportionate.
- **The nature of the clients of the firm** - If the intervened firm mostly carried out work for vulnerable individuals, such as housing or immigration, then we are likely to set a lower small balance threshold, as the money held may be significant for those clients. Conversely, if the intervened firm carried out work for high-net worth individuals or corporate entities then we are likely to set a higher small balance threshold.
- **The age of the balances** - If balances have been held by the firm for a long time, we are likely to set a higher small balance threshold. This is because the cost of locating beneficiaries, through tracing/enquiry agents, is likely to be higher and therefore disproportionate to the balance held.

Example 1

We create a reliable and intact distribution list for the ABC & Co statutory trust containing £500,000. The distribution list has 250 balances of which only 30 are under £250. ABC & Co dealt mainly with immigration and low value personal injury matters.

On the basis that the distribution list is reliable, there are only a few small balances, and considering the nature of the firm's clients, we set a small balance threshold of £20.

Example 2

We create a distribution list for the DEF & Co statutory trust containing £350,000 which does not prove reliable. It contains 450 balances and suggests a shortfall of £20,000. Around 250 balances are under £500. DEF & Co dealt mainly with high value conveyancing and commercial matters.

Due to the distribution list not being reliable, there being a lot of small balances, and the nature of the firm's clients, we set a small balance threshold of £500.

5. *Inviting claims*

Our next step is to invite claims from possible beneficiaries if we have not already received a claim. We contact the beneficiaries to ask them to complete a claim form, provide identification and, if necessary, provide evidence of their entitlement. The beneficiaries may be:

- **The client** - The client and their contact details can usually be found in the firm's records or the client files.
- **Third party** - A third party may be a beneficiary. For example, HMRC, the Land Registry or an estate agent in a conveyancing matter, or a barrister or an expert on a litigation matter.
- **SRA Compensation Fund** - Due to the time it takes to deal with the statutory trust, most clients or third parties will normally have made an application to the SRA Compensation Fund. If the fund has made a payment to a person, it becomes the beneficiary in their place.

If we can identify the beneficiary but do not know where they are, we may instruct tracing/enquiry agents to try to find them. We may not know where they are because the firm's records do not contain any contact details or because the contact details are no longer correct. We will consider these factors when deciding whether to try to locate them:

- **Amount of money** - The higher the balance the more proportionate it is to try to locate the beneficiary.
- **Information available** - If we have useful information (for example a full name, a previous address and date of birth) then it is likely to be appropriate to try to locate the beneficiary as the chances of success are higher. But if we have very little information, (for example only a common surname and initial) then it is not likely to be appropriate to try to locate them.
- **Personal circumstances** - We will take additional steps to communicate with and protect the interests of vulnerable clients if we are aware of their circumstances.

Example 3

We establish that £5,000 belongs to Mr G. We write to Mr G to invite him to claim. We use the address from the client file, but the letter is returned and marked 'addressee no longer at this address'. A basic online tracing search does not reveal Mr G's current address. The file contains Mr G's full name, date of birth and another previous address.

Given the significant amount of money involved, and the information available, we decide it is proportionate to instruct an enquiry agent to try to

trace Mr G. The agent makes extensive enquiries and locates Mr G at a cost of £300.

Example 4

We establish that £250 belongs to Mrs H. The file relating to Mrs H only contains an email address and telephone number, both of which are no longer in use. There is no other useful information in the file and Mrs H has a very common surname.

Given the amount of money involved, and the lack of information available, we decide that it is not proportionate to try to trace her.

6. Establishing who each balance belongs to

Once we have prepared the distribution list, set a small balance threshold and invited claims, we will next establish who each balance belongs to (known as "verification"). We need to do this as a balance may, for example, have several potential claimants such as the seller, mortgage provider or estate agent in a conveyancing transaction.

In many cases it will be obvious who should be paid the balance and payment can be made quickly. An example is where a client paid money to the intervened firm shortly before the intervention to hold pending a property purchase, but no work was done. In this case it is obvious that the balance should be paid back to the client.

In other cases, it may not be clear who should be paid the balance and further investigation may be required.

If two or more parties claim the same balance, we will consider the evidence and make a recommendation for payment in a report. We may disclose the report to the parties for comment before a formal decision is made. Very occasionally, it is not possible for us to decide who should be paid. If the parties cannot agree, we will put aside the balance for a period of time to enable an agreement to be reached, including court proceedings if necessary. In some cases, we may establish all or part of a balance belongs to the intervened firm. For example, there may be unpaid costs or paid disbursements which the firm has not taken from the money it was holding for the client. We treat this money as office money (see paragraph 7.4 below).

Example 5

We establish that a balance of £20,000 relates to a property sale that completed two years ago. It is not clear from the file why this money was held by the intervened firm, so we contact both the seller and the buyer to find out. We learn that the parties have been in dispute over the £20,000

since completion of the sale. Both are legally represented, and court proceedings are imminent.

Given that the parties are in dispute and are heading towards litigation, we decide to hold the balance until the dispute is resolved. Six months later, the parties agree that they are each entitled to half of the money. We therefore make a payment of £10,000 to the seller and £10,000 to the buyer.

7. Deciding to pay money

We prepare a report, known as a 'payment report', prior to making a formal decision to pay money out of the statutory trust. Payment reports can cover the statutory trust as a whole, in which case the decision maker is asked to approve a "payment scheme", or may cover a specific balance, in which case the decision will relate to payment of that sum only.

A payment report (both for a specific balance or a payment scheme) will contain the following information:

- relevant background to the intervention and intervened firm
- the state of the accounts and whether the distribution list is reliable
- the extent of and conclusions from the verification work.
- A recommendation for the payment of that balance.

A payment report for a payment scheme will also contain the following information:

- the proposed small balance threshold and the reasons for it
- whether a statutory trust is intact, has a surplus or has a shortfall
- recommendations for payments to the various classes of beneficiaries
- recommendations for dealing with any office money.

7.1 Payment scheme

If a payment scheme is approved, it allows us to pay all, or many, individual beneficiaries where certain circumstances are met. Some examples of payment schemes are:

- **Reliable distribution list** - If there is a reliable distribution list, then certain assumptions can be made. For example, we may be able to assume that all balances under a certain amount belong to the clients and can be paid without further work.



- **Percentage payment** - If the statutory trust has a shortfall, then we are likely to pay a fixed percentage of each balance (known as a pro-rata distribution). This ensures that every beneficiary is treated equally. The payment scheme may recommend that balances which will not be paid (such as unclaimed small balances or where the beneficiary cannot be located), are used to make up the shortfall in the statutory trust so that each beneficiary will receive a higher payment.
- **Difficult balances** - We may proceed with most of the payments from the statutory trust even if there are some difficult balances that require further investigation, as this ensures that the other payments are not delayed.

7.2 Specific payments

We may also decide to pay specific balances in addition to, or instead of, a whole payment scheme. Examples of when we may do this include:

- **Designated deposit account** - If the intervened firm held a deposit account for a particular client, then we will probably deal with the money from that account on its own as we can be sure that the money is for that client. Paying it out would not prejudice any other beneficiaries.
- **Difficult balance** - It may be appropriate to deal with a difficult balance, such as one involving several parties, on its own after the payment scheme has been approved. This would make it easier for us to disclose the payment report to the parties and would allow the decision maker to consider the specific facts of the balance.
- **Interim payment** - We can make an interim payment under Rule 9.1 of the Statutory Trust Rules before we have completed work on the whole statutory trust, if we are satisfied that the payment will not prejudice any other beneficiary. We will only make interim payments where there is urgency and not making the payment would cause prejudice.

7.3 Residual balances

Where we are unable to pay a balance, then under Rule 8.2 of the Statutory Trust Rules we can treat the balance as a 'residual' balance and pay it to the Compensation Fund. We commonly do this for unclaimed small balances, where we cannot establish who to pay a balance to, where we cannot locate the beneficiary, or if there is a surplus.

Rule 8.2 states that if residual funds are transferred to the Compensation Fund, any claims for that money are extinguished. However, if a beneficiary later comes forward, we will consider whether it is reasonable to retrieve the money from the fund to make a payment.

7.4 Office money

If the statutory trust contains money due to the intervened solicitor/firm, we may use it towards a shortfall in the statutory trust. If there is no shortfall, we will use it to pay the intervened solicitor's debt to us for intervention cost or Compensation Fund payments. If that debt is cleared, any remaining funds will be paid to the intervened solicitor/firm or, if applicable, into their insolvencies.

Further guidance

Decision making at the SRA [<https://www.sra.org.uk/sra/decision-making/decision-making-sra/>]

Guidance on how we decide to intervene
[<https://www.sra.org.uk/solicitors/enforcement/intervention-reasons-costs/>]

Guidance on recovering costs and payments from third parties
[<https://www.sra.org.uk/solicitors/guidance/general-recovering-costs-payment-third-paties/>]

Further help

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