

The usual business of a regulated person (Rule 3.4(a) and (b))

5 July 2021

Status

This guidance is to help you understand how we make decisions on applications received for payments out of the SRA Compensation Fund (the Fund).

Who is this guidance for?

This guidance is for all applicants seeking a payment from the Fund and for those assisting applicants with their application.

Purpose of this guidance

This guidance explains how we decide whether your loss relates to an activity which is the usual business of a regulated person.

Usual business

Where an application is based on loss caused by dishonesty or by a failure to account, you also need to show that the activity was a kind which is part of the usual business of a regulated person.

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 part of 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. This means that we will not cover losses which arise from the other activities that the body may undertake. For example, losses caused by a licensed body's estate agency work, where that licensed body is only authorised by us to provide conveyancing services, will not be covered by the Fund.

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

- there is no underlying transaction on which the firm is advising
- the firm's client account is being improperly used as a banking facility – for example money is paid into or out of the firm's client account without any instructions to undertake any legal work



- the firm is only acting as an escrow agent
- the firm is providing tax avoiding schemes (such as Stamp Duty Land Tax mitigation)
- money held in the firm's client account to hide a client's true financial position (such as hiding assets ahead of divorce proceedings or to improperly claim benefits)
- involvement in dubious or questionable investment schemes
[<https://www.sra.org.uk/solicitors/guidance/investment-schemes-including-conveyancing/>]

We will apply the following two-stage test, to determine whether the loss suffered was in the usual business of a regulated person:

Stage 1: Is the general description of the transaction within the scope of the ordinary business of a regulated person? This involves a broad consideration of the transaction as a whole. So, for example:

- It is not the usual business of a solicitor to provide banking facilities. Therefore, if that is all the solicitor is doing, then stage 1 is not satisfied and the transaction is not the usual business of a solicitor. The Fund cannot consider a payment.
- It is the usual business of a solicitor to provide conveyancing services. So, if the transaction the solicitor is involved with includes conveyancing, even if the transaction in question is fairly unusual, then Stage 1 is satisfied.

Stage 2: If Stage 1 is satisfied, then we will examine the detail of the transaction to assess, when viewed properly and fairly, is it the kind of transaction which forms part of the usual business of a regulated person? This involves looking closely at what the regulated person actually did in relation to the transaction and deciding whether that is usual business.

Example cases

Example 1

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 to the third party. We intervened and found that the solicitor had stolen the remaining £150,000.

The client made an application to the Fund for the £150,000 the solicitor stole.

We reject the application. Stage 1 of the test is not satisfied as there was no legal transaction carried out.

Example 2

An applicant made payments to her solicitor to invest in artworks 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 in which the solicitor was involved.

Applying our test, we reject the applicant's application 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. Stage 1 of the test is not satisfied.

Example 3

A solicitor is involved in an investment scheme supposedly financing the construction of social housing in South America. Investors pay blocks of £30,000 to the solicitor for onward transmission to the developers in South America. The scheme was in fact a fraud, which the solicitor was aware of, so the investors applied to the Fund for their lost investments.

When considering stage 1, we are satisfied that advising on transactions, such as negotiating deals for a client, explaining the nature of the transaction, approving loan documents and holding money pending completion is generally the usual business of a solicitor.

However, in this case the proposed transaction was incredible and preposterous, offering investors very large returns and promising there was no risk. The solicitor was just acting as a conduit for the money and was not providing any meaningful legal services to the client. Therefore, we decided this was not part of the usual business of a solicitor under stage 2 and rejected the application.

Further guidance

Read more information about our Compensation Fund

[<https://www.sra.org.uk/consumers/compensation-fund/>] .

Further help

If you require further assistance, please contact the Contact Centre

[<https://www.sra.org.uk/contactus/>] .