

## 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 individuals and firms

### Purpose of this guidance

This guidance sets out our approach to recovering money due to us as a result of regulatory action and litigation arising from our regulatory functions. These debts can arise in a number of ways, for example:

### General

- When we take cases to the Solicitors Disciplinary Tribunal (SDT), they may order the regulated individual or firm to pay our costs if we win. We can also recover our costs in cases that have resulted in us issuing or agreeing a finding or sanction.
- When we use our powers to intervene, we can recover our costs from the individual or firm.
- When the compensation fund makes a payment to a claimant, we take over any rights that person had to recover their money from the individual or firm. We will therefore try to recover the sums which the fund has paid.
- Where the court awards us costs in litigation arising from our regulatory functions – for instance, where we have successfully defended a challenge in the courts to a decision we have made.

This guidance should be read in the context of [decision making at the SRA \[https://upgrade.sra.org.uk/sra/decision-making/decision-making-sra/\]](https://upgrade.sra.org.uk/sra/decision-making/decision-making-sra/) and other guidance listed at the end. We may update this from time to time.

Most of the cost recovery work relates to individuals. However, similar considerations to those set out in this guidance will apply to recovery against firms that are the subject of regulatory action or litigation.

This guidance does not cover the collection of fines imposed either by the SDT or by us on regulated individuals and firms. We do not deal with collection of these fines which is done by the Treasury. We do deal with collection of fines we impose, but again, we account to the Treasury for these and different procedures apply.

## **Our decision to recover costs**

### **General approach**

We need to decide how best to recover the money that is due to us. We are funded through fees paid by the individuals and firms we regulate. We recognise that it is important to maximise recoveries to help minimise our costs and, therefore, the cost of regulation for individuals and firms which is ultimately passed on to consumers.

Our key principle is that we will act quickly, fairly and proportionately.

To begin with, we will contact the person as soon as possible to request payment. If they cannot pay in full, we ask for details of their financial circumstances so that we can assess their ability to pay. We expect prompt payment in full, unless we see clear evidence that they cannot do so.

If the person has cooperated promptly and openly, we may be able to agree a payment plan. For example:

- payment by instalments
- a voluntary charge over property
- waiving of interest
- a reduced lump sum in full settlement.

Unless urgent action is needed (for instance, because a person is actively dissipating assets which we might be able to take action against), we will, where possible, try to reach an agreement for repayment.

However, if it would not be appropriate to do so, or an individual or firm will not agree an acceptable repayment plan, or does not comply with an agreed payment plan, then we will consider enforcement action to recover the money. The decision will be based on the factors listed below.

While it is usual for us to take enforcement action, we do not always do so. For instance, if someone is seriously ill, or clearly does not have enough money, then we may decide that action is not appropriate. However, in most cases we will take enforcement action which may include:



- an order requiring attendance at court for questioning
- attachment of earnings
- a third-party debt order
- a charging order
- instruction of bailiffs
- issuing of a statutory demand in bankruptcy followed by a petition for bankruptcy
- winding up petition against a company.

We may use enquiry or tracing agents to find people who owe us money.

If the person passes away, leaving an outstanding debt to us, we will consider whether to make a claim on the estate.

## **Factors we take into account**

When deciding if, and how best to recover money due, we take into account financial, personal and all other relevant circumstances. Each case is specific to its individual facts and will be considered on that basis, although we seek to act proportionately and to achieve consistency in our approach.

## **Financial circumstances**

We will look at the person's financial circumstances to assess what amount they are able to pay. A number of factors might be relevant here. For example, we look at the person's current income and their earning potential. We also consider any savings and assets they have, as well as their regular liabilities and any other debts. We will consider all of the person's financial circumstances in making our decision, always bearing in mind if our action to recover money due will be proportionate in the circumstances. These factors will also help us to decide what action to take if we are going to pursue the debt. Relevant financial factors may include:

- current income and likelihood of future income (such as when a solicitor's suspension from practice comes to an end)
- existence and nature of assets
- involvement with, or ownership of other businesses
- amount of debt and any other liabilities, or likely future liabilities
- amount and reasonableness of stated outgoings
- insolvency (actual or pending)
- recent disposals of assets (particularly apparent transactions at undervalue). If there is evidence of this, then a trustee in bankruptcy may be able to set aside such transactions so the asset can be used towards settling the debts due.

For example, a person may have a low monthly income and so cannot afford monthly payments to settle the debt, but they own a property with

a small mortgage. As a result, a charge over the property to secure the debt may be the best solution. Alternatively, a person may not own their house, but have a high monthly income. In such a case, we may look to agree monthly instalments.

In a case where a person has no current income and no assets, then we may place our file on hold for a period of time and review the position in the future when their circumstances may have changed.

### **Example 1**

We intervene into ABC Ltd on the grounds of suspected dishonesty of its directors. The intervention costs come to £100,000.

The company quickly goes into liquidation as a result of another creditor. We contact the liquidator to inform her of our claim. It becomes clear that a large number of client files have been transferred to another firm and are generating significant levels of costs arising from the work in progress of ABC Ltd. The liquidator accepts that under the intervention powers, the costs recovered for ABC Ltd vest in us and can be used to settle the intervention debt.

### **Personal circumstances**

As well as financial factors, we will also consider the individual's personal circumstances. We will look at their current health, family situation, whether they have any dependants and what, if any, impact our decision to recover money due will have on them.

We will also take into account the person's behaviour towards us. For instance, whether they engage openly with us and are transparent and honest in providing us with information. If the person refuses to engage with us, we have little option but to take enforcement action against them.

Where a person has provided us with inaccurate information regarding their assets in the cost recovery process, we will be more likely to pursue action, as there will be doubt over the validity and reliability of the other financial information provided to us. Our experience also shows that someone who has not engaged with us in a transparent and honest manner, is not likely to comply with any payment plan.

While none of these factors are necessarily decisive, they collectively help us to arrive at a decision that is appropriate and proportionate to the facts of the case.

### **Example 2**

Mr X is suspended by the SDT after persistent failures of service to clients. He also allows his firm to fail in a disorderly way, resulting in an intervention which costs £60,000. The SDT orders him to pay costs of £20,000.

Mr X cooperates fully with us and gives full financial disclosure. He produces evidence of medical difficulties arising at the time of the failure of his firm which are continuing and likely to be long-term.

Mr X is a single parent with three children under 10. He has found employment outside of the profession with reasonable pay and which supports his health and childcare position. He is the sole owner of a 4-bedroom detached house with equity of about £10,000.

Mr X offers to settle all costs for £45,000 by way of a charge on his house on the basis that there will be no application for sale until his children are over 18. We settle on that basis.

### **Other factors**

In addition to the above, we will also look at any other factors that may impact the case generally and if there are other avenues from which we could recover the money due. For example, the police may be involved in confiscation proceedings. In this case, the person's assets may be frozen and so will not be susceptible to recovery action. Therefore, we may make a claim within the confiscation proceedings. Alternatively, there may be other people involved in the matter who are jointly liable for the debt, or there may be an indemnity insurance policy that might cover payment of the debt.

### **Example 3**

We intervene into Mrs Y's practice for suspected dishonesty involving significant overcharging when administering estates. Following intervention, the compensation fund pays out £300,000. Only £40,000 is in the client account at the date of intervention. The intervention costs are £100,000.

Mrs Y is subsequently found by the SDT to have dishonestly misused client money to fund her lifestyle and firm. She is struck off and ordered to pay costs of £30,000.

Mrs Y refuses to provide a statement of means claiming she is independently wealthy. She offers to pay a lump sum of £100,000 plus a balance of a further £100,000 to be charged against her home. She says her position is non-negotiable.

We discover that just prior to the intervention Mrs Y gifted a valuable property to a third party. We petition for Mrs Y's bankruptcy and invite

the Official Receiver to consider seeking a bankruptcy restriction order. We also provide details of the gifted property.

Mrs Y is bankrupted and subject to a Bankruptcy Restriction Order for 12 years. The gifted property is recovered, leading to a full recovery for the SRA (and other creditors).

### **Further help**

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