

Applicant's conduct and contribution to loss (Rule 11)

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

To explain how an applicant's behaviour is taken into account when deciding whether or not to make a payment out of the Fund or if the payment should be reduced.

When will we refuse or reduce a payment?

We expect applicants to take steps to protect themselves before entering into transactions for example by taking advice from independent experts, carrying out due diligence and properly investigating the transaction before entering into any agreements. We also expect applicants to act properly, in both their dealings with the regulated person and us, and to pursue their application to the Fund promptly. We will look at the facts of each case and circumstances of the applicant. We may decide to refuse a payment if an applicant has acted dishonestly, improperly or unreasonably. In appropriate circumstances we can reduce a payment, so pay out less than the amount applied for. Although this guidance cannot identify all the circumstances, we set out some examples below:

Circumstances in which the loss arose.

Example 1

The solicitor sends a cheque but it expires before the applicant pays it into their bank account.

Example 2

The applicant ignores warnings from regulators or other watchdogs relating to the transaction, or type of transaction,



the applicant enters into.

Example 3

The applicant agrees to purchase an investment property for substantially less than market value very quickly without carrying out the usual due diligence, such as a survey and conveyancing searches, and without inspecting the property themselves.

Application to the Compensation Fund.

Example 4

The applicant makes misleading statements.

Example 5

The applicant withholds information relevant to the application.

Failure to pursue an application promptly and in good faith.

Example 6

The applicant does not tell us about other people who may be entitled to the money they are applying for.

Example 7

The applicant causes delay in our investigation of the application.

Example 8

The applicant fails to deal with us openly, clearly and truthfully.

Applicant's conduct wholly or partly caused the loss.

Example 9

The applicant failed to check that the service provided by their solicitor was genuine.

Example 10

The applicant enters into a tax avoidance scheme which they know, or ought to know, is unlikely to be successful.

Example 11

The applicant entered into an agreement without proper investigation into the transaction or the people involved.

Failure to mitigate the loss.

Example 12

The applicant delayed in taking action and so missed the chance to recover their money from elsewhere.

Further guidance

Read more information about our [Compensation Fund](https://consultations.sra.org.uk/consumers/compensation-fund/) [<https://consultations.sra.org.uk/consumers/compensation-fund/>].

Further help

If you require further assistance, please contact the [Contact Centre](https://consultations.sra.org.uk/contactus/) [<https://consultations.sra.org.uk/contactus/>].