

Exhausting other remedies (Rule 2.3)

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 deal with applications where an applicant may have other ways of recovering their loss.

Fund of last resort

The Fund is a fund of last resort. We may refuse or reduce a payment where you can recover your money in another way, for example, by claiming against the professional indemnity insurer of the firm, taking legal action against the regulated person or taking bankruptcy/insolvency proceedings.

We may require you to take other action to recover your loss(es) but will only do so when we consider that it is proportionate. When assessing this, we may consider the following issues:

- Whether you have insurance which may cover the loss. Increasingly, people have protection in their household insurance or from their credit card provider.
- Could the regulated person's professional indemnity insurer cover any of the loss? For instance, we may know that an insurer is making payments on claims from clients where the firm delayed in paying Stamp Duty Land Tax (SDLT), leading to penalties. If you send an application to us on similar facts, we will inform you of the insurance position and expect you to make a claim on the insurance before we consider the application to the Fund.
- If there is no insurance or the regulated person's professional indemnity insurer refuses to pay the claim (for example, because this is excluded by reason of the solicitor/firm's dishonesty), we may consider the situation of the regulated person when deciding if it is proportionate to expect you to first take legal action against them to recover your losses. For example, if the regulated person has moved



abroad, or their whereabouts are unknown, then any potential action against them for recovery becomes more difficult and expensive and is not likely to be proportionate.

- If you are a vulnerable individual with little experience of legal matters, or are unable to obtain representation, we are not likely to require you to take action. If you are a business applicant, or are represented, we may require you to take action.
- What is the likely timescale for any alternative recovery action and what are the prospects of success? If any action is likely to be very lengthy, or has little prospect of success, we are not likely to require you to take it.
- What are the likely costs of the recovery action? If the likely costs of the action are substantial and disproportionate to the loss, or you do not have the means to fund the action, we are not likely to require you to take it.

Example

A solicitor stole money from a number of clients and bought a number of properties with the money. We receive two similar applications, one from an elderly person living in a care home with little experience of the legal process, the other from a successful businesswoman with considerable experience of legal matters and with solicitors acting for her.

We require the businesswoman to take steps to try to recover the money from the solicitor. They bring a claim through the courts and ultimately succeed in recovering the money stolen. We do not ask the elderly person to do the same and consider their application without requiring any further steps to be taken.

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/>].