

## Dishonesty (Rule 3.3(a))

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

We can consider a payment where a loss has been caused by the dishonesty of someone we regulate. This guidance explains how we consider whether there was dishonesty and whether the dishonesty caused the applicant's loss.

### Is there dishonesty?

Typical examples of dishonesty by people we regulate include:

- excessive overcharging
- stealing money from a trust or an estate
- stealing the sale proceeds in a property transaction.

Deciding whether there has been dishonesty is a legal question. The courts have set out a two-stage test (*Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67*). This requires us to consider the following questions:

- First, what was the regulated individual's genuine knowledge or belief as to the facts at the time?
- Second, in view of their knowledge or belief at the time, was their conduct dishonest by the standards of ordinary decent people? It does not matter if the regulated person knew that ordinary people would view what they had done as dishonest.

If there has already been a finding of dishonesty against the regulated person (for example from the Solicitors Disciplinary Tribunal (SDT) or a criminal court) we may consider this as sufficient evidence of dishonesty when considering an application.

The consequences of a finding of dishonesty against a regulated person are serious and may lead to disciplinary action against them. For this reason, we ensure we are fair by giving the regulated person a chance to comment on the application. These comments will be taken into account in reaching a decision.

## **Did the dishonesty cause the loss?**

If we are satisfied that there has been dishonesty, we then consider whether the applicant's loss was caused directly by that dishonesty. Sometimes, this is clear. For instance, where the firm's accounts show a client's money being improperly paid into a solicitor's private account, or where a solicitor has excessively overcharged and taken payment from money held for a client.

However, this may not always be the case and we may need to investigate further.

### **Example**

A solicitor routinely takes money from clients on account of his costs. However, we investigate and find that often the work is not actually done. We bring proceedings against him before the SDT on the basis of several cases where clients have lost out and been lied to. He is found guilty of dishonesty and struck off.

We receive an application for £3,000 which a company had paid on account of costs. The company has a turnover of less than £2m and is therefore eligible to make a claim. No work has been done by the solicitor.

The facts relating to the application were not covered by the SDT proceedings but are very similar to those which the SDT found to be dishonest. There is less documentation to support this application. However, in light of the similarity in the cases and the SDT finding, we decide on the balance of probabilities that the solicitor has acted dishonestly in this case and we make a payment.

## **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/>].