

1. Introduction

1.1 Who should read this practice note?

All solicitors handling client accounts.

1.2 What is the issue?

In the event of a bank's collapse, client funds could be lost. This practice note gives interim advice on mitigating any risk of liability for these funds.

1.3 Professional conduct

The Solicitors' Accounts Rules 1998

Rule 10.05 of the Solicitors' Code of Conduct on undertakings and its related guidance

1.4 Status of this practice note

This is interim advice. It may be updated as economic events change and in light of any legal advice provided to the Law Society. Neither the Society nor the Solicitors Regulation Authority (SRA) can provide financial or legal advice. The law in this area is uncertain because it has never been tested, so consider this advice in light of that. This advice supersedes previous advice on this issue.

Practice notes are issued by the Law Society for the use and benefit of its members. They represent the Law Society's view of good practice in a particular area. They are not intended to be the only standard of good practice that solicitors can follow. You are not required to follow them, but doing so will make it easier to account to oversight bodies for your actions.

Practice notes are not legal advice, nor do they necessarily provide a defence to complaints of misconduct or of inadequate professional service. While care has been taken to ensure that they are accurate, up to date and useful, the Law Society will not accept any legal liability in relation to them. For queries or comments on this practice note contact the Law Society's Practice Advice Service.

1.5 Terminology in this practice note

Must - a specific requirement in the Solicitor's Code of Conduct or legislation. You must comply, unless there are specific exemptions or defences provided for in the code of conduct or relevant legislation.

Should - good practice for most situations in the Law Society's view. If you do not follow this, you must be able to justify to oversight bodies why this is appropriate, either for your practice, or in the particular retainer.

May - a non-exhaustive list of options for meeting your obligations. Which option you choose is determined by the risk profile of the individual practice, client or retainer. You must be able to justify why this was an appropriate option to oversight bodies.

You - a practice.

1.6 More information

1.6.1 Practice Advice Line

The Law Society provides support for solicitors on a wide range of areas of practice. Practice Advice can be contacted on 0870 606 2522 from 09:00 to 17:00 on weekdays.

www.lawsociety.org.uk/practiceadvice

1.6.2 Solicitors Regulation Authority

The Solicitors Regulation Authority regulates solicitors in England and Wales. It makes and enforces the Solicitors' Code of Conduct.

www.sra.org.uk

2 Liability for client money if a bank collapses

It is unlikely that you will be liable in negligence if client money is lost if a bank collapses, as long as you have placed the money in accordance with the Solicitors' Accounts Rules. However, any final decision on this is for the courts. If you have made any express undertakings to pay money, you must honour these even if the bank has collapsed.

You may update your terms of business to limit any liability, provided you follow Rule 2.07 of the code of conduct. You may also state in your terms of business that, if you make a claim under the Financial Services Compensation Scheme (FSCS) in respect of client money on your clients' behalf, you will, subject to their consent, give certain client information to the FSCS to help them identify clients and amounts to which clients are entitled in client accounts.

3. Solicitors' Accounts Rules 1998 (SARs)

You must place client money in a client account at a bank or building society, as defined in section 87 of the Solicitors Act 1974.

- Banks must have permission from the FSA to accept deposits.
- A client account must be held at a branch or a head office in England and Wales - Rule 14(4).

[Read the Solicitors' Account Rules \(SARs\)](#)

The SARs do not prevent you from:

- dividing money among separate client accounts
- distributing client money in different banks

4. Financial Services Compensation Scheme (FSCS)

The FSCS has confirmed that the scheme applies to client money as to other banking deposits. Therefore the scheme covers deposits belonging to clients who are individuals or small businesses up to £50,000, per client, per authorised deposit-taking institution.

[Read more about deposit claims](#)

You do not need to write to the bank to confirm that an account was opened on behalf of multiple clients. Banks will know this from your application to open the account, particularly as the account must have the word 'client' in its title according to Rule 14(3) SARs.

If a bank collapses, you should contact the FSCS with details of all clients whose money is held in the account and the amount in the account to which they are entitled, with supporting evidence. You must seek the consent of your clients before doing so. If an individual client does not give consent, the FSCS will still need to know the account balances, but you may withhold the identity of the client. In this latter case, the client will not be able to receive compensation from the FSCS.

The FSCS will then contact the clients directly

4.1 Multiple client accounts

It is likely to be difficult to identify whose money is in which account if you hold client money in several different general client accounts with different banks. You need to be able to identify the total amounts held on behalf of each of your clients even though you will not know in which bank the individual's money is held.

If one of those banks fails, you should notify the FSCS of all client money held in all the general client accounts with that bank and the entitlement of clients to those funds. The FSCS will need to be satisfied as to the entitlement of individual clients to funds held in the client account. If funds are pooled between a number of different banks and it is not possible to identify which clients' funds are held in which bank, you will need to let the FSCS have the full picture of the money held in all the accounts.

You may need to seek additional funds from clients according to the proportion of the total funds held in the failed bank if you are to complete transactions for them before they receive compensation.

4.2 Accounts in foreign banks

You may move funds to foreign banks provided that the client's bank account is held at a branch in England and Wales under Rule 14(4) of the SARs.

You can check whether the bank is registered with the FSA by looking at the [FSA online listing](#).

The FSCS distinguishes between UK subsidiaries of overseas banks and UK branches of overseas banks. For UK subsidiaries of overseas banks, the FSCS will compensate for loss in the same way as for UK banks. For branches of overseas banks, you should normally make an application to any relevant scheme in the home country.

Some overseas EEA banks with branches in the UK have arrangements with the FSCS to top up any difference, eg as to the level of compensation between the branch's home state scheme and FSCS (up to the £50,000 UK limit). These branches are listed on the FSCS website.

5. What you should tell your client

You should explain to the client how their money is held by doing all of the following:

1. Explain that it is unlikely that you will be held liable for losses resulting from a banking failure.
2. Tell them the name of the bank in which their money is held.
3. Explain that the £50,000 FSCS limit applies to the individual client, and so if they hold other personal monies themselves in the same bank as your client account, the limit remains £50,000 in total.
4. Tell them that some deposit taking institutions have several brands, ie where the same institution is trading under different names. Clients should check either with their bank, the FSA or a financial adviser for more information.
5. Seek consent for the disclosure to FSCS of client details in the event of a bank failure.

6. Qualified undertakings

Some solicitors have asked whether they can offer qualified undertakings.

You are free to decide whether to offer or accept an undertaking, so long as to do so is not against the client's interests. You do not need to give an undertaking simply because it is in the client's interests to do so. You may also negotiate the terms of their undertakings, where this is in the best interests of clients.

However, in residential conveyancing transactions, it is highly unlikely that buyers' solicitors could properly accept offers of a limited undertaking in their clients' best interest. Also, offering such an

undertaking may breach the obligations of sellers' solicitors to their clients, depending on the terms of their retainer.

For further information on conveyancing undertakings to discharge mortgages see both:

1. [rule 10.05 of the Solicitors' Code of Conduct](#)
2. the [Conveyancing Handbook, 15th edition](#). The relevant sections are section E.3, F.4 and the guidance on accepting undertakings after *Patel v Daybells* [2001] EWCA Civ 1229 in appendix IV.7

7. Interest rates

You must ensure that your clients gain a reasonable rate of interest on their money, but you do not need to obtain the best rate.

At a time of volatile interest rates, you should check the interest rates paid on client accounts and consider whether it is appropriate to change bankers in the light of the deals available. In deciding, you should consider factors such as access to the money and the administrative costs of changing banker.

8. Useful links

- [Solicitors' Accounts Rules](#)
- [Financial Services Authority / FSA money made clear](#)
- [HM Treasury](#)
- [Financial Services Compensation Scheme](#)
- [FSA Handbook](#)