Solicitors Regulation Authority

A thematic review of probate and estate administration

13 December 2024

Executive Summary

Probate and estate administration work carries significant risk for firms, solicitors and clients.

People typically access these services at a stressful time in their lives and solicitors are required to deal with sensitive issues, vulnerable individuals, and complex family dynamics.

Alongside this, the process involves the management of large amounts of client money and estate assets.

The SRA Annual Assessment of Continuing Competence 2023 [https://indemnity.sra.org.uk/sra/research-publications/annual-assessment-continuing-competence-2023/] found that probate and estate administration generated the third highest volume of reports to us and complaints to the Legal Ombudsman. Some of the largest and most frequent payments made from the Compensation Fund [https://indemnity.sra.org.uk/sra/research-publications/client-protection-interventions-compensation-2021-22/] have also been for probate matters.

Whether they are meeting client needs or protecting estate money and property, it is vital that firms and solicitors are competent and comply with their regulatory obligations.

What we did

Following the findings of the 2023 assessment, we committed to carrying out a thematic review of firms providing probate and estate administration services.

Our review looked at how firms and solicitors working in this area:

- maintain continuing competence
- manage the risks around handling estate monies and assets
- meet their obligations to clients and parties to the administration.

We want to understand the risks and challenges around probate and estate administration, and how firms and solicitors are addressing them. We are also keen to identify good practice where it exists and share that more widely with the sector. The findings from this review will also feed into other work on continuing competence and our consumer protection review.

We spoke with 25 firms, including some sole practitioners, that provide probate and estate administration legal services. At each firm, we met with the person with overall responsibility for probate and estate administration matters (the 'head of department'). Where firms had staff, we met with a fee earner who dealt with probate and estate administration matters and reviewed two of their files (including client and office ledgers). We also reviewed training records and accountant's reports.

A thematic review is not an investigation, and its purpose is not to uncover wrongdoing. If potential misconduct is discovered, the solicitors or firms involved may be referred to our disciplinary system for investigation.

In this thematic review, we did identify three instances of potential misconduct that required investigation. Two related to failing to obtain or submit qualified accountant's reports, and a further to non-compliance with anti-money laundering regulations. As a result, we have opened investigations into three firms.

What we found

Competence, training and supervision

This is a fundamental duty which we expect all solicitors to understand and comply with.

- Most solicitor heads of department (19 out of 23) were aware of the SRA's continuing competence requirements. However, over half of the solicitor fee earners (six out of ten) were not aware of their obligation to make sure they remain competent.
- Only 15 out of the 25 firms had a written continuing competence policy. In seven of those with a written policy, the head of department/fee earner was unaware of it.
- 23 of 25 heads of department and all 15 fee earners completed formal training on probate and estate administration regularly. However, this training was mostly focussed on legal and technical aspects, rather than other areas of the Statement of Solicitor Competence that may be relevant to performing their role competently.
- Fee earners felt they had adequate and effective supervision, but of 30 files reviewed only nine showed evidence of supervision.
- Half of the heads of department / sole practitioners we visited received no oversight of their work or peer review.

We will be reviewing these, and other findings highlighted in this report, as part of our wider work on continuing competence. We will also be following up with firms where we identified a lack of understanding of the obligation to remain competent, to ensure that they are compliant with our requirements.

Meeting client needs

All 25 firms had a good awareness of client vulnerability and took many steps to meet the needs of clients in vulnerable circumstances. Some firms could do more to ensure they fully meet each client's needs, including:

- providing all the key information about their matter and how it will be handled
- providing the best possible costs information
- improving arrangements to ensure a timely service and regular updates
- identifying and addressing complaints
- clearly explaining when and how the firm will account for interest on client money held.

Acting as executor

- Most firms were aware of the risks of a conflict of interest when acting as executor and administering the estate.
- Despite the widespread awareness of the risk of a conflict of interest, only 12 of the 23 firms that act as executor had additional controls in place to avoid or mitigate this risk.
- Firms and solicitors showed a sensitivity to the complex dynamics between many family members and co-executors under the stress of bereavement.
- Beyond providing the final estate accounts, few firms gave residuary beneficiaries important client care, costs, and complaints information.

Protecting estate money and property

- We were satisfied that most firms were keeping accurate and up-to-date client and office ledgers and records of estate assets and liabilities.
- However, we had concerns that two firms were not compliant with their obligations on accountant's reports and have opened investigations into these firms as a result.
- Most firms (21 out of 25) had a written policy and/or procedure on how the firm would account to clients for interest on money held.
- Many firms took steps to reduce the risk of clients and beneficiaries being the victim of cybercrime and scams.
- We saw robust systems in place for the authorisation of payments from client accounts.
- 17 firms routinely completed identity checks on beneficiaries, with three completing checks if there was heightened risk.

What we will do next

We will share good practice from this review with the firms and individuals we regulate. This includes case studies, templates and checklists to support firms working in this area. We will also use the findings from this thematic review to support two ongoing programmes of work:

- continuing competence [https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/continuing-competence/]
- consumer protection review [https://indemnity.sra.org.uk/home/hot-topics/consumer-protection-review/] .

Doing this will provide an opportunity to explore the findings in a wider context and how we can best respond in a coordinated way. It is important that consumers continue to receive the standard of service they expect from solicitors and firms providing probate services.

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Introduction

Obtaining a Grant of Probate or Grant of Representation gives someone the legal right to deal with an individual's assets and property (their estate) after they die. The person who made the will is referred to as the testator. The process of handling the deceased's affairs is referred to as estate administration.

The deceased's will appoints an executor, the person responsible for dealing with the deceased's estate after their death. If someone dies without a will, the court will appoint someone to administer the estate. That person is known as an administrator. In this report we use the term 'personal representative' to refer to both executors and administrators of an estate.

A firm or solicitor may be appointed to act as a personal representative, or they may be instructed by the personal representatives to help them with the estate. Their instructions may be just to obtain the Grant of Probate or Grant of Representation, or they might also be instructed to support the administration of the estate.

Estate administration involves:

- valuing the estate
- paying the necessary tax to HMRC
- collecting in the value of any assets
- paying any outstanding debts and liabilities
- distributing the estate among the beneficiaries.

Firms and solicitors providing probate and estate administration services deal with large amounts of client money and assets and must have robust controls in place. Probate is the area of law which has generated some of the largest payments from the SRA Compensation Fund [https://indemnity.sra.org.uk/sra/research-publications/client-protection-interventions-and-the-compensation-fund--202021---corporate-report/] in recent years, highlighting the risk of client funds being used or taken improperly.

Our thematic review looks at how firms and solicitors working in this area maintain their continuing competence, manage risks and meet their obligations to clients.

Competence, training and supervision

Why this is important

Probate and estate administration work carries significant risk. Firms and solicitors handle large amounts of client money and estate assets. They routinely deal with sensitive issues, grieving and vulnerable individuals, and complex family dynamics. It is vital that firms and solicitors are competent to carry out their work and comply with their regulatory obligations. Appropriate training and supervision help to ensure that solicitors are providing a competent level of service. It also helps identify early any issues that need to be addressed. This safeguards the interests of clients and beneficiaries.

What we expect

Solicitors must:

- Provide a competent service in a timely manner, and keep their professional knowledge and skills up to date (paragraphs 3.2 and 3.3 of the Code of Conduct for Solicitors, RELs and RFLs [https://indemnity.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/]).This includes knowledge of relevant guidance and regulatory obligations.
- Comply with the Competence. To maintain continuing competence [https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/continuing-competence/] , we expect solicitors to:
  - reflect on their practice
  - identify their learning and development needs
  - plan and complete learning and development to address those needs
  - record their learning and development activity
  - evaluate the effectiveness of their learning and development.
- Whilst not a regulatory requirement, maintaining a learning and development record is a good way of demonstrating that the above steps have been taken. You may wish to refer to our template [https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/continuing-competence/templates/] as a guide.
- Ensure the competence of those they supervise (paragraph 3.6 of the Code of Conduct for Solicitors, RELs and RFLs [https://indemnity.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/]).

Firms should have systems in place to make sure that managers and employees are competent to carry out their roles (paragraphs 4.2, 4.3, and 4.4 of the Code of Conduct for Firms).

What we found

Understanding of continuing competence obligations

We spoke to 23 heads of department and ten fee earners who were qualified solicitors. The other two heads of department were accredited by the Chartered Institute of Legal Executors (CILEX). The other five non-solicitor fee earners included a licenced probate practitioner, three Chartered Legal Executives, and one unqualified paralegal.

We asked solicitors whether they were aware of our continuing competence requirements and if so, whether they could explain them. Most solicitor heads of department (19 out of 23) were aware of and able to correctly explain their duty to carry out their work competently and keep their skills and knowledge up to date.

Over half of the solicitor fee earners (six out of ten) and four solicitor heads of department were not aware of their obligation to make sure they remain competent. Our Rules make it clear that solicitors have an individual responsibility to keep their knowledge and skills up to date. To do this, we expect them to regularly reflect on the quality of their practice. There is a strong public interest behind maintaining competence. We have had discussions with these individuals to ensure they understand their competence obligations and how to comply with them. We will follow-up with each of these firms to check they are meeting our expectations.

Ensuing your continuing competence is a fundamental obligation if you are a solicitor. Firms must take the necessary steps to ensure that that all managers and employees understand their obligations in relation to continuing competence.

Only three heads of department and one fee earner were aware of and able to explain the Statement of Solicitor Competence. This is an important tool to help solicitors identify their learning and development needs.

If solicitors are not taking steps to ensure they are maintaining their competence they also risk breaching other aspects of our Standards and Regulations. For example, we had concerns that three of the firms we visited were not complying with Anti Money Laundering

Regulations [https://indemnity.sra.org.uk/solicitors/resources/money-laundering/aml-regulations-apply/] and/or Rules. At two of these firms, the head of department/fee earner could not explain their obligation to maintain continuing competence. We have opened investigations into all three of these firms as a result of our findings.

Systems to promote, assess and monitor competence

Of the firms we visited, 15 out of 25 had a written policy about maintaining continuing competence. A written policy can help solicitors understand their obligations and how to meet them. It promotes clarity and consistency.

In seven of the 15 firms that had a continuing competence policy, the head of department or fee earner was unaware and unable to correctly explain their professional obligations in relation to continuing competence. This shows that having a written policy is not enough. Firms must make sure that staff understand and comply with their professional obligation to maintain their competence.

We found that the firms with policies were generally disseminating them to staff, either by sending them directly or making them accessible centrally. Some firms referred to the policies during induction (eight), team meetings (three), and supervision (nine). These are useful ways of embedding continuing competence into day-to-day practice.

Apart from ongoing training (which is addressed below), we asked the 21 firms which had fee earners (including unqualified staff) what they did to support continuing competence.

Table 1: How do firms make sure staff are competent?

Steps taken by firms	Number of firms
Share knowledge updates	12
Departmental/team meetings	11
Share client feedback	11
Supervisor feedback	10
One to ones/appraisals	8
Share complaints data	8
Referred to during induction	8

Taking such steps is especially important where firms make a declaration of competence on a solicitors' behalf, as part of the annual bulk practising certificate renewal. All but two of the 20 firms we visited with solicitor fee earners completed a bulk practising certificate renewal for their solicitors.

We asked firms how they were checking that solicitors complied with their continuing competence obligations. Almost all the firms kept and reviewed solicitors' training records. Some firms had individual discussions with solicitors (seven) and required them to make a personal declaration of competence (five).

To promote, assess and monitor competence, firms should adopt the processes most appropriate to their circumstances. It is good practice to record the steps that have been taken – for example, by making notes of meetings and asking solicitors to confirm in writing that they have received and understood policies and updates.

Training

We saw good practice in this area. Firms and solicitors took advantage of free resources and subscriptions, read legal updates and carried out independent research. Some solicitors were members of STEP (Society of Trust and Estate Practitioners), The Law Society's Wills and Inheritance Quality Scheme, and the Association of Lifetime Lawyers. Membership of these groups gave access to a range of resources and training materials.

23 of 25 heads of department and all 15 fee earners completed formal training on probate and estate administration regularly. This included online and in person courses, conferences, and seminars. Most of them did formal training at least annually.

There was flexibility in how training was arranged. At some firms, fee earners took the initiative to request training they wanted to attend. At other firms, firms identified training for fee earners. Firms were prepared to pay for training, which would remove cost as a potential barrier to fee earner learning and development.

Even though almost all individuals were completing regular training on legal and technical aspects of probate and estate administration, most of the training did not focus on other areas of the Statement of Solicitor Competence that may be relevant to performing their role. Some did not understand their continuing competence obligations. It is important that solicitors understand and comply with the full range of their competence obligations, not just the legal and technical requirements.

Learning and development records

Whilst not a regulatory requirement, maintaining a learning and development record is a good way to demonstrate that continuing competence obligations have been met. We asked to review the learning and development records of all qualified heads of department and fee earners. All fee earners were able to provide them, but three heads of department were not. We discussed the importance of keeping a learning and development record with them.

Of the 30 learning and development records we reviewed:

- 12 reflected on practice
- 18 identified the solicitor's learning and development needs
- 17 included a plan to address those needs
- 28 documented the learning and development activity they had completed
- eight evaluated the effectiveness of the learning and development activities.

Almost all the learning and development records showed the learning and development activity solicitors had undertaken, including noting training events and dates attended. It was less common for training records to include information about the solicitor's reflection on their practice, identification of training needs and evaluation of whether training completed had met the identified need.

Recording reflection demonstrates to us that a solicitor has taken the necessary steps to keep their knowledge and skills up to date. A failure to do this raises concerns to us that not all learning and development needs are being identified and addressed.

Supervision

Appropriate supervision arrangements help to ensure clients receive competent and timely services. Effective supervision includes supporting supervised individuals to identify and address their learning needs so that the delivery of competent service for clients is maintained over time.

We asked heads of department and fee earners about their supervision arrangements. All fee earners felt they received adequate and effective supervision. Heads of department told us that supervision was tailored to fee earners' learning needs, level of experience and the complexity of the matters they were dealing with.

However, 12 out of 25 heads of department / sole practitioners received no supervision, oversight or peer review of their work. Solicitors should carefully consider whether these measures are necessary to support their own continuing competence, and/or their own effectiveness in ensuring those they supervise provide a competent level of service. If so, they should put these measures in place and 13 heads of department and sole practitioners did so by having:

- oversight from other partners/directors (six)

- their files regularly reviewed by other partners/directors (eight)
- peer review by external consultants (one).

Firms could do more to ensure that supervision is documented. Of the 30 files we reviewed that were conducted by a fee earner, only nine files showed evidence of supervision. Of the 20 files conducted by heads of department or sole practitioners, supervision, peer review or oversight was recorded on only one file.

It is good practice to document supervision for clarity and transparency. This can be done through file/attendance notes, amendments to documents, written approvals, records of file reviews/audits, and emails/correspondence.

Case studies

Systems to maintain continuing competence – good practice

At Firm A, every fee earner, regardless of their level, has three of their files reviewed every month by their supervisor. Partners have their files reviewed by other partners. A file review form must be completed and kept on the files. These include any corrective actions required, which must be completed within 28 days. Firm A's COLP receives copies of the file review forms and follows up with each fee earner to make sure they have taken the necessary corrective actions. Learning points are also discussed in one to ones between fee earners and their supervisors.

Firm A pays for regular staff training. It does not have a billable hour's target, which encourages fee earners to complete training during the working day. Fee earners are required to keep training records, which are reviewed by the COLP annually before practising certificates are renewed.

Firm A also has policies and procedures addressing continuing competence, supervision and training. When new staff join the firm, they are required to familiarise themselves with these. In order to pass their probation period, their line manager must check and confirm they understand the firm's policies and procedures.

Checklist for firms/solicitors

- Consider putting in place a written policy about maintaining continuing competence. Have mechanisms in place to make sure all staff are aware of it and follow it.
- Ensure that all managers and employees are competent to carry out their work and have an up-to-date understanding of relevant law, policy and practice. Solicitors must be able to show they meet our requirements. This includes the Statement of Solicitor Competence [https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/] .
- Check that solicitors are:
  - reflecting on their practice
  - identifying their learning and development needs
  - planning and completing learning and development to address those needs
  - recording their learning and development activity
  - evaluating the effectiveness of their learning and development.
- Keep a learning and development record, this is a good way to demonstrate that the steps have been taken. You may wish to refer to our template [https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/continuing-competence/templates/] as a guide.
- Maintain supervision structures which are effective, tailored to the individual's needs and requirements of the work. Supervision should be appropriately documented.
- Make sure solicitors are receiving the training they need to provide a competent service in a timely manner. Training should be tailored to their work and needs. Learning and development should focus on all aspects of their role, not just technical legal practice (for example, ethics, professionalism and judgment, and working with other people).

Meeting client needs

Clients in vulnerable circumstances

Why this is important

Many individuals seeking help from a solicitor with a probate and estate administration matter will be in a vulnerable position. This is due to their legal need and the imbalance of knowledge that exists between solicitors and most clients. Some will have additional vulnerabilities due to bereavement, illness, financial circumstances, strained family relationships or other reasons. Firms and solicitors need to be sensitive to these vulnerabilities and ensure that their services are accessible. They should ensure that they are keeping all their skills up to date, including those required to engage effectively with vulnerable individuals.

What we expect

Paragraph 3.4 of the Code of Conduct for Solicitors, RELs and RFLs [https://indemnity.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/] requires that: 'You consider and take account of your client's [https://indemnity.sra.org.uk/solicitors/standards-regulations/glossary/#client] attributes, needs and circumstances.'

Our Statement of Solicitor Competence [https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/] requires all solicitors to be competent at 'identifying and taking reasonable steps to meet the particular service needs of all clients including those in vulnerable circumstances'.

We expect firms and solicitors to comply with our guidance on accepting instructions from vulnerable clients or third parties acting on their behalf [https://indemnity.sra.org.uk/solicitors/guidance/accepting-instructions-vulnerable-clients/].

What we found

The 25 firms we visited demonstrated a good awareness that clients and beneficiaries might be in vulnerable circumstances. Firms took a range of steps to identify this, including:

- having in-person meetings
- obtaining an independent medical assessment if they had any concerns about a client's mental capacity
- being aware of signs of vulnerability in correspondence
- being aware of risks and indicators of undue influence, such as family members dominating meetings or trying to give instructions on the client's behalf.

Firms showed good practice in how they met the needs of clients in vulnerable circumstances, including:

- offering in-person meetings at their offices or a client's home where they had health or other challenges
- making accessibility adjustments for clients – for example, providing documentation in large font, offering to read correspondence to clients or taking extra time to explain or go over information. By making these adjustments, firms were also fulfilling their obligations under the Equality Act 2010
- taking steps beyond their legal work to serve the best interests of their clients – for example, by reporting concerns about the welfare of clients or beneficiaries to local safeguarding teams, the Office of the Public Guardian or to the police.

Case studies

Supporting beneficiaries in vulnerable circumstances – good practice

Firm B contacted an elderly beneficiary to inform them they had been left a significant legacy. The beneficiary was previously unaware of the legacy and became very anxious that the firm was asking for bank details to transfer the legacy. The beneficiary was very

concerned that Firm B was not genuine and could be making a scam attempt to obtain access to the beneficiary's bank account.

Firm B took the time to provide additional reassurance to the beneficiary about its role and to explain the circumstances of the legacy in detail. It also provided reassurance about the security of arrangements to pay the legacy.

Firm B demonstrated empathy for the beneficiary, taking steps to relieve their anxiety by providing clear explanations and reassurance.

Supporting clients in vulnerable circumstances – good practice

Firm C's awareness of vulnerability is fundamental to its approach to probate and estate administration. The head of department explained, 'our starting point is that all clients are vulnerable because they are grieving'.

Firm C has a detailed policy on dealing with vulnerable clients which informs its day-to-day practice. This policy details:

- staff's professional obligations to clients in vulnerable circumstances
- that the needs of each client should be identified as soon as possible and addressed, with examples of how to address specific needs
- how to approach meetings with vulnerable clients
- that staff need to complete relevant training on supporting vulnerable clients before meeting with them.

This policy is reviewed annually or if there is any major change in the firm, regulation, legislation, or if it is breached.

When we spoke with the fee earner at the firm, they were able to explain how they were applying the policy in their day-to-day practice, including sharing learning from their experiences in identifying and addressing different vulnerable circumstances.

Providing clients with relevant information

Why this is important

Clients typically seek legal help with probate and estate administration at a stressful time in their lives. Many will not be familiar with the processes or legal concepts involved. It is important that solicitors provide their client with clear information on the work required and costs so they can make informed decisions about how they want to proceed.

This also helps to manage client expectations and reduce the likelihood of dissatisfaction and complaints. Providing information in writing is useful as clients can refer back to it as and when they need to.

What we expect

The Code of Conduct for Solicitors, RELs and RFLs [https://indemnity.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/] requires that:

- You give clients [https://indemnity.sra.org.uk/solicitors/standards-regulations/glossary/#client] information in a way they can understand. You ensure they are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them (Paragraph 8.6).
- You ensure that clients [https://indemnity.sra.org.uk/solicitors/standards-regulations/glossary/#client] receive the best possible information about how their matter will be priced and, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of the matter and any costs [https://indemnity.sra.org.uk/solicitors/standards-regulations/glossary/#costs] incurred (Paragraph 8.7).

Complying with the Statement of Solicitor Competence [https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/] involves 'informing clients in a timely way of key facts and issues including risks, progress towards objectives, and costs'.

What we found

Information about probate and estate administration

We reviewed 30 matters where the firm was acting for the personal representatives of an estate. We found that the level of written information given to clients was variable. There is room for improvement in this area.

Table 2: Written information provided to clients

Information provided	Number of firms
Process for administering the estate	24
Likely timescales for administering the estate	24
How the firm will communicate	18
How often the firm will communicate	13
PR's role and firm's role in relation to the estate	12
PR's obligations and responsibilities	11
No written information provided	2

Most firms explained the process and timescales for administering the estate. For example, they explained how long they would expect it to take to prepare an application for a Grant of Probate and for the application to be processed. This information was relevant and likely to be helpful to clients.

However, most firms do not provide basic written information about the client's role and responsibilities as a personal representative, and about the firm's role in dealing with the administration. Not all firms were telling clients how often they could expect updates and what method of communication they would use. Giving clients this information is important in ensuring they can make informed decisions about the administration of the estate as it progresses. It also helps to effectively manage client expectations and avoid misunderstandings.

For example, clients may expect legacies to be distributed as soon as the Grant of Probate is obtained. Giving them clear information about their obligations as personal representatives is helpful to explain why it may be advisable to wait a period of time before starting to make distributions, in case of claims against the estate.

Some firms provided standard information about the probate and estate administration process to all clients as part of their client care letter or alongside it. Case studies D and E are examples of good practice in this area.

Costs information

We reviewed 30 files where the firm was acting for personal representatives, and 20 files where the firm was acting as personal representative.

Table 3: Costs information

Information provided	Number of files
Basis of charges	42
Likely disbursements	37
Estimate (in total or by stage)	36
When costs will be charged	27

How costs will be paid	25
No costs information given	4

We were concerned that on three files where firms were acting for a personal representative, no costs information was provided by firms to their clients. This did not meet our requirement to provide clients with the best possible costs information, or obligations under consumer protection legislation. We spoke to these firms about their obligations and referred them to relevant guidance, emphasising the requirements they need to meet.

On most of the files we reviewed, firms provided clients with costs information, but the level and quality were variable. Firms could do more to ensure they are giving clients the best possible information on costs. Providing this information at an early stage is in the client's best interests and helps to manage their expectations from the outset. This may in turn avoid complaints or dissatisfaction.

It was positive that on most files, firms provided clients with information about:

- the basis of the firm's charges
- an estimate of costs (in total or by stage)
- other likely costs and disbursements.

On only around half of the files, the firm explained when and how the client would need to pay costs. To give clients the best possible information on costs, it is good practice for firms to clarify cost issues. This includes whether clients should expect to receive interim invoices for payment or a final bill with the final estate accounts. Or whether costs will be deducted from the estate or require payment separately.

Costs estimates

On four out of 50 files, firms significantly exceeded their estimates and issued bills to their clients without any prior warning. This does not meet our requirement to provide clients with the best possible costs information. It risks causing clients unnecessary worry and potentially inconvenience when budgeting for their legal costs. While the clients had not complained about these matters, we emphasised to the firms involved that they have an obligation to provide the best possible costs information.

Sometimes, in the course of a matter, more work is required, or it becomes more complex than originally expected. Where this happens, firms should inform the client and provide a revised estimate as soon as they identify that additional work is needed. Where possible, firms should avoid letting clients know after additional costs have already been incurred, or after an estimate has been exceeded.

Providing clients with the best possible costs information involves proactively tracking costs incurred against estimates provided, and providing updated costs estimates where necessary. This ensures clients can make an informed choice about incurring additional costs, and avoids clients being surprised by unexpected legal costs, which can lead to client dissatisfaction and complaints.

Case studies

Guides to probate and estate administration – good practice

At the outset of each matter, Firm D and E give every client a helpful guide to probate and estate administration. Their guides provide a range of standard information in clear and simple language, including:

- an explanation of key terms used in probate and estate administration
- what happens if there is a will and if there is no will
- the probate and administration process and key milestones
- the role and obligations of the personal representatives
- practical tips, including tax issues and how to reduce legal costs.

Keeping costs estimates up to date – poor practice

Firm F acted for a personal representative. It provided a cost estimate for the first stage of work, but exceeded this estimate by a significant amount. It then issued its first interim bill to the client without any prior warning that it had exceeded the estimate. At that point, the firm provided a new estimate to cover the work that needed to be done until the end of the matter.

Later, Firm F sent a second interim bill to the client, which was just within the revised estimate it had given. However, the legal work was not yet complete. Firm F did not update its estimate, even though it was clear it would be exceeded by a significant amount in view of the amount of work still left to complete. Sometime later, Firm F issued a final bill, having incurred significant further costs.

Firm F did not provide the client with the best possible information on costs. While there were very good reasons for the additional work that needed to be completed, and the firm could not have anticipated this at the outset, it did not keep its client properly informed once it was clear that additional work would be required.

The client was left without a clear idea about what Firm F's final costs were likely to be. This could have been avoided if the firm had promptly revised its costs estimates as and when required.

Notwithstanding that client did not make a complaint, we reminded Firm F of the requirement to give clients the best possible costs information. We referred it to the service. This makes it clear that clients may be entitled to compensation from firms if they experience worry and inconvenience as a result of receiving poor costs information.

Timely service

Why this is important

Many clients want to finalise the financial affairs of the person who has died as soon as possible. However, dealing with an estate is not typically a quick process. We know from the reports to us, and complaints to the Legal Ombudsman, that delays are a source of client dissatisfaction and complaints. It is important that firms and solicitors take the necessary steps to provide a timely service for clients and deal appropriately with the risk of delays.

What we expect

Solicitors must ensure that they deliver services in a timely manner (paragraph 3.2 of the Code of Conduct for Solicitors, RELs and RFLs [https://indemnity.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/]).Firms must have arrangements in place to ensure solicitors are doing so (paragraph 4.2 of the Code of Conduct for Firms [https://indemnity.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/]).

What we found

Most firms had systems in place to make sure matters were being progressed and clients were regularly updated. Some firms used electronic case management systems (including prompts for actions required), calendar applications or other diary systems. Three firms used data from their accounts team to flag matters for review. Several firms also used file reviews and team meetings. It was positive to hear that as part of these processes, senior staff were providing guidance to those with less experience and ensuring that cases were being appropriately allocated.

Table 4: Proactive measures to provide timely service

Measure in place	Number of firms
Diarising key dates	21
Planning reviews and follow-up	6

Reviewing cases regularly	18
Case management prompts / automation	10
Paralegal support	2
Paper checklist	2
No proactive measures	2

All of these measures are useful ways of making sure that matters are progressed in a timely manner. We were concerned, however, that two firms appeared to have weak systems in place. One firm relied on incoming communication to prompt action and had no diary or record of key dates. Another firm said it would deal with matters when clients chased it. It said it reviewed its files regularly but had no diary system or record of key dates. These firms are at greater risk of causing avoidable delays which may adversely affect clients.

Of the 50 client files we reviewed, we found client complaints about delay on three. On two of those matters, delays could have been avoided had the firms put proactive measures in place. On one of these matters the delay resulted in interest being charged on the inheritance tax payment and increased costs to the estate.

On a third matter, the delays were beyond the firm's control. The firm responded promptly and in detail to the client's concerns, explaining what had happened and the steps it had taken. The tone of the firm's complaint correspondence was empathetic and helpful. Its response appeared to have resolved matters to the client's satisfaction.

Some delays are outside of firms' control. Almost every firm (23 of 25) we spoke to referred to challenges they had experienced because of increased processing times at the Probate Registry. They also described difficulties in contacting and resolving queries with the Probate Registry. Most firms (17 of 25) referred to increased processing times at HMRC. Firms said these changes meant the administration of estates was taking longer than it had in the past.

We saw evidence of good practice in how firms were dealing with these challenges. Firms proactively explained to clients the effect of these issues on the timescales for the estate administration, updating them on developments and managing their expectations effectively. They took steps to mitigate the impact of these factors, including liaising with third party organisations to progress matters where possible, and using formal complaint mechanisms on behalf of clients where appropriate and instructed to do so. This approach is helpful for clients and likely to reduce complaints about delays that are beyond the firm's control.

Case studies

Avoidable delay – poor practice

Firm G had an initial meeting with a family member of the deceased. The family member believed there was a will but it had not been located. They asked Firm G to act, and the firm agreed. Firm G sent the individual a client care letter and terms of business and asked the individual for the documents it needed to progress the estate administration. The individual agreed but failed to send the documents and did not return a signed copy of the firm's terms of business. Firm G did not contact the individual again until six months after sending the client care letter. Once the firm received instructions it progressed the case. However, due to the time elapsed in getting the documents from the client, interest was ultimately charged on the inheritance tax payment.

In these circumstances, the family member had delayed matters, and Firm G could not proceed with the estate administration without instructions. However, the interest payment might have been avoided if Firm G had made contact with the individual much earlier to remind them about the documents needed. They could have also warned them that delay in providing them could result in additional costs to the estate.

Firm H was instructed by the executors of an estate. Following the initial instruction, it took the firm nine months to confirm that it held the deceased's original will which was believed

to be lost. Firm H did not inform the clients for five months that the Grant of Probate it had applied for had been issued. It was clear from the clients' communications that they were very dissatisfied with the firm's standard of service. Firm H waived its fees for dealing with the Grant of Probate. However, it did not treat the clients' clear expressions of dissatisfaction as a complaint, nor take steps to address that dissatisfaction in accordance with its complaints procedure. Firm H did not have a system for managing key dates or prompting it to take action. If it had, this delay might have been avoided.

Neither of these firms met their obligation to provide clients with a timely service. We expect all firms to acknowledge to clients where they have failed to do so and explain any steps needed to put things right. These delays indicate that the firms did not have effective measures in place to ensure timely progression of matters. Unless they improve their processes, these firms are at risk of making the same mistakes with future clients.

We highlighted these issues, and the relevant regulatory obligations, to the firms involved.

Complaints handling

Why this is important

It is important that clients know how to complain if they are unhappy with the service they have received and are confident their complaint will be addressed fairly.

Although beneficiaries are not the firm's clients, the Legal Ombudsman can and do accept complaints from beneficiaries [https://www.legalombudsman.org.uk/information-centre/news/leo-mythbusters-article-beneficiaries/] about firms. It is therefore good practice for firms to respond to complaints from beneficiaries under their internal complaints procedure. The firm's response can reflect that the level of service provided to a beneficiary will not be the same as that provided to a client.

What we expect

Firms and solicitors must operate an effective complaints procedure that complies with paragraphs 8.2-8.5 of the Code of Conduct for Solicitors [https://indemnity.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/], RELs and RFLs and paragraph 7.1I of the Firms. Information about the complaints procedure must be published on the firm's website under Rule 2 of the Transparency Rules [https://indemnity.sra.org.uk/solicitors/standards-regulations/transparency-rules/].

What we found

All firms we visited provided their clients with appropriate information about their complaints procedure. This included their right to complain to the Legal Ombudsman. Our file reviews confirmed this good practice.

However, there were few files where residuary beneficiaries were provided with the firm's complaints procedure. We discuss the level of information given to residuary beneficiaries in the section on 'Acting as executor'.

A complaint had been made on four of the 50 files we reviewed. On two of these matters, the firms provided a detailed response to the client's concerns about delays. They appeared to have addressed matters to the client's satisfaction. However, on the other two files, the firms did not address a clear expression of dissatisfaction by the clients. The Firm H case study above was one of these files. On the other file, involving a different firm, the client dis-instructed the firm before their legal work was completed. While neither matter was escalated by the client, it appears likely they remained dissatisfied.

Individuals should not have to use the word 'complaint' for the firm to address concerns about their service. Addressing expressions of dissatisfaction promptly can help resolve matters quickly. It can also help avoid matters escalating unnecessarily by reassuring individuals that their concerns are being taken seriously. We highlighted these matters, and

the relevant regulatory obligations, to the firms who had not addressed their client's clear expressions of dissatisfaction with the service they had received.

Case study

In the case study regarding Firm H mentioned above, the firm ought to have recognised the expression of dissatisfaction as a complaint. It should have reminded the client of the complaints procedure and dealt with the matter in accordance with the complaints procedure.

Checklist for firms/solicitors

- Take reasonable steps to meet the needs of all clients, including those in vulnerable circumstances. Ensure all client-facing staff know how to proactively identify and address indicators of clients and beneficiaries in vulnerable circumstances. Addressing vulnerable circumstances may involve in person meetings, capacity assessments, and accessibility adjustments.
- Provide clients with appropriate written information about how their matter will be handled and what the administration of an estate is likely to involve. Consider giving clients standard guides to probate and estate administration at the start of the matter.
- Ensure every client receives the best possible costs information, so they can make informed decisions about their costs. This will typically include the basis of the firm's charges, likely disbursements, an estimate of the overall costs or the next stage of work where that is not possible, when and how costs will be paid, and when the firm will pay interest on client money held.
- Keep clients updated on costs, and proactively monitor estimates so they can be updated if necessary. Tell clients in advance if an estimate is likely to be exceeded, explain why and provide an updated estimate.
- Put in place effective processes to ensure matters are progressed efficiently and timely updates are provided to clients. This may include case management systems, calendar and diary prompts, and file reviews.
- Proactively manage client expectations about delays as a result of a third parties' processing times. Explain their likely effect on the estate administration and any additional work that will be required.
- Make sure clients have been provided with written information about how the firm handles complaints. At the point when a complaint is made, remind clients of the complaints procedure.
- Check that all staff know how to identify and address complaints by clients and beneficiaries. Do not ignore expressions of dissatisfaction and try to address and resolve any concerns as soon as possible.

Acting as executor

Why this is important

Many firms and solicitors are appointed by testators to act as executors and administer their estates following death. Where a firm or solicitor acts as executor and administers the estate, there is no external client. There may be less accountability or oversight of their work, decision making, and costs than when the firm or solicitor is acting for an executor client.

In these circumstances, there is an increased risk of a conflict of interest arising. If there are insufficient controls in place, firms and solicitors may administer the estate in a way which benefits themselves rather than being in the best interests of the estate. Where there are disputes between beneficiaries or family members about aspects of the estate administration, firms or solicitors may act in ways that are preferential towards one beneficiary or family member. The firm or solicitor may not act in line with their legal and professional obligations to administer the estate in accordance with the will or the rules of intestacy. They may not act neutrally and in the best interests of the estate.

Where the firm or solicitor is acting as executor, it is therefore important that they have robust controls in place to identify and avoid any conflict of interest arising.

What we expect

Firms and solicitors acting as executors have a duty to carry out the wishes of the deceased as set out in their will. They must administer the estate with such care and skill as is reasonable in the circumstances.

Firms and solicitors must not act if there is a conflict of interest or significant risk of it arising (Code of Conduct for Firms [https://indemnity.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/] / Solicitors [https://indemnity.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/] , paragraphs 6.1 and 6.2).When administering the estate, they must act with independence (Principle 3) and integrity (Principle 5), and in a way which upholds public trust and confidence in the legal profession (Principle 2).

If a firm or solicitor cannot put the necessary controls in place to comply with these obligations, they should not accept the appointment as executor.

What we found

Advising testator clients

Solicitors must give clients the information they need to make informed decisions (paragraph 8.6 of the Code of Conduct for Solicitors).We wanted to understand what information and advice testator clients receive when their wills are being drafted, and they ask to appoint firms or solicitors as executors.

Of the 23 firms we visited that act as executors, most (17) gave clients general information about the costs of administering the estate. Some firms also explained:

- the potential disadvantages of them acting as executor, including increased costs and a more limited understanding of their wishes and preferences as compared to friends or family (10)
- alternative options, such as appointing lay executors instead (12)
- what the firm's responsibilities and obligations would be as executor (10).

It is good practice for firms and solicitors to discuss these factors with their testator clients, as well as their circumstances and needs. This enables clients to decide whether appointing the firm as executor is in their best interests. All discussions should be documented so they can be referred to in future. Our expectations are set out in our guidance on drafting and preparation of wills [https://indemnity.sra.org.uk/solicitors/guidance/drafting-preparation-wills/] in the section on appointment of executors.

We did not see evidence of firms or solicitors inappropriately proposing themselves as executors. On the contrary, four firms actively advised clients that it would be preferable to appoint a family member or friend more familiar with their wishes, if possible. Two firms told us they never acted as executor as they did not have sufficient resources to manage the risk of conflicts of interest. This is a good example of ethical practice in line with our principles.

We also found that firms took a reasonable approach to renouncing executorship. Firms told us they would agree to renunciation if it were appropriate to do so. This would consider the testator's original wishes and circumstances, the complexity of the estate, and whether there was agreement from co-executors and/or beneficiaries. This approach is in the best interests of the estates and beneficiaries.

Charging arrangements

Costs to an estate are likely to be higher when a solicitor is appointed as executor rather than a friend or family member. This is because the solicitor will need to spend time completing tasks that would otherwise be completed by a lay executor (friend or family member), which comes with an associated cost. The solicitor will need to ensure that these

tasks are carried out in accordance with the testator's wishes, alongside the other duties of administering the estate. It is reasonable to charge additional costs in these circumstances.

We wanted to understand if firms were imposing different types of charges when appointed as executor, as compared to when they were acting for lay executors. This might affect the independence of the advice provided to testator clients about appointing an executor. There would be a conflict of interest if a firm or solicitor encourages their testator client to appoint them as executor, against the client's best interests, purely so they can receive increased costs.

We did not see any evidence of firms' advice to testators being compromised in this way. We saw clear evidence of firms seeking to actively dissuade clients from appointing them where the firm identified that it was not in a testator's best interests to do so.

Most firms said that the basis of their charges (e.g. hourly rate only, or hourly rate plus an element for the value of the estate) was the same whether they were acting as executor themselves or acting for lay executors. Four firms said they reserved the discretion to charge an additional element for the value of the estate, in addition to the hourly rate when acting as executor. Where firms charge a value element, they should explain it clearly at the outset as part of the firm's costs information. Firms should have regard to relevant case law when charging a value element.

Executorship appointments

All but two of the firms we visited acted as executors.

Where a specific solicitor is nominated as executor in the will, there is the risk that the matter will not be progressed if the individual is unexpectedly unavailable to act (for example, due to illness, absence or death). Firms and solicitors must make sure they are taking the necessary steps to mitigate this risk and avoid detriment to the estate.

Most firms (18 out of 23) had a non-specified individual (e.g. a partner or director) appointed as executor. One firm named a trust corporation as executor. This was good practice.

We spoke to four firms which only nominated specified individuals as executors. For two firms, this was because they were sole practitioners The other two were small firms with only one individual who was able to act as executor. It was positive that they had contingency plans in place in case they were unavailable, including:

- making sure they always acted alongside co-executors
- arranging for other firms to take on their matters if necessary
- appointing the firm as executor in substitute.

Avoiding conflicts of interest

Most heads of department and fee earners had a good understanding of the risks and challenges when acting as executor and administering the estate. The lack of oversight of costs and potential disputes from beneficiaries were common factors mentioned.

Despite the widespread awareness of the risk of a conflict of interest, only 12 of the 23 firms that act as executor had additional controls in place to avoid or mitigate this risk.

The firms that had those additional controls in place told us they ensured:

- the executor and the administrator were different people within the firm (five)
- greater oversight of billing (two)
- additional supervision (two)
- they treated residuary beneficiaries as clients, providing them with client care letters, costs information, and regular updates, and seeking their agreement to key decisions (four).

We saw evidence of additional controls on 11 of the 20 files we reviewed where the firm acted as executor. We felt that there was room for improvement in this area.

Firms and solicitors must take adequate steps to avoid a conflict of interest. The measures mentioned above are some ways of doing this. If firms cannot do this, they should not accept the appointment as executor. If they are already acting as executor, they should consider renouncing the appointment.

We did not have concerns that any of the firms we visited were acting in a conflict of interest.

Acting for multiple executors

All of the firms we spoke to acted on behalf of executors. Firms took appropriate steps to avoid conflicts of interest where they were acting for multiple executors.

Firms ensured that joint instructions were agreed between all executors by:

- sending client care and costs information to all of them for approval
- sending correspondence to all of them and confirming their agreement to major decisions
- agreeing who the lead executor should be and taking instructions from them.

However, on two files we reviewed, there was no written record of consent to key decisions from one or more of the executors. It is important that joint instructions are obtained and clearly documented on the file to avoid ambiguity or dispute.

Where there was a lack of agreement between joint executors, firms were aware of the risk of a conflict of interest. They had a good understanding of the measures they may need to take, including:

- advising executors to take independent legal advice
- remaining neutral and/or ceasing to act
- advising executors that disagreements have the potential to increase delay and costs
- discussing whether any executors should renounce or reserve power
- referring the matter to contentious probate specialists.

Firms and solicitors showed a sensitivity to the complex dynamics between many family members and co-executors under the stress of bereavement. This sensitivity helped them to navigate the significant challenges that can arise in probate and estate administration work.

Information given to residuary beneficiaries

A residuary beneficiary is a beneficiary of a will who has been left all, or a proportion of the estate after other legacies, debts and expenses have been settled.

Executors owe a fiduciary duty to beneficiaries of the estate they are administering. They must account to the residuary beneficiaries for all the assets of the estate by producing a copy of the final estate accounts. This should include the final costs of administering the estate.

All 23 firms that act as executor said they would share the final estate accounts and final bill of costs with residuary beneficiaries. This was confirmed by our file reviews.c

We wanted to understand what other information firms routinely gave residuary beneficiaries, whether they were acting as or on behalf of executors. We reviewed 37 files where there were residuary beneficiaries. It was rare for firms and solicitors to give residuary beneficiaries any information about client care, costs, or updates on key developments.

Table 5: What information did firms give residuary beneficiaries?

Information given	Number of files
Role of individual and firm	2
How firm will communicate	3
When firm will communicate	3

How costs are charged	4
Firm's obligations and responsibilities	5
At what stage(s) costs will be charged	5
Basis of charges	7
Costs estimate	7
Likely disbursements	7
Complaints procedure	7
Likely timescales for administering estate	9
Process for administering estate	10

On the 27 files where interim costs were charged, residuary beneficiaries were notified on only three files. The majority of residuary beneficiaries were not updated on costs until they received the final estate accounts.

While it is not a regulatory requirement to do so, proactively sharing information with residuary beneficiaries can provide an additional layer of accountability and mitigate the risks of disputes. Whether the firm is acting for or as executor, it is good practice to inform residuary beneficiaries as early as possible, in writing, about the firm's responsibilities as executor. This includes client care and costs information, as well as providing them with updates on key developments and costs. It is also good practice to provide residuary beneficiaries with complaints information at the outset and remind them of the procedure at the point where a complaint is made.

Case studies

Executorship policy and procedure – good practice

Firm I have a detailed policy on how to deal with the appointment of the firm as executor, which is embedded in its day-to-day practice. Individual partners are appointed as executors in their capacity as directors of the firm. There is no difference in the charging arrangements where the firm acts as executor.

When drafting a client's will, Firm I will only agree to be appointed as executor if it is in the client's best interests. To determine this, the firm will discuss and consider the circumstances with the client, including the size, value and complexity of the estate, and the availability of family members or friends to act as executors instead. If the appointment is appropriate, the firm will consider whether there is a co-executor who can act alongside them to provide additional accountability.

Following the client's death, the firm will review the will file and have discussions with the deceased's family, friends, and/or beneficiaries to consider whether it is still appropriate for it to act as executor. If not, the firm will take steps to renounce the executorship or have power reserved. No costs will be charged for this.

Where the firm is acting as executor, it regularly updates beneficiaries on the progress of the matter and costs incurred, providing full estate accounts. The firm also consults beneficiaries on key decisions, which are recorded and kept on the file.

Sole practitioners – good practice

Individual J and Individual K are sole practitioners.

At the point of drafting the client's will, Individual J will advise the client that it would be preferable to appoint someone else as executor. They explain that there will be additional costs if a professional rather than lay person is administering the estate. They also explain the risks of appointing a sole practitioner as executor – for example, that they may unexpectedly be unable to act due to illness, absence or death. If the client insists on appointing Individual J as executor, Individual J ensures that they are acting alongside a co-executor. This adds accountability and enables the administration of the estate to be progressed even if Individual J is not available.

Individual K does not accept appointments as executor. If, when drafting their will, the client asks them to act as executor, Individual K declines and explains that:

- they do not have sufficient resources to manage the risk of a conflict of interest arising (e.g. they are not able to put additional controls in place)
- from a consumer perspective, they feel that it would limit the client's options and choices in the administration of the estate
- it would be preferable for a family, friend, or someone more familiar with the client to carry out their wishes, and Individual K would be able to act for them if instructed.

Checklist for firms/solicitors

- When appointing the firm as executor, ensure that estates can still be administered even if specific individuals are unavailable.
- If a testator client asks to appoint the firm as executor in their will, give them the necessary information and advice to make an informed decision.
- If the firm is acting as executor put adequate systems and controls in place to avoid a conflict of interest. If this is not possible, the firm should not act as executor.
- Provide residuary beneficiaries with the final estate accounts, including the final bill of costs. It is also good practice to also give them client care, costs, and complaints information in writing at the outset, and to keep them updated on key developments.
- If acting for multiple executors, make sure that instructions are agreed. If there is a dispute between executors, take the appropriate steps to avoid a conflict of interest.

Protecting estate money and property

Accountant's Reports

Why this is important

Firms and solicitors working on probate and estate administration matters frequently handle significant sums of money, property, and other estate assets. Keeping estate money and assets safe is an important part of maintaining public trust and confidence in the legal profession.

Firms are required to obtain accountant's reports, unless an exemption applies. Accountant's reports identify breaches of the Accounts Rules, mismanagement of client funds, and areas for improvement in firm systems.

What we expect

Firms must comply with Rule 12.1 of the Accounts Rules [https://indemnity.sra.org.uk/solicitors/standards-regulations/accounts-rules/], which states:

'If you have, at any time during an accounting period [https://indemnity.sra.org.uk/solicitors/standards-regulations/glossary/#accounting-period], held or received client money [https://indemnity.sra.org.uk/solicitors/standards-regulations/glossary/#client-money], or operated a joint account or a client's [https://indemnity.sra.org.uk/solicitors/standards-regulations/glossary/#client] own account as signatory, you must:

- obtain an accountant's report for that accounting period [https://indemnity.sra.org.uk/solicitors/standards-regulations/glossary/#accounting-period] within six months of the end of the period; and
- deliver it to the SRA [https://indemnity.sra.org.uk/solicitors/standards-regulations/glossary/#SRA] within six months of the end of the accounting period [https://indemnity.sra.org.uk/solicitors/standards-regulations/glossary/#accounting-period] if the accountant's report is qualified to show a failure to comply with these rules, such that money belonging to clients [https://indemnity.sra.org.uk/solicitors/standards-regulations/glossary/#client] or third parties is, or has been, or is likely to be placed, at risk.

Firms must obtain an accountant's report unless they are exempt from the requirement. For further details, please refer to our guidance [https://indemnity.sra.org.uk/solicitors/guidance/accountant-

report-exemption-obtain-one/] .

What we found

We had concerns that two firms were not compliant with their obligations in this area. It appeared that one firm failed to submit a qualified accountant's report to us, and the other firm had not obtained an accountant's report at all. Neither firm was exempt from the requirements. Such breaches could pose a significant risk to clients of the firm and third parties such as beneficiaries. We have opened investigations into these firms as a result of our findings.

Almost all of the firms which obtained accountant's reports only received a completed AR1 form. AR1 forms confirm whether the accountant's report is qualified or unqualified. Where the report was qualified, the AR1 firm explained the breaches identified. Where the report was unqualified, almost all firms received no further detail about the accountant's review and findings.

Of those firms with unqualified reports, only two received feedback from their accountant about where the firm's financial controls were strong, and how the firm could improve weaker controls. While accountants are not required to do so, firms may wish to consider asking accountants to provide this information as part of their accountant's reports. This is likely to help the firm identify and address issues before they become a potential risk for the firm, its clients and beneficiaries.

Case study

Accountant's recommendations – good practice

Firm L obtained an accountant's report in line with its obligations. It received a detailed 'management letter' from its reporting accountant alongside its AR1 form, which confirmed the accountant's report was unqualified. The accountant's management letter set out their findings in detail and made a series of clear recommendations about how the firm could improve their financial controls. The accountant also rated the recommendations in order of urgency and priority.

Firm L's management team went through the accountant's recommendations in detail and set out in writing how the firm would address each of them. This approach is likely to improve the firm's financial controls and reduce risks to clients and beneficiaries.

Recording estate assets and liabilities

Why this is important

Administering an estate effectively requires that firms and solicitors keep an accurate and up-to-date record of assets and liabilities. This also helps firms to prepare estate accounts, which set out how the estate has been distributed in accordance with the will or the rules of intestacy.

What we expect

Rule 8 of the Accounts Rules [https://indemnity.sra.org.uk/solicitors/standards-regulations/accounts-rules/] requires that firms maintain an accurate, contemporaneous, and chronological ledger record for each client matter. This must show all receipts and payments of client money, and separately all receipts and payments which are not client money.

What we found

We saw good practice in this area. Many firms (14) used a schedule of assets and liabilities. Some firms kept a draft estate account updated (four) and reconciled it with their client and office ledgers on an ongoing basis (three). All of the client and office ledgers we reviewed accurately recorded receipts and payments.

Interest on client funds

Why this is important

In recent years, interest rates on firms' client accounts have generally been very low. For many firms, those rates have now increased significantly. We have reminded firms about their obligations in relation to interest on client funds.

What we expect

Firms and solicitors must comply with Rule 7 of the Accounts Rules [https://indemnity.sra.org.uk/solicitors/standards-regulations/accounts-rules/] , which states:

- Your account to clients or third parties for a fair sum of interest on any client money held by you on their behalf.
- You may by a written agreement come to a different arrangement with the client or the third party for whom the money is held as to the payment of interest, but you must provide sufficient information to enable them to give informed consent.

What we found

Most firms (21 out of 25) had a written policy and/or procedure on how the firm would account to clients for interest on money held. This is a useful way to ensure staff are aware and comply with the firms' arrangements.

We reviewed the terms of business and client care letters on 50 files. On most files, those documents included a clear explanation of the circumstances in which the firm would account for interest. However, at two firms, the explanations provided were unclear. We also saw terms of business which referred to an out-of-date version of the Accounts Rules when explaining the interest policy. While there was nothing to suggest the clients involved had experienced any detriment, we highlighted these issues with the firms so they could put them right.

Two fee earners we spoke to were not sure about the circumstances when interest would be paid on client money. It is important that staff who have client contact are aware of the arrangements, so they can answer any client queries and check that interest is accounted for on matters.

Cybercrime and scams

Why this is important

Firms and solicitors holding large sums of client money are at risk of being targeted by cybercriminals. We wanted to understand the practical steps firms and solicitors were taking to mitigate this risk.

What we expect

Firms and solicitors must safeguard money and assets entrusted to them by clients and others (paragraph 5.2 of the Code of Conduct for Firms [https://indemnity.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/] , paragraph 4.2 of the Code of Conduct for Solicitors, RELs and RFLs [https://indemnity.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/]).

Firms and solicitors must check the identity of beneficiaries of trusts, including will trusts. These obligations are set out in our Anti-money laundering guidance [https://indemnity.sra.org.uk/sra/research-publications/aml-risk-assessment/#:~:text=All%20firms%20that%20are%20within,money%20laundering%20or%20terrorist%20financing.] .

What we found

Raising awareness of the risks of cybercrime and other scams can help to reduce their likelihood. About half (13 of 25) of firms took practical steps to do so. Some firms included warnings in the firm's client care information and/or in email footers as standard practice. Frequently this confirmed that firms would never share their bank account details by email, and that clients were welcome to call the firm before making any payments. We consider this good practice.

Most firms took steps to mitigate the risk of cybercrime and scams when making payments to beneficiaries. All but one firm used a secure method to obtain beneficiary bank details (for example, asking for an original bank statement to confirm bank details, or verifying written details by telephone).

We found that 17 firms routinely completed identity checks on beneficiaries. Three firms only did these checks if there was heightened risk – for example, if the beneficiaries were not well-known to the personal representatives or the deceased's family members. Firms may wish to consider carrying out beneficiary identity checks routinely to reduce the risk of clients being a victim of cybercrime, and the risk of mistakenly making a payment to the wrong individual.

It may be helpful for firms to review our further resources on how to reduce the risk of cybercrime [https://indemnity.sra.org.uk/solicitors/resources/cybercrime/] .

Risk of employee fraud

Why this is important

Probate is the area of law which has generated some of the largest payments from the SRA Compensation Fund [https://indemnity.sra.org.uk/sra/research-publications/client-protection-interventions-and-the-compensation-fund--202021---corporate-report/] in recent years. This highlights that estate and/or client funds are being taken or improperly used by some firms and individuals we regulate.

Where solicitors are appointed as executor of an estate they are administering, there may be less external oversight of their actions than where they act for a lay executor. There have been examples of dishonest law firm managers and staff taking advantage of this reduced external oversight. This has included recent cases of probate practitioners misappropriating estate funds and being convicted of fraud offences [https://www.cps.gov.uk/cps/news/tamworth-women-jailed-after-defrauding-ps634000-beneficiaries-wills] and / or misconduct. It is therefore crucial that firms and solicitors take adequate steps to mitigate the risk of employee fraud and safeguard client and estate funds.

What we expect

Firms and solicitors must safeguard money and assets entrusted to them by clients and others (paragraph 5.2 of the Code of Conduct for Firms [https://indemnity.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/] , paragraph 4.2 of the Code of Conduct for Solicitors, RELs and RFLs [https://indemnity.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/]).

Firms must comply with Section 9.4 of the Legal Sector Affinity Group Anti-Money Laundering Guidance 2023 [https://indemnity.sra.org.uk/globalassets/documents/solicitors/firm-based-authorisation/lsag-aml-guidance.pdf?version=496f8e] to screen relevant members of staff. Any necessary employee consent should be obtained before conducting checks.

What we found

Having a robust authorisation process for payments and transfers from the client account is a useful way to prevent and detect inappropriate activity. All firms restricted the members of staff who could authorise payments from the firm's client account.23 of 25 firms had controls in place so only managers of the firm could authorise transfers. We consider this to be good practice.

Background checks on staff are also a useful safeguard to identify any misconduct or illegal activity. We asked firms what checks they carried out on new and existing staff. Four firms had not recruited staff for a long time and were unable to answer.

Table 6: What background checks do firms carry out on new and existing staff?

Background checks	New staff - no of firms	Existing staff - no of firms
DBS (criminal records)	16	10
SRA regulatory history	3	1
Employment references	19	0
Adverse publicity check	2	1
None	0	14

While all firms conducted some background checks on new employees, few firms carried out background checks on existing staff. Those which did, often did so because of the requirements of accrediting bodies, such as Excel or the Conveyancing Quality Scheme.

Firms may wish to consider conducting background checks on new and existing staff, including DBS (criminal records) checks, SRA regulatory history checks, and adverse publicity checks.

Having effective systems for the supervision of clients' matters can help prevent employee fraud and ensure any warning signs are identified and addressed as quickly as possible.

As noted above ('Competence, training and supervision') we found that 12 out of 25 heads of department / sole practitioners received no oversight or peer review of their work. Where this is the case, firms should consider whether they need to put in place oversight or peer review arrangements to reduce the risks to clients and the firm. These arrangements can be tailored to the particular circumstances of the firm and matter, and the experience and qualifications of the person whose work is being reviewed.

Checklist for firms/solicitors

- Provide clients with a clear explanation about the payment of interest on client money.
- Warn clients about cybercrime and scam risks, particularly in relation to sharing bank account details.
- Carry out beneficiary identity checks before legacies are paid.
- Use secure methods to obtain beneficiary bank details.
- Conduct appropriate checks on new and existing members of staff to minimise risks to clients and client money.
- Have an effective system for the supervision of client matters. This may include oversight or peer review of the work of heads of department and other senior staff.
- Make sure there are appropriate controls on the authorisation of payments and transfers from the client account.
- Consider obtaining recommendations from your reporting accountant, even if your report is unqualified.

Our approach

Sample

We identified firms which generated more than 10% of their annual turnover from probate and estate administration work.

We then randomly selected 25 firms from different annual turnover brackets, to broadly reflect the SRA-regulated probate and estate administration market. The firms were of various practice structures (including sole practitioners), and in different geographic regions across England and Wales.

All of the firms we selected had not been visited for a thematic review within the last 24 months and had sufficient relevant open matters for us to review.

Firms we excluded

We did not visit firms that we were currently investigating, or which had an open Solicitors Disciplinary Tribunal matter. This was to avoid prejudicing any open investigation or raising issues as to procedural unfairness.

Interviews

At each firm we spoke with the person with overall responsibility for probate and estate administration matters. Where available, we also spoke to a more junior fee earner who handled probate and estate administration work.

In total, we spoke to 25 heads of department and 15 fee earners. Of the firms we visited, 10 of them did not have a more junior fee earner for us to interview.

File reviews

At each firm, we reviewed two probate and estate administration matters opened since February 2022.We also reviewed the office and client ledgers for each matter.

Where there was a fee earner, we reviewed files conducted by them. Where there was no fee earner, we reviewed files conducted by the head of department.

Other documents

We reviewed policies or procedures that were relevant to how each firm dealt with probate and estate administration matters.

We reviewed each firm's most recent accountant's report and any recommendations from the accountant. One firm was exempt from the requirement to obtain an accountant's report. We reviewed their reconciliations over the last three months instead.

We also reviewed the learning and development records of the individuals we interviewed to assess how firms recorded and evaluated their continuing competence.

External stakeholders

We spoke to external stakeholders to hear about their experiences with those providing probate and estate administration services. We spoke with representatives from the Society of Trust and Estate Practitioners (STEP), the Legal Ombudsman (LeO), The Law Society Private Client Section, the Institute of Chartered Accountants in England and Wales (ICAEW), and the Competition and Markets Authority (CMA).

Next steps, further information and reporting

We will use the findings from this thematic review to support two ongoing programmes of work:

- continuing competence [https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/continuing-competence/]
- consumer protection review [https://indemnity.sra.org.uk/home/hot-topics/consumer-protection-review/] .

This approach will enable us to consider the findings from this review in the context of other relevant evidence. It will also enable us to explore how we can best respond to the findings in a coordinated way, so that we can ensure consumers continue to receive the standard of service they are entitled to expect from solicitors and firms providing probate services.

Further information and resources

We have provided some helpful information, guidance and resources for firms and solicitors who do probate and estate administration work.

SRA Standards and Regulations

SRA Principles [https://indemnity.sra.org.uk/solicitors/standards-regulations/principles/]

Code of Conduct for Solicitors, RELs and RFLs [https://indemnity.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/]

Code of Conduct for Firms [https://indemnity.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/]

Accounts Rules [https://indemnity.sra.org.uk/solicitors/standards-regulations/accounts-rules/] .

SRA Guidance

Drafting and preparation of wills [https://indemnity.sra.org.uk/solicitors/guidance/drafting-preparation-wills/]

Accepting instructions from vulnerable clients or third parties acting on their behalf [https://indemnity.sra.org.uk/solicitors/guidance/accepting-instructions-vulnerable-clients/]

Client care letters [https://indemnity.sra.org.uk/solicitors/guidance/client-care-letters/]

Anti-money laundering [https://indemnity.sra.org.uk/sra/research-publications/aml-risk-assessment/#:~:text=All%20firms%20that%20are%20within,money%20laundering%20or%20terrorist%20financing.]

Exemption to requirement to obtain accountant's report [https://indemnity.sra.org.uk/solicitors/guidance/accountant-report-exemption-obtain-one/] .

Continuing Competence

Continuing competence [https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/continuing-competence/templates/]

Statement of Solicitor Competence [https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/competence-statement/]

Template learning and development record [https://www.sra.org.uk/solicitors/resources/continuing-competence/cpd/continuing-competence/templates/] .

Other resources

The Law Society's Wills and Inheritance Quality Scheme [https://www.lawsociety.org.uk/topics/firm-accreditations/wills-and-inheritance-quality-scheme] provides a publicly accessible Wills and Inheritance Protocol. This includes best practice guidance and precedent policies.

STEP [https://www.step.org/] (Society of Trust and Estate Practitioners) offers a range of qualifications, courses and training materials relating to probate and estate administration.

The Legal Ombudsman published best practice guidance [https://www.legalombudsman.org.uk/information-centre/news/updated-guidance-on-complaints-about-costs/] on the costs information clients should receive

The Legal Sector Affinity Group's Anti-Money Laundering Guidance [https://indemnity.sra.org.uk/globalassets/documents/solicitors/firm-based-authorisation/lsag-aml-guidance.pdf?version=496f8e]

How to reduce the risk of cybercrime [https://indemnity.sra.org.uk/solicitors/resources/cybercrime/] .

Reporting an individual or firm

Solicitors and firms have a duty to report any facts or matters capable of amounting to a serious breach of our Standards and Regulations. We have provided resources to help individuals make a report [https://indemnity.sra.org.uk/consumers/problems/report-solicitor/] .

If solicitors/firms need any help in deciding whether to make a report, they can contact:

- our Professional Ethics helpline [https://indemnity.sra.org.uk/contact-us/]
- our Red Alert line [https://indemnity.sra.org.uk/solicitors/resources/reporting-misconduct/fraud-dishonesty/] to make a confidential report.