

Who really believes that the cheque is in the post?

Failing to pay your debts when they are due may get you into regulatory difficulties, says **John Gould**

The contrast between those that have and those that have not has never been greater in the legal profession. If you're a solicitor or barrister earning £1.5m annually, paying your debts shouldn't be a problem. However, for many lawyers money is tight.

Solicitors are, of course, expected to maintain systems to monitor financial stability and keep the SRA informed of financial difficulties under the terms of the code of conduct 2011. But even assuming compliance with those obligations, a greater risk of serious misconduct arises when a lawyer or a firm get into financial difficulties.

It is not misconduct simply to be unable to pay a debt even if it is a judgment debt. Something more culpable is required than just running out of money. While bankruptcy, liquidation or administration will lead to regulatory consequences, they are unlikely to prevent an individual earning a living as a lawyer in the future; unlike being stuck off for misconduct.

The problem is that the response to the pressures of being unable to pay one's debts as they fall due may lead to actions that fall below the standard of integrity expected. It is not misconduct to be impecunious but it is to act without integrity.

Creditors can be very persistent

and giving a reason for non-payment along the lines of 'I/we are insolvent and have no money to pay you' may seem deeply embarrassing and at worst may mean that vital supplies or services are no longer provided.

Intelligent people may be capable of better false excuses than the cheque being in the post, but any falsehood to gain time or deflect pressure will probably amount to serious misconduct.



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Flimsy claims

Although arguably less serious than lying, raising flimsy claims of non-performance by a supplier may also, on the facts, be something that no lawyer of integrity would do. It might be expected that a lawyer with financial difficulties would acknowledge them and not put a creditor to substantial expense attempting to collect a debt that was beyond the lawyer's means to pay.

The most critical relationship for an insolvent lawyer is with the bank. The truth, the whole truth and nothing but the truth may be unusually elusive on both sides as the risk of default introduces an element of shadow-boxing into the relationship.

Devices intended to circumvent the bank's security or position by, for example, redirecting receipts away from an existing office account may amount to a lack of integrity.

Financial problems also raise the risk for professional indemnity insurers and must be properly disclosed.

There are many circumstances in which impermissible conduct in relation to insolvency processes could amount to professional misconduct for a lawyer. Misconduct may be found even if the insolvency does not arise from the lawyer's practice but some other business. A lack of integrity in a separate business is not irrelevant to the reputation of lawyers.

Disciplinary proceedings

Continuing to practise while insolvent, failing to cooperate with the appointed insolvency practitioner, or being subject to sanctions such as director disqualification or a bankruptcy restriction order could all lead to disciplinary proceedings. There may be a temptation to transfer assets to a spouse, which, if set aside, could also

show a lack of integrity.

Where, however, actions are lawful, it does not follow that a perception of public disapproval means that they are out of bounds for lawyers. If and until the government outlaws selling businesses out of administration to the previous management, there is no reason in principle why an insolvent legal practice should not be dealt with in that way.

The justification is the interests of creditors, but the interests of clients may also be best protected by such a sale.

Most solicitors now practise through companies or LLPs with limited liability, but many principals will still have personal risks through guarantees.

Inevitably in a financial crisis, money is the focus. Long term, the consequences of falling below the required standard of integrity may be greater than the insolvency of a practice. **SJ**



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