

Prevention is the best strategy when it comes to fraud - by the time you notice something a little off, it could be too late.

Tim Maffey has a unique blend of experience and knowledge in NZ law, having spent many years as both a lawyer and NZLS inspector. He goes through some steps you should be taking to safeguard your firm.



I've seen many a trust account fraud in my years in the law industry, while working as a lawyer for 22 years (12 as a partner), as a NZLS Inspector for 17 and Trust Account Consultant for almost 7.

In that time I have carried out nearly 1000 trust account inspections, exposed several embezzlements and been an expert witness in cases where offenders were convicted and imprisoned.

Trust account fraud happens when you least expect it. I'm going to give you some practical tips to prevent it happening at your firm.

As you are reading this, someone is stealing money from a lawyer's trust account in New Zealand.

History shows it is most likely to be an employee in a small to medium law firm – perhaps a legal executive, a trust account administrator or a staff lawyer. In the next most likely scenario it would be a sole practitioner, but it could also be a principal or employee in a large firm.



have documented how you can do this.

## Please note:

It is difficult to write in detail about the various methods I have seen used to steal trust money without giving the reader some ideas of how to go about it. To some extent I have to assume the reader is honest, and hope that the suggestions I make to help to counter theft and dishonesty outweigh the risk of divulging previously used methods.

I have analysed methods used in cases I have been involved in or briefed about, and devised the following list of suggested procedures. If rigorously implemented, these should assist to prevent, or at worst detect, your trust account being ripped off.

You may think some are blindingly obvious, others a bit obscure, but for each one I can point to at least one example where a theft might have been prevented or detected, had the procedure been in place.

No firm, whatever the size or location, is exempt from the risk of fraud and dishonesty.

Billions of dollars pass through lawyers' trust accounts in NZ every week, within reach of thousands of principals and staff. It only takes one to develop an addiction, a desire for a champagne lifestyle on a beer income, or to get in financial difficulty through external pressures and they could be tempted to steal from your trust account.

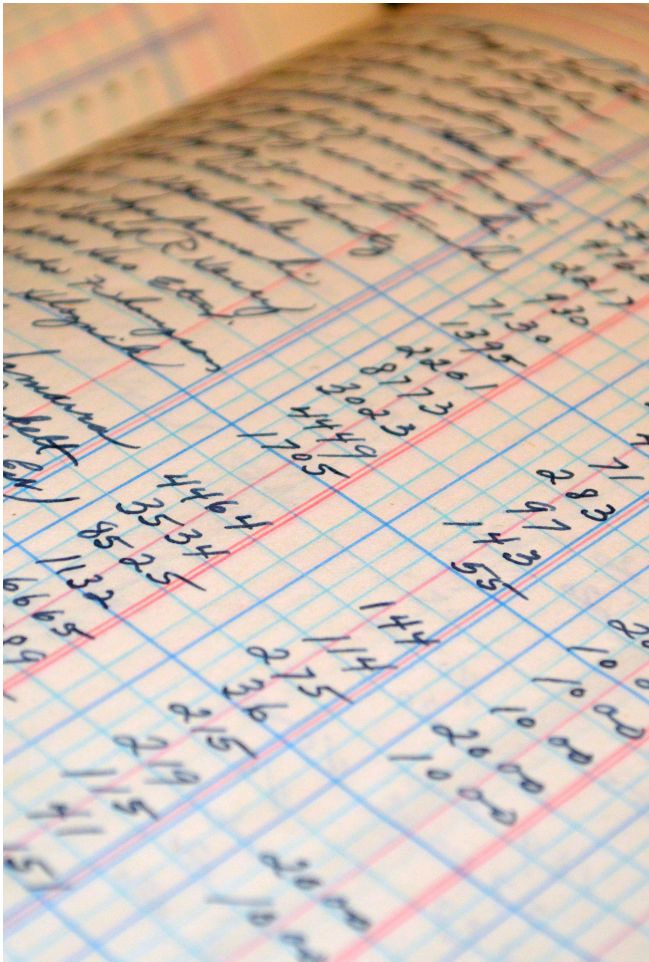
## Who is going to steal from your firm?

Trying to assess who is the most likely person in the firm to steal money is impossible. There's no gender or age bias in statistics, nor any particular length of service. Telltale signs could be behaviour changes, mood swings, an extravagant lifestyle beyond an individual's apparent means or reluctance to take annual leave. These indicators could also have perfectly logical explanations.

You never fully know what's happening in people's lives outside of the workplace.

The only really effective means of detecting fraud and theft- or better still preventing it in the first place- is to run a tight ship. This means having extremely robust systems, procedures and controls around the trust account, particularly around the journals and payments functions. I





In no particular order, my suggestions are as follows:

1. Randomly check a sample of statements to clients, looking for unusual items, and checking that they actually add up. Don't assume that they do just because the totals at the bottom of each column are the same – they could be hiding a balance for later fraud
2. Ensure that all cheques to institutions are made payable to the institution, named in full, and restricted to be applied to a particular client's account.
3. When releasing electronic payments to institutions, check the payee account number thoroughly – don't assume it is correct just because it is a regular payee, or because it looks similar to what you recall the correct number to be.
4. Periodically check the "library" of regular payee account numbers logged in the electronic payment system to ensure none have been altered.
5. Verify that common bank fees, such as release or consent fees, are valid charges for the file in question and not being paid in to an employee's bank account.
6. Require all authors to regularly disclose any controlled bank accounts, and have another author monitor the bank account and associated accounting requirements.
7. Don't act on unsolicited emails. Always phone the client

for confirmation of any requests for payment and to verify the payee bank account details, preferably by way of an encoded deposit slip or copy of a bank statement.

8. Keep on top of stale balances and static IBD balances. It is preferable to not let them arise in the first place, but if unavoidable monitor them constantly and ensure annual accounting to the client.
9. If as a principal you find it necessary to delegate payment authority to staff, make sure it requires two senior staff and that they are properly trained for the task. Check on all payments authorised by them in your absence.
10. Don't allow trust account cheques to be made payable to cash.
11. Regularly monitor the trust ledgers for vulnerable "passive" clients such as estates or elderly folk for whom the firm makes payments to tradespeople or utility companies to ensure all payments are appropriate.



12. Keep a record of any unused paper receipt books and keep them secure.
13. As TAS be sure to check the bank reconciliation thoroughly. Check that any "funds in transit" are quickly accounted for and the logic and arithmetic of the reconciliation are right. Verify also to the bank statement and bank-generated IBD schedule, and to a complete list of client balances.
14. Don't allow staff, particularly trust account staff, to get too close to clients to the exclusion of a principal's involvement.
15. Don't be bullied, either by a principal or by a TAA, into bending the rules and not following correct procedure.
16. Check with the Ministry of Justice's Tribunals Division before employing new staff, particularly trust accounting staff, to ensure they haven't been previously disciplined and ordered not to work in the legal profession.
17. Check that staff take sufficient annual leave.
18. Report any dishonesty by staff or principals to ensure that they are dealt with appropriately by the Law Society and/or the Police or Serious Fraud Office, thereby preventing any other firm being affected by them in future.
19. Tighten journal transfer procedures to require a principal's authority, check also for client authority, and always go over a monthly list of processed journals to spot any "rogue" entries that weren't previously authorised.
20. Always require full supporting documentation and evidence of payee bank account details to be made available to cheque signatories/electronic payment authorisers.
21. Monitor incoming mail, preferably with a principal's involvement on at least a random basis, and randomly monitor staff email traffic.
22. Check all "suspense" ledgers to ensure that all unidentified deposits are appropriately resolved.

Remember that those who commit fraud and theft aren't always very clever or sophisticated, nor are the methods they use. They always think they will get away with it, but they seldom do, at least not for long.

## Don't underestimate the negative effect that it has on a firm when someone steals money.

It is devastating on staff morale and the firm's reputation. There is little in the way of deterrence these days, other



than for the Law Society's inspection regime- not like the four-monthly audit days of old. Fraud and dishonesty is generally on the increase, and lawyers' trust accounts are a temptation that some find too hard to resist.

Implementing tight systems, procedures and controls and regularly checking that they are being correctly followed is your best defence.

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