Legal Services Act: New forms of practice and regulation

Consultation paper 4

Changes to the Solicitors' Accounts Rules 1998

11 February 2008

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Introduction

1. This paper is one of a series of detailed consultation papers on changes to the structure and regulation of legal practice enabled or required by the Legal Services Act 2007 (the Act). It deals with amendments to the Solicitors' Accounts Rules 1998 (SAR). An overview paper sets these changes in context and summarises this and the other consultations.

2. The revised SAR show the proposed changes in revision marking. These changes primarily relate to:

    - legal disciplinary practices (LDPs);
    - the firm-based regulation of partnerships and sole practices;
    - the application of the SAR to non-solicitor managers and employees; and
    - the abolition of "controlled trusts" and "interest certificates".

    We are particularly interested in your views on who should be able to authorise withdrawals from client account once solicitors are permitted to practise with other legally qualified persons, and with up to 25% non-legally qualified persons, following the introduction of LDPs.

3. The priority now is to put in place the necessary SAR changes to enable solicitors to practise through LDPs, and to allow for firm-based regulation. In due course, the SAR will be reframed in the style of the Solicitors' Code of Conduct 2007, and consideration can also be given to changes made possible by the more flexible rule-making powers contained in the Act. The proposed timescale does not permit a complete rewrite of the SAR at this stage.

4. Please let us have your views on the proposed amendments. For information about How to respond, go to sra.org.uk/consultations/429.article#respond.

5. The closing date for responses is 21 April 2008. We may be able to take into account comments received after this date, but please remember that we are working to a very tight timetable.

Summary of amendments arising from the Legal Services Act

6. The proposed amendments are intended to adjust the SAR to reflect the following:

    6.1. the setting up of the Solicitors Regulation Authority (SRA) as the independent regulatory organisation of the Law Society of England and Wales, foreshadowing the separation of the regulatory and representational functions of professional bodies as required under the Act;

    6.2. amendments to the Solicitors Act 1974 made by the Act:

6.2.1. introducing a new concept of "manager" - meaning a partner in a partnership, a member of a limited liability partnership (LLP), or a director of a company (for example, see rules 2(2)(mb) and 23(1)(e));

6.2.2. allowing the SRA to extend the "recognised bodies" regime so as to regulate:

6.2.2.1. partnerships as well as bodies corporate;

6.2.2.2. firms which include other "lawyers" (barristers, notaries, legal executives, licensed conveyancers, patent agents, trade mark agents and costs draftsmen) as "managers";

6.2.2.3. practices which include up to 25% of "managers" who are not legally qualified;

6.2.3. requiring the SRA to authorise sole practitioners (who will be designated and regulated as "recognised sole practitioners" – see rule 2(2)(ta));

6.2.4. allowing the SRA to apply its rules to "managers" and employees of recognised bodies, and to employees of recognised sole practitioners (see rule 4);

6.2.5. abolishing the statutory concept of a "controlled trust", thus allowing the same interest provisions to apply to money previously defined as "controlled trust money" as to money previously defined as "client money" (for further detail, see the section below on controlled trusts);

6.2.6. replacing the statutory requirement to deliver an accountant's report under the existing section 34 of the Solicitors Act with a rule making power under the new section 34, making it necessary to ensure that the rules are sufficiently flexible to:

6.2.6.1. preserve the current powers of the SRA under the existing section 34;

6.2.6.2. ensure that the SRA has the powers it needs for risk-based regulation (see rule 35);

6.2.7. introducing a mandatory whistleblowing duty on reporting accountants (see rule 38);

6.3. solicitors becoming "managers" or employees in firms regulated by other "approved regulators" (such as the Council for Licensed Conveyancers) as envisaged by the Act (see rule 5(d) and note (iii) to rule 5);

6.4. the repeal of the statutory basis for the giving of interest certificates (formerly deposit interest certificates). Since in the future, such

complaints will be a matter for the Office for Legal Complaints, it is sensible, in the meantime, for the Legal Complaints Service (LCS) to deal with complaints of this nature by use of its inadequate professional services powers.

Signing on client account

7.1. The main new policy decision that needs to be made in the light of LDPs is who should be entitled to sign client account cheques or other authorities to withdraw money from a client account under rule 23. The SAR have been redrafted on the basis that:

- solicitors and registered European lawyers (RELs) should be permitted to sign, as at present;
- a Fellow of the Institute of Legal Executives (FILEx) should be permitted to sign as an employee (as at present) and also as a "manager", but that in both cases the requirement for three years' standing be removed; the basis for this is that all FILExes have training in the SAR;
- a licensed conveyancer should be permitted to sign as an employee (as at present) and also as a "manager", but that in both cases the requirement for the work of the office to be confined to conveyancing be removed; the basis for this is that licensed conveyancers are trained in their own accounts rules, which are based on the solicitors' rules and should have the knowledge to operate client accounts more generally;
- a registered foreign lawyer (RFL) should be permitted to sign as a "manager" only (as at present); the basis for this is that RFLs should not be deprived of their existing rights as "managers", but that it would be inappropriate to give RFLs any special standing as employees;
- all other "managers" should be given the right to sign for client account withdrawals, whether they are authorised persons or non-lawyers; the basis for this is that, in the case of a partnership, the client account is the account of all the partners, and in the case of an incorporated practice, responsibility is shared by all the directors of a company, or all the members of an LLP, and all non-lawyer "managers" will, in becoming “managers”, have been subject to character and suitability checks (although not any form of written test) by the SRA.

7.2. Giving all other “managers” the right to sign for client account withdrawals is a tentative proposal. We make the proposal knowing that:

- giving non-lawyers the right to sign for client account withdrawals could present new risks to the Compensation Fund;
- when full alternative business structures (ABSs) are permitted, the right to sign for client account withdrawals may be restricted to legally qualified "managers", which may be difficult if we have already given that right to non-lawyer "managers" in the context of LDPs.

7.3. It has also been suggested that a "manager" or employee who is a chartered or certified accountant should be given the right to authorise client account withdrawals, even if this right is denied to other non-lawyer "managers". On the other hand, it may be argued that it is not appropriate that the person in charge of a firm's finance department should have authority on his or her own to authorise withdrawals because of the increased risks to client money this might present.

7.4. The tentative proposal is that the SAR should require two signatures when one of the signatories is a non-lawyer “manager” in charge of the practice’s accounts department (see rule 23(1A) and rule 2(2)(xb)). The revised Guidelines on accounting procedures and systems at Appendix 3 to the SAR also require a firm to have proper systems in place to ensure that a client account authority signed by a non-lawyer “manager”, in charge of the accounts department, is always countersigned by another person authorised under rule 23.

7.5. On the other hand, we are aware that many firms’ own internal processes impose more prescriptive requirements than are demanded by the SAR. Allowing firms the scope to set their own specific safeguards is consistent with the new principles based approach of the Solicitors’ Code of Conduct 2007, for example, the supervision and management provisions in rule 5 of the Code. The alternative approach would be for rule 23 SAR to continue to set out the categories of persons permitted to sign on client account but not to prescribe circumstances where more than one signatory is required. Firms would make their own risk assessments, and set their own internal procedures, in the light of the good practice principles set out in the Guidelines. The Guidelines would highlight the risk associated with allowing the person in sole control of the accounts department to be a sole signatory.

7.6. The Guidelines have also been amended to require firms to maintain appropriate systems to ensure that any person authorised to sign on client account is familiar with the SAR.

Minor amendments to the SAR

8. Further amendments have been made to reflect the need to:

8.1. distinguish between a UK LLP, which is a body corporate, and other LLPs (such as those formed in the USA or Jersey), which are not (see rule 2(2)(ma));

8.2. ensure that a person held out as a partner in an unincorporated firm is treated by the rules as a partner, and that the firm is treated as a partnership, in line with the practice of the SRA and the Solicitors Disciplinary Tribunal (see rule 2(2)(qa));

8.3 clarify rule 2(1) on the mandatory nature of the notes to the rules;

8.4. clarify rule 15(2)(d) on using a client account for paying the client a sum in lieu of interest;

8.5. clarify note (viii) to rule 15 on the aggregation of client accounts;

8.6. clarify the reconciliation requirements as they apply to client money which is retained in cash or placed in an account of the solicitor which is not a client account - see note (iii) to rule 16 and new note (iia) to rule 17;

8.7. clarify in the Guidelines on accounting procedures and systems at Appendix 3 of the SAR that:

8.7.1. it is acceptable for firms to have ready access to the current on-line version of the SAR instead of a printed version (paragraph 2.2);

8.7.2. digital images of paid cheques need to be included in a firm's retention policies and systems (paragraph 5.6);

8.8. incorporate the forthcoming change under the Constitutional Reform Act 2005, when "solicitors of the Supreme Court" will be known as "solicitors of the Senior Courts" (see rule 2(2)(xb)).

9. The requirement for concurrence by the Master of the Rolls to changes to the Guidelines on accounting procedures and systems, published under rule 29, has been removed.

10. It is anticipated that the Secretary of State will make an order applying the SRA's powers under section 33A of the Solicitors Act (inspection of practice bank accounts, etc.) to RFLs, thus making note (v) to rule 34 redundant.

11. The SAR have been amended to reflect the Act's provisions restricting the operation of legal professional privilege in relation to a recognised body one or more of whose managers are not legally qualified. It is thought that work which is neither done nor supervised by a legally qualified individual may not attract privilege.

Controlled trusts

(see 6.2.5)

12.1. The Act abolishes the concept of a "controlled trust", allowing the same interest provisions to apply to money previously defined as "controlled trust money" as to money previously defined as "client money".

12.2. The Government was of the view that the separate treatment of client money and trust money for interest purposes should be removed in favour of a single set of provisions in the SAR. The interest provisions in the SAR (see rule 24 and rule 25] were considered fair to clients and would have the benefit of simplifying a solicitor's obligation to account for interest on trust money.

12.3. The amendments to section 33(3) of the Solicitors Act 1974 made by the Courts and Legal Services Act 1990 to remove the distinction were, however, defective.

12.4. As a result, solicitors were permitted, as in the case of client money, to retain any interest received on trust money where the solicitor was a trustee with others outside the firm (sometimes called non-controlled trust money), over

and above that payable under the SAR. However, a solicitor who was a controlled trustee (effectively an in-house trust) remained subject to the general law which required all interest earned to be paid to the trust.

12.5. The statutory change means that all money held by a solicitor will be subject to the same interest provisions under the SAR. These provisions ensure clients are treated fairly in relation to the payment of interest on money held for them, and solicitors can operate under a single set of requirements.

12.6. The Act gives the SRA more flexible rule making powers in relation to interest. We anticipate that a consultation on this subject will follow in due course, once the new regime under the Act is established.

Appendices to the SAR

13. With the exception of Appendix 3, the appendices to the SAR are not included in this revised draft of the SAR. The form of the appendices will reflect the amendments ultimately made to the SAR.

Impact assessment

14. The proposed amendments to the SAR are not intended to be unnecessarily prescriptive. In particular, we have attempted to strike a fair balance in relation to signing on client account. Please tell us if you think that you will be adversely affected by any of the proposals.

Your views

Please send us your views on:

- who should be able to sign on client account; and
- the other proposed changes to the SAR contained in the revised SAR.

Your views, both on the substantive issues raised in this consultation, and on the redrafting of the SAR, would be very welcome.

How to respond

For information about How to respond, please visit our website.

- Go to www.consultations.sra.org.uk.
- Select **Legal Services Act: New forms of practice and regulation**.
- Click **How to respond**.
- Alternatively, go to www.sra.org.uk/consultations/429.article#respond.

Appendix 1

Revised Solicitors' Accounts Rules 1998

[last amended 15 January 2008]

Made by ***Authority:*** ***the Council of the Law Society made under sections 32, 33A, 34 and 37 of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985 with the concurrence, where requisite, of the Master of the Rolls;***

date: ***22nd July 1998;***

authority: ***sections 32, 33A, 34 and 37 of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985;***

replacing: ***the Solicitors' Accounts Rules 1991, the Solicitors' Accounts (Legal Aid Temporary Provision) Rule 1992 and the Accountant's Report Rules 1991;***

regulating: ***the accounts of solicitors and their employees, registered European lawyers and their employees, registered foreign lawyers and lawyers, and recognised bodies and their managers and employees, in respect of their English and Welsh practices practice in England and Wales.***

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Part A – General

Rule 1 – Principles

~~The following principles must be observed. A ***solicitor*** must:~~

~~(a) comply with the requirements of rule 1 of the Solicitors' Code of Conduct 2007 as to the ***solicitor's*** integrity, the duty to act in the ***client's*** best interests, and public trust in the ***solicitor*** and the ***solicitor's*** profession;~~

A ***solicitor*** must comply with the requirements of rule 1 of the Solicitors' Code of Conduct 2007, and in particular must:

(~~b~~a) keep other people's money separate from money belonging to the ***solicitor*** or the practice;

(~~c~~b) keep other people's money safely in a ***bank*** or ***building society*** account identifiable as a ***client account*** (except when the rules specifically provide otherwise);

(~~d~~c) use each ***client's*** money for that ***client's*** matters only;

(~~e~~d) use ~~***controlled trust money***~~ money held as ***trustee*** of a ***trust*** for the purposes of that ***trust*** only;

(~~f~~e) establish and maintain proper accounting systems, and proper internal controls over those systems, to ensure compliance with the rules;

(~~g~~f) keep proper accounting records to show accurately the position with regard to the money held for each ***client*** and ~~each ***controlled trust***~~;

(~~h~~g) account for interest on other people's money in accordance with the rules;

(~~i~~h) co-operate with the ~~***Society***~~ ***SRA*** in checking compliance with the rules; and

(~~j~~i) deliver annual accountant's reports as required by the rules.

Rule 2 - Interpretation

(1) ~~The rules are to be interpreted in the light of the notes.~~The notes form part of the rules and are mandatory.

(2) In the rules, unless the context otherwise requires:

(a) "accounting period" has the meaning given in rule 36;

(b) "agreed fee" has the meaning given in rule 19(5);

(ba) "approved regulator" means any body listed as an approved regulator in paragraph 1 of Schedule 4 to the Legal Services Act 2007 (whether or not that paragraph has been brought into force), or designated as

an approved regulator by an order under paragraph 17 of that Schedule;

(c) "bank" has the meaning given in section 87(1) of the Solicitors Act 1974;

(d) "building society" means a building society within the meaning of the Building Societies Act 1986;

(e) "client" means the person for whom a ***solicitor*** acts;

(f) "client account" has the meaning given in rule 14(2);

(g) "client money" has the meaning given in rule 13;

(h) ~~a "controlled trust" arises when:~~

~~(i) a ***solicitor of the Supreme Court*** or ***registered European lawyer*** is the sole ***trustee*** of a ***trust***, or co-***trustee*** only with one or more of his or her ***partners*** or employees;~~

~~(ii) a ***registered foreign lawyer*** who practises in ***partnership*** with a ***solicitor of the Supreme Court*** or ***registered European lawyer*** is, by virtue of being a ***partner*** in that ***partnership***, the sole ***trustee*** of a ***trust***, or co-***trustee*** only with one or more of the other ***partners*** or employees of that ***partnership***;~~

~~(iii) a ***recognised body*** which is a company is the sole ***trustee*** of a ***trust***, or co-***trustee*** only with one or more of the ***recognised body's*** officers or employees***;*** or~~

~~(iv) a ***recognised body*** which is a limited liability partnership is the sole ***trustee*** of a ***trust***, or co-***trustee*** only with one or more of the ***recognised body's*** members or employees;~~

~~and "controlled trustee" means a ***trustee*** of a ***controlled trust***; (see also paragraph (y) below on the meaning of "trustee" and "trust");~~[deleted]

(i) ~~"controlled trust money" has the meaning given in rule 13;~~[deleted]

(j) "costs" means a ***solicitor's fees*** and ***disbursements***;

(ja) “Court of Protection deputy” includes a deputy who was appointed by the Court of Protection as a receiver under the Mental Health Act 1983 before the commencement day of the Mental Capacity Act 2005;

(k) "disbursement" means any sum spent or to be spent by a ***solicitor*** on behalf of the ***client*** or ~~***controlled trust***~~ (including any VAT element);

(l) "fees" of a ***solicitor*** means the ***solicitor's*** own charges or profit costs (including any VAT element);

(la) "firm" means a sole practitioner, ***partnership***, ***LLP*** or company operating as a legal practice;

(m) "general client account" has the meaning given in rule 14(5)(b);

(ma) “lawyer” includes a barrister, notary, legal executive, licensed conveyancer, patent agent, trade mark agent or costs draftsman;

(mb) “LLP” means a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000;

(mc) "manager" means:

(i) a ***partner*** in a ***partnership***;

(ii) a member of an ***LLP***; or

(iii) a director of a company;

(n) "mixed payment" has the meaning given in rule 20(1);

(o) "non-solicitor employer" means any employer other than a ***solicitor*** or ***authorised non-SRA firm***;

(oa) "authorised non-SRA firm" means a ***firm*** which is not authorised to practise by the ***SRA*** but is authorised to practise by another ***approved regulator***;

(p) "office account" means an account of the ***solicitor*** or the practice for holding ***office money***, or other means of holding ***office money*** (for example, the office cash box);

(q) "office money" has the meaning given in rule 13;

(qa) "partner" means a person who is or is held out as a partner in an unincorporated practice;

(qb) "partnership" means an unincorporated partnership, and includes any unincorporated practice in which persons are or are held out as partners, but does not include an ***LLP*** ~~and does not include a limited liability partnership, and "partner" is to be construed accordingly~~;

(r) "principal" means:

(i) a sole practitioner;

(ii) a ***partner*** ~~or a person held out as a ***partner*** (including a "salaried" or "associate" ***partner***)~~ in a ***partnership***;

(iia) in the case of a ***recognised body*** which is an ***LLP*** or company, the ***recognised body*** itself;

(iii) the principal ***solicitor*** ***of the Supreme Court*** or ***registered European lawyer*** (or any one of ~~the principal ***solicitors***~~ them) ~~in an in-house practice~~ employed by a ***non-solicitor employer*** (for example, in a law centre or in commerce and industry);

(s) "professional disbursement" means the fees of counsel or other lawyer, or of a professional or other agent or expert instructed by the ***solicitor***;

(t) "recognised body" means a ***partnership***, company or ~~limited liability partnership~~ ***LLP*** recognised by the ~~***Society***~~ ***SRA*** under section 9 of the Administration of Justice Act 1985;

(ta) "recognised sole practitioner" means a ***solicitor of the Supreme Court*** or ***registered European lawyer*** authorised by the ***SRA*** under section 1B of the Solicitors Act 1974 to practise as a sole practitioner;

~~(ta)~~(tb) "registered European lawyer" means a person registered by the ~~***Society***~~ ***SRA*** under regulation 17 of the European Communities (Lawyer's Practice) Regulations 2000;

(u) "registered foreign lawyer" means a person registered by the ~~***Society***~~ ***SRA*** under section 89 of the Courts and Legal Services Act 1990;

(ua) "regular payment" has the meaning given in rule 21;

(v) "separate designated client account" has the meaning given in rule 14(5)(a);

(w) ~~"Society" means the Law Society of England and Wales;~~[deleted]

(x) "solicitor" means:

(i) a ***solicitor of the Supreme Court***; ~~and for the purposes of these rules also includes:~~

(ii) a ***registered European lawyer***;

(iii) a ***registered foreign lawyer*** practising:

(A) as a ***partner*** in a ***partnership*** ~~with a ***solicitor of the Supreme Court*** or ***registered European lawyer***~~ which is a ***recognised body*** or ***authorised non-SRA firm***; or in a ***partnership*** which should be a ***recognised body*** but has not been recognised by the ***SRA***; ~~or~~

(B) as the director of a company which is a ***recognised body*** ~~which is a company~~ or ***authorised non-SRA firm***, or as the director of a company which is a ***manager*** of a ***recognised body*** or ***authorised non-SRA firm***; ~~or~~

(C) as a member of ~~a~~ an ***LLP*** which is a ***recognised body*** ~~which is a limited liability partnership;~~ or ***authorised non-SRA firm***, or as a member of an ***LLP*** which is a ***manager*** of a ***recognised body*** or ***authorised non-SRA firm***;

(D) as a ***partner*** in a ***partnership*** with separate legal personality which is a ***manager*** of a ***recognised body*** or ***authorised non-SRA firm***;

(E) as an employee of a ***recognised body*** or ***recognised sole practitioner***; or

(F) as an employee of a ***partnership*** which should be a ***recognised body*** but has not been authorised by the ***SRA***, or of a sole practitioner who should be a ***recognised sole practitioner*** but has not been authorised by the ***SRA***;

(iv) a ***recognised body***; ~~and a ***partnership*** including at least one ***solicitor of the Supreme Court***, ***registered European lawyer*** or~~

(v) a ***manager*** of a ***recognised body***;

(vi) an employee of a ***recognised body*** or ***recognised sole practitioner***; or

(vii) an employee of a ***partnership*** which should be a ***recognised body*** but has not been authorised by the ***SRA***, or of a sole practitioner who should be a ***recognised sole practitioner*** but has not been authorised by the ***SRA***;

(xa) "solicitor-manager", in rule 22(8)(b), means a ***solicitor of the Supreme Court*** (or ***registered European lawyer***) appointed by the personal representatives of a deceased sole practitioner to carry on the practice;

~~(xa)~~(xb)"solicitor of the Supreme Court" means an individual who is a solicitor

of the Supreme Court of England and Wales; and, with effect from the coming into force of section 59(1) of the Constitutional Reform Act 2005, all references to a solicitor of the Supreme Court are to be replaced by references to a solicitor of the Senior Courts;

(xc) "SRA" means the Solicitors Regulation Authority, and reference to the SRA as an ***approved regulator*** means the SRA carrying out regulatory functions assigned to the Law Society as an ***approved regulator***;

(y) "trustee" includes a personal representative (i.e. an executor or an administrator), and "trust" includes the duties of a personal representative; and

(z) "without delay" means, in normal circumstances, either on the day of receipt or on the next working day; and

(za) the singular includes the plural and vice versa, and references to the masculine or feminine include the neuter.

Notes

(i) Although many of the rules are expressed as applying to an individual solicitor, the effect of the definition of "solicitor" in rule 2(2)(x) is that the rules apply equally to all those who carry on or work in a practice and to the practice itself. See also rule 4(1)(a) rule 4 (persons governed by the rules) and rule 5 (persons exempt from the rules). Note however that, until [1 July 2009], rules which are stated to apply to a recognised sole practitioner, or the employee of a recognised sole practitioner, will apply to a sole practitioner or the employee of a sole practitioner.

(ii) A client account must be at a bank or building society's branch in England and Wales - see rule 14(4).

(iii) For the full definition of a "European authorised institution" (rule 2(2)(c)), see the Banking Co-ordination (Second Council Directive) Regulations 1992 (S.I. 1992 no. 3218).

(iv) The definition of a controlled trust (rule 2(2)(h)), which derives from statute, gives rise to some anomalies. For example, a partner, assistant solicitor or consultant acting as sole trustee will be a controlled trustee. So will a sole solicitor trustee who is a director of a recognised body which is a company, or a member of a recognised body which is a limited liability partnership. Two or more partners acting as trustees will be controlled trustees. However two or more assistant solicitors or consultants acting as trustees will fall outside the definition, as will two or more directors of a recognised body which is a company, or two or more members of a recognised body which is a limited liability partnership. In these cases, if the matter is dealt with through the practice, the partners (or the recognised body) will hold any money as client money.[deleted]

(iva) Exceptionally, where a trust is handled by registered European lawyers, the trustees might be two partners at the firm's head office in the home state who are not directly subject to the rules. Money in the trust should be held by the firm as client money. However it should be treated as if it were controlled trust money in relation to choice of account, accounting for interest, etc., to ensure that there is no breach of duty by the trustees.

(v) The fees of interpreters, translators, process servers, surveyors, estate agents, etc., instructed by the solicitor are professional disbursements (see rule 2(2)(s)). Travel agents' charges are not professional

disbursements.

(vi) The general definition of "office account" is wide (see rule 2(2)(p)). However, rule 19(1)(b) (receipt and transfer of costs) and rule 21(1)(b) and 21(2)(b) (payments from the Legal Services Commission) specify that certain money is to be placed in an office account at a bank or building society.

(vii) An index is attached to the rules but it does not form part of the rules. For the status of the flowchart (Appendix 1) and the chart dealing with special situations (Appendix 2), see note (xiii) to rule 13.

Rule 3 - Geographical scope

The rules apply to practice carried on from an office in England and Wales.

Note

Accounts of a practice carried on from an office outside England and Wales are governed by the Solicitors' Code of Conduct 2007 rule 15.27 (accounts), rule 15.15 (deposit interest) and rule 20.06 (production of documents and information).

Rule 4 - Persons governed by the rules

(1) The rules apply to:

(a) ***solicitors of the Supreme Court*** or ***registered European lawyers*** who are:

(i) sole practitioners;

(ii) ***partners*** in a ~~practice, or held out as ***partners*** (including "salaried" and "associate" ***partners***)~~ ***partnership*** which is a ***recognised body*** or ***authorised non-SRA firm***, or in a ***partnership*** which should be a ***recognised body*** but has not been recognised by the ***SRA***;

(iii) assistants, associates, professional support lawyers, consultants ~~or locums~~, locums or persons otherwise employed in ~~a private~~ the practice of a ***recognised body, recognised sole practitioner*** or ***authorised non-SRA firm***; or of a ***partnership*** which should be a ***recognised body*** but has not been recognised by the ***SRA***, or of a sole practitioner who should be a ***recognised sole practitioner*** but has not been authorised by the ***SRA***;

(iv) employed as in-house ~~***solicitors***~~ lawyers by a ***non-solicitor employer*** (for example, in a law centre or in commerce and industry);

(v) directors of ~~***recognised bodies*** which are companies; or~~ companies which are ***recognised bodies*** or ***authorised non-SRA firms***, or of companies which are ***managers*** of ***recognised bodies*** or ***authorised non-SRA firms***;

(vi) members of ~~***recognised bodies*** which are limited liability partnerships;~~ ***LLPs*** which are ***recognised bodies*** or ***authorised non-SRA firms***, or of ***LLPs*** which are ***managers*** of ***recognised bodies*** or ***authorised non-SRA firms***; or

(vii) ***partners*** in a ***partnership*** with separate legal personality which is a ***manager*** of a ***recognised body*** or ***authorised non-SRA firm***;

~~(aa) ***registered European lawyers*** who are:~~

~~(i) sole practitioners;~~

~~(ii) ***partners*** in a practice, or held out as ***partners*** (including "salaried" and "associate" ***partners***);~~

~~(iii) assistants, associates, consultants or locums in a private practice;~~

~~(iv) employed as in-house lawyers (for example, in a law centre or in commerce and industry);~~

~~(v) directors of ***recognised bodies*** which are companies; or~~

~~(vi) members of ***recognised bodies*** which are limited liability partnerships~~;

(b) ***registered foreign lawyers*** who are~~:~~

~~(i)~~ practising in ~~***partnership*** with ***solicitors of the Supreme Court*** or ***registered European lawyers,*** or held out as ***partners*** (including "salaried" and "associate" ***partners***) of ***solicitors of the Supreme Court*** or ***registered European lawyers***;~~

~~(ii) directors of ***recognised bodies*** which are companies; or~~

~~(iii) members of ***recognised bodies*** which are limited liability partnerships; and~~ any of the ways set out in rule 2(2)(x)(iii);

(c) ***recognised bodies***;

(d) ***managers*** and employees of a ***recognised body***, or of a ***partnership*** which should be a ***recognised body*** but has not been authorised by the ***SRA***; and

(e) employees of a ***recognised sole practitioner,*** or of a sole practitioner who should be a ***recognised sole practitioner*** but has not been authorised by the ***SRA***.

(2) Part F of the rules (accountants' reports) also applies to reporting accountants.

Notes

(i) ~~In practical terms, the rules also bind anyone else working in a practice, such as cashiers and non-lawyer fee earners.~~ All employees of a recognised body are directly subject to the rules, following the amendment of section 9 of the Administration of Justice Act 1985 by the Legal Services Act 2007. All employees of a recognised sole practitioner are also directly subject to the rules as from the coming into force of new sections 1B and 34A of the Solicitors Act 1974. Non-compliance by any member of staff will also lead to the principals being in breach of the rules - see rule 6. Misconduct by an employee can also lead to an order of the SRA or the ~~Solicitors'~~ Solicitors Disciplinary Tribunal under section 43 of the Solicitors Act 1974 imposing restrictions on his or her employment.

(ii) Solicitors who have held or received client money ~~or controlled trust money~~, but no longer do so, whether or not they continue in practice, continue

to be bound by some of the rules - for instance:

- o rule 7 (duty to remedy breaches);
- o rule 19(2), and note (xi) to rule 19, rule 32(8) to (15) and rule 33 (retention of records);
- o rule 34 (production of records);
- o Part F (accountants' reports), and in particular ~~rule 35(1)~~ rule 35 and rule 36(5) (delivery of final report), and rule 38(2) and rule 46 (retention of records).

(iii) The rules do not cover a solicitor's trusteeships carried on in a purely personal capacity outside any legal practice. It will normally be clear from the terms of the appointment whether the solicitor is being appointed trustee in a purely personal capacity or in his or her professional capacity. If a solicitor is charging for the work, it is clearly being done as solicitor. Use of professional stationery may also indicate that the work is being done in a professional capacity.

(iv) A solicitor who wishes to retire from private practice must make a decision about any professional trusteeship. There are three possibilities:

(a) continue to act as a professional trustee (as evidenced by, for instance, charging for work done, or by continuing to use the title "solicitor" in connection with the trust). In this case, the solicitor must continue to hold a practising certificate, and money subject to the trust must continue to be dealt with in accordance with the rules.

(b) continue to act as trustee, but in a purely personal capacity. In this case, the solicitor must stop charging for the work, and must not be held out as a solicitor (unless this is qualified by words such as "non-practising" or "retired") in connection with the trust.

(c) cease to be a trustee.

Rule 5 - Persons exempt from the rules

The rules do not apply to:

(a) a ***solicitor*** when practising as an employee of:

(i) a local authority;

(ii) statutory undertakers;

(iii) a body whose accounts are audited by the Comptroller and Auditor General;

(iv) the Duchy of Lancaster;

(v) the Duchy of Cornwall; or

(vi) the Church Commissioners; or

(b) a ***solicitor*** who practises as the Solicitor of the City of London; or

(c) a ***solicitor*** when carrying out the functions of:

(i) a coroner or other judicial office; or

(ii) a sheriff or under-sheriff; or

(d) a ***solicitor*** when practising as a ***manager*** or employee of an ***authorised non-SRA firm*** and acting within the scope of that ***firm's*** authorisation to practise.

Notes

(i) "Statutory undertakers" means:

(a) any persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power; and

(b) any licence holder within the meaning of the Electricity Act 1989, any public gas supplier, any water or sewerage undertaker, the Environment Agency, any public telecommunications operator, the Post Office, the Civil Aviation Authority and any relevant airport operator within the meaning of Part V of the Airports Act 1986.

(ii) "Local authority" means any of those bodies which are listed in section 270 of the Local Government Act 1972 or in section 21(1) of the Local Government and Housing Act 1989.

(iii) A solicitor practising as a manager or employee of an authorised non-SRA firm is exempt from the Solicitors' Accounts Rules when the solicitor is acting within the scope of the firm's authorisation. Thus if a solicitor is a partner or employee in a firm authorised by the Council for Licensed Conveyancers, the rules will not apply to any money received by the solicitor in connection with conveyancing work. However if the solicitor does in-house litigation work - say collecting money owed to the firm - the Solicitors' Accounts Rules will apply to any money received by the solicitor in that context. This is because, whilst in-house litigation work is within the scope of the solicitor's authorisation as an individual, it is outside the scope of authorisation of the firm.

Rule 6 - Principals' responsibility for compliance

All the ***principals*** in a practice must ensure compliance with the rules by the ***principals*** themselves and by everyone ~~else working~~ employed in the practice. This duty also extends to the directors of a ***recognised body*** which is a company, or to the members of a ***recognised body*** which is ~~a limited liability partnership~~ an ***LLP***, ~~and to the ***recognised body*** itself~~.

Rule 7 - Duty to remedy breaches

(1) Any breach of the rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a ***client account***.

(2) In a private practice, the duty to remedy breaches rests not only on the person causing the breach, but also on all the ***principals*** in the practice. This duty extends to replacing missing ***client money*** ~~or ***controlled trust money***~~ from the ***principals'*** own resources, even if the money has been misappropriated by an employee or ~~fellow~~ another ***principal***, and whether or not a claim is subsequently

made on the Solicitors' Indemnity or Compensation Funds or on the ~~firm's~~ ***firm's*** insurance.

~~(3) In the case of a ***recognised body***, this duty falls on the ***recognised body*** itself.~~

Note

For payment of interest when money should have been held in a client account but was not, see rule 24(2).

Rule 8 - ~~Controlled trustees~~ [repealed]

~~A ***solicitor*** who in the course of practice acts as a ***controlled trustee*** must treat the ***controlled trust money*** as if it were ***client money***, except when the rules provide to the contrary.~~

~~**Note**~~

~~The following are examples of controlled trust money being treated differently from client money:~~

- ~~rule 18 (controlled trust money withheld from a client account) - special provisions for controlled trusts, in place of rules 16 and 17 (which apply to client money);~~
- ~~rule 19(2), and note (xi) to rule 19 - original bill etc., to be kept on file, in addition to central record or file of copy bills;~~
- ~~rule 23, note (v) and rule 32, note (ii)(d) - controlled trustees may delegate to an outside manager the day to day keeping of accounts of the business or property portfolio of an estate or trust;~~
- ~~rule 24(7), and note (x) to rule 24 - interest;~~
- ~~rule 32(7) - quarterly reconciliations.~~

Rule 9 - Liquidators, trustees in bankruptcy, Court of Protection deputies and trustees of occupational pension schemes

(1) A ***solicitor*** who in the course of practice acts as

- a liquidator,
- a trustee in bankruptcy,
- ***a Court of Protection deputy***, or
- a trustee of an occupational pension scheme which is subject to section 47(1)(a) of the Pensions Act 1995 (appointment of an auditor) **and** section 49(1) (separate bank account) **and** regulations under section 49(2)(b) (books and records),

must comply with:

(a) the appropriate statutory rules or regulations;

(b) the principles set out in rule 1; and

(c) the requirements of paragraphs (2) to (4) below;

and will then be deemed to have satisfactorily complied with the Solicitors' Accounts Rules.

(2) In respect of any records kept under the appropriate statutory rules, there must also be compliance with:

(a) rule 32(8) - bills and notifications of costs;

(b) rule 32(9)(c) - retention of records;

(c) rule 32(12) - centrally kept records;

(d) rule 34 - production of records; and

(e) rule 42(1)(l) and (p) - reporting accountant to check compliance.

(3) If a liquidator or trustee in bankruptcy uses any of the practice's ***client accounts*** for holding money pending transfer to the Insolvency Services Account or to a local bank account authorised by the Secretary of State, he or she must comply with the Solicitors' Accounts Rules in all respects whilst the money is held in the ***client account.***

(4) If the appropriate statutory rules or regulations do not govern the holding or receipt of ***client money*** in a particular situation (for example, money below a certain limit), the ***solicitor*** must comply with the Solicitors' Accounts Rules in all respects in relation to that money.

Notes

(i) The Insolvency Regulations 1994 (S.I. 1994 no. 2507) regulate liquidators and trustees in bankruptcy.

(ii) The Court of Protection Rules 2007 (S.I. 2007 no. 1744 (L.12)) regulate Court of Protection deputies (see rule 2(2)(ja)).

(iii) Money held or received by solicitor liquidators, trustees in bankruptcy, ~~and~~ Court of Protection deputies and trustees of occupational pension schemes is client money but, because of the statutory rules and rule 9(1), it will not normally be kept in a client account. If for any reason it is held in a client account, the Solicitors' Accounts Rules apply to that money for the time it is so held (see rule 9(3) and (4)).

~~(iv) Money held or received by solicitor trustees of occupational pension schemes is either client money or controlled trust money but, because of the statutory rules and rule 9(1), it will not normally be kept in a client account. If for any reason it is held in a client account, the Solicitors' Accounts Rules apply to that money for the time it is so held (see rule 9(4)).~~

Rule 10 - Joint accounts

(1) If a ***solicitor*** acting in a ***client's*** matter holds or receives money jointly with the ***client***, another ***solicitors'*** practice or another third party, the rules in general do not apply, but the following must be complied with:

(a) rule 32(8) - bills and notifications of costs;

(b) rule 32(9)(b)(ii) - retention of statements and passbooks;

(c) rule 32(13) - centrally kept records;

(d) rule 34 - production of records; and

(e) rule 42(1)(m) and (p) - reporting accountant to check compliance.

Operation of the joint account by the solicitor only

(2) If the joint account is operated only by the ***solicitor***, the ***solicitor*** must ensure that he or she receives the statements from the ***bank***, ***building society*** or other financial institution, and has possession of any passbooks.

Shared operation of the joint account

(3) If the ***solicitor*** shares the operation of the joint account with the ***client,*** another ***solicitor's*** practice or another third party, the ***solicitor*** must:

(a) ensure that he or she receives the statements or duplicate statements from the ***bank***, ***building society*** or other financial institution and retains them in accordance with rule 32(9)(b)(ii); and

(b) ensure that he or she either has possession of any passbooks, or takes copies of the passbook entries before handing any passbook to the other signatory, and retains them in accordance with rule 32(9)(b)(ii).

Operation of the joint account by the other account holder

(4) If the joint account is operated solely by the other account holder, the ***solicitor*** must ensure that he or she receives the statements or duplicate statements from the ***bank***, ***building society*** or other financial institution and retains them in accordance with rule 32(9)(b)(ii).

Note

Although a joint account is not a client account, money held in a joint account is client money.

Rule 11 - Operation of a client's own account

(1) If a ***solicitor*** in the course of practice operates a ***client's*** own account as signatory (for example, as done under a power of attorney), the rules in general do not apply, but the following must be complied with:

(a) rule 33(1) to (3) - accounting records for clients' own accounts;

(b) rule 34 - production of records; and

(c) rule 42(1)(n) and (p) - reporting accountant to check compliance.

Operation by the solicitor only

(2) If the account is operated by the ***solicitor*** only, the ***solicitor*** must ensure that he or she receives the statements from the ***bank***, ***building society*** or other financial institution, and has possession of any passbooks.

Shared operation of the account

(3) If the ***solicitor*** shares the operation of the account with the ***client*** or a co-attorney outside the ***solicitor's*** practice, the ***solicitor*** must:

(a) ensure that he or she receives the statements or duplicate statements from the ***bank***, ***building society*** or other financial institution and retains them in accordance with rule 33(1) to (3); and

(b) ensure that he or she either has possession of any passbooks, or takes copies of the passbook entries before handing any passbook to the ***client*** or co-attorney, and retains them in accordance with rule 33(1) to (3).

Operation of the account for a limited purpose

(4) If the ***solicitor*** is given authority (whether as attorney or otherwise) to operate the account for a limited purpose only, such as the taking up of a share rights issue during the ***client's*** temporary absence, the ***solicitor*** need not receive statements or possess passbooks, provided that he or she retains details of all cheques drawn or paid in, and retains copies of all passbook entries, relating to the transaction, and retains them in accordance with rule 33(1) and (2).

Application

(5) This rule applies only to ***solicitors*** in private practice.

Notes

(i) Money held in a client's own account (under a power of attorney or otherwise) is not "client money" for the purpose of the rules because it is not "held or received" by the solicitor. If the solicitor closes the account and receives the closing balance, this becomes client money and must be paid into a client account, unless the client instructs to the contrary in accordance with rule 16(1)(a).

(ii) A solicitor who merely pays money into a client's own account, or helps the client to complete forms in relation to such an account, is not "operating" the account.

(iii) A solicitor executor who operates the deceased's account (whether before or after the grant of probate) will be subject to the limited requirements of rule 11. If the account is subsequently transferred into the solicitor's name, or a new account is opened in the solicitor's name, the solicitor will have "held or received" ~~controlled trust money (or~~ client ~~money)~~ money and is then subject to all the rules.

(iv) The rules do not cover money held or received by a solicitor attorney acting in a purely personal capacity outside any legal practice. If a solicitor is charging for the work, it is clearly being done in the course of legal practice. See rule 4, note (iv) for the choices which can be made on retirement from private practice.

(v) "A client's own account" covers all accounts in a client's own name, whether opened by the client himself or herself, or by the solicitor on the client's instructions under rule 16(1)(b).

(vi) "A client's own account" also includes an account opened in the name of a person designated by the client under rule 16(1)(b).

(vii) Solicitors should also remember the requirements of rule 32(8) - bills and notifications of costs.

(viii) For payment of interest, see rule 24, note (iii).

Rule 12 - Solicitor's rights not affected

Nothing in these rules deprives a ***solicitor*** of any recourse or right, whether by way of lien, set off, counterclaim, charge or otherwise, against money standing to the credit of a ***client account.***

Rule 13 - Categories of money

All money held or received in the course of practice falls into one or other of the following categories:

(a) "client money" - money held or received for a ***client*** or as ***trustee***, and all other money which is not ~~***controlled trust money***~~ or ***office money***;

~~(b) "controlled trust money" - money held or received for a ***controlled trust***;~~ or

~~(c)~~(b) "office money" - money which belongs to the ***solicitor*** or the practice.

Notes

(i) "Client money" includes money held or received:

(aa) as trustee;

(a) as agent, bailee, stakeholder, or as the donee of a power of attorney, or as a liquidator, trustee in bankruptcy, ~~or~~ Court of Protection deputy or trustee of an occupational pension scheme;

(b) for payment of unpaid professional disbursements (for definition of "professional disbursement" see rule 2(2)(s));

(c) for payment of stamp duty land tax, Land Registry registration fees, telegraphic transfer fees and court fees; this is not office money because the solicitor has not incurred an obligation to the Inland Revenue, the Land Registry, the bank or the court to pay the duty or fee (contrast with note (xi)(c)(C) below); (on the other hand, if the solicitor has already paid the duty or fee out of his or her own resources, or has received the service on credit, payment subsequently received from the client will be office money - see note (xi)(c)(B) below);

(d) as a payment on account of costs generally;

(e) as commission paid in respect of a solicitor's client, unless the client has given the solicitor prior authority to retain it in accordance with ~~practice rule 10~~rule 2.06 of the Solicitors' Code of Conduct 2007, or unless it falls within the £20 de minimis figure specified in that rule.

(ii) A solicitor to whom a cheque or draft is made out, and who in the course of practice endorses it over to a client or employer, has received client money. Even if no other client money is held or received, the solicitor will be subject to some provisions of the rules, e.g.:

- rule 7 (duty to remedy breaches);
- rule 32 (accounting records for client money);
- rule 34 (production of records);
- rule 35 (delivery of accountants' reports).

(iii) Money held by solicitor liquidators, trustees in bankruptcy, Court of Protection deputies and ~~solicitors who are~~ trustees of occupational pension schemes ~~will either be~~ is client money ~~or controlled trust money~~, ~~according to~~

~~the circumstances~~ subject to a limited application of the rules – see rule 9.

(iv) Money held jointly with another person outside the practice (for example, with a lay trustee, or with another firm of solicitors) is client money subject to a limited application of the rules - see rule 10.

(v) Money held to the sender's order is client money.

(a) If money is accepted on such terms, it must be held in a client account.

(b) However, a cheque or draft sent to a solicitor on terms that the cheque or draft (as opposed to the money) is held to the sender's order must not be presented for payment without the sender's consent.

(c) The recipient is always subject to a professional obligation to return the money, or the cheque or draft, to the sender on demand.

(vi) An advance to a client from the solicitor which is paid into a client account under rule 15(2)(b) becomes client money. For interest, see rule 24(3)(e).

(vii) ~~Money subject to a trust will be either:~~

~~(a) controlled trust money (basically if members of the practice are the only trustees, but see the detailed definition of "controlled trust" in rule 2(2)(h)); or~~

~~(b) client money (if the trust is not a controlled trust; typically the solicitor will be co-trustee with a lay person, or is acting for lay trustees).~~ [deleted]

(viii) If the ~~Law Society~~ SRA intervenes in a practice, money from the practice is held or received by the ~~Society's~~ SRA's intervention agent subject to a trust under Schedule 1 paragraph 7(1) of the Solicitors Act 1974, and is therefore ~~controlled trust~~ client money. The same provision requires the agent to pay the money into a client account.

(ix) A solicitor who, as the donee of a power of attorney, operates the donor's own account is subject to a limited application of these rules - see rule 11. Money kept in the donor's own account is not "client money", because it is not "held or received" by the solicitor.

(x) Money held or received by a solicitor in the course of his or her employment when practising in one of the capacities listed in rule 5 (persons exempt from the rules) is not "client money" for the purpose of the rules, because the rules do not apply at all.

(xi) Office money includes:

(a) money held or received in connection with running the practice; for example, PAYE, or VAT on the firm's fees;

(b) interest on general client accounts; the bank or building society should be instructed to credit such interest to the office account - but see also rule 15(2)(d)~~, and note (vi) to rule 15 for interest on controlled trust money~~; and

(c) payments received in respect of:

(A) fees due to the practice against a bill or written

notification of costs incurred, which has been given or sent in accordance with rule 19(2);

(B) disbursements already paid by the practice (for definition of "disbursement" see rule 2(2)(k));

(C) disbursements incurred but not yet paid by the practice, but excluding unpaid professional disbursements (for definition of "professional disbursement" see rule 2(2)(s), and note (v) to rule 2);

(D) money paid for or towards an agreed fee - see rule 19(5); and

(d) money held in a client account and earmarked for costs under rule 19(3) (transfer of costs from client account to office account); and

(e) money held or received from the Legal Services Commission as a regular payment (see rule 21(2)).

(xii) A solicitor cannot be his or her own client for the purpose of the rules, so that if a practice conducts a personal or office transaction - for instance, conveyancing - for a principal (or for a number of principals), money held or received on behalf of the principal(s) is office money. However, other circumstances may mean that the money is client money, for example:

(a) If the practice also acts for a lender, money held or received on behalf of the lender is client money.

(b) If the practice acts for a principal and, for example, his or her spouse jointly (assuming the spouse is not a partner in the practice), money received on their joint behalf is client money.

(c) If the practice acts for an assistant solicitor, consultant or non-solicitor employee, or (if it is a company) a director, or (if it is ~~a limited liability partnership~~an LLP) a member, he or she is regarded as a client of the practice, and money received for him or her is client money - even if he or she conducts the matter personally.

~~(d) See also note (iva) to rule 2 (money held on behalf of trustees who are head office partners of a registered European lawyer is client money).~~

(xiii) For a flowchart summarising the effect of the rules, see Appendix 1. For more details of the treatment of different types of money, see the chart "Special situations - what applies" at Appendix 2. These two appendices are included to help solicitors and their staff find their way about the rules. Unlike the notes, they are not intended to affect the meaning of the rules.

Part B - Client money~~, controlled trust money~~ and operation of a client account

Rule 14 - Client accounts

(1) A ***solicitor*** who holds or receives ***client money*** ~~and/or ***controlled trust money***~~ must keep one or more ***client accounts*** (unless all the ***client money*** ~~and ***controlled trust money***~~ is always dealt with outside any ***client account*** in accordance with rule 9, rule 10 ~~or rules 16 to 18~~, rule 16 or rule 17).

(2) A "client account" is an account of a practice kept at a ***bank*** or ***building society*** for holding ***client money*** ~~and/or ***controlled trust money***~~, in accordance with the requirements of this part of the rules.

(3) The client account(s) of:

(a) a sole practitioner must be either in the ***solicitor's*** own name or in the practice name;

(b) a ***partnership*** must be in the ~~firm~~ ***firm*** name;

(c) ~~a ***recognised body***~~ an incorporated practice must be in the company name, or the name of the ~~limited liability partnership~~ ***LLP***;

(d) in-house ***solicitors*** must be in the name of the current ***principal solicitor*** or ***solicitors***;

(e) ~~executors or~~ ***trustees*** ~~who are ***controlled trustees***~~, where all the ***trustees*** of a ***trust*** are ***managers*** and/or employees of the same ***recognised body,*** must be either in the name of the ~~firm~~ ***recognised body*** or in the name of the ~~***controlled***~~ ***trustee(s)***;

and the name of the account must also include the word "client".

(4) A ***client account*** must be:

(a) a ***bank*** account at a branch (or a ***bank's*** head office) in England and Wales; or

(b) a ***building society*** deposit or share account at a branch (or a society's head office) in England and Wales.

(5) There are two types of ***client account***:

(a) a "separate designated client account", which is a deposit or share account for money relating to a single ***client***, other person or ***trust***, ~~or a current, deposit or share account for money held for a single ***controlled trust***~~, and which includes in its title, in addition to the requirements of rule 14(3) above, a reference to the identity of the ***client***, other person or ~~***controlled***~~ ***trust***; and

(b) a "general client account", which is any other ***client account***.

Notes

(i) For the client accounts of an executor, trustee or nominee company owned by a ~~solicitors'~~ practice, see rule 31.

(ii) In the case of in-house solicitors, any client account should ~~be in~~ include the names of all solicitors of the Supreme Court or registered European lawyers held out on the notepaper as principals. The names of other ~~solicitor~~ employees who are solicitors of the Supreme Court or registered European lawyers may also be included if so desired. Any ~~solicitor~~

person whose name is included will be subject to the full Compensation Fund contribution and his or her name will have to be included on the accountant's report.

(iii) "Bank" and "building society" are defined in rule 2(2)(c) and (d) respectively.

(iv) A practice may have any number of separate designated client accounts and general client accounts.

(v) The word "client" must appear in full; an abbreviation is not acceptable.

(vi) Compliance with rule 14(1) to (4) ensures that clients, as well as the bank or building society, have the protection afforded by section 85 of the Solicitors Act 1974.

(vii) Money held in a client account must be immediately available, even at the sacrifice of interest, unless the client otherwise instructs, or the circumstances clearly indicate otherwise.

Rule 15 - Use of a client account

(1) ***Client money*** ~~and ***controlled trust money***~~ must ***without delay*** be paid into a ***client account***, and must be held in a ***client account***, except when the rules provide to the contrary (see rules ~~16 to 18~~ 9, 10, 16, 17, 19 and 21).

(2) Only ***client money*** ~~or ***controlled trust money***~~ may be paid into or held in a ***client account***, except:

(a) an amount of the ***solicitor's*** own money required to open or maintain the account;

(b) an advance from the ***solicitor*** to fund a payment on behalf of a ***client*** or ~~***controlled***~~ ***trust*** in excess of funds held for that ***client*** or ~~***controlled trust***~~; the sum becomes ***client money*** ~~or ***controlled trust money***~~ on payment into the account (for interest on ***client money***, see rule 24(3)(e); ~~for interest on ***controlled trust money***, see rule 24(7) and note (x) to rule 24);~~

(c) money to replace any sum which for any reason has been drawn from the account in breach of rule 22; the replacement money becomes ***client money*** ~~or ***controlled trust money***~~ on payment into the account; and

(d) a sum in lieu of interest which is paid into a ***client account*** ~~for the purpose of complying with rule 24(2)~~ to enable the ***solicitor*** to make a single payment from the ***client account*** of all money owed to the ***client*** as an alternative to ~~paying it to the client direct~~ making separate payments from the ***office*** and ***client accounts***; ~~(for interest on ***controlled trust money***, see note (vi) below)~~;

and except when the rules provide to the contrary (see note (iv) below).

Notes

(i) See rule 13 and notes for the definition and examples of client money ~~and controlled trust money~~.

(ii) "Without delay" is defined in rule 2(2)(z).

(iii) Exceptions to rule 15(1)(client money ~~and controlled trust money~~ must

be paid into a client account) can be found in:

- rule 9 – liquidators, trustees in bankruptcy, Court of Protection deputies and trustees of occupational pension schemes;
- rule 10 – joint accounts;
- rule 16 - client's instructions;
- rule~~s~~ 17 ~~and 18~~ -
  - cash paid straight to client, beneficiary or third party;
  - cheque endorsed to client, beneficiary or third party;
  - money withheld from client account on the ~~Society's~~SRA's authority;
  - ~~controlled trust money paid into an account which is not a client account~~money withheld from client account in accordance with a trustee's powers;

~~o rule 16 - client's instructions;~~

- rule 19(1)(b) - receipt and transfer of costs;
- rule 21(1) - payments by the Legal Services Commission.

(iv) Rule 15(2)(a) to (d) provides for exceptions to the principle that only client money ~~and controlled trust money~~ may be paid into a client account. Additional exceptions can be found in:

- rule 19(1)(c) – receipt and transfer of costs;
- rule 20(2)(b) - receipt of mixed payments;
- rule 21(2)(c)(ii) – transfer to client account of a sum for unpaid professional disbursements, where the solicitor receives regular payments from the Legal Services Commission.

(v) Only a nominal sum will be required to open or maintain an account. In practice, banks will usually open (and, if instructed, keep open) accounts with nil balances.

(vi) ~~Rule 15 allows controlled trust money to be mixed with client money in a general client account. However, the general law requires a solicitor to act in the best interests of a controlled trust and not to benefit from it. The interest rules in Part C do not apply to controlled trust money. A solicitor's legal duty means that the solicitor must obtain the best reasonably obtainable rate of interest, and must account to the relevant controlled trust for all the interest earned, whether the controlled trust money is held in a separate designated client account or in a general client account. To ensure that all interest is accounted for, one option might be to set up a general client account just for controlled trust money. When controlled trust money is held in a general client account, interest will be credited to the office account in the normal way, but all interest must be promptly allocated to each controlled trust - either by transfer to the general client account, or to separate designated client account(s) for the particular trust(s), or by payment to each~~

~~trust in some other way.~~

~~Solicitors should also consider whether they have received any indirect benefit from controlled trust money at the expense of the controlled trust(s). For example, the bank might charge a reduced overdraft rate by reference to the total funds (including controlled trust money) held, in return for paying a lower rate of interest on those funds. In this type of case, the law may require the solicitor to do more than simply account for any interest earned.~~[deleted]

(vii) If ~~controlled trust~~ client money is invested in the purchase of assets other than money - such as stocks or shares - it ceases to be ~~controlled trust~~ client money, because it is no longer money held by the solicitor. If the investment is subsequently sold, the money received is, again, ~~controlled trust~~ client money. The records kept under rule 32 must include entries to show the purchase or sale of investments.

(viii) Some schemes proposed by banks would aggregate the sums held in a number of client accounts, including one or more separate designated client accounts, in order to maximise the interest payable. ~~It is not acceptable to aggregate money held in separate designated client accounts with money held in general client accounts (see note (i) to rule 24).~~This is acceptable only if:

- each client account remains a separate account;
- the rate of interest applied by the bank is the same for each client account; and
- the bank credits the interest earned on each separate designated client account to that account (see rule 24(1)), and credits the interest earned on any general client account to the office account (see note (xi)(b) to rule 13).

(ix) In the case of Wood and Burdett (case number 8669/2002 filed on 13 January 2004), the ~~Solicitors'~~ Solicitors Disciplinary Tribunal said that it is not a proper part of a solicitor's everyday business or practice to operate a banking facility for third parties, whether they are clients of the firm or not. Solicitors should not, therefore, provide banking facilities through a client account. Further, solicitors are likely to lose the exemption under the Financial Services and Markets Act 2000 if a deposit is taken in circumstances which do not form part of a solicitor's practice. It should also be borne in mind that there are criminal sanctions against assisting money launderers.

Rule 16 - Client money withheld from client account on client's instructions

(1) ***Client money*** may be:

(a) held by the ***solicitor*** outside a ***client account*** by, for example, retaining it in the ***solicitor's*** safe in the form of cash, or placing it in an account in the ***solicitor's*** name which is not a ***client account***, such as an account outside England and Wales; or

(b) paid into an account at a ***bank***, ***building society*** or other financial institution opened in the name of the ***client*** or of a person designated by the ***client***;

but only if the ***client*** instructs the ***solicitor*** to that effect for the ***client's*** own convenience, and only if the instructions are given in writing, or are given by other means and confirmed by the ***solicitor*** to the ***client*** in writing.

(2) It is improper to seek blanket agreements, through standard terms of business or otherwise, to hold ***client money*** outside a ***client account***.

Notes

(i) For advance payments from the Legal Services Commission, withheld from a client account on the Commission's instructions, see rule 21(1)(a).

(ii) If a client instructs the solicitor to hold part only of a payment in accordance with rule 16 (1)(a) or (b), the entire payment must first be placed in a client account. The relevant part can then be transferred out and dealt with in accordance with the client's instructions.

(iii) Money withheld from a client account under rule 16(1)(a) remains client money, and the record-keeping provisions of rule 32, including monthly reconciliations, must be complied with.

(iv) Once money has been paid into an account set up under rule 16(1)(b), it ceases to be client money. Until that time, the money is client money and a record must therefore be kept of the solicitor's receipt of the money, and its payment into the account in the name of the client or designated person, in accordance with rule 32. If the solicitor can operate the account, the solicitor must comply with rule 11 (operating a client's own account) and rule 33 (accounting records for clients' own accounts). In the absence of instructions to the contrary, any money withdrawn must be paid into a client account - see rule 15(1).

(v) Clients' instructions under rule 16(1) must be kept for at least six years - see rule 32(9)(d).

(vi) A payment on account of costs received from a person who is funding all or part of the solicitor's fees may be withheld from a client account on the instructions of that person given in accordance with rule 16(1) and (2).

(vii) For payment of interest, see rule 24(6) and notes (ii) and (iii) to rule 24.

Rule 17 - Other client money withheld from a client account

The following categories of ***client money*** may be withheld from a ***client account***:

(a) cash received and ***without delay*** paid in cash in the ordinary course of business to the ***client*** or, on the ***client's*** behalf, to a third party, or paid in cash in the execution of a ***trust*** to a beneficiary or third party;

(b) a cheque or draft received and endorsed over in the ordinary course of business to the ***client*** or, on the ***client's*** behalf, to a third party, or ***without delay*** endorsed over in the execution of a ***trust*** to a beneficiary or third party;

(c) money withheld from a ***client account*** on instructions under rule 16;

(ca) money which, in accordance with a ***trustee's*** powers, is paid into or retained in an account of the ***trustee*** which is not a ***client account*** (for example, an account outside England and Wales), or properly retained in cash in the performance of the ***trustee's*** duties;

(d) unpaid ***professional disbursements*** included in a payment of ***costs*** dealt with under rule 19(1)(b);

(e) (i) advance payments from the Legal Services Commission withheld from ***client account*** (see rule 21(1)(a)); and

(ii) unpaid ***professional disbursements*** included in a payment of ***costs*** from the Legal Services Commission (see rule 21(1)(b)); and

(f) money withheld from a ***client account*** on the written authorisation of the ~~***Society***~~SRA. The ~~***Society***~~***SRA*** may impose a condition that the ***solicitor*** pay the money to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received.

Notes

(i) "Without delay" is defined in rule 2(2)(z).

(ii) If money is withheld from a client account under rule 17(a) or (b), rule 32 requires records to be kept of the receipt of the money and the payment out.

(iia) If money is withheld from a client account under rule 17(ca), rule 32 requires a record to be kept of the receipt of the money, and requires the inclusion of the money in the monthly reconciliations.

(iii) It makes no difference, for the purpose of the rules, whether an endorsement is effected by signature in the normal way or by some other arrangement with the bank.

(iv) The circumstances in which authorisation would be given under rule 17(f) must be extremely rare. Applications for authorisation should be made to the Waivers Executive in the Professional Ethics ~~Division~~Guidance Team.

Rule 18 - ~~**Controlled trust money withheld from a client account**~~ [repealed]

~~The following categories of ***controlled trust money*** may be withheld from a ***client account***:~~

~~(a) cash received and ***without delay*** paid in cash in the execution of the ***trust*** to a beneficiary or third party;~~

~~(b) a cheque or draft received and ***without delay*** endorsed over in the execution of the ***trust*** to a beneficiary or third party;~~

~~(c) money which, in accordance with the ***trustee's*** powers, is paid into or retained in an account of the ***trustee*** which is not a ***client account*** (for example, an account outside England and Wales), or properly retained in cash in the performance of the ***trustee's*** duties;~~

~~(d) money withheld from a ***client account*** on the written authorisation of the ***Society***. The ***Society*** may impose a condition that the ***solicitor*** pay the money to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received.~~

~~**Notes**~~

~~(i) "Without delay" is defined in rule 2(2)(z).~~

~~(ii) If money is withheld from a client account under rule 18(a) or (b), rule 32 requires records to be kept of the receipt of the money and the payment out - see also rule 15, note (vii). If money is withheld from a client account~~

~~under rule 18(c), rule 32 requires a record to be kept of the receipt of the money.~~

~~(iii) It makes no difference, for the purpose of the rules, whether an endorsement is effected by signature in the normal way or by some other arrangement with the bank.~~

~~(iv) The circumstances in which authorisation would be given under rule 18(d) must be extremely rare. Applications for authorisation should be made to the Professional Ethics Division.~~

Rule 19 - Receipt and transfer of costs

(1) A ***solicitor*** who receives money paid in full or part settlement of the ***solicitor's*** bill (or other notification of ***costs***) **must follow one of the following four options:**

(a) determine the composition of the payment *without delay*, and deal with the money accordingly:

(i) if the sum comprises ***office money*** only, it must be placed in an ***office account***;

(ii) if the sum comprises only ***client money*** (for example an unpaid ***professional disbursement*** - see rule 2(2)(s), and note (v) to rule 2), the entire sum must be placed in a ***client account***;

(iii) if the sum includes both ***office money*** and ***client money*** (such as unpaid ***professional disbursements***; purchase money; or payments in advance for court fees, stamp duty land tax, Land Registry registration fees or telegraphic transfer fees), the ***solicitor*** must follow rule 20 (receipt of mixed payments); **or**

(b) ascertain that the payment comprises only *office money,* and/or *client money* in the form of *professional disbursements* incurred but not yet paid, and deal with the payment as follows:

(i) place the entire sum in an ***office account*** at a ***bank*** or ***building society*** branch (or head office) in England and Wales; and

(ii) by the end of the second working day following receipt, either pay any unpaid ***professional disbursement***, or transfer a sum for its settlement to a ***client account***; **or**

(c) pay the entire sum into a *client account* (regardless of its composition), and transfer any *office money* out of the *client account* within 14 days of receipt; or

(d) on receipt of *costs* from the Legal Services Commission, follow the option in rule 21(1)(b).

(2) A ***solicitor*** who properly requires payment of his or her ***fees*** from money held for ~~the~~ a ***client*** or ~~***controlled***~~ ***trust*** in a ***client account*** must first give or send a bill of ***costs***, or other written notification of the ***costs*** incurred, to the ***client*** or the paying party.

(3) Once the ***solicitor*** has complied with paragraph (2) above, the money earmarked for ***costs*** becomes ***office money*** and must be transferred out of the ***client account*** within 14 days.

(4) A payment on account of ***costs*** generally is ***client money***, and must be held in a ***client account*** until the ***solicitor*** has complied with paragraph (2) above. (For an exception in the case of legal aid payments, see rule 21(1)(a).)

(5) A payment for an ***agreed fee*** must be paid into an ***office account***. An "agreed fee" is one that is fixed - not a ***fee*** that can be varied upwards, nor a ***fee*** that is dependent on the transaction being completed. An ***agreed fee*** must be evidenced in writing.

Notes

(i) For the definition and further examples of office and client money, see rule 13 and notes.

(ii)
- Money received for paid disbursements is office money.
- Money received for unpaid professional disbursements is client money.
- Money received for other unpaid disbursements for which the solicitor has incurred a liability to the payee (for example, travel agents' charges, taxi fares, courier charges or Land Registry search fees, payable on credit) is office money.
- Money received for disbursements anticipated but not yet incurred is a payment on account, and is therefore client money.

(iii) The option in rule 19(1)(a) allows a solicitor to place all payments in the correct account in the first instance. The option in rule 19(1)(b) allows the prompt banking into an office account of an invoice payment when the only uncertainty is whether or not the payment includes some client money in the form of unpaid professional disbursements. The option in rule 19(1)(c) allows the prompt banking into a client account of any invoice payment in advance of determining whether the payment is a mixture of office and client money (of whatever description) or is only office money.

(iv) A solicitor who is not in a position to comply with the requirements of rule 19(1)(b) cannot take advantage of that option.

(v) The option in rule 19(1)(b) cannot be used if the money received includes a payment on account - for example, a payment for a professional disbursement anticipated but not yet incurred.

(vi) In order to be able to use the option in rule 19(1)(b) for electronic payments or other direct transfers from clients, a solicitor may choose to establish a system whereby clients are given an office account number for payment of costs. The system must be capable of ensuring that, when invoices are sent to the client, no request is made for any client money, with the sole exception of money for professional disbursements already incurred but not yet paid.

(vii) Rule 19(1)(c) allows clients to be given a single account number for making direct payments by electronic or other means - under this option, it has to be a client account.

(viii) A solicitor will not be in breach of rule 19 as a result of a misdirected electronic payment or other direct transfer, provided:

(A) appropriate systems are in place to ensure compliance;

(B) appropriate instructions were given to the client;

(C) the client's mistake is remedied promptly upon discovery; and

(D) appropriate steps are taken to avoid future errors by the client.

(ix) "Properly" in rule 19(2) implies that the work has actually been done, whether at the end of the matter or at an interim stage, and that the solicitor is entitled to appropriate the money for costs.

(x) Costs transferred out of a client account in accordance with rule 19(2) and (3) must be specific sums relating to the bill or other written notification of costs, and covered by the amount held for the particular client or controlled trust. Round sum withdrawals on account of costs will be a breach of the rules.

(xi) In the case of a ~~controlled~~ trust of which the only trustee(s) are within the firm, the paying party will be the ~~controlled~~ trustee(s) themselves. The solicitor must keep the original bill or notification of costs on the file, in addition to complying with rule 32(8) (central record or file of copy bills, etc.).

(xii) Undrawn costs must not remain in a client account as a "cushion" against any future errors which could result in a shortage on that account, and cannot be regarded as available to set off against any general shortage on client account.

(xiii) The rules do not require a bill of costs for an agreed fee, although a solicitor's VAT position may mean that in practice a bill is needed. If there is no bill, the written evidence of the agreement must be filed as a written notification of costs under rule 32(8)(b).

Rule 20 - Receipt of mixed payments

(1) A "mixed payment" is one which includes ***client money*** ~~or~~ ~~***controlled trust money***~~ as well as ***office money***.

(2) A ***mixed payment*** must either:

(a) be split between a ***client account*** and ***office account*** as appropriate; or

(b) be placed without delay in a client account.

(3) If the entire payment is placed in a ***client account***, all ***office money*** must be transferred out of the ***client account*** within 14 days of receipt.

(4) See rule 19(1)(b) and (c) for additional ways of dealing with (among other things) ***mixed payments*** received in response to a bill or other notification of ***costs***.

(5) See rule 21(1)(b) for (among other things) ***mixed payments*** received from the Legal Services Commission.

Note

"Without delay" is defined in rule 2(2)(z).

Rule 21 - Treatment of payments to legal aid practitioners

Payments from the Legal Services Commission

(1) Two special dispensations apply to payments (other than regular payments) from the Legal Services Commission:

(a) An advance payment in anticipation of work to be carried out, although ***client money***, may be placed in an ***office account***, provided the Commission instructs in writing that this may be done.

(b) A payment for ***costs*** (interim and/or final) may be paid into an ***office account*** at a ***bank*** or ***building society*** branch (or head office) in England and Wales, regardless of whether it consists wholly of ***office money***, or is mixed with ***client money*** in the form of:

(i) advance payments for ***fees*** or ***disbursements***; or

(ii) money for unpaid ***professional disbursements***;

provided all money for payment of ***disbursements*** is transferred to a ***client account*** (or the ***disbursements*** paid) within 14 days of receipt.

(2) The following provisions apply to ***regular payments*** from the Legal Services Commission:

(a) "Regular payments" (which are ***office money***) are:

(i) standard monthly payments paid by the Commission under the civil legal aid contracting arrangements;

(ii) monthly payments paid by the Commission under the criminal legal aid contracting arrangements; and

(iii) any other payments for work done or to be done received from the Commission under an arrangement for payments on a regular basis.

(b) ***Regular payments*** must be paid into an ***office account*** at a ***bank*** or ***building society*** branch (or head office) in England and Wales.

(c) A ***solicitor*** must within 28 days of submitting a report to the Commission, notifying completion of a matter, either:

(i) pay any unpaid ***professional disbursement(s)***, or

(ii) transfer to a ***client account*** a sum equivalent to the amount of any unpaid ***professional disbursement(s)***,

relating to that matter.

(d) In cases where the Commission permits ~~solicitors~~ ***solicitors*** to submit reports at various stages during a matter rather than only at the end of a matter, the requirement in paragraph (c) above applies to any unpaid ***professional disbursement(s)*** included in each report so submitted.

Payments from a third party

(3) If the Legal Services Commission has paid any ***costs*** to a ***solicitor*** or a previously nominated ***solicitor*** in a matter (advice and assistance or legal help ***costs***,

advance payments or interim ***costs***), or has paid ***professional disbursements*** direct, and ***costs*** are subsequently settled by a third party:

(a) The entire third party payment must be paid into a ***client account.***

(b) A sum representing the payments made by the Commission must be retained in the ***client account.***

(c) Any balance belonging to the ***solicitor*** must be transferred to an ***office account*** within 14 days of the ***solicitor*** sending a report to the Commission containing details of the third party payment.

(d) The sum retained in the ***client account*** as representing payments made by the Commission must be:

(i) **either** recorded in the individual ***client's*** ledger account, and identified as the Commission's money;

(ii) **or** recorded in a ledger account in the Commission's name, and identified by reference to the ***client*** or matter;

and kept in the ***client account*** until notification from the Commission that it has recouped an equivalent sum from subsequent payments due to the ***solicitor***. The retained sum must be transferred to an ***office account*** within 14 days of notification.

Notes

(i) This rule deals with matters which specifically affect legal aid practitioners. It should not be read in isolation from the remainder of the rules which apply to all solicitors, including legal aid practitioners.

(ii) Franchised firms can apply for advance payments on the issue of a certificate. The Legal Services Commission has issued instructions that these payments may be placed in office account. For regular payments, see notes (vii)-(x) below.

(iii) Rule 21(1)(b) deals with the specific problems of legal aid practitioners by allowing a mixed or indeterminate payment of costs (or even a payment consisting entirely of unpaid professional disbursements) to be paid into an office account, which for the purpose of rule 21(1)(b) must be an account at a bank or building society. However, it is always open to the solicitor to comply with rule 19(1)(a) to (c), which are the options for all solicitors for the receipt of costs. For regular payments, see notes (vii) – (x) below.

(iv) Solicitors are required by the Legal Services Commission to report promptly to the Commission on receipt of costs from a third party. It is advisable to keep a copy of the report on the file as proof of compliance with the Commission's requirements, as well as to demonstrate compliance with the rule.

(v) A third party payment may also include unpaid professional disbursements or outstanding costs of the client's previous solicitor. This part of the payment is client money and must be kept in a client account until the solicitor pays the professional disbursement or outstanding costs.

(vi) In rule 21, and elsewhere in the rules, references to the Legal Services Commission are to be read, where appropriate, as including the Legal Aid Board.

(vii) Regular payments are office money and are defined as such in the rules (rule 13, note (xi)(e)). They are neither advance payments nor

payments of costs for the purposes of the rules. Regular payments must be paid into an office account which for the purpose of rule 21(2)(b) must be an account at a bank or building society.

(viii) Firms in receipt of regular payments must deal with unpaid professional disbursements in the way prescribed by rule 21(2)(c). The rule permits a solicitor who is required to transfer an amount to cover unpaid professional disbursements into a client account to make the transfer from his or her own resources if the regular payments are insufficient.

(ix) The 28 day time limit for paying, or transferring an amount to a client account for, unpaid professional disbursements is for the purposes of these rules only. An earlier deadline may be imposed by contract with the Commission or with counsel, agents or experts. On the other hand, a solicitor may have agreed to pay later than 28 days from the submission of the report notifying completion of a matter, in which case rule 21(2)(c) will require a transfer of the appropriate amount to a client account (but not payment) within 28 days. Solicitors are reminded of their professional obligation to pay the fees of foreign lawyers (see rule 10.07 of the Solicitors' Code of Conduct).

(x) For the appropriate accounting records for regular payments, see note (v) to rule 32.

Rule 22 - Withdrawals from a client account

(1) ***Client money*** may only be withdrawn from a ***client account*** when it is:

(a) properly required for a payment to or on behalf of the ***client*** (or other person on whose behalf the money is being held);

(aa) properly required for a payment in the execution of a particular ***trust***, including the purchase of an investment (other than money) in accordance with the ***trustee's*** powers;

(b) properly required for payment of a ***disbursement*** on behalf of the ***client*** or ***trust***;

(c) properly required in full or partial reimbursement of money spent by the ***solicitor*** on behalf of the ***client*** or ***trust***;

(d) transferred to another ***client account***;

(e) withdrawn on the ***client's*** instructions, provided the instructions are for the ***client's*** convenience and are given in writing, or are given by other means and confirmed by the ***solicitor*** to the ***client*** in writing;

(ea) transferred to an account other than a ***client account*** (such as an account outside England and Wales), or retained in cash, by a ***trustee*** in the proper performance of his or her duties;

(f) a refund to the ***solicitor*** of an advance no longer required to fund a payment on behalf of a ***client*** or ***trust*** (see rule 15(2)(b));

(g) money which has been paid into the account in breach of the rules (for example, money paid into the wrong ***separate designated client account***) - see paragraph (4) below; or

(h) money not covered by (a) to (g) above, withdrawn from the account on the written authorisation of the ~~***Society***~~***SRA***. The ~~***Society***~~***SRA*** may impose a condition that the ***solicitor*** pay the money to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received.

(2) ~~***Controlled trust money*** may only be withdrawn from a ***client account*** when it is:~~

~~(a) properly required for a payment in the execution of the particular ***trust***, including the purchase of an investment (other than money) in accordance with the ***trustee's*** powers;~~

~~(b) properly required for payment of a ***disbursement*** for the particular ***trust***;~~

~~(c) properly required in full or partial reimbursement of money spent by the ***solicitor*** on behalf of the particular ***trust***;~~

~~(d) transferred to another ***client account***;~~

~~(e) transferred to an account other than a ***client account*** (such as an account outside England and Wales), but only if the ***trustee's*** powers permit, or to be properly retained in cash in the performance of the ***trustee's*** duties;~~

~~(f) a refund to the ***solicitor*** of an advance no longer required to fund a payment on behalf of a ***controlled trust*** (see rule 15(2)(b));~~

~~(g) money which has been paid into the account in breach of the rules (for example, money paid into the wrong ***separate designated client account***) - see paragraph (4) below; or~~

~~(h) money not covered by (a) to (g) above, withdrawn from the account on the written authorisation of the ***Society***. The ***Society*** may impose a condition that the ***solicitor*** pay the money to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received.~~[deleted]

(3) ***Office money*** may only be withdrawn from a ***client account*** when it is:

(a) money properly paid into the account to open or maintain it under rule 15(2)(a);

(b) properly required for payment of the ***solicitor's costs*** under rule 19(2) and (3);

(c) the whole or part of a payment into a ***client account*** under rule 19(1)(c);

(d) part of a ***mixed payment*** placed in a ***client account*** under rule 20(2)(b); or

(e) money which has been paid into a ***client account*** in breach of the rules (for example, interest wrongly credited to a ***general client account***) - see paragraph (4) below.

(4) Money which has been paid into a ***client account*** in breach of the rules must be withdrawn from the ***client account*** promptly upon discovery.

(5) Money withdrawn in relation to a particular ***client or ~~controlled~~ trust*** from a ***general client account*** must not exceed the money held on behalf of that ***client or ~~controlled~~ trust*** in all the ***solicitor's general client accounts*** (except as provided in paragraph (6) below).

(6) A ***solicitor*** may make a payment in respect of a particular ***client*** or ***~~controlled~~ trust*** out of a ***general client account***, even if no money (or insufficient money) is held for that ***client*** or ***~~controlled~~ trust*** in the ***solicitor's general client account(s)***, provided:

(a) sufficient money is held for that ***client*** or ***~~controlled~~ trust*** in a ***separate designated client account***; and

(b) the appropriate transfer from the ***separate designated client account*** to a ***general client account*** is made immediately.

(7) Money held for a ***client*** or ***~~controlled~~ trust*** in a ***separate designated client account*** must not be used for payments for another ***client*** or ***~~controlled~~ trust***.

(8) A ***client account*** must not be overdrawn, except in the following circumstances:

(a) A ***separate designated client account*** ~~for a~~ ***~~controlled trust~~*** ~~of~~ ***solicitor-trustee(s)*** can be overdrawn if the ***~~controlled trustee~~*** ~~makes~~ ***trustee(s)*** make payments on behalf of the ***trust*** (for example, inheritance tax) before realising sufficient assets to cover the payments.

(b) If a sole practitioner dies and his or her ***client accounts*** are frozen, the ***~~solicitor~~*** ~~manager~~ ***solicitor-manager*** can operate ***client accounts*** which are overdrawn to the extent of the money held in the frozen accounts.

Notes

Withdrawals in favour of solicitor, and for payment of disbursements

(i) Disbursements to be paid direct from a client account, or already paid out of the solicitor's own money, can be withdrawn under rule 22(1)(b) or (c) (or rule 22(2)(b) or (c)) in advance of preparing a bill of costs. Money to be withdrawn from a client account for the payment of costs (fees and disbursements) under rule 19(2) and (3) becomes office money and is dealt with under rule 22(3)(b).

(ii) Money is "spent" under rule 22(1)(c) (or rule 22(2)(c)) at the time when the solicitor despatches a cheque, unless the cheque is to be held to the solicitor's order. Money is also regarded as "spent" by the use of a credit account, so that, for example, search fees, taxi fares and courier charges incurred in this way may be transferred to the solicitor's office account.

(iii) See rule 23(3) for the way in which a withdrawal from a client account in favour of the solicitor must be effected.

Cheques payable to banks, building societies, etc.

(iv) In order to protect ~~clients' funds (or controlled trust funds)~~ client money against misappropriation when cheques are made payable to banks, building societies or other large institutions, it is strongly recommended that solicitors add the name and number of the account after the payee's name.

Drawing against uncleared cheques

(v) A solicitor should use discretion in drawing against a cheque received from or on behalf of a client before it has been cleared. If the cheque is not met, other clients' money will have been used to make the payment in breach of the rules. See rule 7 (duty to remedy breaches). A solicitor may be able to

avoid a breach of the rules by instructing the bank or building society to charge all unpaid credits to the solicitor's office or personal account.

Non-receipt of telegraphic transfer

(vi) If a solicitor acting for a client withdraws money from a general client account on the strength of information that a telegraphic transfer is on its way, but the telegraphic transfer does not arrive, the solicitor will have used other clients' money in breach of the rules. See also rule 7 (duty to remedy breaches).

Withdrawals on instructions

(vii) One of the reasons why a client might authorise a withdrawal under rule 22(1)(e) might be to have the money transferred to a type of account other than a client account. If so, the requirements of rule 16 must be complied with.

Withdrawals on the ~~Society's~~SRA's authorisation

(viii) Applications for authorisation under rule 22(1)(h) or 22(2)(h) should be made to the Waivers Executive in the Professional Ethics ~~Division~~Guidance Team, who can advise on the criteria which must normally be met for authorisation to be given.

(ix) After a practice has been wound up, banks sometimes discover unclaimed balances in an old client account. This money remains subject to rule 22 and rule 23. An application can be made to the ~~Society~~SRA under rule 22(1)(h) or 22(2)(h).

Rule 23 - Method of and authority for withdrawals from client account

(1) A withdrawal from a ***client account*** may be made only after a specific authority in respect of that withdrawal has been signed by at least one of the following:

(a) a ***solicitor*** who holds a current practising certificate or a ***registered European lawyer***;

(b) ~~a Fellow of the Institute of Legal Executives of at least three years standing who is employed by such a ***solicitor***, a ***registered European lawyer*** or a ***recognised*** body;~~a Fellow of the Institute of Legal Executives or licensed conveyancer who is a ***manager*** of the practice, where the practice is a ***recognised body***;

(c) ~~in the case of an office dealing solely with conveyancing, a licensed conveyancer who is employed by such a ***solicitor***, a ***registered European lawyer*** or a ***recognised*** body; or~~a Fellow of the Institute of Legal Executives or licensed conveyancer who is an employee of the practice, where the practice is a ***recognised body*** or ***recognised sole practitioner***;

(d) ~~a ***registered foreign lawyer*** who is a ***partner*** in the practice, or who is a director of the practice (if it is a company), or who is a member of the practice (if it is a limited liability partnership).~~a ***registered foreign lawyer*** who is a ***manager*** of the practice, where the practice is a ***recognised body***; or

(e) subject to paragraph (1A) below, any other individual who is a ***manager*** of the practice.

(1A) Any authority signed by a non-***lawyer manager*** in charge of the practice's accounts department, for example, the head of finance or finance director, must also be signed by at least one other person in the practice authorised to sign under rule 23(1).

(2) There is no need to comply with paragraph (1) above when transferring money from one ***general client account*** to another ***general client account*** at the same ***bank*** or ***building society.***

(3) A withdrawal from a ***client account*** in favour of the ***solicitor*** or the practice must be either by way of a cheque to the ***solicitor*** or practice, or by way of a transfer to the ***office account*** or to the ***solicitor's*** personal account. The withdrawal must not be made in cash.

Notes

(a) Reference should also be made to paragraphs 4.1.A and 4.1.B of the Guidelines for accounting procedures and systems at Appendix 3.

(i) Instructions to the bank or building society to withdraw money from a client account (rule 23(1)) may be given over the telephone, provided a specific authority has been signed in accordance with this rule before the instructions are given. If a solicitor decides to take advantage of this arrangement, it is of paramount importance that the scheme has appropriate in-built safeguards, such as passwords, to give the greatest protection possible for client money ~~(or controlled trust money)~~. Suitable safeguards will also be needed for practices which operate a CHAPS terminal.

(ii) In the case of a withdrawal by cheque, the specific authority (rule 23(1)) is usually a signature on the cheque itself. Signing a blank cheque is not a specific authority.

(iii) A withdrawal from a client account by way of a private loan from one client to another can only be made if the provisions of rule 30(2) are complied with.

(iv) It is advisable that a withdrawal for payment to or on behalf of a client (or on behalf of a ~~controlled~~ trust) be made by way of a crossed cheque whenever possible.

(v) ~~Controlled~~ Solicitor-trustees who instruct an outside ~~manager~~ administrator to run, or continue to run, on a day to day basis, the business or property portfolio of an estate or trust will not need to comply with rule 23(1), provided all cheques are retained in accordance with rule 32(10). (See also rule 32, note (ii)(d).)

(vi) Where the sum due to the client is sufficiently large, the solicitor should consider whether it should not appropriately be transferred to the client by direct bank transfer. For doing this, the solicitor would be entitled to make a modest administrative charge in addition to any charge made by the bank in connection with the transfer.

Land Registry application fees paid by direct debit

(vii) Solicitors may set up a direct debit system of payment for Land Registry application fees on either the office account or a client account. If a direct debit payment is to be taken from a client account for the payment of Land Registry application fees, the signature of a person, within one of the categories listed in rule 23(1), on the application for registration will constitute the specific authority required by rule 23(1). As with any other payment

method, care must be taken to ensure that sufficient uncommitted funds are held in the client account for the particular client before signing the authority. Solicitors should also bear in mind that should the Land Registry take an incorrect amount in error from a firm's client account (for example, a duplicate payment), the firm will be in breach of the rules if other clients' money has been used as a result.

(viii) If a solicitor fails to specify the correct Land Registry fee on the application for registration (either by specifying a lesser amount than that actually due, or failing to specify any fee at all), the solicitor will be in breach of rule 23(1) if the Land Registry takes a sum from the solicitor's client account greater than that specified on the application, without a specific authority for the revised sum being in place as required by rule 23. In order that the solicitor can comply with the rules, the Land Registry will need to contact the solicitor before taking the revised amount, so that the necessary authority may be signed prior to the revised amount being taken.

(ix) Where the Land Registry contacts the solicitor by telephone, and the solicitor wishes to authorise an immediate payment by direct debit over the telephone, the solicitor will first need to check that there is sufficient money held in client account for the client and, if there is, that it is not committed to some other purpose.

(x) The specific authority required by rule 23(1) can be signed after the telephone call has ended but must be signed before the additional payment (or correct full payment) is taken by the Land Registry. It is advisable to sign the authority promptly and, in any event, on the same day as the telephone instruction is given to the Land Registry to take the additional (or correct full) amount. If the solicitor decides to fund any extra amount from the office account, the transfer of office money to the client account would need to be made, preferably on the same day but, in any event, before the direct debit is taken. The solicitor's internal procedures would need to make it clear to unqualified staff how to deal with such situations; for example, who they should consult before a direct debit for an amount other than that specified on the application can be authorised, and the mechanism for ensuring the new authority is signed by a person within one of the categories listed in rule 23(1).

(xi) A solicitor may decide to set up a direct debit system of payment on the office account because, for example, he or she does not wish to allow the Land Registry to have access to the firm's client account. Provided the solicitor is in funds, a transfer from the client account to the office account may be made under rule 22(1)(c) to reimburse the solicitor as soon as the direct debit has been taken.

Part C – Interest

Rule 24 - When interest must be paid

(1) When a ***solicitor*** holds money in a ***separate designated client account*** for a ***client***, or for a person funding all or part of the ***solicitor's fees***, or for a ***trust,*** the ***solicitor*** must account to the ***client*** or that person or ***trust*** for all interest earned on the account.

(2) When a ***solicitor*** holds money in a ***general client account*** for a ***client***, or for a person funding all or part of the ***solicitor's fees***, or for a ***trust*** (or if money should have

been held for a ***client*** or such other person or ***trust*** in a ***client account*** but was not), the ***solicitor*** must account to the ***client*** or that person or ***trust*** for a sum in lieu of interest calculated in accordance with rule 25.

(3) A ***solicitor*** is not required to pay a sum in lieu of interest under paragraph (2) above:

(a) if the amount calculated is £20 or less;

(b) (i) if the ~~solicitor~~ ***solicitor*** holds a sum of money not exceeding the amount shown in the left hand column below for a time not exceeding the period indicated in the right hand column:

Amount	Time
£1,000	8 weeks
£2,000	4 weeks
£10,000	2 weeks
£20,000	1 week

(ii) if the ~~solicitor~~ ***solicitor*** holds a sum of money exceeding £20,000 for one week or less, unless it is fair and reasonable to account for a sum in lieu of interest having regard to all the circumstances;

(c) on money held for the payment of counsel's fees, once counsel has requested a delay in settlement;

(d) on money held for the Legal Services Commission;

(e) on an advance from the ***solicitor*** under rule 15(2)(b) to fund a payment on behalf of the ***client*** or ***trust*** in excess of funds held for that ***client*** or ***trust***; or

(f) if there is an agreement to contract out of the provisions of this rule under rule 27.

(4) If sums of money are held intermittently during the course of acting, and the sum in lieu of interest calculated under rule 25 for any period is £20 or less, a sum in lieu of interest should still be paid if it is fair and reasonable in the circumstances to aggregate the sums in respect of the individual periods.

(5) If money is held for a continuous period, and for part of that period it is held in a ***separate designated client account***, the sum in lieu of interest for the rest of the period when the money was held in a ***general client account*** may as a result be £20 or less. A sum in lieu of interest should, however, be paid if it is fair and reasonable in the circumstances to do so.

(6) (a) If a ***solicitor*** holds money for a ***client*** (or person funding all or part of the ***solicitor's fees***) in an account opened on the instructions of the ***client*** (or that person) under rule 16(1)(a), the ***solicitor*** must account to the ***client*** (or that person) for all interest earned on the account.

(aa) If a ***solicitor-trustee***, whether or not in strict accordance with rule 17(ca), holds money for a ***trust*** in an account of the ***solicitor-trustee*** which is not a ***client account***, the ***solicitor-trustee*** must account to the ***trust*** for all interest earned on the account.

(b) If a ***solicitor*** has failed to comply with instructions to open an account under rule 16(1)(a), the ***solicitor*** must account to the ***client*** (or the person funding all or part of the ***solicitor's fees***) for a sum in lieu of any net loss of interest suffered by the ***client*** (or that person) as a result.

(7) ~~This rule does not apply to ***controlled trust money***.~~[deleted]

Notes

Requirement to pay interest

(i) The whole of the interest earned on a separate designated client account must be credited to the account. However, the obligation to pay a sum in lieu of interest for amounts held in a general client account is subject to the de minimis provisions in rule 24(3)(a) and (b). Section 33(3) of the Solicitors Act 1974 permits solicitors to retain any interest earned on client money held in a general client account over and above that which they have to pay under these rules. (See also note (viii) to rule 15 on aggregation of accounts.)

(ii) There is no requirement to pay a sum in lieu of interest on money held on instructions under rule 16(1)(a) in a manner which attracts no interest.

(iii) Accounts opened in the client's name under rule 16(1)(b) (whether operated by the solicitor or not) are not subject to rule 24, as the money is not held by the solicitor. All interest earned belongs to the client. The same applies to any account in the client's own name operated by the solicitor as signatory under rule 11.

(iv) Money subject to a trust ~~which is not a controlled trust~~ is client money (see rule 13~~, note (vii)~~), and rule 24 therefore applies to it.

De minimis provisions (rule 24(3)(a) and (b))

(v) The sum in lieu of interest is calculated over the whole period for which money is held (see rule 25(2)); if this sum is £20 or less, the solicitor need not account to the client, other person or trust. If sums of money are held in relation to separate matters for the same client, other person or trust, it is normally appropriate to treat the money relating to the different matters separately, so that, if any of the sums calculated is £20 or less, no sum in lieu of interest is payable. There will, however, be cases when the matters are so closely related that they ought to be considered together - for example, when a solicitor is acting for a client in connection with numerous debt collection matters.

Administrative charges

(vi) It is not improper to charge a reasonable fee for the handling of client money when the service provided is out of the ordinary.

Unpresented cheques

(vii) A client may fail to present a cheque to his or her bank for payment. Whether or not it is reasonable to recalculate the amount due will depend on all the circumstances of the case. A reasonable charge may be made for any extra work carried out if the solicitor is legally entitled to make such a charge.

Liquidators, trustees in bankruptcy, Court of Protection deputies and trustees of occupational pension schemes

(viii) Under rule 9, Part C of the rules does not normally apply to solicitors who are liquidators, etc. Solicitors must comply with the appropriate statutory rules and regulations, and rules 9(3) and (4) as appropriate.

Joint accounts

(ix) Under rule 10, Part C of the rules does not apply to joint accounts. If a solicitor holds money jointly with a client, interest earned on the account will be for the benefit of the client unless otherwise agreed. If money is held jointly with another solicitors' practice, the allocation of interest earned will depend on the agreement reached.

~~**Requirements for controlled trust money (rule 24(7))**~~

(x) ~~Part C does not apply to controlled trust money. Under the general law, trustees of a controlled trust must account for all interest earned. For the treatment of interest on controlled trust money in a general client account, see rule 13, note (xi)(b), rule 15(2)(d) and note (vi) to rule 15. (See also note (viii) to rule 15 on aggregation of accounts.)~~[deleted]

Failure to pay interest

(xa) A client, including one of joint clients, or a person funding all or part of a solicitor's fees, may complain to the Legal Complaints Service if he or she believes that interest, or a sum in lieu of interest, was due and has not been paid, or that the amount paid was insufficient. It is advisable for the client (or other person) to try to resolve the matter with the solicitor before approaching the Legal Complaints Service.

Rule 25 - Amount of interest

(1) ***Solicitors*** must aim to obtain a reasonable rate of interest on money held in a ***separate designated client account***, and must account for a fair sum in lieu of interest on money held in a ***general client account*** (or on money which should have been held in a ***client account*** but was not). The sum in lieu of interest need not necessarily reflect the highest rate of interest obtainable but it is not acceptable to look only at the lowest rate of interest obtainable.

(2) **The sum in lieu of interest** for money held in a ***general client account*** (or on money which should have been held in a ***client account*** but was not) **must be calculated**

- **on the balance or balances held over the whole period for which cleared funds are held**

- **at a rate not less than (whichever is the higher of) the following**

  (i) the rate of interest payable on a ***separate designated client account*** for the amount or amounts held, or

  (ii) the rate of interest payable on the relevant amount or amounts if placed on deposit on similar terms by a member of the business community

- **at the *bank* or *building society* where the money is held.**

(3) If the money, or part of it, is held successively or concurrently in accounts at different ***banks*** or ***building societies***, the relevant ***bank*** or ***building society*** for the

purpose of paragraph (2) will be whichever of those ***banks*** or ***building societies*** offered the best rate on the date when the money was first held.

(4) If, contrary to the rules, the money held for a ***client*** or other person is not held in a ***client account***, the relevant ***bank*** or ***building society*** for the purpose of paragraph (2) will be a clearing bank or ***building society*** nominated by the ***client*** (or other person ~~on whose behalf ***client money*** is held~~).

(5) If, contrary to the rules, money held by a ***solicitor-trustee*** is not held in a ***client account***, the ***solicitor-trustee*** has a particular obligation to comply with the requirement in paragraph (1) to account for a fair sum in lieu of interest.

Notes

(i) The sum in lieu of interest has to be calculated over the whole period for which money is held - see rule 25(2). The solicitor will usually account to the client at the conclusion of the client's matter, but might in some cases consider it appropriate to account to the client at intervals throughout.

(ii) When looking at the period over which the sum in lieu of interest must be calculated, it will usually be unnecessary to check on actual clearance dates. When money is received by cheque and paid out by cheque, the normal clearance periods will usually cancel each other out, so that it will be satisfactory to look at the period between the dates when the incoming cheque is banked and the outgoing cheque is drawn.

(iii) Different considerations apply when payments in and out are not both made by cheque. So, for example, the relevant periods would normally be:

- from the date when a solicitor receives incoming money in cash until the date when the outgoing cheque is sent;
- from the date when an incoming telegraphic transfer begins to earn interest until the date when the outgoing cheque is sent;
- from the date when an incoming cheque or banker's draft is or would normally be cleared until the date when the outgoing telegraphic transfer is made or banker's draft is obtained.

(iv) The sum in lieu of interest is calculated by reference to the rates paid by the appropriate bank or building society (see rule 25(2) to ~~(4)~~(5)). Solicitors will therefore follow the practice of that bank or building society in determining how often interest is compounded over the period for which the cleared funds are held.

(v) Money held in a client account must be immediately available, even at the sacrifice of interest, unless the client otherwise instructs, or the circumstances clearly indicate otherwise. The need for access can be taken into account in assessing the appropriate rate for calculating the sum to be paid in lieu of interest, or in assessing whether a reasonable rate of interest has been obtained for a separate designated client account.

(vi) For failure by the solicitor to pay a sufficient sum by way of interest, or in lieu of interest, see note (xa) to rule 24.

Rule 26 - Interest on stakeholder money

When a ***solicitor*** holds money as stakeholder, the ***solicitor*** must pay interest, or a sum in lieu of interest, on the basis set out in rule 24 to the person to whom the stake is paid.

Note

For contracting out of this provision, see rule 27(2) and the notes to rule 27.

Rule 27 - Contracting out

(1) In appropriate circumstances a ***client*** and his or her ***solicitor*** may by a written agreement come to a different arrangement as to the matters dealt with in rule 24 (payment of interest).

(2) A ***solicitor*** acting as stakeholder may, by a written agreement with his or her own ***client*** and the other party to the transaction, come to a different arrangement as to the matters dealt with in rule 24.

Notes

(i) Solicitors should act fairly towards their clients and provide sufficient information to enable them to give informed consent if it is felt appropriate to depart from the interest provisions. Whether it is appropriate to contract out depends on all the circumstances, for example, the size of the sum involved or the nature, ~~or~~ status or bargaining position of the client. It might, for instance, be appropriate to contract out by standard terms of business if the client is a substantial commercial entity and the interest involved is modest in relation to the size of the transaction. The larger the sum of interest involved, the more there would be an onus on the solicitor to show that a client who had accepted a contracting out provision was properly informed and had been treated fairly. Contracting out is never appropriate if it is against the client's interests.

(ii) In principle, a solicitor-stakeholder is entitled to make a reasonable charge to the client for acting as stakeholder in the client's matter.

(iii) Alternatively, it may be appropriate to include a special provision in the contract that the solicitor-stakeholder retains the interest on the deposit to cover his or her charges for acting as stakeholder. This is only acceptable if it will provide a fair and reasonable payment for the work and risk involved in holding a stake. The contract could stipulate a maximum charge, with any interest earned above that figure being paid to the recipient of the stake.

(iv) Any right to charge the client, or to stipulate for a charge which may fall on the client, would be excluded by, for instance, a prior agreement with the client for a fixed fee for the client's matter, or for an estimated fee which cannot be varied upwards in the absence of special circumstances. It is therefore not normal practice for a stakeholder in conveyancing transactions to receive a separate payment for holding the stake.

(v) A solicitor-stakeholder who seeks an agreement to exclude the operation of rule 26 should be particularly careful not to take unfair advantage either of the client, or of the other party if unrepresented.

Rule 28 - ~~Interest certificates~~[repealed]

~~Without prejudice to any other remedy:~~

~~(a) any ***client***, including one of joint ***clients***, or a person funding all or part of a ***solicitor's fees***, may apply to the ***Society*** for a certificate as to whether or not interest, or a sum in lieu of interest, should have been paid and, if so, the amount; and~~

~~(b) if the ***Society*** certifies that interest, or a sum in lieu of interest, should have been paid, the ***solicitor*** must pay the certified sum.~~

~~**Notes**~~

~~(i) Applications for an interest certificate should be made to the Law Society's Consumer Complaints Service. It is advisable for the client (or other person) to try to resolve the matter with the solicitor before approaching the Consumer Complaints Service.~~

~~(ii) If appropriate, the Law Society will require the solicitor to obtain an interest calculation from the relevant bank or building society.~~

Part D - Accounting systems and records

Rule 29 - Guidelines for accounting procedures and systems

The ~~Council of the Law Society, with the concurrence of the Master of the Rolls,~~ ***SRA*** may from time to time publish guidelines for accounting procedures and systems to assist ***solicitors*** to comply with Parts A to D of the rules, and ***solicitors*** may be required to justify any departure from the guidelines.

Notes

(i) The current guidelines appear at Appendix 3.

(ii) The reporting accountant does not carry out a detailed check for compliance, but has a duty to report on any substantial departures from the guidelines discovered whilst carrying out work in preparation of his or her report (see rules 43 and 44(e)).

Rule 30 - Restrictions on transfers between clients

(1) A paper transfer of money held in a ***general client account*** from the ledger of one ***client*** to the ledger of another ***client*** may only be made if:

(a) it would have been permissible to withdraw that sum from the account under rule 22(1); and

(b) it would have been permissible to pay that sum into the account under rule 15;

(but there is no requirement in the case of a paper transfer for the written authority of a solicitor, etc., under rule 23(1)).

(2) No sum in respect of a private loan from one ***client*** to another can be paid out of funds held for the lender either:

(a) by a payment from one ***client account*** to another;

(b) by a paper transfer from the ledger of the lender to that of the borrower;

or

(c) to the borrower directly,

except with the prior written authority of both ***clients***.

Notes

(i) "Private loan" means a loan other than one provided by an institution which provides loans on standard terms in the normal course of its activities - rule 30(2) does not apply to loans made by an institutional lender. See also the Solicitors' Code of Conduct 2007 rule 3.16(2)(b), which prohibits a solicitor from acting for both lender and borrower in an individual mortgage at arm's length.

(ii) If the loan is to be made by (or to) joint clients, the consent of each client must be obtained.

Rule 31 - ~~Recognised bodies~~Executor, trustee or nominee companies

(1) If a ***solicitors'*** practice owns all the shares in a ***recognised body*** which is an executor, trustee or nominee company, the practice and the ***recognised body*** must not operate shared ***client accounts***, but may:

(a) use one set of accounting records for money held, received or paid by the practice and the ***recognised body***; and/or

(b) deliver a single accountant's report for both the practice and the ***recognised body***.

(2) If such a ***recognised body*** as nominee receives a dividend cheque made out to the ***recognised body***, and forwards the cheque, either endorsed or subject to equivalent instructions, to the share-owner's ***bank*** or ***building society***, etc., the ***recognised body*** will have received (and paid) ~~***controlled trust money***~~***client money***. One way of complying with rule 32 (accounting records) is to keep a copy of the letter to the share-owner's ***bank*** or ***building society***, etc., on the file, and, in accordance with rule 32(14), to keep another copy in a central book of such letters. (See also rule 32(9)(f) (retention of records for six years)).

Notes [deleted]

~~(i) Rule 31(1) applies equally to a recognised body owned by a sole practitioner, or by a multi-national partnership, or indeed by another recognised body.~~

~~(ii) If a recognised body holds or receives money as executor, trustee or nominee, it is a controlled trustee.~~

Rule 32 - Accounting records for client accounts, etc.

Accounting records which must be kept

(1) A ***solicitor*** must at all times keep accounting records properly written up to show the ***solicitor's*** dealings with:

(a) ***client money*** received, held or paid by the ***solicitor***; including ***client money*** held outside a ***client account*** under rule ~~16(1)(a);~~ 16(1)(a) or rule 17(ca); and

(b) ~~***controlled trust money*** received, held or paid by the ***solicitor***, including ***controlled trust money*** held under rule 18(c) in accordance with the ***trustee's*** powers in an account which is not a ***client account***; and~~[deleted]

(c) any ***office money*** relating to any ***client*** or ***trust*** matter~~, or to any ***controlled trust*** matter~~.

(2) All dealings with ***client money*** ~~(whether for a ***client*** or other person), and with any ***controlled trust money***,~~ must be appropriately recorded:

(a) in a client cash account or in a record of sums transferred from one client ledger account to another; and

(b) on the client side of a separate client ledger account for each ***client*** (or other person, or ~~***controlled trust***~~).

No other entries may be made in these records.

(3) If ***separate designated client accounts*** are used:

(a) a combined cash account must be kept in order to show the total amount held in ***separate designated client accounts***; and

(b) a record of the amount held for each ***client*** (or other person, or ~~***controlled trust***~~) must be made either in a deposit column of a client ledger account, or on the client side of a client ledger account kept specifically for a ***separate designated client account***, for each ***client*** (or other person, or ~~***controlled trust***~~).

(4) All dealings with ***office money*** relating to any ***client*** matter, or to any ~~***controlled trust***~~ matter, must be appropriately recorded in an office cash account and on the office side of the appropriate client ledger account.

Current balance

(5) The current balance on each client ledger account must always be shown, or be readily ascertainable, from the records kept in accordance with paragraphs (2) and (3) above.

Acting for both lender and borrower

(6) When acting for both lender and borrower on a mortgage advance, separate client ledger accounts for both ***clients*** need not be opened, provided that:

(a) the funds belonging to each ***client*** are clearly identifiable; and

(b) the lender is an institutional lender which provides mortgages on standard terms in the normal course of its activities.

Reconciliations

(7) The ***solicitor*** must, at least once every fourteen weeks ~~for ***controlled trust money held***~~ in the case of money held by ***solicitor-trustees*** in passbook-operated ***separate designated client accounts***, and at least once every five weeks in all other cases:

(a) compare the balance on the client cash account(s) with the balances shown on the statements and passbooks (after allowing for all unpresented items) of all ***general client accounts*** and ***separate designated client accounts***, and of any account which is not a ***client account*** but in which the ***solicitor*** holds ***client money*** under rule 16(1)(a) ~~(or ***controlled trust money*** under rule 18(c))~~or rule 17(ca), and any ***client money*** ~~(or ***controlled trust money***)~~ held by the ***solicitor*** in

cash; and

(b) as at the same date prepare a listing of all the balances shown by the client ledger accounts of the liabilities to ***clients*** (and other persons, and ~~***controlled trusts***~~) and compare the total of those balances with the balance on the client cash account; and also

(c) prepare a reconciliation statement; this statement must show the cause of the difference, if any, shown by each of the above comparisons.

Bills and notifications of costs

(8) The ***solicitor*** must keep readily accessible a central record or file of copies of:

(a) all bills given or sent by the ***solicitor***; and

(b) all other written notifications of ***costs*** given or sent by the ***solicitor***;

in both cases distinguishing between ***fees***, ***disbursements*** not yet paid at the date of the bill, and paid ***disbursements***.

Retention of records

(9) The ***solicitor*** must retain for at least six years from the date of the last entry:

(a) all documents or other records required by paragraphs (1) to (8) above;

(b) all statements and passbooks, as printed and issued by the ***bank***, ***building society*** or other financial institution, and/or all duplicate statements and copies of passbook entries permitted in lieu of the originals by rule 10(3) or (4), for:

(i) any ***general client account*** or ***separate designated client account***;

(ii) any joint account held under rule 10;

(iii) any account which is not a ***client account*** but in which the ***solicitor*** holds ***client money*** under rule ~~16(1)(a);~~ 16(1)(a) or rule 17(ca); and

(iv) ~~any account which is not a ***client account*** but in which ***controlled trust money*** is held under rule 18(c); and~~[deleted]

(v) any ***office account*** maintained in relation to the practice;

(c) any records kept under rule 9 (liquidators, trustees in bankruptcy, ***Court of Protection deputies*** and trustees of occupational pension schemes) including, as printed or otherwise issued, any statements, passbooks and other accounting records originating outside the ***solicitor's*** office;

(d) any written instructions to withhold ***client money*** from a ***client account*** (or a copy of the ***solicitor's*** confirmation of oral instructions) in accordance with rule 16;

(e) any central registers kept under paragraphs (11) to (13) below; and

(f) any copy letters kept centrally under rule 31(2) (dividend cheques endorsed over by ~~recognised body~~ nominee company).

(10) The ***solicitor*** must retain for at least two years:

(a) originals or copies of all authorities, other than cheques, for the withdrawal of money from a ***client account***; and

(b) all original paid cheques (or digital images of the front and back of all original paid cheques), unless there is a written arrangement with the ***bank***, ***building society*** or other financial institution that:

(i) it will retain the original cheques on the ***solicitor's*** behalf for that period; or

(ii) in the event of destruction of any original cheques, it will retain digital images of the front and back of those cheques on the ***solicitor's*** behalf for that period and will, on demand by the ***solicitor***, the ***solicitor's*** reporting accountant or the ~~***Society***~~***SRA***, produce copies of the digital images accompanied, when requested, by a certificate of verification signed by an authorised officer.

Centrally kept records for certain accounts, etc.

(11) Statements and passbooks for ***client money*** ~~or ***controlled trust money***~~ held outside a ***client account*** under rule 16(1)(a) or rule ~~18(c)~~ 17(ca) must be kept together centrally, or the ***solicitor*** must maintain a central register of these accounts.

(12) Any records kept under rule 9 (liquidators, trustees in bankruptcy, ***Court of Protection deputies*** and trustees of occupational pension schemes) must be kept together centrally, or the ***solicitor*** must maintain a central register of the appointments.

(13) The statements, passbooks, duplicate statements and copies of passbook entries relating to any joint account held under rule 10 must be kept together centrally, or the ***solicitor*** must maintain a central register of all joint accounts.

(14) If a ~~***recognised body***~~ ~~as~~ nominee company follows the option in rule 31(2) (keeping instruction letters for dividend payments), a central book must be kept of all instruction letters to the share-owner's ***bank*** or ***building society***, etc.

Computerisation

(15) Records required by this rule may be kept on a computerised system, apart from the following documents, which must be retained as printed or otherwise issued:

(a) original statements and passbooks retained under paragraph (9)(b) above;

(b) original statements, passbooks and other accounting records retained under paragraph (9)(c) above; and

(c) original cheques and copy authorities retained under paragraph (10) above.

There is no obligation to keep a hard copy of computerised records. However, if no hard copy is kept, the information recorded must be capable of being reproduced reasonably quickly in printed form for at least six years, or for at least two years in the case of digital images of paid cheques retained under paragraph (10) above.

Suspense ledger accounts

(16) Suspense client ledger accounts may be used only when the ***solicitor*** can justify their use; for instance, for temporary use on receipt of an unidentified payment, if time is needed to establish the nature of the payment or the identity of the ***client***.

Notes

(i) It is strongly recommended that accounting records are written up at least weekly, even in the smallest practice, and daily in the case of larger firms.

(ii) Rule 32(1) to (6) (general record-keeping requirements) and rule 32(7) (reconciliations) do not apply to:

(a) solicitor liquidators, trustees in bankruptcy, Court of Protection deputies and trustees of occupational pension schemes operating in accordance with statutory rules or regulations under rule 9(1)(a);

(b) joint accounts operated under rule 10;

(c) a client's own account operated under rule 11, the record-keeping requirements for this type of account are set out in rule 33;

(d) ~~controlled~~ solicitor ~~-~~trustees who instruct an outside ~~manager~~ administrator to run, or continue to run, on a day to day basis, the business or property portfolio of an estate or trust, provided the ~~manager~~ administrator keeps and retains appropriate accounting records, which are available for inspection by the ~~Society~~SRA in accordance with rule 34. (See also note (v) to rule 23.)

(iii) When a cheque or draft is received on behalf of a client and is endorsed over, not passing through a client account, it must be recorded in the books of account as a receipt and payment on behalf of the client. The same applies to cash received and not deposited in a client account but paid out to or on behalf of a client. A cheque made payable to a client, which is forwarded to the client by the solicitor, is not client money and falls outside the rules, although it is advisable to record the action taken.

(iv) For the purpose of rule 32, money which has been paid into a client account under rule 19(1)(c) (receipt of costs), or under rule 20(2)(b) (mixed money), and for the time being remains in a client account, is to be treated as client money; it should be recorded on the client side of the client ledger account, but must be appropriately identified.

(v) For the purpose of rule 32, money which has been paid into an office account under rule 19(1)(b) (receipt of costs), rule 21(1)(a) (advance payments from the Legal Services Commission), or under rule 21(1)(b) (payment of costs from the Legal Services Commission), and for the time being remains in an office account without breaching the rules, is to be treated as office money. Money paid into an office account under rule 21(2)(b) (regular payments) is office money. All these payments should be recorded on the office side of the client ledger account (for the individual client or for the Legal Services Commission), and must be appropriately identified.

(vi) Some accounting systems do not retain a record of past daily balances. This does not put the solicitor in breach of rule 32(5).

(vii) "Clearly identifiable" in rule 32(6) means that by looking at the ledger account the nature and owner of the mortgage advance are unambiguously stated. For example, if a mortgage advance of £100,000 is received from the ABC Building Society, the entry should be recorded as "£100,000, mortgage

advance, ABC Building Society". It is not enough to state that the money was received from the ABC Building Society without specifying the nature of the payment, or vice versa.

(viii) Although the solicitor does not open a separate ledger account for the lender, the mortgage advance credited to that account belongs to the lender, not to the borrower, until completion takes place. Improper removal of these mortgage funds from a client account would be a breach of rule 22.

(ix) Reconciliations should be carried out as they fall due, and in any event no later than the due date for the next reconciliation. In the case of a separate designated client account operated with a passbook, there is no need to ask the bank, building society or other financial institution for confirmation of the balance held. In the case of other separate designated client accounts, the solicitor should either obtain statements at least monthly, or should obtain written confirmation of the balance direct from the bank, building society or other financial institution. There is no requirement to check that interest has been credited since the last statement, or the last entry in the passbook.

(x) In making the comparisons under rule 32(7)(a) and (b), some solicitors use credits of one client against debits of another when checking total client liabilities. This is improper because it fails to show up the shortage.

(xi) The effect of rule 32(9)(b) is that the solicitor must ensure that the bank issues hard copy statements. Statements sent from the bank to its solicitor customer by means of electronic mail, even if capable of being printed off as hard copies, will not suffice.

(xii) Rule 32(9)(d) - retention of client's instructions to withhold money from a client account - does not require records to be kept centrally; however this may be prudent, to avoid losing the instructions if the file is passed to the client.

(xiii) A solicitor who holds client money ~~(or controlled trust money)~~ in a currency other than sterling should hold that money in a separate account for the appropriate currency. Separate books of account should be kept for that currency.

(xiv) The requirement to keep paid cheques under rule 32(10)(b) extends to all cheques drawn on a client account, or on an account in which client money is held outside a client account under rule 16(1)(a)~~, or on an account in which controlled trust money is held outside a client account under rule 18(c)~~ or rule 17(ca).

(xv) Solicitors may enter into an arrangement whereby the bank keeps digital images of paid cheques in place of the originals. The bank should take an electronic image of the front and back of each cheque in black and white and agree to hold such images, and to make printed copies available on request, for at least two years. Alternatively, solicitors may take and keep their own digital images of paid cheques.

(xvi) Microfilmed copies of paid cheques are not acceptable for the purposes of rule 32(10)(b). If a bank is able to provide microfilmed copies only, the solicitor must obtain the original paid cheques from the bank and retain them for at least two years.

(xvii) Certificates of verification in relation to digital images of cheques may on occasion be required by the ~~Society~~SRA when exercising its investigative and enforcement powers. The reporting accountant will not need to ask for a

certificate of verification but will be able to rely on the printed copy of the digital image as if it were the original.

Rule 33 - Accounting records for clients' own accounts

(1) When a ***solicitor*** operates a ***client's*** own account as signatory under rule 11, the ***solicitor*** must retain, for at least six years from the date of the last entry, the statements or passbooks as printed and issued by the ***bank***, ***building society*** or other financial institution, and/or the duplicate statements, copies of passbook entries and cheque details permitted in lieu of the originals by rule 11(3) or (4); and any central register kept under paragraph (2) below.

(2) The ***solicitor*** must either keep these records together centrally, or maintain a central register of the accounts operated under rule 11.

(3) If, when the ***solicitor*** ceases to operate the account, the ***client*** requests the original statements or passbooks, the ***solicitor*** must take photocopies and keep them in lieu of the originals.

(4) This rule applies only to ***solicitors*** in private practice.

Note

Solicitors should remember the requirements of rule 32(8) (central record of bills, etc.).

Part E - Monitoring and investigation by the ~~Society~~SRA

Rule 34 - Production of records

(1) Any ***solicitor*** must at the time and place fixed by the ***~~Society~~SRA*** produce to any person appointed by the ***~~Society~~SRA*** any records, papers, ***client*** and ***~~controlled~~ trust*** matter files, financial accounts and other documents, and any other information, necessary to enable preparation of a report on compliance with the rules.

(2) A requirement for production under paragraph (1) above must be in writing, and left at or sent by ~~registered post or recorded delivery~~ the "recorded signed for" or "special delivery next day" service to the most recent address held by the ***~~Society's~~*** ~~Registration Department~~***SRA's*** Information Directorate, or delivered by the ***~~Society's~~SRA's*** appointee. If sent through the post, receipt will be deemed 48 hours (excluding Saturdays, Sundays and Bank Holidays) after posting.

(3) Material kept electronically must be produced in the form required by the ***~~Society's~~SRA's*** appointee.

(4) The ***~~Society's~~SRA's*** appointee is entitled to seek verification from ***clients*** and staff, and from the ***banks***, ***building societies*** and other financial institutions used by the ***solicitor***. The ***solicitor*** must, if necessary, provide written permission for the information to be given.

(5) The ***~~Society's~~ SRA's*** appointee is not entitled to take original documents away but must be provided with photocopies on request.

(6) A ***solicitor*** must be prepared to explain and justify any departures from the guidelines for accounting procedures and systems published by the ***~~Society~~ SRA*** (see rule 29).

(7) Any report made by the ***~~Society's~~SRA's*** appointee may, if appropriate, be sent to the Crown Prosecution Service or the Serious Fraud Office and/or used in

proceedings before the ~~Solicitors'~~ Solicitors Disciplinary Tribunal. In the case of a ***registered European lawyer*** or ***registered foreign lawyer***, the report may also be sent to the competent authority in that lawyer's home state or states. In the case of a ***solicitor of the Supreme Court*** who is established in another state under the Establishment of Lawyers Directive 98/5/EC, the report may also be sent to the competent authority in the host state. The report may also be sent to any of the accountancy bodies set out in rule 37(1)(a) and/or taken into account by the ***~~Society~~SRA*** in relation to a possible disqualification of a reporting accountant under rule 37(3).

(8) Without prejudice to paragraph (1) above, any ***solicitor*** must produce documents relating to any account kept by the ***solicitor*** at a ***bank*** or with a ***building society***:

(a) in connection with the ***solicitor's*** practice; or

(b) in connection with any ***trust*** of which the ***solicitor*** is or formerly was a ***trustee,***

for inspection by a person appointed by the ***~~Society~~SRA*** for the purpose of preparing a report on compliance with the rules or on whether the account has been used for or in connection with a breach of any other rules, codes or mandatory guidance made or issued by the ***~~Society~~SRA***. Paragraphs (2)-(7) above apply in relation to this paragraph in the same way as to paragraph (1).

Notes

(i) "Solicitor" in rule 34 (as elsewhere in the rules) includes any person to whom the rules apply - see rule 2(2)(x), rule 4 and note (ii) to rule 4.

(ii) The ~~Society's~~SRA's powers override any confidence or privilege between solicitor and client.

(iii) The ~~Society's~~SRA's monitoring and investigation powers are exercised by Forensic Investigations ~~(Compliance Directorate)~~.

(iv) Reasons are never given for a visit by Forensic Investigations, so as:

(a) to safeguard the ~~Society's~~SRA's sources of information; and

(b) not to alert a defaulting ~~principal~~ manager or employee to conceal or compound his or her misappropriations.

(v) ~~Rule 34(8) does not apply to registered foreign lawyers in the absence of an order by the Lord Chancellor under section 89(5) of the Courts and Legal Services Act 1990. The Society can nevertheless exercise the powers under rule 34(8) in the case of a multi-national partnership, because the rule applies to those partners who are solicitors or registered European lawyers even though it does not apply to the registered foreign lawyers.~~[deleted]

Part F - Accountants' reports

Rule 35 - Delivery of accountants' reports

(1) A s***olicitor*** ***~~of the Supreme Court, registered European lawyer, registered foreign lawyer~~*** or ***~~recognised body~~*** who or which has, at any time during an ***accounting period***, held or received ***client money*** ~~or **controlled trust money**~~, or operated a ***client's*** own account as signatory, must deliver to the ***~~Society~~SRA*** an accountant's report for that ***accounting period*** within six months of the end of the ***accounting period***. This duty extends to the directors of ~~such a **recognised body** if it~~

~~is~~ a company, ~~and to~~ or the members of ~~such a ***recognised body*** if it is a limited liability partnership~~ an ***LLP,*** which is subject to this rule.

(2) In addition the ***SRA*** may require the delivery of an accountant's report in circumstances other than those set out in paragraph (1) above if the ***SRA*** has reason to believe that it is in the public interest to do so.

Notes

(i) ~~Section 34 of the Solicitors Act 1974 requires every solicitor of the Supreme Court to deliver an accountant's report once in every twelve months ending 31st October, unless the Society is satisfied that this is unnecessary. This provision is applied to recognised bodies by the Administration of Justice Act 1985, Schedule 2, paragraph 5(1). The Courts and Legal Services Act 1990, Schedule 14, paragraph 8(1) imposes the same duty on registered foreign lawyers, and this provision is extended to registered European lawyers by the European Communities (Lawyer's Practice) Regulations 2000, Schedule 4, paragraph 5(2). In general, the Society is satisfied that no report is necessary when the rules do not require a report to be delivered, but this is without prejudice to the Society's overriding discretion. In addition, a condition imposed on a solicitor's practising certificate under section 12(4)(b) of the Solicitors Act 1974 may require the solicitor to deliver accountant's reports at more frequent intervals.~~Examples of situations under rule 35(2) include:

- when no report has been delivered but the SRA has reason to believe that a report should have been delivered;
- when a report has been delivered but the SRA has reason to believe that it may be inaccurate;
- when the conduct of the solicitor gives the SRA reason to believe that it would be appropriate to require earlier delivery of a report (for instance three months after the end of the accounting period);
- when the conduct of the solicitor gives the SRA reason to believe that it would be appropriate to require more frequent delivery of reports (for instance every six months);
- when the SRA has reason to believe that the regulatory risk justifies the imposition on a category of solicitors of a requirement to deliver reports earlier or at more frequent intervals;
- when a condition on a solicitor's practising certificate requires earlier delivery of reports or the delivery of reports at more frequent intervals.

(ii) ~~A solicitor who practises only in one or more of the ways set out in rule 5 is exempt from the rules, and therefore does not have to deliver an accountant's report.~~For accountant's reports of limited scope see rule 9 (liquidators, trustees in bankruptcy, Court of Protection deputies and trustees of occupational pension schemes), rule 10 (joint accounts) and rule 11 (operation of a client's own account). For exemption from the obligation to deliver a report, see rule 5 (persons exempt from the rules).

(iii) The requirement in rule 35 for a registered foreign lawyer to deliver an accountant's report applies only to a registered foreign lawyer practising in ~~partnership with a solicitor of the Supreme Court or registered European lawyer, or as a director of a recognised body which is a company, or as a member of a recognised body which is a limited liability partnership~~one of the ways set out in rule 2(2)(x)(iii).

(iv) The form of report is dealt with in rule 47.

(v) When client money is held or received by ~~a~~ an unincorporated practice, the principals in the practice ~~(including those held out as principals)~~ will have held or received client money. A salaried partner whose name ~~is included~~ appears in the list of partners on a firm's letterhead, even if the name appears under a separate heading of "salaried partners" or "associate partners", ~~has been held out as~~ is a principal.

(va) In the case of an incorporated practice, it is the company or ~~limited liability partnership~~LLP (i.e. the recognised body) which will have held or received client money. The recognised body and its directors (in the case of a company) or members (in the case of ~~a limited liability partnership~~an LLP) will have the duty to deliver an accountant's report, although the directors or members will not usually have held client money.

(vi) Assistant ~~solicitors and~~ solicitors, consultants and other employees do not normally hold client money. An assistant solicitor or consultant might be a signatory for a firm's client account, but this does not constitute holding or receiving client money. If a client or third party hands cash to an assistant ~~solicitor or~~ solicitor, consultant or other employee, it is the sole principal or the partners (rather than the assistant ~~solicitor or~~ solicitor, consultant or other employee) who are regarded as having received and held the money. In the case of ~~a recognised body~~ an incorporated practice, whether a company or ~~a limited liability partnership~~ an LLP, it would be the recognised body itself which would be regarded as having held or received the money.

(vii) If, exceptionally, an assistant ~~solicitor or~~ solicitor, consultant or other employee has a client account (~~for example,~~ as a ~~controlled~~ trustee), or operates a client's own account as signatory, the assistant ~~solicitor or~~ solicitor, consultant or other employee will have to deliver an accountant's report. The assistant ~~solicitor or~~ solicitor, consultant or other employee can be included in the report of the practice, but must ensure that his or her name is added, and an explanation given.

(viii) A solicitor to whom a cheque or draft is made out, and who in the course of practice endorses it over to a client or employer, has received (and paid) client money. That solicitor will have to deliver an accountant's report, even if no other client money has been held or received.

(ix) When only a small number of transactions is undertaken or a small volume of client money is handled in an accounting period, a waiver of the obligation to deliver a report may sometimes be granted. Applications should be made to the ~~Registration Department~~Information Directorate.

(x) If a solicitors' practice owns all the shares in a recognised body which is an executor, trustee or nominee company, the practice and the recognised body may deliver a single accountant's report (see rule 31(1)(b)).

Rule 36 - Accounting periods

The norm

(1) An "accounting period" means the period for which the accounts of the ***solicitor*** are ordinarily made up, except that it must:

(a) begin at the end of the previous ***accounting period***; and

(b) cover twelve months.

Paragraphs (2) to (5) below set out exceptions.

First and resumed reports

(2) For a ***solicitor*** who is under a duty to deliver his or her first report, the ***accounting period*** must begin on the date when the ***solicitor*** first held or received ***client money*** ~~or ***controlled trust money***~~ (or operated a ***client's*** own account as signatory), and may cover less than twelve months.

(3) For a ***solicitor*** who is under a duty to deliver his or her first report after a break, the ***accounting period*** must begin on the date when the ***solicitor*** for the first time after the break held or received ***client money*** ~~or ***controlled trust money***~~ (or operated a ***client's*** own account as signatory), and may cover less than twelve months.

Change of accounting period

(4) If a practice changes the period for which its accounts are made up (for example, on a merger, or simply for convenience), the ***accounting period*** immediately preceding the change may be shorter than twelve months, or longer than twelve months up to a maximum of 18 months, provided that the ***accounting period*** shall not be changed to a period longer than twelve months unless the ~~Law Society~~***SRA*** receives written notice of the change before expiry of the deadline for delivery of the accountant's report which would have been expected on the basis of the ~~firm's~~ ***firm's*** old ***accounting period***.

Final reports

(5) A ***solicitor*** who for any reason stops holding or receiving ***client money*** ~~or ***controlled trust money***~~ (and operating any ***client's*** own account as signatory) must deliver a final report. The ***accounting period*** must end on the date upon which the ***solicitor*** stopped holding or receiving ***client money*** ~~or ***controlled trust money***~~ (and operating any ***client's*** own account as signatory), and may cover less than twelve months.

Notes

(i) In the case of solicitors joining or leaving a continuing partnership, any accountant's report for the practice as a whole will show the names and dates of the principals joining or leaving. For a solicitor who did not previously hold or receive client money, etc., and has become a principal in the firm, the report for the practice will represent, from the date of joining, the solicitor's first report for the purpose of rule 36(2). For a solicitor who was a principal in the firm and, on leaving, stops holding or receiving client money, etc., the

report for the practice will represent, up to the date of leaving, the solicitor's final report for the purpose of rule 36(5) above.

(ii) When a partnership splits up, it is usually appropriate for the books to be made up as at the date of dissolution, and for an accountant's report to be delivered within six months of that date. If, however, the old partnership continues to hold or receive client money, etc., in connection with outstanding matters, accountant's reports will continue to be required for those matters; the books should then be made up on completion of the last of those matters and a report delivered within six months of that date. The same would be true for a sole practitioner winding up matters on retirement.

(iii) When a practice is being wound up, the solicitor may be left with money which is unattributable, or belongs to a client who cannot be traced. It may be appropriate to apply to the ~~Society~~SRA for authority to withdraw this money from the solicitor's client account - see rule 22(1)(h), rule 22(2)(h), and note (viii) to rule 22.

Rule 37 - Qualifications for making a report

(1) A report must be prepared and signed by an accountant

(a) who is a member of:

(i) the Institute of Chartered Accountants in England and Wales;

(ii) the Institute of Chartered Accountants of Scotland;

(iii) the Association of Chartered Certified Accountants;

(iv) the Institute of Chartered Accountants in Ireland; or

(v) the Association of Authorised Public Accountants; **and**

(b) who is also:

(i) an individual who is a registered auditor within the terms of section 35(1)(a) of the Companies Act 1989; or

(ii) an employee of such an individual; or

(iii) a ***partner*** in or employee of a ***partnership*** which is a registered auditor within the terms of section 35(1)(a) of the Companies Act 1989; or

(iv) a director or employee of a company which is a registered auditor within the terms of section 35(1)(a) of the Companies Act 1989; or

(v) a member or employee of ~~a limited liability partnership~~ an ***LLP*** which is a registered auditor within the terms of section 35(1)(a) of the Companies Act 1989.

(2) An accountant is not qualified to make a report if:

(a) at any time between the beginning of the ***accounting period*** to which the report relates, and the completion of the report:

(i) he or she was a ***partner*** or employee, or an officer or employee (in the case of a company), or a member or employee (in the case of ~~a limited liability partnership~~an ***LLP***) in the practice to which the report relates; or

(ii) he or she was employed by the same ***non-solicitor employer***

as the ***solicitor*** for whom the report is being made; or

(b) he or she has been disqualified under paragraph (3) below and notice of disqualification has been given under paragraph (4) (and has not subsequently been withdrawn).

(3) The ~~***Society***~~***SRA*** may disqualify an accountant from making any accountant's report if:

(a) the accountant has been found guilty by his or her professional body of professional misconduct or discreditable conduct; or

(b) the ~~***Society***~~***SRA*** is satisfied that a ***solicitor*** has not complied with the rules in respect of matters which the accountant has negligently failed to specify in a report.

In coming to a decision, the ~~***Society***~~***SRA*** will take into account any representations made by the accountant or his or her professional body.

(4) Written notice of disqualification must be left at or sent by ~~registered post~~ or recorded delivery to the address of the accountant shown on an accountant's report or in the records of the accountant's professional body. If sent through the post, receipt will be deemed 48 hours (excluding Saturdays, Sundays and Bank Holidays) after posting.

(5) An accountant's disqualification may be notified to any ***solicitor*** likely to be affected and may be printed in the Law Society's Gazette or other publication.

Note

It is not a breach of the rules for a solicitor to retain an outside accountant to write up the books of account and to instruct the same accountant to prepare the accountant's report. However, the accountant will have to disclose these circumstances in the report - see the form of report in Appendix 5.

Rule 38 - Reporting accountant's rights and duties - letter of engagement

(1) The ***solicitor*** must ensure that the reporting accountant's rights and duties are stated in a letter of engagement incorporating the following terms:

"In accordance with rule 38 of the Solicitors' Accounts Rules 1998, you are instructed as follows:

(i) I/this firm/this company/this limited liability partnership recognises that, if during the course of preparing an accountant's report:

(a) you discover evidence of fraud or theft in relation to money

- held by a solicitor (or registered European lawyer, or registered foreign lawyer, or recognised body, or employee of a solicitor or registered European lawyer, or manager or employee of a recognised body) for a client or any other person (including money held on trust), or

- held in an account of a client, or an account of another person, which is operated by a solicitor (or registered European lawyer, registered foreign lawyer, recognised body, employee of a solicitor or registered European

lawyer, or manager or employee of a recognised body); or

(b) you obtain information which you have reasonable cause to believe is likely to be of material significance in determining whether a solicitor (or registered European lawyer, or registered foreign lawyer, or recognised body, or employee of a solicitor or registered European lawyer, or manager or employee of a recognised body) is a fit and proper person

- to hold money for clients or other persons (including money held on trust), or
- to operate an account of a client or an account of another person,

you must immediately give a report of the matter to the Solicitors Regulation Authority in accordance with section 34(9) of the Solicitors Act 1974;.

(ii) ~~that~~ you may, and are encouraged to, make that report ~~directly to the Law Society~~ without prior reference to me/this firm/this company/this limited liability partnership ~~should you, during the course of carrying out work in preparation of the accountant's report, discover evidence of theft or fraud affecting client money, controlled trust money, or money in a client's own account operated by a solicitor (or registered European lawyer, or registered foreign lawyer, or recognised body) as signatory; or information which is likely to be of material significance in determining whether any solicitor (or registered European lawyer, or registered foreign lawyer, or recognised body) is a fit and proper person to hold client money or controlled trust money, or to operate a client's own account as signatory~~;

~~(ii)~~(iii) you are to report directly to the ~~Law Society~~Solicitors Regulation Authority should your appointment be terminated following the issue of, or indication of intention to issue, a qualified accountant's report, or following the raising of concerns prior to the preparation of an accountant's report;

~~(iii)~~(iv) you are to deliver to me/this firm/this company/this limited liability partnership with your report the completed checklist required by rule 46 of the Solicitors' Accounts Rules 1998; to retain for at least three years from the date of signature a copy of the completed checklist; and to produce the copy to the ~~Law Society~~Solicitors Regulation Authority on request;

~~(iv)~~(v) you are to retain these terms of engagement for at least three years after the termination of the retainer and to produce them to the ~~Law Society~~Solicitors Regulation Authority on request; and

~~(v)~~(vi) following any direct report made to the ~~Law Society~~Solicitors Regulation Authority under (i) or ~~(ii)~~(iii) above, you are to provide to the ~~Law Society~~Solicitors Regulation Authority on request any further relevant information in your possession or in the possession of your firm.

To the extent necessary to enable you to comply with (i) to ~~(v)~~(vi) above, I/we waive my/the firm's/the company's/the limited liability partnership's right of confidentiality. This waiver extends to any report made, document produced or information disclosed to the ~~Law Society~~Solicitors Regulation Authority in good faith pursuant to these instructions, even though it may subsequently transpire that you were mistaken in your belief that there was cause for concern."

(2) The letter of engagement and a copy must be signed by the ***solicitor*** (or by a ***partner***, or in the case of a company by a director, or in the case of ~~a limited liability partnership~~an ***LLP*** by a member) and by the accountant. The ***solicitor*** must keep the copy of the signed letter of engagement for at least three years after the termination of the retainer and produce it to the ~~***Society***~~***SRA*** on request.

Notes

(i) Any direct report by the accountant to the ~~Society~~SRA under rule 38(1)(i) or ~~(ii)~~(iii) should be made to the Fraud Intelligence Unit.

(ii) Rule 38(1) envisages that the specified terms are incorporated in a letter from the solicitor to the accountant. Instead, the specified terms may be included in a letter from the accountant to the solicitor setting out the terms of the engagement. If so, the text must be adapted appropriately. The letter must be signed in duplicate by both parties - the solicitor will keep the original, and the accountant the copy.

Rule 39 - Change of accountant

On instructing an accountancy practice to replace that previously instructed to produce accountant's reports, the ***solicitor*** must immediately notify the ~~***Society***~~***SRA*** of the change and provide the name and business address of the new accountancy practice.

Rule 40 - Place of examination

Unless there are exceptional circumstances, the place of examination of a ***solicitor's*** accounting records, files and other relevant documents must be the ***solicitor's*** office and not the office of the accountant. This does not prevent an initial electronic transmission of data to the accountant for examination at the accountant's office with a view to reducing the time which needs to be spent at the ~~solicitor's~~ ***solicitor's*** office.

Rule 41 - Provision of details of bank accounts, etc.

The accountant must request, and the ***solicitor*** must provide, details of all accounts kept or operated by the ***solicitor*** in connection with the ***solicitor's*** practice at any ***bank***, ***building society*** or other financial institution at any time during the ***accounting period*** to which the report relates. This includes ***client accounts***, ***office accounts***, accounts which are not ***client accounts*** but which contain ***client money*** ~~or ***controlled trust money***~~, and ***clients'*** own accounts operated by the ***solicitor*** as signatory.

Rule 42 - Test procedures

(1) The accountant must examine the accounting records (including statements and passbooks), ***client*** and ~~***controlled***~~ ***trust*** matter files selected by the accountant as and when appropriate, and other relevant documents of the ***solicitor***, and make the following checks and tests:

(a) confirm that the accounting system in every office of the ***solicitor*** complies with:

- rule 32 - accounting records for client accounts, etc;
- rule 33 - accounting records for clients' own accounts;

and is so designed that:

(i) an appropriate client ledger account is kept for each ***client*** (or other person for whom ***client money*** is received, held or paid) ~~and each ***controlled***~~ or ***trust***;

(ii) the client ledger accounts show separately from other information details of all ***client money*** ~~and ***controlled trust money***~~ received, held or paid on account of each ***client*** (or other person for whom ***client money*** is received, held or paid) ~~and each ***controlled***~~ or ***trust***; and

(iii) transactions relating to ***client money*** ~~, ***controlled trust money***~~ and any other money dealt with through a ***client account*** are recorded in the accounting records in a way which distinguishes them from transactions relating to any other money received, held or paid by the ***solicitor***;

(b) make test checks of postings to the client ledger accounts from records of receipts and payments of ***client money*** ~~and ***controlled trust money***~~, and make test checks of the casts of these accounts and records;

(c) compare a sample of payments into and from the ***client accounts*** as shown in ***bank*** and ***building society*** statements or passbooks with the ***solicitor's*** records of receipts and payments of ***client money*** ~~and controlled trust money~~;

(d) test check the system of recording ***costs*** and of making transfers in respect of ***costs*** from the ***client accounts***;

(e) make a test examination of a selection of documents requested from the ***solicitor*** in order to confirm:

(i) that the financial transactions (including those giving rise to transfers from one client ledger account to another) evidenced by such documents comply with Parts A and B of the rules, rule 30 (restrictions on transfers between clients) and rule 31 (recognised bodies); and

(ii) that the entries in the accounting records reflect those transactions in a manner complying with rule 32;

(f) subject to paragraph (2) below, extract (or check extractions of) balances on the client ledger accounts during the ***accounting period*** under review at not fewer than two dates selected by the accountant (one of which may be the last day of the ***accounting period***), and at

each date:

(i) compare the total shown by the client ledger accounts of the liabilities to the ***clients*** (~~or~~ and other persons for whom ***client money*** is held) and ~~***controlled***~~ ***trusts*** with the cash account balance; and

(ii) reconcile that cash account balance with the balances held in the ***client accounts***, and accounts which are not ***client accounts*** but in which ***client money*** ~~or ***controlled trust money***~~ is held, as confirmed direct to the accountant by the relevant ***banks***, ***building societies*** and other financial institutions;

(g) confirm that reconciliation statements have been made and kept in accordance with rule 32(7) and (9)(a);

(h) make a test examination of the client ledger accounts to see whether payments from the ***client account*** have been made on any individual account in excess of money held on behalf of that ***client*** (or other person for whom ***client money*** is held) or ~~***controlled***~~ ***trust***;

(i) check the office ledgers, office cash accounts and the statements provided by the ***bank***, ***building society*** or other financial institution for any ***office account*** maintained by the ***solicitor*** in connection with the practice, to see whether any ***client money*** ~~or ***controlled trust money***~~ has been improperly paid into an ***office account*** or, if properly paid into an ***office account*** under rule 19(1)(b) or rule 21(1), has been kept there in breach of the rules;

(j) check the accounting records kept under rule 32(9)(d) and (11) for ***client money*** held outside a ***client account*** to ascertain what transactions have been effected in respect of this money and to confirm that the ***client*** has given appropriate instructions under rule 16(1)(a);

(k) make a test examination of the client ledger accounts to see whether rule 32(6) (accounting records when acting for both lender and borrower) has been complied with;

(l) for liquidators, trustees in bankruptcy, ***Court of Protection deputies*** and trustees of occupational pension schemes, check that records are being kept in accordance with rule 32(8), (9)(c) and (12), and cross-check transactions with ***client*** or ~~***controlled***~~ ***trust*** matter files when appropriate;

(m) check that statements and passbooks and/or duplicate statements and copies of passbook entries are being kept in accordance with rule 32(9)(b)(ii) and (13) (record-keeping requirements for joint accounts), and cross-check transactions with ***client*** matter files when appropriate;

(n) check that statements and passbooks and/or duplicate statements, copies of passbook entries and cheque details are being kept in accordance with rule 33 (record-keeping requirements for clients' own accounts), and cross-check transactions with ***client*** matter files when appropriate;

(o) check that interest earned on ***separate designated client accounts***, and in accounts opened on ***clients'*** instructions under rule 16(1)(a), is credited in accordance with rule 24(1) and (6)(a), and note (i) to rule 24;

(p) in the case of private practice only, check that for the period which will be covered by the accountant's report ~~(excluding any part of that period falling before 1st September 2000)~~ the practice was covered for the purposes of the Solicitors' Indemnity Insurance Rules in respect of its offices in England and Wales by:

- certificates of qualifying insurance outside the assigned risks pool; or
- a policy issued by the assigned risks pool manager; or
- certificates of indemnity cover under the professional requirements of a ***registered European lawyer's*** home jurisdiction in accordance with paragraph 1 of Appendix ~~4~~ 3 to those Rules, together with the ***SRA's*** written grant of full exemption; or
- certificates of ~~additional insurance~~ indemnity cover under the professional requirements of a ***registered European lawyer's*** home jurisdiction plus certificates of a difference in conditions policy with a qualifying insurer under paragraph 2 of Appendix ~~4~~ 3 to those Rules, together with the ***SRA's*** written grant of partial exemption; and

(q) ask for any information and explanations required as a result of making the above checks and tests.

Extracting balances

(2) For the purposes of paragraph (1)(f) above, if a ***solicitor*** uses a computerised or mechanised system of accounting which automatically produces an extraction of all client ledger balances, the accountant need not check all client ledger balances extracted on the list produced by the computer or machine against the individual records of client ledger accounts, provided the accountant:

(a) confirms that a satisfactory system of control is in operation and the accounting records are in balance;

(b) carries out a test check of the extraction against the individual records; and

(c) states in the report that he or she has relied on this exception.

Notes

(i) The rules do not require a complete audit of the solicitor's accounts nor do they require the preparation of a profit and loss account or balance sheet.

(ii) In making the comparisons under rule 42(1)(f), some accountants improperly use credits of one client against debits of another when checking total client liabilities, thus failing to disclose a shortage. A debit balance on a client account when no funds are held for that client results in a shortage which must be disclosed as a result of the comparison.

(iii) The main purpose of confirming balances direct with banks, etc., under rule 42(1)(f)(ii) is to ensure that the solicitor's records accurately reflect the sums held at the bank. The accountant is not expected to conduct an active search for undisclosed accounts.

Rule 43 - Departures from guidelines for accounting procedures and systems

The accountant should be aware of the ~~Council's~~***SRA's*** guidelines for accounting procedures and systems (see rule 29), and must note in the accountant's report any substantial departures from the guidelines discovered whilst carrying out work in preparation of the report. (See also rule 44(e).)

Rule 44 - Matters outside the accountant's remit

The accountant is not required:

(a) to extend his or her enquiries beyond the information contained in the documents produced, supplemented by any information and explanations given by the ***solicitor***;

(b) to enquire into the stocks, shares, other securities or documents of title held by the ***solicitor*** on behalf of the ***solicitor's clients***;

(c) to consider whether the accounting records of the ***solicitor*** have been properly written up at any time other than the time at which his or her examination of the accounting records takes place;

(d) to check compliance with the provisions in rule 24(2) to (5) and (6)(b) on payment of sums in lieu of interest; or

(e) to make a detailed check on compliance with the guidelines for accounting procedures and systems (see rules 29 and 43).

Rule 45 - Privileged documents

A ***solicitor***, acting on a ***client's*** instructions, ~~always has~~ will normally have the right on the grounds of privilege as between ***solicitor*** and ***client*** to decline to produce any document requested by the accountant for the purposes of his or her examination. In these circumstances, the accountant must qualify the report and set out the circumstances.

Note

In a recognised body with one or more managers who are not legally qualified, legal professional privilege may not attach to work which is neither done nor supervised by a legally qualified individual - see Legal Services Act 2007, section 190(3) to (7), and Schedule 22, paragraph 17.

Rule 46 - Completion of checklist

The accountant should exercise his or her professional judgment in adopting a suitable "audit" programme, but must also complete and sign a checklist in the form published from time to time by the ~~Council of the Law Society~~***SRA***. The ***solicitor*** must obtain the completed checklist, retain it for at least three years from the date of signature and produce it to the ~~***Society***~~***SRA*** on request.

Notes

(i) The current checklist appears at Appendix 4. It is issued by the ~~Society~~SRA to solicitors at the appropriate time for completion by their reporting accountants.

(ii) The letter of engagement required by rule 38 imposes a duty on the accountant to hand the completed checklist to the solicitor, to keep a copy for three years and to produce the copy to the ~~Society~~SAR on request.

Rule 47 - Form of accountant's report

The accountant must complete and sign his or her report in the form published from time to time by the ~~Council of the Law Society~~***SRA***.

Notes

(i) The current form of accountant's report appears at Appendix 5.

(ii) The form of report is prepared and issued by the ~~Society~~SAR to solicitors at the appropriate time for completion by their reporting accountants. Separate reports can be delivered for each principal in a partnership but most firms deliver one report in the name of all the principals. For assistant ~~solicitors and~~ solicitors, consultants and other employees, see rule 35, notes (vi) and (vii).

(iia) ~~A recognised body~~ An incorporated practice will deliver only one report, on behalf of the company and its directors, or on behalf of the ~~limited liability partnership~~LLP and its members - see rule 35(1).

(iii) Although it may be agreed that the accountant send the report direct to the ~~Society~~SAR, the responsibility for delivery is that of the solicitor. The form of report requires the accountant to confirm that either a copy of the report has been sent to each of the ~~solicitors of the Supreme Court, registered European lawyers and registered foreign lawyers~~ persons (including bodies corporate) to whom the report relates, or a copy of the report has been sent to a named partner on behalf of all the partners in the firm. A similar confirmation is required in respect of the directors of a recognised body which is a company, or the members of a recognised body which is ~~a limited liability partnership~~an LLP.

(iv) A reporting accountant is not required to report on trivial breaches due to clerical errors or mistakes in book-keeping, provided that they have been rectified on discovery and the accountant is satisfied that no client suffered any loss as a result.

(v) In many practices, clerical and book-keeping errors will arise. In the majority of cases these may be classified by the reporting accountant as trivial breaches. However, a "trivial breach" cannot be precisely defined. The amount involved, the nature of the breach, whether the breach is deliberate or accidental, how often the same breach has occurred, and the time outstanding before correction (especially the replacement of any shortage) are all factors which should be considered by the accountant before deciding whether a breach is trivial.

(vi) The ~~Society~~SAR receives a number of reports which are qualified only by reference to trivial breaches, but which show a significant difference between liabilities to clients and client money held in client and other accounts. An explanation for this difference, from either the accountant or the solicitor, must be given.

(vii) Accountants' reports should be sent to ~~Regulation and Information Services~~the Information Directorate.

(viii) For direct reporting by the accountant to the ~~Society~~SRA in cases of concern, see rule 38 and note (i) to that rule.

Rule 48 - Practices with two or more places of business

If a practice has two or more offices:

(a) separate reports may be delivered in respect of the different offices; and

(b) separate ***accounting periods*** may be adopted for different offices, provided that:

(i) separate reports are delivered;

(ii) every office is covered by a report delivered within six months of the end of its ***accounting period***; and

(iii) there are no gaps between the ***accounting periods*** covered by successive reports for any particular office or offices.

Rule 49 - Waivers

The ***~~Society~~SRA*** may waive in writing in any particular case or cases any of the provisions of Part F of the rules, and may revoke any waiver.

Note

Applications for waivers should be made to ~~Regulation and Information Services~~the Information Directorate. In appropriate cases, solicitors may be granted a waiver of the obligation to deliver an accountant's report (see rule 35, and note (ix) to that rule). The circumstances in which a waiver of any other provision of Part F would be given must be extremely rare.

Part G - Commencement

Rule 50 – Commencement

The Solicitors' Accounts Rules 1998 took effect on 22 July 1998 and had to be implemented by 1 May 2000. They replaced the Solicitors' Accounts Rules 1991, the Solicitors' Accounts (Legal Aid Temporary Provision) Rule 1992 and the Accountant's Report Rules 1991.

~~(1) These rules must be implemented not later than 1st May 2000; until a practice implements these rules, it must continue to operate the Solicitors' Accounts Rules 1991~~.

~~(2) Practices opting to implement these rules before 1st May 2000 must implement them in their entirety, and not selectively.~~

~~(3) Part F of the rules (accountants' reports) will apply to:~~

~~(a) reports covering any period of time after 30th April 2000; and also~~

~~(b) reports covering any earlier period of time for which a practice has opted to operate these rules.~~

~~(4) The Accountant's Report Rules 1991 will continue to apply to:~~

~~(a) reports covering any period of time before 22nd July 1998; and also~~

(b) reports covering any period of time after 21st July 1998 and before 1st May 2000 during which a practice continued to operate the Solicitors' Accounts Rules 1991.

(5) If a practice operated the Solicitors' Accounts Rules 1991 for part of an ***accounting period***, and these rules for the rest of the ***accounting period***, the practice may, in respect of that ***accounting period*** ("the transitional accounting period") either:

(a) deliver a single accountant's report covering the whole of the transitional accounting period, made partly under the Accountant's Report Rules 1991 and partly under Part F of these rules, as appropriate; or

(b) deliver a separate accountant's report for each part of the transitional accounting period, one under the Accountant's Report Rules 1991 and the other under Part F of these rules; or

(c) deliver a report under the Accountant's Report Rules 1991 to cover that part of the transitional accounting period during which the practice operated the Solicitors' Accounts Rules 1991; and subsequently a report under Part F of these rules to cover the remaining part of the transitional accounting period plus the whole of the next ***accounting period***; or

(d) deliver a report under the Accountant's Report Rules 1991 to cover the last complete ***accounting period*** during which the practice operated the Solicitors' Accounts Rules 1991 plus that part of the transitional accounting period during which the practice continued to operate those rules; and subsequently a report under Part F of these rules to cover the remaining part of the transitional accounting period.

Appendix 3: Guidelines for accounting procedures and systems

1. **Introduction**

1.1 These guidelines, published under rule 29 of the Solicitors' Accounts Rules 1998, are intended to be a benchmark or broad statement of good practice requirements which should be present in an effective regime for the proper control of client money and controlled trust money. They should therefore be of positive assistance to firms in establishing or reviewing appropriate procedures and systems. They do not override, or detract from the need to comply fully with, the Accounts Rules.

1.2. It should be noted that these guidelines apply equally to client money and to controlled trust money.

1.3 References to partners or firms in the guidelines are intended to include sole practitioners, recognised bodies and their directors (in the case of a company) or members (in the case of a limited liability partnership).

2. General

2.1 Compliance with the Accounts Rules is the equal responsibility of all partners in a firm. They should establish policies and systems to ensure that the firm complies fully with the rules. Responsibility for day to day supervision may be delegated to one or more partners to enable effective control to be exercised. Delegation of total responsibility to a cashier or book-keeper is not acceptable.

2.2 The firm should hold a copy of the current version of the Solicitors' Accounts Rules and/or have ready access to the current online version. The person who maintains the books of account must have a full knowledge of the requirements of the rules and the accounting requirements of solicitors' firms.

2.3 Proper books of account should be maintained on the double-entry principle. They should be legible, up to date and contain narratives with the entries which identify and/or provide adequate information about the transaction. Entries should be made in chronological order and the current balance should be shown on client ledger accounts, or be readily ascertainable, in accordance with rule 32(5).

2.4 Ledger accounts for clients, other persons or controlled trusts should include the name of the client or other person or controlled trust and contain a heading which provides a description of the matter or transaction.

2.5 Separate designated client accounts should be brought within the ambit of the systems and procedures for the control of client money and controlled trust money – including reconciliations (see 5.4 below).

2.6 Manual systems for recording client money and controlled trust money are capable of complying with these guidelines and there is no requirement on firms to adopt computerised systems. A computer system, with suitable support procedures will, however, usually provide an efficient means of producing the accounts and associated control information.

2.7 If a computer system is introduced care must be taken to ensure:

(1) that balances transferred from the old books of account are reconciled with the opening balances held on the new system before day to day operation commences;

(2) that the new system operates correctly before the old system is abandoned. This may require a period of parallel running of the old and new systems and the satisfactory reconciliation of the two sets of records before the old system ceases.

2.8 The firm should ensure that office account entries in relation to each client or controlled trust matter are maintained up to date as well as the client account entries. Credit balances on office account in respect of client or controlled trust matters should be fully investigated.

2.9 The firm should operate a system to identify promptly situations which may require the payment of deposit interest to clients.

3. Receipt of client money and controlled trust money

3.1 The firm should have procedures for identifying client money and controlled trust money, including cash, when received in the firm, and for promptly recording the receipt of the money either in the books of account or a register for later posting to the client cash book and ledger accounts. The procedures should cover money received through the post, electronically or direct by fee earners or other personnel. They should also cover the safekeeping of money prior to payment to bank.

3.2 The firm should have a system which ensures that client money and controlled trust money is paid promptly into a client account.

3.3 The firm should have a system for identifying money which should not be in a client account and for transferring it without delay.

3.4 The firm should determine a policy and operate a system for dealing with money which is a mixture of office money and client money (or controlled trust money), in compliance with rules 19-21.

4. Payments from client account

4.1 The firm should have clear procedures for ensuring that all withdrawals from client accounts are properly authorised. In particular, suitable persons, consistent with rule 23(1), should be named for the following purposes:

(1) authorisation of internal payment vouchers;

(2) signing client account cheques;

(3) authorising telegraphic or electronic transfers.

No other personnel should be allowed to authorise or sign the documents.

4.1.A The firm should establish clear procedures and systems for ensuring that persons permitted to authorise the withdrawal of client money from a client account have an appropriate understanding of the requirements of the rules.

4.1.B The firm should establish clear procedures and systems for ensuring compliance with the requirement in rule 23(1A) for a second signature when an authority is signed by a non-lawyer manager in charge of the firm's accounts department.

4.2 Persons nominated for the purpose of authorising internal payment vouchers should, for each payment, ensure there is supporting evidence showing clearly the reason for the payment, and the date of it. Similarly, persons signing cheques and authorising transfers should ensure there is a suitable voucher or other supporting evidence to support the payment.

4.3 The firm should have a system for checking the balances on client ledger accounts to ensure no debit balances occur. Where payments are to be made other than out of cleared funds, clear policies and procedures must be in place to ensure that adequate risk assessment is applied.

N.B. If incoming payments are ultimately dishonoured, a debit balance will arise, in breach of the rules, and full replacement of the shortfall will be required under rule 7. See also rule 22, notes (v) and (vi).

4.4 The firm should establish systems for the transfer of costs from client account to office account in accordance with rule 19(2) and (3). Normally transfers should be made only on the basis of rendering a bill or written notification. The payment from the client account should be by way of a cheque or transfer in favour of the firm or sole principal – see rule 23(3).

4.5 The firm should establish policies and operate systems to control and record accurately any transfers between clients of the firm. Where these arise as a result of loans between clients, the written authority of both the lender and borrower must be obtained in accordance with rule 30(2).

5. Overall control of client accounts

5.1 The firm should maintain control of all its bank and building society accounts opened for the purpose of holding client money and controlled trust money. In the case of a joint account, a suitable degree of control should be exercised.

5.2 Central records or central registers must be kept in respect of:

(1) accounts held for client money, or controlled trust money, which are not client accounts (rules 16(1)(a), 18(c) and 32(11));

(2) practice as a liquidator, trustee in bankruptcy, Court of Protection receiver or trustee of an occupational pension scheme (rules 9 and 32(12));

(3) joint accounts (rules 10 and 32(13));

(4) dividend payments received by a recognised body as nominee (rules 31(2) and 32(14)); and

(5) clients' own accounts (rules 11, 16(1)(b) and 33(2)).

5.3 In addition, there should be a master list of all:

- general client accounts;
- separate designated client accounts;
- accounts held in respect of 5.2 above; and
- office accounts.

The master list should show the current status of each account; e.g. currently in operation or closed with date of closure.

5.4 The firm should operate a system to ensure that accurate reconciliations of the client accounts, whether comprising client and/or controlled trust money, are carried out at least every five weeks or, in the case of passbook-operated separate designated client accounts for controlled trust money, every 14 weeks. In particular it should ensure that:

(1) a full list of client ledger balances is produced. Any debit balances should be listed, fully investigated and rectified immediately. The total of any debit balances cannot be "netted off" against the total of credit balances;

(2) a full list of unpresented cheques is produced;

(3) a list of outstanding lodgements is produced;

(4) formal statements are produced reconciling the client account cash book balances, aggregate client ledger balances and the client bank accounts. All unresolved differences must be investigated and, where appropriate, corrective action taken;

(5) a partner checks the reconciliation statement and any corrective action, and ensures that enquiries are made into any unusual or apparently unsatisfactory items or still unresolved matters.

5.5 Where a computerised system is used, the firm should have clear policies, systems and procedures to control access to client accounts by determining the personnel who should have "write to" and "read only" access. Passwords should be held confidentially by designated personnel and changed regularly to maintain security. Access to the system should not unreasonably be restricted to a single person nor should more people than necessary be given access.

5.6 The firm should establish policies and systems for the retention of the accounting records to ensure:

- books of account, reconciliations, bills, bank statements and passbooks are kept for at least 6 years;

- paid cheques, digital images of paid cheques and other authorities for the withdrawal of money from a client account are kept for at least 2 years;

- other vouchers and internal expenditure authorisation documents relating directly to entries in the client account books are kept for at least two years.

5.7 The firm should ensure that unused client account cheques are stored securely to prevent unauthorised access. Blank cheques should not be pre-signed. Any cancelled cheques should be retained.