

Draft SRA Accounts Rules (Annex D)

Authority: made under sections 32, 33A, 34 and 37 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985, sections 83(5)(h) and 93 of, and paragraph 20 of Schedule 11 to, the Legal Services Act 2007 with the approval of the Legal Services Board;

date: 22nd July 1998;

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, recognised bodies and their managers and employees, and licensed bodies and their managers and employees, in respect of practice in England and Wales; and

regulating: the accounts of solicitors, lawyer-controlled recognised bodies and their managers, lawyers of England and Wales who are managers of overseas law firms controlled by lawyers of England and Wales, solicitors who are named trustees, and managers of a lawyer-controlled recognised body who are named trustees, in respect of practice outside the UK; and

regulating: the accounts of solicitors and registered European lawyers, lawyer-controlled and registered European lawyer-controlled recognised bodies and their managers, lawyer of England and Wales and registered European lawyer managers of overseas law firms controlled by lawyers of England and Wales and/or registered European lawyers, solicitors and registered European lawyers who are named trustees, and managers of a lawyer-controlled recognised body or a registered European lawyer-controlled body who are named trustees, in respect of practice from Scotland or Northern Ireland.

For the definition of words in italics in Parts A-F see rule 2 - Interpretation. For the definition of words in italics in Part G see rule 51 - Application and Interpretation (overseas provisions).

Introduction

The Principles set out in the Handbook apply to all aspects of practice, including the handling of client money. Those which are particularly relevant to these rules are that you must:

- protect client money and assets;
- act with integrity;

- behave in a way that maintains the trust the public places in you and in the provision of legal services;
- comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner; and
- run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles.

The desired outcomes which apply to these rules are that:

- client money is safe;
- clients and the public have confidence that client money held by firms will be safe;
- firms are managed in such a way, and with appropriate systems and procedures in place, so as to safeguard client money;
- client accounts are used for appropriate purposes only; and
- the SRA is aware of issues in a firm relevant to the protection of client money.

Underlying principles which are specific to the accounts rules are set out in rule 1 below.

These rules apply to all those who carry on or work in a firm and to the firm itself (see rules 4 and 5). In relation to a multi-disciplinary practice, the rules apply only in respect of those activities for which the practice is regulated by the SRA, and are concerned only with money handled by the practice which relates to those regulated activities.

Part A - General

Rule 1 - The overarching objective and underlying principles

- (1) The purpose of these rules is to keep *client money* safe. This aim must always be borne in mind in the application of these rules.
- (2) You must comply with the Principles set out in the Handbook, and the outcomes in Chapter 7 of the *Code of Conduct* in relation to the effective financial management of the *firm*, and in particular must:
 - (a) keep other people's money separate from money belonging to *you* or *your firm*;
 - (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);
 - (c) use each *client's* money for that *client's* matters only;
 - (d) use money held as *trustee* of a *trust* for the purposes of that *trust* only;
 - (e) establish and maintain proper accounting systems, and proper internal controls over those systems, to ensure compliance with the rules;
 - (f) keep proper accounting records to show accurately the position with regard to the money held for each *client*

and *trust*;

- (g) account for *interest* on other people's money in accordance with the rules;
- (h) co-operate with the *SRA* in checking compliance with the rules; and
- (i) deliver annual accountant's reports as required by the rules.

Rule 2 - Interpretation

- (1) The guidance notes do not form part of the rules.
- (2) In Parts A to F of these 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, or designated as an approved regulator by an order under paragraph 17 of that Schedule;
 - (bb) "authorised non-SRA firm" means a *firm* which is authorised to carry on legal activities by an *approved regulator* other than the *SRA*;
 - (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 *you* act;
 - (f) "client account" has the meaning given in rule 14(2);
 - (g) "client money" has the meaning given in rule 13;
 - (h) [deleted]
 - (i) [deleted]
 - (ia) "Code of Conduct" means the *SRA Code of Conduct*;
 - (ib) "COFA" means the compliance officer for finance and administration as defined in rule 1 of the *SRA Authorisation Rules*;
 - (j) "costs" means *your 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 date of the

Mental Capacity Act 2005;

- (k)** "disbursement" means, in respect of those activities for which the practice is regulated by the *SRA*, any sum spent or to be spent on behalf of the *client* or *trust* (including any VAT element);
- (l)** "fees" means *your own* charges or profit costs (including any VAT element);
- (la)** "firm" means a sole practitioner, *partnership*, *LLP* or company;
- (m)** "general client account" has the meaning given in rule 14(5)(b);
- (ma)** "interest" includes a sum in lieu of interest;
- (mai)** "lawyer" includes a barrister, notary, legal executive, licensed conveyancer, patent agent, trade mark agent or costs draftsman;
- (maii)** "licensed body" means a body licensed by the *SRA* under Part 5 of the Legal Services Act 2007;
- (maiii)** "licensed non-SRA firm" means a *firm* which is not licensed to practise by the *SRA* but is licensed to practise by another *licensing authority*;
- (maiv)** "licensing authority" means an *approved regulator* which is designated as a licensing authority under Part 1 of Schedule 10 to the Legal Services Act 2007, and whose licensing rules have been approved for the purposes of the Act;
- (mb)** "LLP" means a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000;
- (mbi)** "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;
- (mc)** "manager" means:

 - (i)** a *partner* in a *partnership*;
 - (ii)** a member of an *LLP*; or
 - (iii)** a director of a company;
- (md)** "MDP" means a *licensed body* which is a multi-disciplinary practice providing a range of different services, some only of which are regulated by the *SRA*;
- (n)** "mixed payment" has the meaning given in rule 20(1);
- (o)** "non-solicitor employer" means any employer other than a *recognised body*, *recognised sole practitioner*, *licensed body*, *authorised non-SRA firm* or *licensed non-SRA firm*;
- (p)** "office account" means an account of the *firm* for holding *office money* and/or *out-of-scope money*, or other means of holding

office money or *out-of-scope money* (for example, the office cash box or an account holding money regulated by a regulator other than the *SRA*);

- (q)** "office money" has the meaning given in rule 13;
- (qa)** "out-of-scope money" means money held or received by an *MDP* in relation to those activities for which it is not regulated by the *SRA*;
- (qb)** "partner" means a person who is or is held out as a partner in an unincorporated practice;
- (qc)** "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*;
- (r)** "principal" means:
 - (i)** a sole practitioner;
 - (ii)** a *partner* in a *partnership*;
 - (iia)** in the case of a *recognised body* which is an *LLP* or company, the *recognised body* itself;
 - (iib)** in the case of a *licensed body* which is an *LLP* or company, the *licensed body* itself;
 - (iii)** the principal *solicitor* or *registered European lawyer* (or any one of them) employed by a *non-solicitor employer* (for example, in a law centre or in commerce and industry);
- (ra)** "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;
- (s)** "professional disbursement" means, in respect of those activities for which the practice is regulated by the *SRA*, the fees of counsel or other lawyer, or of a professional or other agent or expert instructed by *you*, including the fees of interpreters, translators, process servers, surveyors and estate agents but not travel agents' charges;
- (t)** "recognised body" has the meaning given in Chapter 14 of the *Code of Conduct*;
- (ta)** "recognised sole practitioner" has the meaning given in Chapter 14 of the *Code of Conduct*;
- (tb)** "registered European lawyer" means an individual registered with the *SRA* under regulation 17 of the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000 no. 1119);

- (u)** "registered foreign lawyer" means an individual registered with the 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)** [deleted]
- (x)** "solicitor" means an individual who is a solicitor of the Senior Courts of England and Wales;
- (xa)** [deleted]
- (xb)** [deleted]
- (xc)** "SRA" means the Solicitors Regulation Authority, and reference to the SRA as an *approved regulator* or *licensing authority* means the SRA carrying out regulatory functions assigned to the Law Society as an *approved regulator* or *licensing authority*;
- (xd)** "statutory undertakers" means:
 - (i)** 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
 - (ii)** 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;
- (y)** "trustee" includes a personal representative (i.e. an executor or an administrator), and "trust" includes the duties of a personal representative;
- (z)** "without delay" means, in normal circumstances, either on the day of receipt or on the next working day; and
- (za)** "you" means:
 - (i)** a *solicitor*, or
 - (ii)** a *registered European lawyer*,

in either case who is:

- (A)** a sole practitioner;

- (B) a *partner* in a *partnership* which is a *recognised body, licensed body, authorised non-SRA firm or licensed non-SRA firm*, or in a *partnership* which should be a *recognised body* but has not been recognised by the SRA;
 - (C) an assistant, associate, professional support lawyer, consultant, locum or person otherwise employed in the practice of a *recognised body, licensed body, recognised sole practitioner, authorised non-SRA firm or licensed 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; and "employed" in this context shall be interpreted in accordance with the definition of "employee" in the *Code of Conduct*;
 - (D) employed as an in-house lawyer by a *non-solicitor employer* (for example, in a law centre or in commerce and industry);
 - (E) a director of a company which is a *recognised body, licensed body, authorised non-SRA firm or licensed non-SRA firm*, or of a company which is a *manager* of a *recognised body, licensed body, authorised non-SRA firm or licensed non-SRA firm*;
 - (F) a member of an *LLP* which is a *recognised body, licensed body, authorised non-SRA firm or licensed non-SRA firm*, or of an *LLP* which is a *manager* of a *recognised body, licensed body, authorised non-SRA firm or licensed non-SRA firm*; or
 - (G) a *partner* in a *partnership* with separate legal personality which is a *manager* of a *recognised body, licensed body, authorised non-SRA firm or licensed non-SRA firm*;
- (iii) a *registered foreign lawyer* practising:
- (A) as a *partner* in a *partnership* which is a *recognised body, licensed body, authorised non-SRA firm or licensed non-SRA firm*, or in a *partnership* which should be a *recognised*

body but has not been recognised by the SRA;

- (B)** as the director of a company which is a *recognised body, licensed body, authorised non-SRA firm* or *licensed non-SRA firm*, or as the director of a company which is a *manager* of a *recognised body, licensed body, authorised non-SRA firm* or *licensed non-SRA firm*;
- (C)** as a member of an *LLP* which is a *recognised body, licensed body, authorised non-SRA firm* or *licensed non-SRA firm*, or as a member of an *LLP* which is a *manager* of a *recognised body, licensed body, authorised non-SRA firm* or *licensed non-SRA firm*;
- (D)** as a *partner* in a *partnership* with separate legal personality which is a *manager* of a *recognised body, licensed body, authorised non-SRA firm* or *licensed non-SRA firm*;
- (E)** as an employee of a *recognised body, licensed 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*;

(iva) a *licensed body*;

(v) a *manager* or employee of a *recognised body* or *licensed body*, or of a *partnership* which should be a *recognised body* but has not been authorised by the SRA; or

(vi) an employee 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;

and "you" includes "your" as appropriate.

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

Guidance notes

- (i) The effect of the definition of "you" in rule 2(2)(za) is that the rules apply equally to all those who carry on or work in a firm and to the firm itself. See also rule 4 (persons governed by the rules) and rule 5 (persons exempt from the rules).
- (ii) [deleted]
- (iii) [deleted]
- (iv) [deleted]
- (v) [deleted]
- (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. Out-of-scope money can be held in an office account (which could be an account regulated by another regulator); it must not be held in a client account.
- (vii) An index is attached to the rules but it does not form part of the rules. 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 do not form part of the rules but are included to help solicitors and their staff find their way about the rules. [moved from note (xiii) to rule 13]

Rule 3 - Geographical scope

Parts A to F of these rules apply to practice carried on from an office in England and Wales. Part G of these rules applies to practice carried on from an office outside England and Wales.

Rule 4 - Persons governed by the rules

- (1) Save as provided in paragraph (1A) below, Parts A to F of these rules apply to *you*.
- (1A) In relation to an *MDP*, the rules apply to *you* only in respect of those activities for which the *MDP* is regulated by the *SRA*.
- (2) Part F of the rules (accountants' reports) also applies to reporting accountants.
- (3) If *you* have held or received *client money*, but no longer do so, whether or not *you* continue in practice, *you* continue to be bound by some of the

rules.

Guidance notes

- (i) "You" is defined in rule 2(2)(za). All employees of a recognised body or licensed body are directly subject to the rules, following changes made by the Legal Services Act 2007. All employees of a recognised sole practitioner are also directly subject to the rules under 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 Disciplinary Tribunal under section 43 of the Solicitors Act 1974 imposing restrictions on his or her employment.
- (ii) Rules which continue to apply to you where you no longer hold client money include:
- rule 7 (duty to remedy breaches);
 - rules 19(2) and (8), rule 32(8) to (15) and rule 33 (retention of records);
 - rule 34 (production of records);
 - Part F (accountants' reports), and in particular rule 35 and rule 36(5) (delivery of final report), and rule 38(2) and rule 46 (completion of checklist).
- (iii) The rules do not cover trusteeships carried on in a purely personal capacity outside any legal practice. It will normally be clear from the terms of the appointment whether you are being appointed in a purely personal capacity or in your professional capacity. If you are charging for the work, it is clearly being done in a professional capacity. 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 will need to 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.

- (v) A licensed body may undertake a range of services, comprising both "traditional" legal services and other, related, services of a non-legal nature, for example, where a solicitor, estate agent and surveyor set up in practice together. Where a licensed body practises in this way (an MDP), only some of the services it provides (reserved and other legal activities, and other activities which are subject to one or more conditions on the body's licence) are within the regulatory reach of the SRA. Other, "non-legal", activities of the licensed body may be regulated by another regulator, and some activities may not fall within the regulatory ambit of any regulator.

Rule 5 - Persons exempt from the rules

The rules do not apply to *you* when:

- (a) 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) practising as the Solicitor of the City of London; or

- (c) carrying out the functions of:
 - (i) a coroner or other judicial office; or
 - (ii) a sheriff or under-sheriff; or

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

Guidance notes

- (i) [deleted]
- (ii) [deleted]

- (iii) A person practising as a manager or employee of an authorised non-SRA firm, or licensed non-SRA firm, is exempt from the Accounts Rules when 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 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 *firm* must ensure compliance with the rules by the *principals* themselves and by everyone employed in the *firm*. This duty also extends to the directors of a *recognised body* or *licensed body* which is a company, or to the members of a *recognised body* or *licensed body* which is an *LLP*. It also extends to the *COFA* of a *firm* (whether a *manager* or non-*manager*).

Guidance note

Rule 8.5(c) of the SRA Authorisation Rules requires all firms to have a COFA. The appointment of a COFA satisfies the requirement under section 92 of the Legal Services Act 2007 for a licensed body to appoint a Head of Finance and Administration. Under rule 6 of the accounts rules, the COFA must ensure compliance with the accounts rules. This obligation is in addition to, not instead of, the duty of all the principals to ensure compliance (the COFA may be subject to this duty both as COFA and as a principal). Under rule 8.5(d) of the SRA Authorisation Rules, the COFA must report any breaches of the accounts rules to the SRA as soon as reasonably practicable. (See also outcomes 3 and 4 of Chapter 10 of the Code of Conduct in relation to the general duty to report serious financial difficulty or serious misconduct.)

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 *firm*. This duty extends to replacing missing *client money* from the *principals'* own resources, even if the money has been misappropriated by an employee or another *principal*, and whether or not a claim is subsequently made on the *firm's* insurance or the Compensation Fund.

Rule 8 - [repealed]

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

- (1) If in the course of practice *you* act 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),

you must comply with:

- (a) the appropriate statutory rules or regulations;
- (b) the Principles referred to, and the underlying 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 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 *firm'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 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), *you* must comply with the Accounts Rules in all respects in relation to that money.

Guidance 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 liquidators, trustees in bankruptcy, 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 Accounts Rules apply to that money for the time it is so held (see rule 9(3) and (4)).

Rule 10 - Joint accounts

- (1) If, when acting in a *client's* matter, *you* hold or receive money jointly with the *client*, another practice or another third party, the rules in general do not apply, but the following must be complied with:
 - (ai) rule 32(6A) - statements from banks, building societies and other financial institutions;
 - (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.

A joint account is not a *client account* but money held in a joint account is *client money*.

Operation of the joint account by you only

- (2) If the joint account is operated only by *you*, *you* must ensure that *you* receive the statements from the *bank*, *building society* or other financial institution in accordance with rule 32(6A), and have possession of any passbooks.

Shared operation of the joint account

- (3) If *you* share the operation of the joint account with the *client*, another practice or another third party, *you* must:
 - (a) ensure that *you* receive the statements or duplicate statements from the *bank*, *building society* or other financial institution in accordance with rule 32(6A), and retain them in accordance with rule 32(9)(b)(ii); and
 - (b) ensure that *you* either have possession of any passbooks, or take copies of the passbook entries before handing any passbook to the other signatory, and retain 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, *you* must ensure that *you* receive the statements or duplicate statements from the *bank, building society* or other financial institution in accordance with rule 32(6A), and retain them in accordance with rule 32(9)(b)(ii).

Rule 11 - Operation of a client's own account

- (1) If, in the course of practice, *you* operate a *client's* own account as signatory (for example, as donee 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 you only

- (2) If the account is operated by *you* only, *you* must ensure that *you* receive the statements from the *bank, building society* or other financial institution in accordance with rule 33, and have possession of any passbooks.

Shared operation of the account

- (3) If *you* share the operation of the account with the *client* or a co-attorney outside *your firm*, *you* must:
 - (a) ensure that *you* receive the statements or duplicate statements from the *bank, building society* or other financial institution and retain them in accordance with rule 33(1) to (3); and
 - (b) ensure that *you* either have possession of any passbooks, or take copies of the passbook entries before handing any passbook to the *client* or co-attorney, and retain them in accordance with rule 33(1) to (3).

Operation of the account for a limited purpose

- (4) If *you* are 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, *you* need not receive statements or possess passbooks, provided that *you* retain details of all cheques drawn or paid in, and retain copies of all passbook entries, relating to the transaction, and retain them in accordance with rule 33(1) and (2).

Application

- (5) This rule applies only to private practice. It does not cover money held or received by a donee of a power of attorney acting in a purely personal capacity outside any legal practice (see rule 4, notes (iii)-(iv)).
- (6) A "*client's own account*" covers all accounts in a *client's* own name, whether opened by the *client* himself or herself, or by *you* on the *client's* instructions under rule 16(1)(b). 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).

Guidance 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 you. If you close the account and receive the closing balance, this becomes client money subject to all the rules.
- (ii) Merely paying money into a client's own account, or helping the client to complete forms in relation to such an account, is not "operating" the account.
- (iii) If as executor you operate the deceased's account (whether before or after the grant of probate), you will be subject to the limited requirements of rule 11. If the account is subsequently transferred into your name, or a new account is opened in your name, you will have "held or received" client money and are then subject to all the rules.

Rule 12 - Firm's rights not affected

Nothing in these rules deprives *you* 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

- (1) These rules do not apply to *out-of-scope money*, save to the limited extent specified in the rules. All other 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 *office money*; or
 - (b) "*office money*" - money which belongs to *you* or *your firm*.
- (2) "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, *Court of Protection deputy* or trustee of an occupational pension scheme;
 - (b) for payment of unpaid *professional disbursements*;
 - (c) for payment of stamp duty land tax, Land Registry registration fees, telegraphic transfer fees and court fees (but see also guidance note (i)(c));
 - (d) as a payment on account of *costs* generally;
 - (e) as commission paid in respect of a *client*, unless the *client* has given *you* prior authority to retain it (see Chapter 1, outcome 15 and indicative behaviour 17 of the *Code of Conduct*);
 - (f) jointly with another person outside the *firm*.
- (3) 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 *you* 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.
- (4) An advance to a *client* which is paid into a *client account* under rule 15(2)(b) becomes *client money*.
- (5) A cheque in respect of damages and *costs*, made payable to the *client* but paid into a *client account* under rule 15(2)(e), becomes *client money*.
- (6) Endorsing a cheque or draft over to a *client* or employer in the course of practice amounts to receiving *client money*. Even if no other *client money* is held or received, *you* must comply with 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).
- (7) "Office money" includes:
- (a) money held or received in connection with running the *firm*; 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
 - (c) payments received in respect of:
 - (A) *fees* due to the *firm* 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 *firm*;
 - (C) *disbursements* incurred but not yet paid by the *firm*, but excluding unpaid *professional disbursements*;
 - (D) money paid for or towards an *agreed fee*; and
 - (d) money held in a *client account* and earmarked for costs under rule 19(3); and
 - (e) money held or received from the Legal Services Commission as a *regular payment* (see rule 21(2)).
- (8) If a *firm* 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 *firm* also acts for a lender, money held or received on behalf of the lender is *client money*.
 - (b) If the *firm* 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 *firm* acts for an assistant *solicitor*, consultant or non-solicitor employee, or (if it is a company) a director, or (if it is an *LLP*) a member, he or she is regarded as a *client* of the *firm*, and money received for him or her is *client money* - even if he or she conducts the matter personally.

Guidance notes

- (i)
 - (aa) [deleted]
 - (a) [deleted]
 - (b) [deleted]
 - (c) Money held or received for payment of stamp duty land tax, Land Registry registration fees, telegraphic transfer

fees and court fees is not office money because you have not incurred an obligation to HMRC, the Land Registry, the bank or the court to pay the duty or fee; (on the other hand, if you have already paid the duty or fee out of your own resources, or have received the service on credit, or the bank's charge for a telegraphic transfer forms part of your profit costs, payment subsequently received from the client will be office money;

(d) [deleted]

(e) [deleted]

(ii) [deleted]

(iii) Money held:

- o by liquidators, trustees in bankruptcy, Court of Protection deputies and trustees of occupational pension schemes;
- o jointly with another person outside the practice (for example, with a lay trustee, or with another firm);

is client money, subject to a limited application of the rules - see rules 9 and 10. The donee of a power of attorney, who operates the donor's own account, is also subject to a limited application of the rules (see rule 11), although money kept in the donor's own account is not "client money" because it is not "held or received" by the donee.

(iv) [deleted]

(v) [deleted]

(vi) [deleted]

(vii) [deleted]

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

(ix) [deleted - moved to note (iii)]

(x) Money held or received in the course of 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.

(xa) The receipt of out-of-scope money of an MDP which is mixed with other types of money is dealt with in rules 19 and 20.

(xi) [deleted]

- (xii) [deleted]
- (xiii) [moved to rule 2(2)(vii)] See Appendices 1 and 2 (which do not form part of the rules) for a summary of the effect of the rules and the treatment of different types of money.

Part B - Client money and operation of a client account

Rule 14 - Client accounts

- (1) If you hold or receive *client money*, you must keep one or more *client accounts* (unless all the *client money* is always dealt with outside any *client account* in accordance with rule 9, rule 10, 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*, in accordance with the requirements of this part of the rules.
- (3) The *client account(s)* of:
 - (a) a sole practitioner must be in the name under which the sole practitioner is recognised by the *SRA*, whether that is the sole practitioner's own name or the *firm* name;
 - (b) a *partnership* must be in the name under which the *partnership* is recognised by the *SRA*;
 - (c) an incorporated practice must be in the company name, or the name of the *LLP*, as registered at Companies House;
 - (d) in-house *solicitors* or *registered European lawyers* must be in the name of the current *principal solicitor/registered European lawyer* or *solicitors/registered European lawyers*;
 - (e) *trustees*, where all the *trustees* of a *trust* are *managers* and/or employees of the same *recognised body* or *licensed body*, must be either in the name of the *recognised body/licensed body* or in the name of the *trustee(s)*;
 - (f) *trustees*, where all the *trustees* of a *trust* are the sole practitioner and/or his or her employees, must be either in the name under which the sole practitioner is recognised by the *SRA* or in the name of the *trustee(s)*;

and the name of the account must also include the word "client" in full (an abbreviation is not acceptable).

- (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* 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 an account for money relating to a single *client*, other person or *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 *trust*; and
 - (b) a "*general client account*", which is any other *client account*.
- [(6) Before opening a *client account*, a *licensed body* must enter into a written agreement with the *bank* or *building society* acknowledging that the account will hold *client money*, and that the *bank* or *building society* shall not have any recourse or right against the money standing to its credit in respect of any liability of the *licensed body* to the *bank* or *building society*, other than a liability in connection with the account. This requirement must also be complied with by a *firm* which becomes a *licensed body*, whether opening new *client accounts* or using its existing *client accounts*. The *licensed body* must ensure that the agreement is kept on foot.] [New rule required if section 85 of the Solicitors Act 1974 is not extended to licensed bodies by an Order made under section 69 of the Legal Services Act 2007.]
- (7) The *clients* of a *licensed body* must be informed at the outset of the retainer, or during the course of the retainer as appropriate, if the *licensed body* is (or becomes) owned by a *bank* or *building society* and its *client account* is held at that *bank* or *building society* (or another *bank* or *building society* in the same group).
- (8) 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.

Guidance notes

- (i) [deleted]
- (ii) In the case of in-house practice, any client account should include the names of all solicitors or registered European lawyers held out on the notepaper as principals. The names of other employees who are solicitors or registered European lawyers may also be included if so desired. Any person whose name is included will have to be included on the accountant's report.
- (iii) [deleted]
- (iv) A firm may have any number of separate designated client accounts and general client accounts.
- (v) [deleted]
- (vi) Compliance with rule 14(1) to (4) ensures that clients [of a recognised body or recognised sole practitioner], as well as the bank or building

society, have the protection afforded by section 85 of the Solicitors Act 1974. [Rule 14(6) seeks to give protection, similar to that afforded by section 85, to clients of licensed bodies.] [Changes required if section 85 of the Solicitors Act 1974 is not extended to licensed bodies by an Order made under section 69 of the Legal Services Act 2007].

Rule 15 - Use of a client account

- (1) *Client 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 9, 10, 16, 17, 19 and 21).
- (2) Only *client money* may be paid into or held in a *client account*, except:
 - (a) an amount of the *firm's* own money required to open or maintain the account;
 - (b) an advance from the *firm* to fund a payment on behalf of a *client* or *trust* in excess of funds held for that *client* or *trust*; the sum becomes *client money* on payment into the account (for *interest* on *client money*, see rule 24(3)(e));
 - (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* on payment into the account;
 - (d) *interest* which is paid into a *client account* to enable payment from the *client account* of all money owed to the *client*; and
 - (e) a cheque in respect of damages and *costs*, made payable to the *client*, which is paid into the *client account* pursuant to the Law Society's Conditional Fee Agreement; the sum becomes *client money* on payment into the account (but see rule 19(1)(e) for the transfer of the *costs* element from *client account*);

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

- (3) *Client money* must be returned to the *client* (or other person on whose behalf the money is held) promptly, as soon as there is no longer any proper reason to retain those funds. Payments received after *you* have already accounted to the *client*, for example by way of a refund, must be paid to the *client* promptly.
- (4) *You* must promptly inform a *client* (or other person on whose behalf the money is held) in writing of the amount of any *client money* retained at the end of a matter (or the substantial conclusion of a matter), and the reason for that retention. *You* must inform the *client* (or other person) in writing at least once every twelve months thereafter of the amount of *client money* still held and the reason for the retention, for as long as *you* continue to hold that money.
- (5) *You* must not provide banking facilities through a *client account*. Payments into, and transfers or withdrawals from, a *client account* must be in respect of instructions relating to an underlying transaction (and the funds arising

therefrom) or to a service forming part of *your* normal regulated activities.

Guidance notes

- (i) [deleted]
- (ii) [deleted]
- (iii) Exceptions to rule 15(1)(client 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 17
 - - cash paid straight to client, beneficiary or third party;
 - - cheque endorsed to client, beneficiary or third party;
 - - money withheld from client account on the SRA's authority;
 - - money withheld from client account in accordance with a trustee's powers;
 - 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 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 regular payments are received 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) [deleted]
- (vii) If client money is invested in the purchase of assets other than money - such as stocks or shares - it ceases to be client money, because it is no longer money held by the firm. If the investment is subsequently sold, the money received is, again, client money. The records kept under rule 32 will need to include entries to show the purchase or sale of investments.

- (viii) [deleted]
- (ix) Rule 15(5) reflects decisions of the Solicitors Disciplinary Tribunal 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. It should be noted that any exemption under the Financial Services and Markets Act 2000 is likely to be lost if a deposit is taken in circumstances which do not form part of your practice. It should also be borne in mind that there are criminal sanctions against assisting money launderers.
- (x) As with rule 7 (Duty to remedy breaches), "promptly" in rule 15(3) and (4) is not defined but should be given its natural meaning in the particular circumstances. Accounting to a client for any surplus funds will often fall naturally at the end of a matter. Other retainers may be more protracted and, even when the principal work has been completed, funds may still be needed, for example, to cover outstanding work in a conveyancing transaction or to meet a tax liability. (See also paragraphs 4.6 and 4.7 of the Guidelines for accounting procedures and systems at Appendix 3.)
- (xi) There may be some instances when, during the course of a retainer, the specific purpose for which particular funds were paid no longer exists, for example, the need to instruct counsel or a medical expert. Rule 15(3) is concerned with returning funds to clients at the end of a matter (or the substantial conclusion of a matter) and is not intended to apply to ongoing retainers. However, in order to act in the best interests of your client, you may need to take instructions in such circumstances to ascertain, for instance, whether the money should be returned to the client or retained to cover the general funding or other aspects of the case.
- (xii) See rule 22(1)(ga)-(h) for withdrawals from a client account when the rightful owner of funds cannot be traced. The obligation to report regularly under rule 15(4) ceases to apply if you are no longer able to trace the client, at which point rule 22(1)(ga) or (h) would apply.

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

- (1) *Client money* may be:
 - (a) held by *you* outside a *client account* by, for example, retaining it in the *firm's* safe in the form of cash, or placing it in an account in the *firm'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 *you* 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 *you* 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*.
- (3) If a *client* instructs *you* 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*, before transferring the relevant part out and dealing with it in accordance with the *client's* instructions.
- (4) A payment on account of *costs* received from a person who is funding all or part of *your fees* may be withheld from a *client account* on the instructions of that person given in accordance with rule 16(1).

Guidance notes

- (i) [deleted]
- (ii) [deleted]
- (iii) Money withheld from a client account under rule 16(1)(a) remains client money, and all the record-keeping provisions of rule 32 will apply.
- (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, under rule 32, a record is required of your receipt of the money, and its payment into the account in the name of the client or designated person. If you can operate the account, rule 11 (operating a client's own account) and rule 33 (accounting records for clients' own accounts) will apply. In the absence of instructions to the contrary, rule 15(1) requires any money withdrawn to be paid into a client account.
- (v) Rule 32(9)(d) requires clients' instructions under rule 16(1) to be kept for at least six years.

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 SRA. The SRA may impose a condition that the money is paid to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received.

Guidance notes

- (i) [deleted]
- (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. (Money held by a trustee jointly with another party is subject only to the limited requirements of rule 10.)
- (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 Professional Ethics Guidance Team.

Rule 18 - [repealed]

Rule 19 - Receipt and transfer of costs

- (1) When *you* receive money paid in full or part settlement of *your* bill (or other notification of costs) **you must follow one of the following five options:**
 - (a) **determine the composition of the payment *without delay*, and deal with the money accordingly:**
 - (i) if the sum comprises *office money* and/or *out-of-scope money* only, it must be placed in an *office account*;

- (ii) if the sum comprises only *client money*, the entire sum must be placed in a *client account*;
 - (iii) if the sum includes both *office money* and *client money*, or *client money* and *out-of-scope money*, or *client money*, *out-of-scope money* and *office money*, you must follow rule 20 (receipt of mixed payments); **or**

- (b) **ascertain that the payment comprises only *office money* and/or *out-of-scope 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* and/or *out-of-scope 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); or**

- (e) **in relation to a cheque paid into a *client account* under rule 15(2)(e), transfer the costs element out of the *client account* within 14 days of receipt.**

- (2) If you properly require payment of *your fees* from money held for a *client* or *trust* in a *client account*, you 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 you have 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 in respect of those activities for which the practice is regulated by the SRA is *client money*, and must be held in a *client account* until you have complied with paragraph (2) above. (For an exception in the case of legal aid payments, see rule 21(1)(a). See also rule 20 on dealing with mixed payments of *client money* and/or *out-of-scope money* when part of a payment on account of *costs* relates to activities not regulated by the SRA.)

- (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.

- (6) You will not be in breach of rule 19 as a result of a misdirected electronic payment or other direct transfer from a *client* or paying third party, provided:
- (a) appropriate systems are in place to ensure compliance;
 - (b) appropriate instructions were given to the *client* or paying third party;
 - (c) the *client's* or paying third party's mistake is remedied promptly upon discovery; and
 - (d) appropriate steps are taken to avoid future errors by the *client* or paying third party.
- (7) 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 *trust*. Round sum withdrawals on account of *costs* are a breach of the rules.
- (8) In the case of a *trust* of which the only *trustee(s)* are within the *firm*, the paying party will be the *trustee(s)* themselves. You 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.).
- (9) 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*.

Guidance notes

- (i) [deleted]
- (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 you have 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 you 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 client money and out-of-scope money, or client money, out-of-scope money and office money, or is only office money and/or out-of-scope money.

- (iv)** If you are not in a position to comply with the requirements of rule 19(1)(b), you 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, you 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)** [deleted]
- (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 you are entitled to appropriate the money for costs. For example, the costs set out in a completion statement in a conveyancing transaction will become due on completion and should be transferred out of the client account within 14 days of completion in accordance with rule 19(3). The requirement to transfer costs out of the client account within a set time is intended to prevent costs being left on client account to conceal a shortage.
- (ixa)** Money is "earmarked" for costs under rule 19(2) and (3) when you decide to use funds already held in client account to settle your bill. If you wish to obtain the client's prior approval, you will need to agree the amount to be taken with your client before issuing the bill to avoid the possibility of failing to meet the 14 day time limit for making the transfer out of client account. If you wish to retain the funds, for example, as money on account of costs on another matter, you will need to ask the client to send the full amount in settlement of the bill. If, when submitting a bill, you fail to indicate whether you intend to take your costs from client account, or expect the client to make a payment, you will be regarded as having "earmarked" your costs.
- (x)** [deleted]
- (xa)** An amendment to section 69 of the Solicitors Act 1974 by the Legal Services Act 2007 permits a solicitor or recognised body to sue on a bill which has been signed electronically and which the client has

agreed can be delivered electronically.

- (xi) [deleted]
- (xii) [deleted]
- (xiii) The rules do not require a bill of costs for an agreed fee, although your 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).
- (xiv) The bill of an MDP may be in respect of costs for work of the SRA-regulated part of the practice, and also for work that falls outside the scope of SRA regulation. Money received in respect of the non-SRA regulated work, including money for disbursements, is out-of-scope money and must be dealt with in accordance with rule 19.
- (xv) See Chapter 1, indicative behaviour 18 of the Code of Conduct in relation to ensuring that disbursements included in a bill reflect the actual amount spent or to be spent.

Rule 20 - Receipt of mixed payments

- (1) A "mixed payment" is one which includes *client money* as well as *office money* and/or *out-of-scope 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* and/or *out-of-scope money* must be transferred out of the *client account* within 14 days of receipt.

Guidance notes

- (i) 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.
- (ii) See rule 21(1)(b) for (among other things) mixed payments received from the Legal Services Commission.
- (iii) Some out-of-scope money may be subject to the rules of other regulators which may require an earlier withdrawal from the client account operated under these rules.

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, which may include *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) standard 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) You 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 *you* 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 *you* or a previously nominated *firm* 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 *you* must be transferred to an *office account* within 14 days of *your* 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 *you*. The retained sum must be transferred to an *office account* within 14 days of notification.

- (4) Any part of a third party payment relating to unpaid *professional disbursements* or outstanding *costs* of the *client's* previous *firm* is *client money*, and must be kept in a *client account* until *you* pay the *professional disbursement* or outstanding *costs*.

Guidance 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 everyone, including legal aid practitioners.
- (ii) In cases carried out under public funding certificates, firms can apply for advance payments ("Payments on Account" under the Standard Civil Contract). The Legal Services Commission has agreed that these payments may be placed in office account.
- (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 you to comply with rule 19(1)(a) to (c), which are the options for everyone for the receipt of costs. For regular payments, see notes (viii) - (x) below.
- (iv) Firms 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) [deleted]
- (vi) [deleted]
- (vii) [deleted]
- (viii) Rule 21(2)(c) permits a firm, which is required to transfer an amount to cover unpaid professional disbursements into a client account, to make the transfer from its 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, you 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.
- (x) For the appropriate accounting records for regular payments, see rule 32(4C).

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 *you* 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 *you* 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 *you* 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;
 - (ga) money not covered by (a) to (g) above, where *you* comply with the conditions set out in rule 22(2A); or
 - (h) money not covered by (a) to (g) above, withdrawn from the account on the written authorisation of the *SRA*. The *SRA* may impose a condition that *you* pay the money to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received.

- (2) [deleted]
- (2A) A withdrawal of *client money* under paragraph (1)(ga) above may be made only where the amount held does not exceed £50 in relation to any one individual *client* or *trust* matter and *you*:
- (a) establish the identity of the owner of the money, or make reasonable attempts to do so;
 - (b) make adequate attempts to ascertain the proper destination of the money, and to return it to the rightful owner, unless the reasonable costs of doing so are likely to be excessive in relation to the amount held;
 - (c) pay the funds to a charity;
 - (d) record the steps taken in accordance with paragraphs (a)-(c) above and retain those records, together with all relevant documentation (including receipts from the charity), in accordance with rule 32(8A) and (9)(a); and
 - (e) keep a central register in accordance with rule 32(13A).
- (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 *your 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.
- (3A) *Out-of-scope money* must be withdrawn from a *client account* in accordance with rules 19(1)(a), 19(1)(c) and 20 as appropriate.
- (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 *trust* from a *general client account* must not exceed the money held on behalf of that *client* or *trust* in all *your general client accounts* (except as provided in paragraph (6) below).
- (6) You may make a payment in respect of a particular *client* or *trust* out of a *general client account*, even if no money (or insufficient money) is held for that *client* or *trust* in *your general client account(s)*, provided:
- (a) sufficient money is held for that *client* or *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 *trust* in a *separate designated client account* must not be used for payments for another *client* or *trust*.
- (8) A *client account* must not be overdrawn, except in the following circumstances:
 - (a) A *separate designated client account* operated in *your* capacity as *trustee* can be overdrawn if *you* 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, overdrawn *client accounts* can be operated in accordance with the rules to the extent of the money held in the frozen accounts.

Guidance notes

Withdrawals in favour of firm, and for payment of disbursements

- (i) Disbursements to be paid direct from a client account, or already paid out of your own money, can be withdrawn under rule 22(1)(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) at the time when you despatch a cheque, unless the cheque is to be held to your 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 your office account.
- (iii) See rule 23(3) for the way in which a withdrawal from a client account in your favour must be effected.

Cheques payable to banks, building societies, etc.

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

Drawing against uncleared cheques

- (v) You 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)). You may be able to avoid a breach of the rules by instructing the bank or

building society to charge all unpaid credits to your office or personal account.

Non-receipt of electronic payments

- (vi) If you withdraw money from a general client account on the strength of information that an electronic payment is on its way, but the electronic payment does not arrive, you 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 where the rightful owner cannot be traced, on the SRA's authorisation and without SRA authorisation

- (viii) Applications for authorisation under rule 22(1)(h) should be made to the Professional Ethics Guidance Team, who can advise on the criteria which must normally be met for authorisation to be given. You may under rule 22(1)(ga) pay to a charity sums of £50 or less per client or trust matter without the SRA's authorisation, provided the safeguards set out in rule 22(2A) are followed. You may, however, if you prefer, apply to the SRA for prior authorisation in all cases.
- (viiiia) You will need to apply to the SRA, whatever the amount involved, if the money to be withdrawn is not to be paid to a charity. This situation might arise, for example, if you have been unable to deliver a bill of costs because the client has become untraceable and so cannot make a transfer from client account to office account in accordance with rule 19(2)-(3).
- (ix) After a practice has been wound up, surplus balances are sometimes discovered in an old client account. This money remains subject to rule 22 and rule 23. An application can be made to the SRA under rule 22(1)(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 an appropriate person or persons in accordance with the *firm's* procedures for signing on *client account*. An authority for withdrawals from *client account* may be signed electronically, subject to appropriate safeguards and controls.
- (1A) *Firms* must put in place appropriate systems and procedures governing

withdrawals from *client account*, including who should be permitted by the *firm* to sign on *client account*. A non-manager owner or a non-employee owner of a *licensed body* is not an appropriate person to be the sole signatory on *client account* and must not be permitted by the *firm* to act in this way.

- (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 *your* favour must be either by way of a cheque, or by way of a transfer to the *office account* or to *your* personal account. The withdrawal must not be made in cash.

Guidance notes

- (a) A firm should select suitable people to authorise withdrawals from the client account. Firms will wish to consider whether any employee should be able to sign on client account, and whether signing rights should be given to all managers of the practice or limited to those managers directly involved in providing legal services. An appropriate understanding of the requirements of the rules is essential - see paragraph 4.1.A 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. It is of paramount importance that there are appropriate in-built safeguards, such as passwords, to give the greatest protection possible for client money. Suitable safeguards will also be needed for practices which operate a CHAPS terminal or other form of electronic instruction for payment.
- (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) [deleted]
- (v) If, in your capacity as trustee, you instruct an outside administrator to run, or continue to run, on a day to day basis, the business or property portfolio of an estate or trust, you 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) [deleted]

Land Registry application fees paid by "direct debit"

- (vii) You 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, a signature, which complies with the firm's systems and procedures set up under rule 23, 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. You 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 you fail 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), you will be in breach of rule 23(1) if the Land Registry takes a sum from your 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 you can comply with the rules, the Land Registry will need to contact you 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 you by telephone, and you wish to authorise an immediate payment by direct debit over the telephone, you 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 you decide 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. Your internal procedures would need to make it clear to unqualified staff how to deal with such situations; for example, whom 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 permitted by the firm to sign on client account.
- (xi)** You may decide to set up a direct debit system of payment on the office account because, for example, you do not wish to allow the Land Registry to have access to the firm's client account. Provided you are in funds, a transfer from the client account to the office account may be made under rule 22(1)(c) to reimburse you as soon as the direct debit has been taken.

- (xii) Variable "direct debit" payments to the Land Registry, as described in paragraphs (vii)-(xi) above, are not direct debits in the usual sense as each payment is authorised and confirmed individually. A traditional direct debit or standing order should not be set up on a client account because of the need for a specific authority for each withdrawal.

Part C - Interest

Rule 24 - When interest must be paid

- (1) When *you* hold money in a *client account* for a *client*, or for a person funding all or part of *your fees*, or for a *trust*, *you* must account to the *client* or that person or *trust* for *interest* when it is fair and reasonable to do so in all the circumstances. (This also applies if money should have been held in a *client account* but was not.)
- (2) [deleted]
- (3) *You* are not required to pay *interest*;
 - (a) [deleted]
 - (b) [deleted]
 - (c) on money held for the payment of a *professional disbursement*, once counsel etc. has requested a delay in settlement;
 - (d) on money held for the Legal Services Commission;
 - (e) on an advance from *you* 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) [deleted]
- (5) [deleted]
- (6) [deleted]
- (7) [deleted]
- (8) *You* must have a written policy on the payment of *interest*, which seeks to provide a fair outcome. The terms of the policy must be drawn to the attention of the *client* at the outset of a retainer, unless it is inappropriate to do so in the circumstances.

Guidance notes

Requirement to pay interest

- (ai) Money is normally held for a client as a necessary, but incidental, part of the retainer, to facilitate the carrying out of the client's

instructions. The main purpose of the rules is to keep that money safe and available for the purpose for which it was provided. The rules also seek to provide for the payment of a fair sum of interest, when appropriate, which is unlikely to be as high as that obtainable by the client depositing those funds.

- (aii)** An outcomes-focused approach has been adopted in this area, allowing firms the flexibility to set their own interest policies in order to achieve a fair outcome for both the client and the firm.
- (aiii)** In addition to your obligation under rule 24(8), it is good practice to explain your interest arrangements to clients. These will usually be based on client money being held in an instant access account to facilitate a transaction. Clients are unlikely to receive as much interest as might have been obtained had they held and invested the money themselves. A failure to explain the firm's policy on interest may lead to unrealistic expectations and, possibly, a complaint to the Legal Ombudsman.
- (aiv)** The Legal Services Act 2007 has abolished the distinction in the Solicitors Act 1974 between interest earned on client money held in a general client account or a separate designated client account, and therefore interest earned on the latter type of account is to be accounted for like interest on any other client money on a "fair and reasonable" basis.
- (av)** Some firms may wish to apply a de minimis by reference to the amount held and period for which it was held, for example, providing that no interest is payable if the amount calculated on the balance held is £20 or less. Any de minimis will need to be set at a reasonable level and regularly reviewed in the light of current interest rates.
- (avi)** It is likely to be appropriate for firms to account for all interest earned in some circumstances, for example, where substantial sums of money are held for lengthy periods of time.
- (avii)** If sums of money are held in relation to separate matters for the same client, it is normally appropriate to treat the money relating to the different matters separately but there may be cases when the matters are so closely related that they ought to be considered together, for example, when you are acting for a client in connection with numerous debt collection matters. Similarly, it may be fair and reasonable in the circumstances to aggregate sums of money held intermittently during the course of acting for a client.
- (i)** [deleted]
- (ii)** There is no requirement to pay 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 you or not) are not subject to rule 24, as the money is not held by you. All interest earned belongs to the client. The same applies to any account in the client's own name operated by you as

signatory under rule 11.

(iv) [deleted]

(v) [deleted]

(vi) [deleted]

Interest policy (rule 24(8))

(via) It is important that your clients should be aware of the terms of your interest policy. This should normally be covered at the outset of a retainer, although it may be unnecessary where you have acted for the client previously. It is open to you and your client to agree that interest will be dealt with in a different way (see rule 27).

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 you are 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 liquidators, etc. You 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 you hold 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 practice, the allocation of interest earned will depend on the agreement reached.

(x) [deleted]

Failure to pay interest

(xa) A client, including one of joint clients, or a person funding all or part of your fees, may complain to the Legal Ombudsman if he or she believes that 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 you before approaching the Legal Ombudsman.

Role of the reporting accountant

(xb) Paragraph 2.9 of the Guidelines for accounting procedures and

systems at Appendix 3 states the need for policies and systems in relation to the payment of interest.

- (xc) The reporting accountant does not check for compliance with the interest provisions but has a duty under rule 43 to report any substantial departures from the Guidelines discovered whilst carrying out work in preparation of the accountant's report. The accountant is not, however, required to determine the adequacy of a firm's interest policy (see rule 44(d)).

Rule 25 - Amount of interest

The *interest* paid must be a fair and reasonable sum calculated over the whole period for which the money is held.

Guidance notes

- (i) You will usually account to the client for interest at the conclusion of the client's matter, but might in some cases consider it appropriate to account to the client at intervals throughout.
- (ia) The sum paid by way of interest need not necessarily reflect the highest rate of interest obtainable but it is unlikely to be appropriate to look only at the lowest rate of interest obtainable. A firm's policy on the calculation of interest will need to take into account factors such as:
- the amount held;
 - the length of time for which cleared funds were held;
 - the need for instant access to the funds;
 - the rate of interest payable on the amount held in an instant access account at the bank or building society where the client account is kept;
 - the practice of the bank or building society where the client account is kept in relation to how often interest is compounded.
- (ib) A firm needs to have regard to the effect of the overall banking arrangements negotiated between it and the bank, on interest rates payable on individual balances. A fair sum of interest is unlikely to be achieved by applying interest rates which are set at an artificially low level to reflect, for example, more favourable terms in relation to the firm's office account.
- (ic) A firm might decide to apply a fixed rate of interest by reference, for example, to the base rate. In setting that rate, the firm would need to consider (and regularly review) the level of interest it actually receives on its client accounts, but also take into account its overall banking arrangements so far as they affect the rates received.
- (ii) When looking at the period over which 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:
 - o from the date when you receive incoming money in cash until the date when the outgoing cheque is sent;
 - o from the date when an incoming telegraphic transfer begins to earn interest until the date when the outgoing cheque is sent;
 - o 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) [deleted]

- (v) Rule 14(8) requires that 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 interest to be paid.

- (vi) For failure to pay a sufficient sum by way of interest, see note (xa) to rule 24.

Rule 26 - Interest on stakeholder money

When *you* hold money as stakeholder, *you* must pay *interest* on the basis set out in rule 24 to the person to whom the stake is paid, unless the parties have contracted out of this provision (see rule 27(2)).

Rule 27 - Contracting out

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

- (1A) *You* must act fairly towards *your clients* when entering into an agreement to depart from the *interest* provisions, including providing sufficient information at the outset to enable them to give informed consent.

- (2) When acting as stakeholder *you* may, by a written agreement with *your own client* and the other party to the transaction, come to a different arrangement as to the matters dealt with in rule 24.

Guidance notes

- (i) Whether it is appropriate to contract out depends on all the circumstances, for example, the size of the sum involved or the

nature, 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 you to show that a client who had accepted a contracting out provision was properly informed and had been treated fairly.

- (ia) Contracting out which on the face of it appears to be against the client's interests is permissible where the client has given informed consent. For example, some clients may wish to contract out for reasons related to their tax position or to comply with their religious beliefs.
- (ib) A firm which decides not to receive or pay interest, due to the religious beliefs of its principals, will need to ensure that clients are informed at the outset, so that they can choose to instruct another firm if the lack of interest is an issue for them.
- (ic) Another example of contracting out is when the client stipulates, and the firm agrees, that all interest earned should be paid to the client despite the terms of the firm's interest policy.
- (ii) In principle, you are 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 you retain the interest on the deposit to cover your 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 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 - [repealed]

Part D - Accounting systems and records

Rule 29 - Guidelines for accounting procedures and systems

The *SRA* may from time to time publish guidelines for accounting procedures and systems to

assist *you* to comply with Parts A to D of the rules, and *you* may be required to justify any departure from the guidelines.

Guidance 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 a written authority 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*.

- (3) If a *private loan* is to be made by (or to) joint *clients*, the consent of each *client* must be obtained.

Rule 31 - Executor, trustee or nominee companies

- (1) If *your firm* owns all the shares in a *recognised body* or a *licensed body* which is an executor, trustee or nominee company, *your firm* and the *recognised body* or *licensed body* must not operate shared *client accounts*, but may:
 - (a) use one set of accounting records for money held, received or paid by the *firm* and the *recognised body* or *licensed body*; and/or
 - (b) deliver a single accountant's report for both the *firm* and the *recognised body* or *licensed body*.

- (2) If such a *recognised body* or *licensed body* as nominee receives a dividend cheque made out to the *recognised body* or *licensed 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* or *licensed body* will have received (and paid) *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)).

Rule 32 - Accounting records for client accounts, etc.

Accounting records which must be kept

- (1) You must at all times keep accounting records properly written up to show your dealings with:
- (a) *client money* received, held or paid by you; including *client money* held outside a *client account* under rule 16(1)(a) or rule 17(ca); and
 - (b) [deleted]
 - (c) any *office money* relating to any *client* or *trust* matter.
- (2) All dealings with *client 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 *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 *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 *trust*).
- (4) All dealings with *office money* relating to any *client* matter, or to any *trust* matter, must be appropriately recorded in an office cash account and on the office side of the appropriate client ledger account.
- (4A) A cheque or draft received on behalf of a *client* and endorsed over, not passing through a *client account*, 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.

- (4B) Money which has been paid into a *client account* under rule 19(1)(c) (receipt of costs), or rule 20(2)(b) (mixed money), and for the time being remains in a *client account*, is to be treated as *client money*; it must be appropriately identified and recorded on the client side of the client ledger account.
- (4C) 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 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 must be appropriately identified and recorded on the office side of the client ledger account for the individual *client* or for the Legal Services Commission.
- (4D) *Client money* in a currency other than sterling must be held in a separate account for the appropriate currency, and you must keep separate books of account for that currency.

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.

Statements from banks, building societies and other financial institutions

- (6A) You must, at least every 5 weeks:
 - (a) obtain hard copy statements (or duplicate statements permitted in lieu of the originals by rule 10(3) or (4)) from *banks*, *building societies* or other financial institutions, or
 - (b) obtain and save in the *firm's* computerised accounting system, in a format which cannot be altered, an electronic version of the *bank's*, *building society's* or other financial institution's on-line record,

in respect of:

- (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 *you* hold *client money* under rule 16(1)(a) or rule 17(ca); and
- (iv) any *office account* maintained in relation to the *firm*;

and each statement or electronic version must begin at the end of the previous statement.

This provision does not apply in respect of passbook-operated accounts, nor in respect of the *office accounts* of an *MDP* operated solely for activities not subject to *SRA* regulation.

Reconciliations

- (7) *You* must, at least once every five weeks:
- (a) compare the balance on the client cash account(s) with the balances shown on the statements and passbooks (after allowing for all unrepresented items) of all *general client accounts* and *separate designated client accounts*, and of any account which is not a *client account* but in which *you* hold *client money* under rule 16(1)(a) or rule 17(ca), and any *client money* held by *you* 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 *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.
- (7A) Reconciliations must be carried out as they fall due, or at the latest by 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*, *you* must either obtain statements at least monthly or 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.
- (7B) All shortages must be shown. In making the comparisons under rule 32(7)(a) and (b), *you* must not, therefore, use credits of one *client* against debits of another when checking total client liabilities.

Bills and notifications of costs

- (8) *You* must keep readily accessible a central record or file of copies of:
- (a) all bills given or sent by *you* (other than those relating entirely to

activities not regulated by the *SRA*); and

- (b) all other written notifications of *costs* given or sent by *you* (other than those relating entirely to activities not regulated by the *SRA*).

Withdrawals under rule 22(1)(ga)

- (8A) If *you* withdraw *client money* under rule 22(1)(ga) *you* must keep a record of the steps taken in accordance with rule 22(2A)(a)-(c), together with all relevant documentation (including receipts from the charity).

Retention of records

- (9) *You* 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 (6) and (7) to (8A) above;
 - (b)
 - (bi) all statements required by paragraph (6A)(a) above and passbooks, as printed and issued by the *bank*, *building society* or other financial institution; and/or
 - (bii) all on-line records obtained and saved in electronic form under paragraph (6A)(b) above,

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 *you* hold *client money* under rule 16(1)(a) or rule 17(ca); and
 - (iv) [deleted]
 - (v) any *office account* maintained in relation to the practice, but not the *office accounts* of an *MDP* operated solely for activities not subject to *SRA* regulation;
- (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 *your* office;
- (d) any written instructions to withhold *client money* from a *client account* (or a copy of *your* confirmation of oral instructions) in accordance with rule 16;
- (e) any central registers kept under paragraphs (11) to (13A) below; and

- (f) any copy letters kept centrally under rule 31(2) (dividend cheques endorsed over by nominee company).
- (10) You 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 *your* 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 *your* behalf for that period and will, on demand by *you, your reporting accountant* or the *SRA*, produce copies of the digital images accompanied, when requested, by a certificate of verification signed by an authorised officer.
 - (c) The requirement to keep paid cheques under paragraph (b) above 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 rule 17(ca).
 - (d) Microfilmed copies of paid cheques are not acceptable for the purposes of paragraph (b) above. If a *bank, building society* or other financial institution is able to provide microfilmed copies only, *you* must obtain the original paid cheques from the *bank* etc. and retain them for at least two years.

Centrally kept records for certain accounts, etc.

- (11) Statements and passbooks for *client money* held outside a *client account* under rule 16(1)(a) or rule 17(ca) must be kept together centrally, or *you* 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 *you* 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 *you* must maintain a central register of all joint accounts.
- (13A) A central register of all withdrawals made under rule 22(1)(ga) must be kept, detailing the name of the *client*, other person or *trust* on whose behalf the money is held (if known), the amount, the name of the recipient charity and the date of the payment.

- (14) If a 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)(bi) 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 *you* 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*.

Guidance 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) 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) you in your capacity as a trustee when you instruct an outside 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 administrator keeps and retains appropriate accounting records, which are available for inspection by the SRA in accordance with rule 34. (See also note (v) to rule 23.)

- (iii)** A cheque made payable to a client, which is forwarded to the client by you, is not client money and falls outside the rules, although it is advisable to record the action taken. See rule 15(2)(e) for the treatment of a damages cheque, made payable to the client, which you pay into a client account under the Law Society's Conditional Fee Agreement.
- (iv)** [deleted]
- (v)** [deleted]
- (vi)** Some accounting systems do not retain a record of past daily balances. This does not put you 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 you do 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)** [deleted]
- (x)** [deleted]
- (xi)** [deleted]
- (xia)** Section 67 of the Solicitors Act 1974 permits a solicitor or recognised body to include on a bill of costs any disbursements which have been properly incurred but not paid before delivery of the bill, subject to those disbursements being described on the bill as unpaid.
- (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)** [deleted]
- (xiv)** [deleted]
- (xv)** You 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, you may take and keep your own digital images of paid cheques.

- (xvi) [deleted]
- (xvii) Certificates of verification in relation to digital images of cheques may on occasion be required by the 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.
- (xviii) These rules require an MDP to keep accounting records only in respect of those activities for which it is regulated by the SRA. Where an MDP acts for a client in a matter which includes activities regulated by the SRA, and activities outside the SRA's regulatory reach, the accounting records should record the MDP's dealings in respect of the SRA-regulated part of the client's matter. It may also be necessary to include in those records dealings with out-of-scope money where that money has been handled in connection with, or relates to, the SRA-regulated part of the transaction. An MDP is not required to maintain records in respect of client matters which relate entirely to activities not regulated by the SRA.

Rule 33 - Accounting records for clients' own accounts

- (1) When *you* operate a *client's* own account as signatory under rule 11, *you* 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.
- (1A) If *you* use on-line records made available by the *bank, building society* or other financial institution, *you* must save an electronic version in the *firm's* computerised accounting system in a format which cannot be altered. There is no obligation to keep a hard copy but the information recorded must be capable of being reproduced reasonably quickly in printed form for at least six years.
- (2) *You* must either keep these records together centrally, or maintain a central register of the accounts operated under rule 11.
- (3) If, when *you* cease to operate the account, the *client* requests the original statements or passbooks, *you* must take photocopies and keep them in lieu of the originals.
- (4) This rule applies only to private practice.

Part E - Monitoring and investigation by the SRA

Rule 34 - Production of documents, information and explanations

- (1) *You* must at the time and place fixed by the *SRA* produce to any person appointed by the *SRA* any records, papers, *client* and *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 post or document exchange to the most recent address held by the *SRA*'s Information Directorate, or sent electronically to the *firm*'s e-mail or fax address, or delivered by the *SRA*'s appointee. A notice under this rule is deemed to be duly served:
 - (a) on the date on which it is delivered to or left at your address;
 - (b) on the date on which it is sent electronically to your e-mail or fax address; or
 - (c) 48 hours (excluding Saturdays, Sundays and Bank Holidays) after it has been sent by post or document exchange.
- (3) Material kept electronically must be produced in the form required by the *SRA*'s appointee.
- (4) The *SRA*'s appointee is entitled to seek verification from *clients* and staff, and from the *banks*, *building societies* and other financial institutions used by *you*. *You* must, if necessary, provide written permission for the information to be given.
- (5) The *SRA*'s appointee is not entitled to take original documents away but must be provided with photocopies on request.
- (6) *You* must be prepared to explain and justify any departures from the Guidelines for accounting procedures and systems published by the *SRA* (see rule 29).
- (7) Any report made by the *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 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* 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 *SRA* in relation to a possible disqualification of a reporting accountant under rule 37(3).
- (8) Without prejudice to paragraph (1) above, *you* must produce documents relating to any account kept by *you* at a *bank* or with a *building society*:
 - (a) in connection with *your* practice; or

- (b) in connection with any *trust* of which *you* are or formerly were a *trustee*,

for inspection by a person appointed by the *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 of the Principles or other *SRA Handbook* requirements made or issued by the *SRA*. Paragraphs (2)-(7) above apply in relation to this paragraph in the same way as to paragraph (1).

Guidance notes

- (i) [deleted]
- (ii) The *SRA's* powers override any confidence or privilege between you and the client.
- (iii) The *SRA's* monitoring and investigation powers are exercised by Forensic Investigations.
- (iv) The *SRA* will normally give a brief statement of the reasons for its investigations and inspections but not if the *SRA* considers that there is a risk that disclosure could:
 - (a) breach any duty of confidentiality;
 - (b) disclose, or risk disclosure of, a confidential source of information;
 - (c) significantly increase the risk that those under investigation may destroy evidence, seek to influence witnesses, default, or abscond; or
 - (d) otherwise prejudice or frustrate an investigation or other regulatory action.

Part F - Accountants' reports

Rule 35 - Delivery of accountants' reports

- (1) If *you* have, at any time during an *accounting period*, held or received *client money*, or operated a *client's* own account as signatory, *you* must deliver to the *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 a company, or the members of 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.

Guidance notes

- (i) 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 your conduct 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 your conduct 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 firm 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)** 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 one of the ways set out in rule 2(2)(za)(iii).
- (iv)** The form of report is dealt with in rule 47.
- (v)** When client money is held or received by an unincorporated practice, the principals in the practice will have held or received client money. A salaried partner whose name 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", is a principal.
- (va)** In the case of an incorporated practice, it is the company or LLP (i.e. the recognised body or licensed body) which will have held or received client money. The recognised body/licensed body and its directors (in the case of a company) or members (in the case of 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, 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, consultant or other employee, it is the sole principal or the partners (rather than the assistant solicitor, consultant or other employee) who are regarded as having received and held the money. In the case of an incorporated practice, whether a

company or an LLP, it would be the recognised body or licensed body itself which would be regarded as having held or received the money.

- (vii) If, exceptionally, an assistant solicitor, consultant or other employee has a client account (as a trustee), or operates a client's own account as signatory, the assistant solicitor, consultant or other employee will have to deliver an accountant's report. The assistant solicitor, consultant or other employee can be included in the report of the practice, but will need to ensure that his or her name is added, and an explanation given.
- (viii) If a cheque or draft is made out to you, and in the course of practice you endorse it over to a client or employer, you have received (and paid) client money. You will have to deliver an accountant's report, even if no other client money has been held or received.
- (viiiia) Rule 35 does not apply to a solicitor or registered European lawyer, employed as an in-house lawyer by a non-solicitor employer, who operates the account of the employer or a related body of the employer.
- (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 Information Directorate.
- (x) If a firm owns all the shares in a recognised body or licensed body which is an executor, trustee or nominee company, the firm and the recognised body/licensed 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 *your* accounts 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) If *you* are under a duty to deliver *your* first report, the *accounting period* must begin on the date when *you* first held or received *client money* (or operated a *client's* own account as signatory), and may cover less than twelve months.
- (3) If *you* are under a duty to deliver *your* first report after a break, the *accounting period* must begin on the date when *you* for the first time after the break held or

received *client money* (or operated a *client's* own account as signatory), and may cover less than twelve months.

Change of accounting period

- (4) If *you* change the period for which *your* 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 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 *your* old *accounting period*.

Final reports

- (5) If *you* for any reason stop holding or receiving *client money* (and operating any *client's* own account as signatory), *you* must deliver a final report. The *accounting period* must end on the date upon which *you* stopped holding or receiving *client money* (and operating any *client's* own account as signatory), and may cover less than twelve months.

Guidance notes

- (i) In the case of persons joining or leaving a continuing partnership, any accountant's report for the firm as a whole will show the names and dates of the principals joining or leaving. For a person who did not previously hold or receive client money, etc., and has become a principal in the firm, the report for the firm will represent, from the date of joining, that person's first report for the purpose of rule 36(2). For a person who was a principal in the firm and, on leaving, stops holding or receiving client money, etc., the report for the firm will represent, up to the date of leaving, that person'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, you 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 SRA for authority to withdraw this money from the client account - see rule 22(1)(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 1239 of the Companies Act 2006; 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 1239 of the Companies Act 2006; or
 - (iv) a director or employee of a company which is a registered auditor within the terms of section 1239 of the Companies Act 2006; or
 - (v) a member or employee of an *LLP* which is a registered auditor within the terms of section 1239 of the Companies Act 2006.
- (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 an *LLP*) in the *firm* to which the report relates; or
 - (ii) he or she was employed by the same *non-solicitor employer* as the *solicitor* or *registered European lawyer* for whom the report is being made; or
 - (iii) 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 an *LLP*) in an accountancy practice which had an ownership interest in, or was part of the group structure of, the *licensed body* to which the report relates; 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 *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 *SRA* is satisfied that *you* have 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 *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 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 *firm* likely to be affected and may be printed in the Law Society's Gazette or other publication.

Guidance note

It is not a breach of the rules for you 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) *You* 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 SRA 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 licensed body, or employee of a solicitor or registered European lawyer, or manager or employee of a recognised body or licensed 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, licensed body, employee of a solicitor or registered European lawyer, or manager or employee of a recognised body or licensed 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 licensed body, or employee of a solicitor or registered European lawyer, or manager or employee of a recognised body or licensed 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 if required to do so under section 34(9) of the Solicitors Act 1974;
- (ii)** you may, and are encouraged to, make that report without prior reference to me/this firm/this company/this limited liability partnership;
- (iii)** you are to report directly to the 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;
- (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 SRA 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 Solicitors Regulation Authority on request;
- (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 Solicitors Regulation Authority on request; and
 - (vi) following any direct report made to the Solicitors Regulation Authority under (i) or (iii) above, you are to provide to the 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 (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 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 *you* and by the accountant. *You* 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 *SRA* on request.
- (3) The specified terms may be included in a letter from the accountant to *you* setting out the terms of the engagement but the text must be adapted appropriately. The letter must be signed in duplicate by both parties, with *you* keeping the original and the accountant the copy.

Guidance note

Any direct report by the accountant to the SRA under rule 38(1)(i) or (iii) should be made to the Fraud and Confidential Intelligence Bureau.

Rule 39 - Change of accountant

On instructing an accountancy practice to replace that previously instructed to produce accountant's reports, *you* must immediately notify the *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 *your* accounting records, files and other relevant documents must be *your* 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 *your* office.

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

The accountant must request, and *you* must provide, details of all accounts kept or operated by *you* in connection with *your* 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, and *clients' own accounts* operated by *you* as signatory.

Rule 42 - Test procedures

- (1) The accountant must examine *your* accounting records (including statements and passbooks), *client* and *trust* matter files selected by the accountant as and when appropriate, and other relevant documents, and make the following checks and tests:
- (a) confirm that the accounting system in every office 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) or *trust*;
- (ii) the client ledger accounts show separately from other information details of all *client money* received, held or paid on account of each *client* (or other person for whom *client money* is received, held or paid) or *trust*; and
- (iii) transactions relating to *client 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 *you*;
- (b) make test checks of postings to the client ledger accounts from records of receipts and payments of *client 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* or other financial institutions' statements or passbooks with *your* records of receipts and payments of *client money*, including paid cheques;
- (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 *you* 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 (executor, trustee or nominee companies); 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* (and other persons for whom *client money* is held) and *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* 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 *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 *you* in connection with the practice, to see whether any *client 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 *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;
- (na) for money withdrawn from *client account* under rule 22(1)(ga), check that records are being kept in accordance with rule 32(8A), (9)(a) and (13A), and cross-check with *client* or *trust* matter files when appropriate;
- (o) [deleted]
- (p) in the case of private practice only, check that for the period which will be covered by the accountant's report the *firm* was covered for the purposes of the SRA Indemnity Insurance Rules in respect of its offices in England and Wales by:
 - o certificates of qualifying insurance outside the assigned risks pool; or
 - o a policy issued by the assigned risks pool manager; or
 - o certificates of indemnity cover under the professional requirements of a *registered European lawyer's* home jurisdiction in accordance with paragraph 1 of Appendix 3 to those Rules, together with the *SRA's* written grant of full exemption; or
 - o certificates of 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 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 *you* use 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.

Guidance notes

- (i) The rules do not require a complete audit of your 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 your records accurately reflect the sums held at the bank. The accountant is not expected to conduct an active search for undisclosed accounts.
- (iv) In checking compliance with rule 22(1)(ga), the accountant should check on a sample basis that you have complied with rule 22(2A) and are keeping appropriate records in accordance with rules 32(8A), (9)(a) and (13A). The accountant is not expected to judge the adequacy of the steps taken to establish the identity of, and to trace, the rightful owner of the money.

Rule 43 - Departures from guidelines for accounting procedures and systems

The accountant should be aware of the 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 *you*;
- (b) to enquire into the stocks, shares, other securities or documents of title held by *you* on behalf of *your clients*;
- (c) to consider whether *your* accounting records 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 on *interest*, nor to determine the adequacy of *your interest* policy;

- (e) to make a detailed check on compliance with the guidelines for accounting procedures and systems (see rules 29 and 43); or
- (f) to determine the adequacy of the steps taken under paragraphs (a) and (b) of rule 22(2A).

Rule 45 - Privileged documents

When acting on a *client's* instructions, *you* 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.

Guidance note

In a recognised body or licensed 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 SRA. *You* must obtain the completed checklist, retain it for at least three years from the date of signature and produce it to the SRA on request.

Guidance notes

- (i) The current checklist appears at Appendix 4. It is issued by the SRA to firms 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 firm, to keep a copy for three years and to produce the copy to the SRA 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 SRA. An explanation of any significant difference between liabilities to *clients* and *client money* held, as identified at section 4 of the report, must be given by either the accountant or *you*.

Guidance notes

- (i) The current form of accountant's report appears at Appendix 5.
- (ii) The form of report is prepared and issued by the SRA to firms 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, consultants and other employees, see rule 35, notes (vi) and (vii).

- (iia) An incorporated practice will deliver only one report, on behalf of the company and its directors, or on behalf of the LLP and its members - see rule 35(1).
- (iii) Although it may be agreed that the accountant send the report direct to the SRA, the responsibility for delivery is that of the firm. The form of report requires the accountant to confirm that either a copy of the report has been sent to each of the 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/licensed body which is a company, or the members of a recognised body/licensed body which is 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) [deleted]
- (vii) Accountants' reports should be sent to the Information Directorate.
- (viii) For direct reporting by the accountant to the SRA in cases of concern, see rule 38 and note (i) to that rule.

Rule 48 - Firms with two or more places of business

If a *firm* 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 *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.

Guidance note

Applications for waivers should be made to the Information Directorate. In appropriate cases, firms 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 - Overseas practice

Rule 50 - Purpose of the overseas accounts provisions

The purpose of applying different accounts provisions to overseas practice is to ensure similar protection for *client money* but by way of rules which are more adaptable to conditions in other jurisdictions.

Rule 51 - Application and Interpretation

- (1) Part G of these rules applies to your practice from an office outside England and Wales to the extent specified in each rule in this Part. If compliance with any applicable provision of Part G of these rules would result in your breaching local law, you may disregard that provision to the extent necessary to comply with that local law.
- (2) In Part G of these rules:
 - (aa) "approved regulator" means any body listed as an approved regulator in paragraph 1 of Schedule 4 to the Legal Services Act 2007, or designated as an approved regulator by an order under paragraph 17 of that Schedule;
 - (a) "body corporate" means a company, an *LLP*, or a *partnership* which is a legal person in its own right;
 - (b) "client account" means an account at a bank or similar institution, subject to supervision by a public authority, which is used only for the purpose of holding *client money* and/or trust money, and the title or designation of which indicates that the funds in the account belong to the client or clients of a *solicitor* or REL or are held subject to a trust;
 - (c) "client money" means money received or held for or on behalf of a client or trust (but excluding money which is held or received by a multi-disciplinary practice - a *licensed body* providing a range of different services - in relation to those activities for which it is not regulated by the SRA);
 - (d) "Establishment Directive" means the Establishment of Lawyers Directive 98/5/EC;
 - (e) "Establishment Directive profession" means any profession listed in Article 1.2(a) of the *Establishment Directive*, including a *solicitor*,

barrister or advocate of the *UK*;

- (f) "firm" means any business through which a *solicitor* or *REL* carries on practice other than in-house practice;
- (g) "lawyer of England and Wales" means a *solicitor*, or an individual who is authorised to carry on legal activities in England and Wales by an *approved regulator* other than the *SRA*, but excludes a member of an *Establishment Directive profession* registered with the Bar Standards Board under the *Establishment Directive*;
- (ga) "lawyer-controlled recognised body or licensed body" means a *recognised body* or *licensed body* in which *lawyers of England and Wales* constitute the national group of lawyers with the largest (or equal largest) share of control of the *recognised body* or *licensed body* either as individual *managers* or by their share in the control of bodies which are *managers*; [moved from paragraph (v) with slight modification]
- (h) "licensed body" means a body licensed by the *SRA* under Part 5 of the Legal Services Act 2007;
- (i) "licensed non-SRA firm" means a *firm* which is not licensed to practise by the *SRA* but is licensed to practise by another *licensing authority*;
- (j) "licensing authority" means an *approved regulator* which is designated as a licensing authority under Part 1 of Schedule 10 to the Legal Services Act 2007, and whose licensing rules have been approved for the purposes of the Act;
- (k) "LLP" means a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000;
- (l) "manager" means a *partner* in a *partnership*, a member of an *LLP*, or a director of a company;
- (m) "non-lawyer" means:
 - (i) an individual who is not a lawyer practising as such; or
 - (ii) a *body corporate* or *partnership* which is not:
 - (ai) a *recognised body* or *licensed body*;
 - (aii) an authorised non-SRA *firm* or *licensed non-SRA firm*; or
 - (aiii) a business, carrying on the practice of lawyers from an office or offices outside England and Wales, in which a controlling majority of the *owners* and *managers* are lawyers;
- (n) "owner", in relation to a body, means a person with any ownership

interest in the body;

- (o) "partner" means a person who is or is held out as a partner in an unincorporated *firm*;
- (p) "partnership" means an unincorporated partnership, and includes any unincorporated *firm* in which persons are or are held out as *partners*, but does not include an *LLP*;
- (q) "practice from an office" includes practice carried on:
 - (i) from an office at which you are based; or
 - (ii) from an office of a *firm* in which you are the sole principal or a *manager*, or in which you have an ownership interest, even if you are not based there,

and "practising from an office" should be construed accordingly;

- (r) "recognised body" has the meaning given in Chapter 14 of the SRA Code of Conduct;
- (s) "REL (registered European lawyer)" means an individual registered with the SRA under regulation 17 of the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000 no. 1119);
- (t) "REL-controlled recognised body or licensed body" means a *recognised body* or *licensed body* in which *RELS*, or *RELS* together with *lawyers of England and Wales* and/or European lawyers registered with the Bar Standards Board, constitute the national group of lawyers with the largest (or equal largest) share of control of the *recognised body* or *licensed body* either as individual *managers* or by their share in the control of bodies which are *managers*, and for this purpose *RELS* and European lawyers registered with the Bar Standards Board belong to the national group of England and Wales;
- (u) "sole practitioner" means a *solicitor* or *REL* practising as a sole principal, and does not include a *solicitor* or *REL* practising in-house;
- (ua) "solicitor" means an individual who is a solicitor of the Senior Courts of England and Wales;
- (v) [deleted] [moved to new paragraph (ga) with slight modification];
- (w) "SRA" means the Solicitors Regulation Authority;
- (x) "UK" means United Kingdom.

Rule 52 - Interest

- (1) You must comply with (2) below, if you hold *client money* and you are:
 - (a) a *solicitor sole practitioner practising from an office* outside England and Wales, or an *REL sole practitioner practising from an office* in Scotland or Northern Ireland;

- (b) a *lawyer-controlled recognised body* or *licensed body* or (in relation to *practice from an office* in Scotland or Northern Ireland) a *lawyer-controlled recognised body* or *licensed body*, or an *REL-controlled recognised body* or *licensed body*;
 - (c) a *lawyer of England and Wales* who is a *manager* of a *firm* which is *practising from an office* outside the *UK*, and *lawyers of England and Wales* control the *firm*, either directly as *partners*, members or *owners*, or indirectly by their ownership of *bodies corporate* which are *partners*, members or *owners*; or
 - (d) a *lawyer of England and Wales* or *REL* who is a *manager* of a *firm* which is *practising from an office* in Scotland or Northern Ireland, and *lawyers of England and Wales* and/or *RELS* control the *firm*, either directly as *partners*, members or *owners*, or indirectly by their ownership of *bodies corporate* which are *partners*, members or *owners*.
- (2) If it is fair and reasonable for interest to be earned for the client on that *client money*, you must ensure that:
- (a) the *client money* is dealt with so that fair and reasonable interest is earned upon it, and that the interest is paid to the client;
 - (b) the client is paid a sum equivalent to the interest that would have been earned if the *client money* had earned fair and reasonable interest; or
 - (c) any alternative written agreement with the client setting out arrangements regarding the payment of interest on that money is carried out.
- (3) In deciding whether it is fair and reasonable for interest to be earned for a client on *client money*, you must have regard to all the circumstances, including:
- (a) the amount of the money;
 - (b) the length of time for which you are likely to hold the money; and
 - (c) the law and prevailing custom of lawyers practising in the jurisdiction in which you are practising.

Rule 53 - Accounts

Practice from an office outside the UK

- (1) You must comply with (3) and (4) below in relation to *practice from an office* outside the *UK* if you are:
 - (a) a *solicitor sole practitioner* who has held or received *client money*;
 - (b) a *lawyer-controlled recognised body* or *licensed body* which has

held or received *client money* as a *firm*;

- (c) a *lawyer of England and Wales*, or a *non-lawyer*, who is a *manager* of a *lawyer-controlled recognised body or licensed body* which holds or receives *client money*;
- (d) a *lawyer of England and Wales* who is a *manager* of any other *firm* which is controlled by *lawyers of England and Wales*, either directly as *partners*, members or *owners*, or indirectly by their ownership of *bodies corporate* which are *partners*, members or *owners*, if the *firm* holds or receives *client money*;
- (e) a *solicitor* who holds or receives *client money* as a named trustee;
- (f) a *lawyer of England and Wales*, or a *non-lawyer*, who is a *manager* of a *lawyer-controlled recognised body or licensed body* and who holds or receives *client money* as a named trustee.

Practice from an office in Scotland or Northern Ireland

- (2) You must comply with (3) and (4) below in relation to *practice from an office* in Scotland or Northern Ireland if you are:
 - (a) a *solicitor* or *REL sole practitioner* who has held or received *client money*;
 - (b) a *lawyer-controlled recognised body or licensed body*, or an *REL-controlled recognised body or licensed body*, which has held or received *client money* as a *firm*;
 - (c) a *lawyer of England and Wales*, an *REL*, a European lawyer registered with the Bar Standards Board or a *non-lawyer*, who is a *manager* of a *lawyer-controlled recognised body or licensed body*, or an *REL-controlled recognised body or licensed body*, which holds or receives *client money*;
 - (d) a *lawyer of England and Wales* or *REL* who is a *manager* of any other *firm* which is controlled by *lawyers of England and Wales* and/or *RELS*, either directly as *partners*, members or *owners*, or indirectly by their ownership of *bodies corporate* which are *partners*, members or *owners*, if the *firm* holds or receives *client money*;
 - (e) a *solicitor* or *REL* who holds or receives *client money* as a named trustee;
 - (f) a *lawyer of England and Wales*, a European lawyer registered with the Bar Standards Board or a *non-lawyer*, who is a *manager* of a *lawyer-controlled recognised body or licensed body*, or an *REL-controlled recognised body or licensed body*, and who holds or receives *client money* as a named trustee.

Dealings with client money

- (3) In all dealings with *client money*, you must ensure that:
- (a) it is kept in a *client account*, separate from money which is not *client money*;
 - (b) on receipt, it is paid without delay into a *client account* and kept there, unless the client has expressly or by implication agreed that the money shall be dealt with otherwise or you pay it straight over to a third party in the execution of a trust under which it is held;
 - (c) it is not paid or withdrawn from a *client account* except:
 - (i) on the specific authority of the client;
 - (ii) where the payment or withdrawal is properly required:
 - (A) for a payment to or on behalf of the client;
 - (B) for or towards payment of a debt due to the *firm* from the client or in reimbursement of money expended by the *firm* on behalf of the client; or
 - (C) for or towards payment of costs due to the *firm* from the client, provided that a bill of costs or other written intimation of the amount of the costs incurred has been delivered to the client and it has thereby (or otherwise in writing) been made clear to the client that the money held will be applied in payment of the costs due; or
 - (iii) in proper execution of a trust under which it is held;
 - (d) accounts are kept at all times, whether by written, electronic, mechanical or other means, to:
 - (i) record all dealings with *client money* in any *client account*;
 - (ii) show all *client money* received, held or paid, distinct from any other money, and separately in respect of each client or trust; and
 - (iii) ensure that the *firm* is able at all times to account, without delay, to each and every client or trust for all money received, held or paid on behalf of that client or trust; and
 - (e) all accounts, books, ledgers and records kept in relation to the *firm's client account(s)* are preserved for at least six years from the date of the last entry therein.

Accountants' reports

- (4)
- (a) You must deliver an accountant's report in respect of any period

during which you or your *firm* have held or received *client money* and you were subject to (3) above.

- (b) The accountant's report must be signed by the reporting accountant, who must be an accountant qualified in England and Wales or in the overseas jurisdiction where your office is based, or by such other person as the *SRA* may think fit. The *SRA* may for reasonable cause disqualify a person from signing accountants' reports.
- (c) The accountant's report must be based on a sufficient examination of the relevant documents to give the reporting accountant a reasonable indication whether or not you have complied with (3) above during the period covered by the report, and must include the following:
 - (i) your name, practising address(es) and practising style and the name(s) of the *firm's managers*;
 - (ii) the name, address and qualification of the reporting accountant;
 - (iii) an indication of the nature and extent of the examination the reporting accountant has made of the relevant documents;
 - (iv) a statement of the total amount of money held at banks or similar institutions on behalf of clients and trusts, and of the total liabilities to clients and trusts, on any date selected by the reporting accountant (including the last day), falling within the period under review; and an explanation of any difference between the total amount of money held for clients and trusts and the total liabilities to clients and trusts;
 - (v) if the reporting accountant is satisfied that (so far as may be ascertained from the examination) you have complied with (3) above during the period covered by the report, except for trivial breaches, or situations where you have been bound by a local rule not to comply, a statement to that effect; and
 - (vi) if the reporting accountant is not sufficiently satisfied to give a statement under (v) above, details of any matters in respect of which it appears to the reporting accountant that you have not complied with (3) above.

Rule 54 - Production of documents, information and explanations

- (1) You must promptly comply with:
 - (a) a written notice from the *SRA* that you must produce for inspection by the appointee of the *SRA* all documents held by you or held under your control and all information and explanations requested:
 - (i) in connection with your practice; or

- (ii) in connection with any trust of which you are, or formerly were, a trustee;

for the purpose of ascertaining whether any person subject to Part G of these rules is complying with or has complied with any provision of this Part of these rules, or on whether the account has been used for or in connection with a breach of any of the Principles or other SRA Handbook requirements made or issued by the *SRA*; and

- (b) a notice given by the *SRA* in accordance with section 44B or 44BA of the Solicitors Act 1974 or section 93 of the Legal Services Act 2007 for the provision of documents, information or explanations.

- (2) You must provide any necessary permissions for information to be given so as to enable the appointee of the *SRA* to:

- (a) prepare a report on the documents produced under (1) above; and
- (b) seek verification from clients, staff and the banks, building societies or other financial institutions used by you.

- (3) You must comply with all requests from the *SRA* or its appointee as to:

- (a) the form in which you produce any documents you hold electronically; and
- (b) photocopies of any documents to take away.

- (4) A notice under this rule is deemed to be duly served:

- (a) on the date on which it is delivered to or left at your address;
- (b) on the date on which it is sent electronically to your e-mail or fax address; or
- (c) 48 hours (excluding Saturdays, Sundays and Bank Holidays) after it has been sent by post or document exchange to your last notified practising address.

Guidance notes

- (i) If your firm has offices in and outside England and Wales, a single accountant's report may be submitted covering your practice from offices both in, and outside, England and Wales - such a report must cover compliance both with Parts A to F of these rules, and with Part G of these rules.
- (ii) The accounting requirements and the obligation to deliver an accountant's report in this part of the rules are designed to apply to you in relation to money held or received by your firm unless it is primarily the practice of lawyers of other jurisdictions. The fact that they do not apply in certain cases is not intended to allow a lower standard of care in the handling of client money - simply to prevent the "domestic provisions" applying "by the back door" in a

disproportionate or inappropriate way.

- (iii) In deciding whether interest ought, in fairness, to be paid to a client, the fact that the interest is or would be negligible, or it is customary in that jurisdiction to deal with interest in a different way, may mean that interest is not payable under rule 52(2).

Rule 55 - Waivers

The SRA may waive in writing in any particular case or cases any of the provisions of Part G of the rules, may place conditions on, and may revoke, any waiver.

Guidance note

Applications for waivers should be made to the Professional Ethics Guidance Team. You will need to show that your circumstances are exceptional in order for a waiver to be granted.

Part H - Commencement

Rule 56 - 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.

Rule 57 – Transitional provisions

- (1) From [31 March 2012], rule 2(2) of these rules shall have effect subject to the following amendments:
 - (a) in sub-paragraph (o) ("*non-solicitor employer*"), omit the words "*, recognised sole practitioner*";
 - (b) omit sub-paragraph (ta) ("*recognised sole practitioner*");
 - (c) in sub-paragraph (za) ("*you*"):
 - (i) in sub-paragraph (ii)(C), omit the words "*, recognised sole practitioner*" and "*, or of a sole practitioner who should be a recognised sole practitioner, but has not been authorised by the SRA*";
 - (ii) in sub-paragraph (iii)(E), delete the comma and insert the word "*or*" between the words "*recognised body*" and "*licensed body*", and omit the words "*or recognised sole practitioner*";
 - (iii) for sub-paragraph (iii)(F), substitute "*as an employee of a partnership or a sole practitioner which should be a recognised body but has not been authorised by the SRA*";
 - (iv) in sub-paragraph (v), insert the words "*or a sole practitioner*" after the word "*partnership*"; and

(v) omit sub-paragraph (vi).

Appendix 1 - Flowchart - effect of Solicitors' Accounts Rules 1998

[will be amended, as necessary, in line with changes to the rules]

Appendix 2 - Special situations - What applies

[will be amended, as necessary, in line with changes to the rules]

Appendix 3 - SRA Guidelines - Accounting Procedures and Systems

1. Introduction

- 1.1 These guidelines, published under rule 29 of the SRA 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. 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 References to managers or firms in the guidelines are intended to include sole practitioners, recognised bodies and licensed bodies, and the managers of those bodies.

2. General

- 2.1 Compliance with the Accounts Rules is the equal responsibility of all managers in a firm. This responsibility also extends to the Compliance Officer for Finance and Administration, whether or not a manager (see rule 6). They should establish policies and systems to ensure that the firm complies fully with the rules, including procedures for verifying that the controls are operating effectively. Responsibility for day to day supervision may be delegated to one or more managers 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 Accounts Rules and/or have ready access to the current on-line 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 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 trusts should include the name of the client or other person or trust and contain a heading which provides a description of the matter or transaction.

- 2.5 [deleted]
- 2.6 Manual systems for recording client money are capable of complying with these guidelines. A computer system, with suitable support procedures will, however, provide an efficient means of producing the accounts and associated control information.
- 2.7 When introducing new systems, care must be taken to ensure:
- (1) that balances transferred from the books of account of the old system 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 trust matter are maintained up to date as well as the client account entries. Credit balances on office account in respect of client or trust matters should be fully investigated.
- 2.9 The firm should establish policies and operate systems for the payment of fair and reasonable interest to clients in accordance with rules 24 and 25.

3. Receipt of client money

- 3.1 The firm should have procedures for identifying client 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 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 client money and out-of-scope money, or client money, out-of-scope money and office 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 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, including rules 22 and 23 which set out when and how a withdrawal from client account may properly be made.
- 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.
- 4.2A** The firm should have clear systems and procedures for authorising withdrawals from client accounts by electronic means, with appropriate safeguards and controls to ensure that all such withdrawals are properly authorised.
- 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).
- 4.6** The firm should establish policies and operate systems for the timely closure of files and the prompt accounting for surplus balances in accordance with rule 15(3).
- 4.7** The firm should establish systems in accordance with rule 15(4) to keep clients (or other people on whose behalf money is held) regularly informed when funds are retained for a specified reason at the end of a matter or the substantial conclusion of a matter.

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. 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, which are not client accounts (rules 16(1)(a), 17(ca) and 32(11));
 - (2)** practice as a liquidator, trustee in bankruptcy, Court of Protection deputy 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 an executor, trustee or nominee company 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:
- o general client accounts;
 - o separate designated client accounts;
 - o accounts held in respect of 5.2 above; and
 - o 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 are carried out at least every five 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 unrepresented 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 manager or the Compliance Officer for Finance and Administration 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** The firm should have clear policies, systems and procedures to control access

to computerised 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.

Appendix 4 - Reporting Accountant's Checklist

[will be amended, as necessary, in line with changes to the rules]

Appendix 5 - Accountant's Report Form

[will be amended, as necessary, in line with changes to the rules]

Index

[will be updated in line with changes to the rules]