

Draft SRA Intervention Powers (Statutory Trust) Rules 2009 (Annex H2)

Rules dated 9 December 2009, amended 6 October 2011 made by the Solicitors Regulation Authority Board under sections 79 and 80 of and paragraph 6B of Schedule 1 to the Solicitors Act 1974, paragraphs 32 to 34 of Schedule 2 to the Administration of Justice Act 1985, and paragraph 6 of Schedule 14 to the Legal Services Act 2007, with the concurrence of the Lord Chancellor, governing the treatment of sums vested in the Law Society under paragraphs 6 or 6A of Schedule 1 to the Solicitors Act 1974, and under paragraphs 3 or 4 of Schedule 14 to the Legal Services Act 2007.

1 Interpretation

- 1.1 All italicised terms in these rules are to be interpreted in accordance with Chapter 14 (interpretation) of the SRA Code of Conduct [2011], unless they are defined in Rule 1.2.
- 1.2 In these rules:
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| " <i>beneficiary</i> " | means a <i>person</i> with a beneficial entitlement to funds held by <i>the Society</i> on <i>statutory trust</i> |
| " <i>best list</i> " | means a list of potential beneficial entitlements to <i>statutory trust monies</i> which, in cases where it is not possible to create a <i>reconciled list</i> , is, in the view of the <i>SRA</i> , the most reliable that can be achieved with a reasonable and proportionate level of work taking into account the circumstances of the <i>intervention</i> and the nature of the evidence available |
| " <i>claimant</i> " | means a <i>person</i> making a claim to <i>statutory trust monies</i> |
| " <i>intervention</i> " | means the exercise of the powers specified in section 35 and Schedule 1 of the Solicitors Act 1974, or section 9 and |

paragraphs 32 to 35 of Schedule 2 to the Administration of Justice Act 1985, or section 89 and paragraph 5 of Schedule 14 to the Courts and Legal Services Act 1990, or section 102 and Schedule 14 of the Legal Services Act 2007

"<i>intervened practitioner</i>"	means the <i>solicitor, recognised body, licensed body, registered European lawyer or registered foreign lawyer</i> whose <i>practice or practices</i> are the subject of an <i>intervention</i>
"<i>reconciled accounts</i>"	means that all elements of the accounting records of an <i>intervened practitioner's practice</i> are consistent with each other
"<i>reconciled list</i>"	means a list of beneficial entitlements to <i>statutory trust monies</i> created from a set of <i>reconciled accounts</i>
"<i>the Society</i>"	means the Law Society
"<i>statutory trust</i>"	means the trust created by Schedule 1 of the Solicitors Act 1974, or Schedule 14 of the Legal Services Act 2007, over monies vesting in <i>the Society</i> following an <i>intervention</i>
"<i>statutory trust account</i>"	means an account in which <i>statutory trust monies</i> are held by <i>the Society</i>
"<i>statutory trust monies</i>"	means the monies vested in <i>the Society</i> under the <i>statutory trust</i> .

- 1.4 The Interpretation Act 1978 applies to these rules as it applies to an Act of Parliament.

2 Holding statutory trust monies

- 2.1 The SRA will place all *statutory trust monies* in identifiable *statutory trust accounts*.

- 2.2 All interest earned on any *statutory trust account* will be added to that account.

3 Proportionality

- 3.1 Nothing in these rules shall require the *SRA* to take any action which it considers unreasonable or disproportionate in the context of any *statutory trust account*.
- 3.2 The *SRA* may apply a level to beneficial entitlements within a *statutory trust account* below which it will not attempt to identify and/or locate potential *beneficiaries* where in the opinion of the *SRA* it would be unreasonable or disproportionate to do so. The level applies to the principal sum identified as relating to a particular *beneficiary*, after the application of any pro-rata adjustment which may be made under rule 7.2 and ignoring the addition of any interest as set out in rule 8.1.

4 Identifying beneficial entitlements

- 4.1 In respect of the *statutory trust monies* held following an *intervention*, the *SRA* will create a *reconciled list* or a *best list* from the evidence which it has available, including documents and other evidence provided by or on behalf of *claimants*.
- 4.2 In creating a *reconciled list* or a *best list*, any sums of money which are identified within a *statutory trust account* as being payments on account of costs, or which are equivalent to the costs incurred in the matter to which the funds relate, will be treated as due to the *client* rather than the *intervened practitioner*, unless there is sufficient evidence of a bill or other written notification of costs having been sent to the *client*.
- 4.3 The *SRA* will attempt to contact all *persons* identified as having a potential beneficial interest in the *statutory trust monies* inviting them to submit a claim in accordance with rule 5.

5 Claimants to money

- 5.1 Every *claimant* must deliver to the *SRA* a completed and signed claim form. The claim form shall require such information as may be prescribed by the *SRA* from time to time.
- 5.2 A *claimant* must provide such documentation and other evidence as may be requested by the *SRA* in order to support the claim including a statement of truth and proof of identity. Failure to provide such documentation or evidence will be taken into account by the *SRA* when deciding whether to make a payment in respect of a claim.
- 5.3 The *SRA* may, in its discretion, waive the requirements of rules 5.1 and/or 5.2.

6 Verification of claims

- 6.1 Subject to rule 6.2, the *SRA* will verify the individual potential beneficial

entitlements claimed under rule 5 by examining all available evidence.

- 6.2** The extent of verification work will be determined by the *SRA* by considering, but not limited to, the circumstances of the *intervention*, the reliability of the accounts of the *intervened practitioner* and the perceived integrity of the list of beneficial entitlements prepared.

7 Shortfall in statutory trust account

- 7.1** In cases where a shortfall is revealed between the *statutory trust monies* held and the beneficial entitlements shown in a *reconciled list* or *best list*, the *SRA* may rectify the position, in whole or in part, by the use of other monies taken into its possession following the *intervention* to which that account relates.
- 7.2** Where a shortfall still exists on a *statutory trust account* after the application of the additional funds set out in rule 7.1, the *SRA* will decide on the method for distribution of the deficient account.

8 Distribution of beneficial entitlements

- 8.1** Any interest which has accrued on the *statutory trust account* under rule 2.2 will be distributed to *beneficiaries* on a pro-rata basis in proportion to the payments made to them or on such other basis as the *SRA* may decide.
- 8.2** In a case where the accounting records of the *intervened practitioner* are *reconciled accounts*, payments to *beneficiaries* will be made on the basis of the *reconciled list*.
- 8.3** In a case where the accounting records of the *intervened practitioner* are not *reconciled accounts*, payments to *beneficiaries* will be made on the basis of the *best list*.

9 Residual balances

- 9.1** The *SRA* may use any funds which remain in a *statutory trust account* following the distribution to *beneficiaries* under rule 8 to offset any costs, charges or other expenses which it has incurred in establishing the beneficial entitlements to the *statutory trust monies* and in distributing the monies accordingly.
- 9.2** If funds remain in a *statutory trust account* after payment to *beneficiaries* and the deduction of costs, charges and expenses in accordance with rule 9.1, the *SRA* may transfer such remaining funds into the compensation fund held by the *SRA* in respect of the activities carried on by the *intervened practitioner* and thereupon any claim to such funds shall be extinguished.

10 Miscellaneous

- 10.1** The SRA may make an interim payment to a *beneficiary* before the full distribution on a *statutory trust account* takes place. This will be done only where the SRA is satisfied that the circumstances are such that the payment can be made without prejudicing other claims on the *statutory trust account*.
- 10.2** The SRA may issue guidance notes to *claimants* to assist in the making of a claim and to explain the steps and processes which the SRA takes in dealing with a *statutory trust account*.

11 Commencement and application

- 11.1** These rules shall come into force on 9 December 2009.
- 11.2** These rules shall apply to all *statutory trust accounts*, whether such accounts were created before or after the commencement date set out in rule 11.1.