

SRA Accounts Rules 2011

Preamble

Authority: made by the Solicitors Regulation Authority Board under sections 31, 32, 33A, 34, 37, 79 and 80 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985, section 83(5)(c) and (h) of, and paragraph 20 of Schedule 11 to, the Legal Services Act 2007 with the approval of the Legal Services Board;

date: 6 October 2011;

replacing: the Solicitors' Accounts Rules 1998;

regulating: **arrangements to deal with payments to and from clients in respect of the provision of legal services** and 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: **arrangements to deal with payments to and from clients in respect of the provision of legal services** and the accounts of solicitors, lawyer-controlled 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 body who are named trustees, in respect of practice outside the UK; and¹

regulating: **arrangements to deal with payments to and from clients in respect of the provision of legal services** and the accounts of solicitors and registered European lawyers, lawyer-controlled and registered European lawyer-controlled 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 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 1-6~~, see rule 2 - Interpretation. For the definition of words in italics in Part 7 see rule 48 – Application and Interpretation (overseas provisions).²

Introduction

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

- protect clients' money and assets;

¹ This section will be deleted in relation to the overseas accounts changes.

² This sentence will be deleted in relation to the overseas accounts charges

- 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:

- clients' money is safe;
- clients and the public have confidence that ~~client~~ their money whether held by firms or ~~and~~ third parties, will be safe;
- firms are managed in such a way, and with appropriate systems and procedures in place, so as to safeguard clients' money;
- client accounts are used for appropriate purposes only; and
- the SRA is aware of issues in a firm relevant to the protection of clients' 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 1: General

Rule 1: The overarching objective and underlying principles

- 1.1 The purpose of these rules is to keep clients' money safe. This aim must always be borne in mind in the application of these rules.
- 1.2 You must comply with the Principles set out in the Handbook, and the outcomes in Chapter 7 of the *SRA 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 arrangements for the management of monies relating to the provision of legal services, and proper internal controls over those systems and arrangements, 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.
- (j) ~~ensure that arrangements made with your clients for the management and administration of monies relating to the provision of legal services comply with the rules.~~

Rule 2: Interpretation

2.1 The guidance notes do not form part of the rules.

2.2 The SRA Handbook Glossary 2012 shall apply and, unless the context otherwise requires:

- (a) all italicised terms shall be defined; and
- (b) all terms shall be interpreted,

in accordance with the *Glossary*.

References to the Legal Aid Agency are to be read, where appropriate, as including the Legal Services Commission.

Guidance notes

- (i) The effect of the definition of "you" 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) The general definition of "office account" is wide. However, rule 17.1(b) (receipt and transfer of costs) and rule 19.1(b) and 19.2(b) (payments from the Legal Aid Agency) 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.
- (iii) 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.

- (iv) ~~These rules also relate to your clients' monies held by third parties pursuant to arrangements made between you and your client in relation to the costs of providing legal services (eg for payment of fees and disbursements) and the handling of monies related to the legal services you provide to your client (eg settlement monies or acquisition funds).~~

- Rule 3: Geographical scope**
- Rule 4: Persons governed by the rules**
- Rule 5: Persons exempt from the rules**
- Rule 6: Principals' responsibility for compliance**
- Rule 7: Duty to remedy breaches**

7.1 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* **or a third party managed account**.

- Rule 8: Liquidators, trustees in bankruptcy, Court of Protection deputies and trustees of occupational pension schemes**
- Rule 9: Joint accounts**
- Rule 10: Operation of a client's own account**
- Rule 11: Firm's rights not affected**
- Rule 12: Categories of money**

12.1 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 **in the course of practice** for a *client* or as *trustee*, and all other **such** money which is not *office money*; or
- (b) "office money" - money which belongs to *you* or *your firm*.

Part 2: Client money and operation of a client account

Rule 13: Client accounts

Rule 14: Use of a client account

Rule 15: Client money withheld from client account on client's instructions

15.1 *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.

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

15.3 If a *client* instructs *you* to hold part only of a payment in accordance with rule 15.1(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.

15.4 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 15.1.

Guidance notes

- (i) Money withheld from a client account under rule 15.1(a) remains client money, and all the record-keeping provisions of rule 29 will apply.
- (ii) Once money has been paid into an account set up under rule 15.1(b), it ceases to be client money. Until that time, the money is client money and, under rule 29, 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 10 (operating a client's own account) and rule 30 (accounting records for clients' own accounts) will apply. In the absence of instructions to the contrary, rule 14.1 requires any money withdrawn to be paid into a client account.
- (iii) Rule 29.17(d) requires clients' instructions under rule 15.1 to be kept for at least six years.

~~(iv)~~ Rule 15.2 does not prevent you entering into arrangements permitted by rule [45A].

~~(v)~~(iv) Rule 15.2 does not prevent you entering into arrangements permitted by rule [45A].

Rule 16: Other client money withheld from a client account

16.1 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 15;
- (d) 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;
- (e) unpaid *professional disbursements* included in a payment of *costs* dealt with under rule 17.1(b);
- (f) in respect of payments from the Legal Aid Agency:
 - (i) advance payments from the Legal Aid Agency withheld from *client account* (see rule 19.1(a)); and
 - (ii) unpaid *professional disbursements* included in a payment of *costs* from the Legal Aid Agency (see rule 19.1(b)); and
- (g) 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

~~(vi)~~(v) If money is withheld from a client account under rule 16.1(a) or (b), rule 29 requires records to be kept of the receipt of the money and the payment out.

~~(vii)~~(vi) If money is withheld from a client account under rule 16.1(d), rule 29 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 9.)

~~(viii)~~(vii) 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.

~~(ix)~~(viii) The circumstances in which authorisation would be given under rule 16.1(g) must be extremely rare. Applications for authorisation should be made to the Professional Ethics Guidance Team.

Rule 17: Receipt and transfer of costs

Rule 18: Receipt of mixed payments

Rule 19: Treatment of payments to legal aid practitioners

Rule 20: Withdrawals from a client account

Rule 21: Method of and authority for withdrawals from client account

Part 3: Interest

Rule 22: When interest must be paid

Rule 23: Amount of interest

Rule 24: Interest on stakeholder money

Rule 25: Contracting out

Part 4: Accounting systems and records

Rule 26: Guidelines for accounting procedures and systems

Rule 27: Restrictions on transfers between clients

Rule 28: Executor, trustee or nominee companies

Rule 29: Accounting records for client accounts, etc.

Rule 30: Accounting records for clients' own accounts

Part 5: Monitoring and investigation by the SRA

Rule 31: Production of documents, information and explanations

Part 6: Accountants' reports

Rule 32: Delivery of accountants' reports

Rule 33: Accounting periods

Rule 34: Qualifications for making a report

Rule 35: Reporting accountant's rights and duties - letter of engagement

Rule 36: Change of accountant

Rule 37: Place of examination

Rule 38: Provision of details of bank accounts, etc.

Rule 39: Test procedures

Rule 40: Departures from guidelines for accounting procedures and systems

Rule 41: Matters outside the accountant's remit

Rule 42: Privileged documents

Rule 43: Completion of checklist

Rule 44: Form of accountant's report

Rule 45: Firms with two or more places of business

Rule 45A Third Party Managed Accounts

45.1 *You may enter into contractual arrangements with your client to use a third party managed account for the purpose of receiving payments from or on behalf of, or making payments to or on behalf of, your client in respect of the legal services provided by you to your client, only if*

- a) *[the SRA has approved the use of the account as suitable for the purpose, either generally or in relation to your particular circumstances or client];*
- b) *use of the account does not result in you receiving or holding your client's money; and*
- c) *you take reasonable steps to satisfy yourself that the arrangements ensure that your client's money is safe; and*

- d) you take reasonable steps to ensure that *your client* understands the terms of the contractual arrangements relating to the use of a *third party managed account*, and in particular how any fees for use of a *third party managed account* will be paid and who will bear the costs of any such fees.

Rule 46: Waivers

46.1 The SRA may waive in writing in any particular case or cases any of the provisions of ~~Part 6 of~~ the rules, **may place conditions on** and may revoke any waiver.

Guidance note

- (i) Applications for waivers should be made to the SRA. In appropriate cases, firms may be granted a waiver of the obligation to obtain an accountant's report (see rule 32, and guidance note (xi) to that rule). ~~The circumstances in which a waiver of any other provision of Part 6 would be given must be extremely rare.~~ Waivers can only be granted in circumstances permissible by law.

Glossary

third party managed account means an account held at a *bank or building society* in the name of a third party, in which monies are owned beneficially by the third party, and which is operated upon terms agreed between the third party, *you* and *your client* as an escrow payment service.