[4.1] Solicitors Act 1974 (ss.34, 34A, 34B and 85)

[With consolidated amendments to 1 July 2009]

34 Accountants' reports

(1) The Society may make rules requiring solicitors to provide the Society with reports signed by an accountant (in this section referred to as an "accountant's report") at such times or in such circumstances as may be prescribed by the rules.

(2) The rules may specify requirements to be met by, or in relation to, an accountant's report (including requirements relating to the accountant who signs the report).

(3) [*repealed*]

(4) If any solicitor fails to comply with the provisions of any rules made under this section, a complaint in respect of that failure may be made to the Tribunal by or on behalf of the Society.

(5)–(8) [*repealed*]

(9) Where an accountant, during the course of preparing an accountant's report –

(a) discovers evidence of fraud or theft in relation to money held by a solicitor for a client or any other person (including money held on trust) or money held in an account of a client of a solicitor, or an account of another person, which is operated by the solicitor, or

(b) obtains information which the accountant has reasonable cause to believe is likely to be of material significance in determining whether a solicitor 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 of the solicitor or an account of another person,

the accountant must immediately give a report of the matter to the Society.

(10) No duty to which an accountant is subject is to be regarded as contravened merely because of any information or opinion contained in a report under subsection (9).

34A Employees of solicitors

(1) Rules made by the Society may provide for any rules made under section 31, 32, 33A or 34 to have effect in relation to employees of solicitors with such additions, omissions or other modifications as appear to the Society to be necessary or expedient.

(2) If any employee of a solicitor fails to comply with rules made under section 31 or 32, as they have effect in relation to the employee by virtue of subsection (1), any person may make a complaint in respect of that failure to the Tribunal.

(3) If any employee of a solicitor fails to comply with rules made under section 34, as they have effect in relation to the employee by virtue of subsection (1), a complaint in respect of that failure may be made to the Tribunal by or on behalf of the Society.

34B Employees of solicitors: accounts rules etc

(1) Where rules made under section 32(1) have effect in relation to employees of solicitors by virtue of section 34A(1), section 85 applies in relation to an employee to whom the rules have effect who keeps an account with a bank or building society in pursuance of such rules as it applies in relation to a solicitor who keeps such an account in pursuance of rules under section 32.

(2) Subsection (3) applies where rules made under section 32 –

(a) contain any such provision as is referred to in section 33(1), and

(b) have effect in relation to employees of solicitors by virtue of section 34A(1).

(3) Except as provided by the rules, an employee to whom the rules are applied is not liable to account to any client, other person or trust for interest received by the employee on money held at a bank or building society in an account which is for money received or held for, or on account of –

(a) clients of the solicitor, other persons or trusts, generally, or

(b) that client, person or trust, separately.

(4) Subsection (5) applies where rules made under section 33A(1) have effect in relation to employees of solicitors by virtue of section 34A(1).

(5) The Society may disclose a report on or information about the accounts of any employee of a solicitor obtained in pursuance of such rules for use –

(a) in investigating the possible commission of an offence by the solicitor or any employees of the solicitor, and

(b) in connection with any prosecution of the solicitor or any employees of the solicitor consequent on the investigation.

(6) Where rules made under section 34 have effect in relation to employees of solicitors by virtue of section 34A(1), section 34(9) and (10) apply in relation to such an employee as they apply in relation to a solicitor.

85. Bank accounts

Where a solicitor keeps an account with a bank or a building society in pursuance of rules under section 32 –

(a) the bank or society shall not incur any liability, or be under any obligation to make any inquiry, or be deemed to have any knowledge of any right of any person to any money paid or credited to the account, which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it; and

(b) the bank or society shall not have any recourse or right against money standing to the credit of the account, in respect of any liability of the solicitor to the bank or society, other than a liability in connection with the account.

[4.2] Legal Services Act 2007 (Designation as a Licensing Authority) (No.2) Order 2011, SI 2011/2866 (art.4)

Bank accounts of licensed bodies

4. (1) This article applies where a licensed body keeps an account with a bank or a building society in accordance with licensing rules made by the Society.

(2) The bank or building society –

(a) does not incur any liability;

(b) is not under any obligation to make any inquiry;

(c) is not deemed to have any knowledge of any right of any person to any money paid or credited to the account,

which it would not incur, or be under, or be deemed to have, in the case of an account kept by a person entitled absolutely to all the money paid or credited to it.

(3) The bank or building society has no recourse or right against money standing to the credit of the account, in respect of any liability of the licensed body to the bank or society, other than a liability in connection with the account.

(4) In this article –

(a) "bank" means –

(i) the Bank of England;

(ii) a person (other than a building society) who under Part 4 of the Financial Services and Markets Act 2000 has permission to accept deposits;

(iii) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act that has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits; and

(b) "building society" means a building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986.

[4.3] Law Society practice note: Holding client funds (extracts)[1]

[Last updated 29 April 2015]

2 Requirements under the Solicitors' Account Rules

[...]

Under rule 14.3 SAR you are required to return client money to your clients promptly – that is, as soon as there is no longer any proper reason to retain those funds. Payments received after you have already accounted to your client, for example by way of a refund, must also be paid to your client promptly. The rules do not define 'promptly' however, guidance note (vi) of rule 14 SAR guidance states that it should be given its natural meaning in the circumstances you find yourself.

2.1 *The purpose for retention*

It may sometimes be more convenient for your client for you to hold onto relevant funds than to return them if it is likely that you will need to use those funds to execute further instructions. For example, if your client is selling shares in a company following a buy-out, they might ask you to hold onto funds pending investment decisions on which you will be advising, or for other transactions in which you would be involved.

In these circumstances you should be aware of the rules governing client money, which aim to prohibit you as a solicitor from acting as a banker to your clients (see 2.5 below).

[...]

2.5 *Solicitors as bankers*

The Solicitors Disciplinary Tribunal has determined that, as a solicitor, it is not a proper part of your everyday business or practice to operate a banking facility for third parties, whether or not they are your clients. As stated in guidance note (v) of rule 14 SAR, any exemption under the Financial Services and Markets Act 2000 (see section 3) is likely to be lost if a deposit is taken in circumstances which do not form part of your practice.

With this in mind, you should assess each case on its own merit based upon the individual circumstances that present themselves. If there is a good reason to continue to hold your client's money pending its investment or use in further transactions on which you continue to advise and act, it is unlikely that this would amount to a breach of the SAR. However, you should review this position if there is likely to be any significant delay in receiving further instructions.

1 See **www.lawsociety.org.uk** for future updates. The extracts set out here relate to SRA Accounts Rules 2011 (SAR), rules 14.3 (returning client money promptly); 14.4 (retaining client funds); 14.5 (not using client account as a banking facility); and associated notes (v)–(vii) to rule 14.

[...]

3 Exemption under the Financial Services and Markets Act 2000

Under the Financial Services and Markets Act 2000 (the Act) the Financial Services Authority (FSA) is the single statutory regulator of financial services business. Under the Act, if you undertake "regulated activities" you are required to either:

- be regulated by the FSA, or
- rely on the Part XX exemption

This exemption makes special provision for professional firms which do not carry on mainstream investment business but which may carry on regulated activities in the course of other work such as conveyancing, corporate, matrimonial, probate and trust work. This enables firms regulated by the SRA which meet certain conditions to be treated as exempt professional firms and to carry on activities known as exempt regulated activities.

[...]

If your firm qualifies for this exemption, you do not need to be regulated by the FSA, but will be able to carry on exempt regulated activities under the supervision of and regulation by the SRA. However, If you take a deposit from your client in circumstances which do not form part of your practice as a solicitor, you are likely to lose the exemption.

You should therefore ensure that the purpose for retention of your client's money is confirmed in writing and kept under review so that your exempt status is not placed at risk.

4 Money laundering

You should be cautious when being asked to hold onto sums of money by your client, and to be mindful that there are criminal sanctions against assisting money launderers. Please refer to our anti-money laundering practice note for further information in this area, and to assist you in meeting your obligations under the UK anti-money laundering and counter-terrorist financing regime.

[4.4] SRA guidance: Withdrawal of residual client balances

[Issued on 31 October 2014]

Status

Whilst this document does not form part of the SRA Handbook, the SRA may have regard to it when exercising its regulatory functions.

Who is this guidance relevant to?

This guidance is relevant to all practitioners who hold client money; Compliance Officers for Finance and Administration (COFAs); for firms that deal with client money and to accountants preparing applications on behalf of such firms.

Purpose of this guidance

Practitioners will often hold money on behalf of clients and although all client money will usually be used in the process of carrying out the retainer this is not always the case. This guidance is intended to assist when dealing with residual client balances (i.e. money due to clients where the client has become untraceable or where it has otherwise not been possible to return the money to the client) and designed to provide a framework that practitioners may find useful when dealing with such balances.

The SRA Principles

You must:

- act in the best interests of each client; (Principle 4)
- provide a proper standard of service to your clients; (Principle 5) and
- protect client money and assets. (Principle 10)

The SRA Rules

In these circumstances, the SRA Accounts Rules 2011 (Accounts Rules) require practitioners to return client money (including refunds received after the client has been accounted to) as soon as there is no longer a proper reason to retain that money (Rule 14.3). Therefore practitioners should, at the start of a retainer, consider how any residual balance that may arise will be returned and request appropriate information from clients, such as their national insurance number. The practitioner should also remind clients at the end of the retainer of their responsibility to provide them with an up to date address and contact details.

Imposing the obligation to return client money under rule [14.3] of the Accounts Rules goes to the heart of practitioners' duties. However, there are circumstances where it may not be possible for a practitioner to return client money. This may arise where the client

has changed their contact details without notifying the practitioner, which further underlines the importance of returning client money as swiftly as possible.

Residual balances of £500 or less

Rule 20.1(j) of the Accounts Rules allows the withdrawal of residual client balances from the client account where the amount withdrawn does not exceed £500 in relation to any one individual client or trust matter and practitioners meet the criteria specified in Rule 20.2. The criteria requires practitioners to:

(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 the requirements above and retain those records, together with all relevant documentation (including receipts from the charity), in accordance with Rule 29.16 and 29.17(a); and

(e) keep a central register in accordance with Rule 29.22.

Residual balances above £500

Rule 20.1(k) allows practitioners to withdraw residual client balances above £500 from the client account and donate the money to a charity on the written authorisation of the Solicitors Regulation Authority (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. In determining whether to grant authorisation, the SRA will assess the adequacy of the steps taken to identify the owner and return the funds.

Where it is intended that the money which is to be withdrawn from the client account is not going to be paid to a charity, for example, where a firm [wishes] to pay the money into the office account, it will still be necessary to make an application to the SRA. This situation might arise, for example, where it has not been possible for the practitioner to deliver a bill of costs because the client has become untraceable, with the consequence that the practitioner cannot make a transfer from client account to office account in accordance with Rules 17.2 and 17.3 of the Accounts Rules.

Furthermore, in relation to the administration of an estate or trust, it will normally be the executors, administrators or trustees, or the Court, who have authority to deal with unpaid money. Practitioners should therefore satisfy themselves as to any legal requirements in relation to their dealings with client money.

Establish the identity of the owner of the money, or make reasonable attempts to do so

What are reasonable steps to take in establishing the identity of the owner of client money will vary, depending on the situation. Factors affecting what will be considered reasonable include, but are not limited to:

- the age of the residual balance;
- the amount held;
- the client details available in respect of a balance and
- the costs associated with a particular tracing method.

Therefore, it is likely to be considered to be reasonable to require more intensive tracing efforts for larger or more recent residual balances, or for balances where more details are held about the client. Importantly practitioners should be aware that the absence of client details may highlight deficiencies in a firm's accounting practices and in the overall management and supervision of the firm as required by the outcomes in Chapter 7 of the SRA Code of Conduct.

The steps below provide a suggested framework for practitioners to employ when attempting to return residual client balances. However, it is worth highlighting that practitioners may identify other processes which also allow them to take reasonable steps to trace clients.

1. *Client file*

The client file is checked and all available contact details are used to try and contact the client or relevant third parties.

2. *Internet search*

An internet search is undertaken.

3. *Directory enquiries*

A Directory Enquiries search is undertaken.

4. *Electoral Register*

If a previous address is available for the client, an Electoral Register search is undertaken in the appropriate area.

5. *DWP letter forwarding service*

The Department for Work & Pensions (DWP) provides a tracing and letter forwarding service that can be used to forward beneficial information to clients where complete details are not held by the sender. The service costs less than £5 and has proved successful for many firms. This service can be utilised where you have an address or a previous address for the client. The letter may include a reference to the fact that monies are held for the client, but you should not include bills for forwarding to the client.

Companies House

If the balance belongs to a company, a Companies House search may be used to identify a current address if the company is still trading. Any monies due to a dissolved company pass to the Crown as bona vacantia and will be payable to the Treasury Solicitor under provisions in the Companies Act. Practitioners should clarify the situation with the Treasury Solicitor's Department before making an application to the SRA under Rule 20.1(k).

6. *Newspaper advertisement/tracing agent*

The cost of placing an advert in a newspaper (or other publication) or instructing a tracing agent will vary. However practitioners should still explore the cost implications of using these services if steps 1–6 above have proved unsuccessful and also take into account the likelihood of tracing the client using such methods, in the light of the information held about the client or third party to whom the monies are due.

Where the costs of placing an advertisement or instructing a tracing agent are unreasonable when compared with the balance in question, it is likely to be considered to be appropriate to withdraw a balance under £500 from the client account and pay the money to a charity.

Record Keeping

Practitioners are required to record the steps taken and retain those records, together with all relevant documentation (including receipts from the charity), in accordance with rule 29.16 and 29.17(a) and keep a central register in accordance with rule 29.22.

Taken together, these rules require practitioners to:

- record the steps taken to try to identify the owner of the residual client balance and return the funds to them (including receipts from the recipient charity);
- keep a central register which details the
  - name of the client or other person or trust on whose behalf the money is held (if known),
  - residual balance amount,
  - name of the recipient charity,
  - date of payment.

Practitioners must retain these for at least six years from the date of the last entry.

Practitioners should not destroy files without client's consent and are advised not to archive files where a client balance remains, until such time as the balance is cleared.

When involved with mergers/acquisitions, acquiring firms are advised not to accept liability for existing client balances without taking receipt of the relevant files.

Practitioners' attention is drawn to the provisions of Rule 29.25 that makes clear firms should be able to justify the use of a suspension account and use of such an account must only be temporary.

Out-of-pocket expenses under £500

Solicitors have no legal authority to take out of pocket expenses. If such expenses are deducted the solicitor remains responsible to the client for these monies should they be traced. Such expenses, in all circumstances, should be reasonable expenses, for example; tracing agents' fees; advertisements; DWP searches, but would not include the administrative or office costs of the firm tracing the client or writing letters.

Where practitioners make an application to the SRA for authority to withdraw client money from a client account and incur out-of-pocket expenses, these can be taken into account by a decision maker, if the attempts to trace the client have not been successful.

Please note that if you make an application for authorisation to withdraw a residual client balance, the outcome will be available to other SRA business units. If the application is granted, details of the authorisation will also be publicly available if an enquiry is received by the SRA.

Further help

If you require further assistance in relation to your accounting requirements, contact us.[1]

To make an application for sums over £500 please complete our application form.[2]

1. See Part 7 for contact details.
2. See www.sra.org.uk/documents/rules/sar/sar-rule-20-1-k-application.doc.