

These rules remain in draft and are yet to be made by the SRA Board. They may be subject to minor amendment after consultation on Phase 2 of Looking to the Future.

SRA Accounts Rules 2018

Introduction

These rules set out our requirements for when firms authorised by us receive or deal with money belonging to clients, including trust money or money held on behalf of third parties. The rules apply to all firms we regulate, including all those who manage or work within such firms.

Firms will need to have systems and controls in place to ensure compliance with these rules and the nature of those systems must be appropriate to the nature and volumes of client transactions dealt with and the amount of client money held or received.

PART 1: GENERAL

Rule 1: Application section

- 1.1 These rules apply to **authorised bodies**, their **managers** and employees and references to “you” in these rules should be read accordingly.
- 1.2 The **authorised body’s managers** are jointly and severally responsible for compliance by the **authorised body**, its **managers** and employees with the rules.
- 1.3 In relation to a **MDP**, the rules apply only in respect of your **regulated activities** and do not apply to “**out of scope money**”.

PART 2: CLIENT MONEY AND CLIENT ACCOUNTS

Rule 2 – Client money

- 2.1 “**Client money**” is money held or received by you:
 - (a) relating to **regulated services** delivered by you to a **client**;
 - (b) on behalf of a third party in relation to **regulated services** delivered by you (such as money held as agent, stakeholder or held to the sender’s order);
 - (c) as a trustee or as the holder of a specified office or appointment, such as donee of a power of attorney, **Court of Protection deputy** or trustee of an occupational pension scheme;

- (d) in respect of your **fees** and any unpaid **disbursements** if held or received prior to delivery of a bill for the same.
- 2.2 In circumstances where the only **client money** you hold or receive falls within rule 2.1(d) above, and:
- (a) any money held for **disbursements** relates to costs or expenses incurred by you on behalf of your **client** and for which you are liable; and
 - (b) you do not for any other reason maintain a **client account**;
- you are not required to hold this money in a **client account**, if you have informed your **client** in advance of where and how the money will be held. Rules 2.3, 2.4, 4.1, 7, 8.1(b) and (c) and 12 do not apply to **client money** held outside of a **client account** in accordance with this rule.
- 2.3 You ensure that **client money** is paid promptly into a **client account** unless:
- (a) in relation to money falling within 2.1(c), to do so would conflict with your obligations under rules or regulations relating to your specified office or appointment;
 - (b) the **client money** represents payments received from the Legal Aid Agency for your **costs**; or
 - (c) you agree in the individual circumstances an alternative arrangement in writing with the **client**, or the third party, for whom the money is held.
- 2.4 You ensure that **client money** is available on demand unless you agree an alternative arrangement in writing with the **client**, or the third party for whom the money is held.
- 2.5 You ensure that **client money** is returned promptly to the **client**, or the third party for whom the money is held, as soon as there is no longer any proper reason to hold those funds.

Rule 3: Client account

- 3.1 You only maintain a **client account** at a branch (or the head office) of a **bank** or a **building society** located in England and Wales.
- 3.2 You ensure that the name of any **client account** includes:
- (a) the name of the **authorised body**; and
 - (b) the word “client” to distinguish it from any other type of account held or operated by the **authorised body**.
- 3.3 You must not use a **client account** to provide banking facilities to clients or third parties. Payments into, and transfers or withdrawals from a **client account** must be in respect of the delivery by you of **regulated services**.

Rule 4: Client money must be kept separate

- 4.1 You keep **client money** separate from money belonging to the **authorised body**.
- 4.2 You ensure that you allocate promptly any funds from **mixed payments** you receive to the correct **client account** or business account.
- 4.3 Where you are holding **client money** and some or all of that money will be used to pay your **costs**:
 - (a) you must give a bill of **costs**, or other written notification, to the **client** or the paying party;
 - (b) this must be done before you transfer any **client money** from a **client account** to make the payment; and
 - (c) any such payment must be for the specific sum identified in the bill of **costs** or other written notification, and covered by the amount held for the particular **client** or third party.

Rule 5: Withdrawals from client account

- 5.1 You only withdraw **client money** from a **client account**:
 - (a) for the purpose for which it is being held; or
 - (b) following receipt of instructions from the client, or the third party for whom the money is held; or
 - (c) on the **SRA**'s prior written authorisation or in **prescribed** circumstances.
- 5.2 You appropriately authorise and supervise all withdrawals made from a **client account**.
- 5.3 You only withdraw **client money** from a **client account** if sufficient funds are held on behalf of that specific **client** or third party to make the payment.

Rule 6: Duty to correct breaches upon discovery

- 6.1 You correct any breaches of these rules promptly upon discovery. Any money improperly withheld or withdrawn from a **client account** must be immediately paid into the account or replaced as appropriate.

Rule 7: Payment of interest

- 7.1 You account to **clients** or third parties for a fair sum of **interest** on any **client money** held by you on their behalf.

- 7.2 You may by a written agreement come to a different arrangement with the **client** or the third party for whom the money is held as to the payment of interest but you must provide sufficient information to enable them to give informed consent.

Rule 8: Client accounting systems and controls

- 8.1 You keep and maintain accurate, contemporaneous and chronological records to:
- (a) record in client ledgers identified by the **client's** name and an appropriate description of the matter to which they relate:
 - (i) all receipts and payments which are **client money** on the client side of the client ledger account;
 - (ii) all receipts and payments which are not **client money** and bills of costs including transactions through the **authorised body's** accounts on the business side of the client ledger account;
 - (b) maintain a list of all the balances shown by the client ledger accounts of the liabilities to **clients** (and third parties), with a running total of the balances;
 - (c) provide a cash book showing a running total of all transactions through **client accounts** held or operated by you.
- 8.2 You obtain, at least every five weeks, statements from **banks, building societies** and other financial institutions for all **client accounts** and business accounts held or operated by you.
- 8.3 You complete at least every five weeks, for all **client accounts** held or operated by you, a reconciliation of the bank or building society statement balance with the cash book balance and the client ledger total, a record of which must be signed off by the **COFA** or a **manager** of the firm. You should promptly investigate and resolve any differences shown by the reconciliation.
- 8.4 You keep readily accessible a central record of all bills or other written notifications of **costs** given by you.

PART 3 – DEALINGS WITH OTHER MONEY BELONGING TO CLIENTS OR THIRD PARTIES

Rule 9: Operation of joint accounts

- 9.1 If, when acting in a **client's** matter, you hold or receive money jointly with the **client** or a third party, part 2 of these rules does not apply save for:
- (a) rule 8.2 - statements from banks, building societies and other financial institutions;

- (b) rule 8.4 - bills and notifications of costs.

Rule 10: Operation of a client's own account

- 10.1 If, in the course of practice, you operate a *client's* own account as signatory, part 2 of these rules does not apply save for:
- (a) rule 8.2- statements from banks, building societies and other financial institutions;
 - (b) rule 8.3 – reconciliations;
 - (c) rule 8.4 - bills and notifications of costs.

Rule 11: Third party managed accounts

- 11.1 You may enter into arrangements with a *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, the *client* in respect of *regulated services* delivered by you to the *client*, only if:
- (a) use of the account does not result in you receiving or holding the *client's* money; and
 - (b) you take reasonable steps to ensure, before accepting instructions, that the *client* is informed of and understands:
 - (i) the terms of the contractual arrangements relating to the use of the *third party managed account*, and in particular how any fees for use of the *third party managed account* will be paid and who will bear them; and
 - (ii) the *client's* right to terminate the agreement and dispute payment requests made by you.
- 11.2 You obtain regular statements from the provider of the *third party managed account* and ensure that these accurately reflect all transactions on the account.

PART 4 - ACCOUNTANTS' REPORTS AND STORAGE AND RETENTION OF ACCOUNTING RECORDS

Rule 12: Obtaining and delivery of accountants' reports

- 12.1 If you have, at any time during an *accounting period*, held or received *client money*, or operated a joint account or a *client's* own account as signatory, you must:

- (a) obtain an accountant's report for that **accounting period** within six months of the end of the period; and
 - (b) deliver it to the SRA within six months of the end of the **accounting period** if the accountant's report is qualified to show a failure to comply with these rules, such that money belonging to **clients** or third parties is, or has been, or is likely to be placed, at risk.
- 12.2 You are not required to obtain an accountant's report if:
- (a) all of the **client money** held or received during an **accounting period** is money received from the Legal Aid Agency; or
 - (b) in the **accounting period**, the statement or passbook balance of **client money** you have held or received does not exceed:
 - (i) an average of £10,000; and
 - (iii) a maximum of £250,000,or the equivalent in foreign currency.
- 12.3 In Rule 12.2 above a "statement or passbook balance" is the total balance of:
- (i) all **client accounts** held or operated by you; and
 - (ii) any joint accounts and clients' own accounts operated by you
- as shown by the statements obtained under rule 8.2.
- 12.4 The **SRA** may require you to obtain or deliver an accountant's report to the **SRA** on reasonable notice if you cease to operate as **an authorised body** and to hold or operate a **client account**, or the **SRA** considers that it is otherwise in the public interest to do so.
- 12.5 You ensure that any report obtained under this rule is prepared and signed by an accountant who is a member of one of the **chartered accountancy bodies** and who is, or works for, a registered auditor.
- 12.6 The **SRA** may disqualify an accountant from preparing a report for the purposes of this rule if:
- (a) the accountant has been found guilty by their professional body of professional misconduct or equivalent; or
 - (b) the **SRA** is satisfied that the accountant has failed to exercise due care and skill in the preparation of a report under these rules.
- 12.7 The **SRA** may specify from time to time matters that you must ensure are incorporated into the terms on which an accountant is engaged.

- 12.8 You must provide to an accountant preparing a report under these rules:
- (a) details of all accounts held 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; and
 - (b) all other information and documentation that the accountant requires to enable completion of their report.
- 12.9 The accountant must complete and sign their report in the *prescribed* form.

Rule 13 – Storage and retention of accounting records

- 13.1 You must store all *accounting records* securely, and retain these for at least six years.

Supplemental notes

Made by the SRA Board on [date] 2018.

Made under sections 32, 33A, 34, 37 of the Solicitors Act 1974, section 9 of the Administration of Justice Act 1985, section 83(5)(h) of, and paragraph 20 of Schedule 11 to the Legal Services Act 2007

Approved by the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007, on [date] 2018.

Commencing on [date] 2018 and replacing the SRA Accounts Rules 2011.