

Solicitors' Accounts (Residual Client Account Balances) Amendment Rules 2008

Effective from 14 July 2008

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Overview

The [Solicitors' Accounts \(Residual Client Account Balances\) Amendment Rules 2008](#) amend the Solicitors' Accounts Rules 1998 (SAR) with effect from 14 July 2008.

The amendments introduce specific obligations for the prompt return of surplus client funds and reporting to clients if funds are retained. They also permit solicitors to deal with the withdrawal of smaller residual client balances themselves, without recourse to the SRA.

Returning surplus client money

A new rule 15(3) SAR will impose a specific obligation to return client money promptly as soon as there is no longer any proper reason to retain the funds. "Promptly" is not defined but should be given its natural meaning in the particular circumstances - see new note (x) to rule 15. Rule 15(3) does not apply to the return of surplus funds whilst a matter is ongoing - see new note (xi).

Reporting to clients

A new rule 15(4) SAR will require a solicitor to inform a client promptly of the amount of any funds retained at the end of a matter, and the reason for that retention. This rule also introduces an obligation to report in writing to the client on at least an annual basis if funds continue to be retained, with an explanation for the ongoing retention.

Left over balances

Under an amended rule 22 SAR, solicitors will have the option to withdraw from client account left over balances of £50 or less without prior SRA authorisation, subject to paying the balances to a charity and complying with the other safeguards set out in a new rule 22(2A). Prior SRA authorisation will still be required for amounts exceeding £50, or for amounts not to be paid to a charity because, for example, they represent costs - see notes (viii) and (viii a) to rule 22.

Procedures and systems

Paragraph 2.1 of the Guidelines for Accounting Procedures and Systems at Appendix 3 SAR states that policies and systems should be established to ensure that the firm complies fully with the rules. Solicitors wishing to deal with left over balances of £50 or less, without prior SRA authorisation, will need to set up appropriate internal procedures and systems to ensure compliance with the new provisions of rule 22.

New paragraphs 4.6 and 4.7 of the Guidelines state that policies and systems should be established for the timely closure of files and prompt accounting for surplus balances, and for reporting to clients when funds are retained.

Role of the reporting accountant

The reporting accountant will be required to check the procedural side of the rule 22(2A) requirements - see note (iv) to rule 42, and rule 44. Under rule 29 SAR, the reporting accountant is required to report on any substantial departures from the Guidelines discovered whilst carrying out work in preparation of the report.

Commencement

The lead-in time of three months from the Master of the Rolls' concurrence is intended to give solicitors and their reporting accountants time to make the necessary changes to their systems and procedures.

Do the changes have retrospective effect?

The amendment rules come into force on 14 July 2008. The provisions do not have retrospective effect:

- The new specific obligation to return client money when there is no longer any reason to continue to hold it, as set out in rule 15(3), will apply to left over balances which arise on or after 14 July 2008.
- The duty in new rule 15(4) to inform a client that funds have been retained, and to report annually to the client when there is continued retention of client funds, applies only to balances arising on or after 14 July 2008.
- Although the new provisions in rule 22 do not come into force until 14 July 2008, solicitors will be able to deal with left over balances of £50 or less which existed prior to the new provisions coming into effect, using the new rule 22(2A) procedure.
- As noted above, "old" balances which a solicitor held prior to 14 July 2008 do not fall to be dealt with under new rules 15(3) and (4), but it is hoped that the new rule 22(2A) will encourage firms to deal with smaller historic client balances with effect from that date.

Amendment rules

Rules dated [three months from the date of the Master of the Rolls' concurrence – effective from 14 July 2008] made with the concurrence of the Master of the Rolls under sections 32 to 34 of the Solicitors Act 1974 and section 9 of the Administration of Justice Act 1985.

The Solicitors' Accounts Rules 1998 shall be amended in accordance with the Schedule.

[Key

Text that is underlined and red indicates an insertion into the existing text. Text that is blue and struck through (~~example~~) indicates a deletion from the text.

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Schedule

SOLICITORS' ACCOUNTS RULES 1998

...

Rule 15 – Use of a client account

- (1) *Client money and controlled trust 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 16 to 18).*

...

- (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 the solicitor has already accounted to the client, for example by way of a refund, must be paid to the client promptly.*

- (4) *A solicitor 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. The solicitor 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 the solicitor continues to hold that money.*

Notes

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(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.

(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, solicitors must always act in the best interests of their clients and 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 rules 22(1)(ga)-(h) and (2)(ga)-(h) for withdrawals from a client account when the rightful owner of funds cannot be traced.)

...

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);
- ...
- (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; ~~or~~
 - (ga) money not covered by (a) to (g) above, where the *solicitor* complies 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 Society](#). The [SRA Society](#) may

impose a condition that the *solicitor* pay the money to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received.

(2) *Controlled trust money* may only be withdrawn from a *client account* when it is:

(a) properly required for a payment in the execution of the particular *trust*, including the purchase of an investment (other than money) in accordance with the *trustee's* powers;

...

(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; ~~or~~

(ga) money not covered by (a) to (g) above, where the *solicitor* complies 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 Society~~. The ~~SRA Society~~ may impose a condition that the *solicitor* pay the money to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received.

(2A) A withdrawal of *client money* or *controlled trust money* under paragraphs (1)(ga) or (2)(ga) above may be made only where the amount withdrawn does not exceed £50 in relation to any one individual *client* or *controlled trust* matter and the *solicitor*:

(a) establishes the identity of the owner of the money, or makes reasonable attempts to do so;

(b) makes 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) pays the funds to a charity;

(d) records the steps taken in accordance with paragraphs (a)-(c) above and retains those records, together with all relevant documentation (including receipts from the charity), in accordance with rule 32(8A) and (9)(a); and

(e) keeps a central register in accordance with rule 32(13A).

...

Notes

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Withdrawals where the rightful owner cannot be traced, on the SRA's ~~Society's~~ authorisation and without SRA authorisation

(viii) Applications for authorisation under rule 22(1)(h) or 22(2)(h) should be made to the Professional Ethics ~~Division~~ Guidance Team, who can advise on the criteria which must normally be met for authorisation to be given.

Solicitors may under rule 22(1)(ga) or 22(2)(ga) pay to a charity sums of £50 or less per client or controlled trust matter without the SRA's authorisation, provided the safeguards set out in rule 22(2A) are followed. Solicitors may, however, if they prefer, apply to the SRA for prior authorisation in all cases.

(viiiia) Solicitors 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 a solicitor has 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, banks sometimes discover unclaimed balances in an old client account. This money remains subject to rule 22 and rule 23. An application can be made to the SRA~~Society~~ under rule 22(1)(h) or 22(2)(h).

(x) See rule 15(3) and notes (x) – (xi) to rule 15 on the return of client money when there is no longer any reason for its continued retention. See also rule 15(4) on reporting to the client when client money is retained at the end of a matter.

...

Rule 32 – Accounting records for client accounts, etc.

...

Withdrawals under rule 22(1)(ga) and (2)(ga)

(8A) A solicitor who withdraws client money under rule 22(1)(ga) or controlled trust money under rule 22(2)(ga) 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) The *solicitor* 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 (8A) above;

...

- (e) any central registers kept under paragraphs (11) to (13A) below; and

...

Centrally kept records for certain accounts, etc.

...

(13A) A central register of all withdrawals made under rule 22(1)(ga) and 22(2)(ga) must be kept, detailing the name of the *client, controlled trust* or other person on whose behalf the money is held (if known), the amount, the name of the recipient charity and the date of the payment.

...

Rule 42 – Test procedures

(1) The accountant must examine the accounting records (including statements and passbooks), *client* and *controlled trust* matter files selected by the accountant as and when appropriate, and other relevant documents of the *solicitor*, and make the following checks and tests:

...

(na) for money withdrawn from *client account* under rule 22(1)(ga) or 22(2)(ga), check that records are being kept in accordance with rule 32(8A), (9)(a) and (13A), and cross-check with *client* or *controlled trust* matter files when appropriate;

...

Notes

...

(iv) In checking compliance with rule 22(1)(ga) and 22(2)(ga), the accountant should check on a sample basis that the solicitor has complied with rule 22(2A) and is 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 44 – Matters outside the accountant's remit

The accountant is not required:

...

(d) to check compliance with the provisions in rule 24(2) to (5) and 6(b) on payment of sums in lieu of interest; ~~or~~

(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).

...

LAW SOCIETY SRA GUIDELINES – ACCOUNTING PROCEDURES AND SYSTEMS

...

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.