Solicitors Regulation Authority

Looking to the future - Accounts Rules review

Consultation responses

June 2017

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Andrew Harris

Armstrong Watson

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Responses not published

PKF Francis Clark LLP

Skadden, Arps, Slate, Meagher & Flom (UK) LLP

Consultation: Looking to the future - Accounts Rules

Response ID:72 Data

2. Your identity

Surname

Harris

Forename(s)

Andrew

Your SRA ID number (if applicable)

Name of the firm or organisation where you work

Hazlewoods LLP

We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.

Attribute my/our response and publish my/our name.

Please identify the capacity in which you are submitting a response. I am submitting a response…

in another capacity
Please specify: as a reporting accountant

3.

1. Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

The draft Accounts Rules at Annex 1.1 are clearer and simpler to understand. However, without seeing an example of the online toolkit it is not possible to give an opinion on whether the Account Rules will be easier to comply with.

4.

2. Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

I do not agree with the proposals. Allowing firms to hold money on account of costs and disbursements is potentially dangerous in my opinion for the following reasons:

1. Money received from clients will form part of a practice's working capital. Where firms are in financial difficulty then this may make it more difficult to reimburse clients, as the advance payment of fees may have already been spent. The proposed rules do not appear to require a separate office account to be used to hold money on account of costs and disbursements, which is something that might provide clients at least some protection. It is difficult to see how this could be viewed as protecting consumers.

2. Currently, it is easy for both practices and reporting accountants to identify instances where client money is incorrectly held on office account, as it usually results in an office ledger credit balance. Under the proposals, office ledger credit balances will become commonplace, and therefore identifying errors will become more difficult.

3. Finally, under agreement with HMRC, money received on account of costs and paid into client account does not create a VAT tax point. In other words, VAT does not have to be accounted for on money paid into client account until such time as an invoice is raised. Allowing money on account of costs to be paid into office account would appear to create a VAT tax point, which will mean that firms will need to account for VAT when monies are first received, then adjust this once the actual VAT invoice is raised. This will

probably necessitate the issuing of credit notes, which can be time-consuming and complicated, and exposes firms to a higher risk of error.

Accounting software used by the vast majority of legal practices is not designed to account for VAT on monies received for costs, and therefore will need to be updated. This is likely to prove expensive.

5.

3. Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

We have concerns that insisting that clients pay by credit card would be detrimental to clients, as bank charges for credit card payments are usually considerably higher than when making payment by bank transfer or cheque.

The SRA's suggestion that clients should pay by credit card in order to help safeguard monies paid on account of costs is in my view inappropriate, misinformed and wrong, and is not in clients' best interest. Many poorer clients do not have credit cards, and therefore would not be able to seek a refund under the Consumer Credit Act 1974, as suggested in the consultation document. It rather feels as though the SRA's proposals would pass on the risk of loss to the client, which cannot be the right thing to do.

6.

4. Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

No, as I do not agree that payment for a firm's fees and payments to third parties for which the firm is liable should be paid into office account. They should continue to be paid into client account.

7.

5. Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Yes, although some guidance on what is meant by "promptly" would be helpful.

8.

6. Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

One significant advantage of the current rules on payments from the LAA is that they prevent firms spending money received in advance. Relaxing the definition of client money, and allowing LAA money to sit in office account may result in money on account of costs being spent before the work has been carried out. Given that many legal aid firms are currently struggling to survive, there would be an increased risk that any funds received in advance would be lost.

9.

7. Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

Whilst it is difficult to imagine that many firms would even consider using a TPMA, in principle I do agree with them as an alternative to a client account. TPMAs are not suitable for all work types though, in particular residential conveyancing (see later question).

10.

8. If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

Key risks are that using a TPMA may slow transactions down, there may be additional costs to firms (and

therefore clients).

11.

9. Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

My understanding of TPMAs is that they can result in delays in making payments. Clearly, any delay in transactions could be catastrophic in a conveyancing transaction involving many different parties in a chain. In my view TPMAs should therefore be restricted to other certain areas of law.

12.

10. Do you have any views on whether we need to retain the requirement to have a published interest policy?

Bank base rates are at their lowest level ever, and therefore interest on client money is a relatively minor issue for the vast majority of clients. However, at some point interest rates will rise, and the payment of interest on client money will become significant again. In my view, it is important to have a published interest policy to safeguard clients' interests.

13.

11. Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

On the whole, many of the proposed Accounts Rules are sensible. As noted earlier in this questionnaire, I have major concern over the proposed definition of client money in relation to money received in advance for costs and third party disbursements.

I also have concerns that the consultation document refers to an online toolkit, yet we have not been given the opportunity to see this. Asking respondents to give a view without being able to see the whole picture is not helpful.

14.

12. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

Without seeing an example it is difficult to respond to this question. For example, I would hope that the guidance on accounting records and systems will include guidance on the preparation of client account reconciliations, but this is unclear.

If the SRA decides to proceed with the proposed redefinition of client money then guidance will be required on how to account for VAT on monies being held in office account. Guidance on how to identify and ringfence monies received in advance would also be helpful.

15.

13. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

Duplicated question.

16.

14. Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

All of these comments are based on experience gained from working with approximately 130 legal practices. Hazlewoods are reporting accountants for approximately 100 practices, of which I sign off at least half. I also sit on the Executive Council of the Institute of Legal Finance and Management, and run courses on the Accounts Rules for Central Law Training.

Armstrong Watson Response to the SRA Consultation
Looking to the Future: SRA Accounts Rules Review
June 2016

Proposed changes

The SRA's consultation document proposes to

- Simplify the Accounts Rules: by focusing on key principles and requirements for keeping client money safe, including:
    - Keeping client money separate from firm money
    - Ensuring client money is returned promptly at the end of a matter
    - Using client money only for its intended purpose
    - Proportionate requirements for firms to obtain an annual accountant's report

  This will put the focus on what is important and allow firms greater flexibility to manage their business. The Accounts Rules will also be simpler and easier to understand – increasing compliance and reducing compliance costs. The Accounts Rules will be supported by an online toolkit which will comprise of guidance and case studies to aid compliance.

- Change the definition of client money: to allow money paid for all fees and disbursements for which the solicitor is liable (for example counsel fees) to be treated as the firm's money. Money held for payments for which the client is liable, such as stamp duty land tax, will continue to be treated as client money and therefore required to be held in client account. The impact of the proposed change in definition is expected to remove the need to have a client account for some firms and therefore reduce the associated compliance costs. The changes may also reduce the number of firms required to obtain an accountant's report through the subsequent reduction in the client account balance.

- Provide an alternative to the holding of client money: through the introduction of clear and consistent safeguards around the use of third party managed accounts (TPMA) as a mechanism for managing payments and transactions.

Background

I am the Legal Sector Partner at Armstrong Watson, a top 35 UK firm of accountants. I have exclusively specialised in acting for solicitors for over 10 years.

I am totally immersed in the legal profession and see a great deal of what is happening at 'the coal face'.

As a firm we do not only carry out approximately 50 SRA Accounts Rules ('SRAAR'/'Rules') Reporting engagements each year, but we also provide a huge amount of training in the SRAAR.

The SRAAR training that we provide includes public courses; private in-house courses at law firms; training at local law societies; training for the large national training providers; and training for national law firm alliances/groupings.

I also host both the Leeds & Yorkshire COFA Forum and the Newcastle COFA Forum.

I therefore have a detailed working knowledge of the Rules and also how they are being implemented in practice.

Summary

Feedback provided to me by COFAs at the Leeds & Yorkshire COFA Forum and the Newcastle COFA Forum, by delegates at my training courses and by my clients is that they prefer to have the comfort of following prescriptive rules that are contained in one place. They feel that whilst the draft wording of the proposed new Rules is easier to read than the old Rules, it would not be easier to comply with.

The most common response has been "if it isn't broke, don't fix it".

It is not clear how the current Rules prevent competition and innovation or why new entrants cannot understand the Rules when lawyers have done so for many years.

It is not clear why the SRA needs to make the changes as proposed. The proposals note that it is to reduce burdens and cost on regulated firms. I fear that the proposals will have the opposite effect. My reasoning for this is set out in my response. Particularly where judgement is required, lawyers and reporting accountants will be forced to take additional steps to justify what actions they have taken since the black and white requirements are no longer there.

The proposals are likely to have some far reaching impacts, some of which have been identified by the SRA including cost to the SRA, profession and the public plus a loss of confidence by the public in the profession. Other impacts don't appear to have been considered including VAT requirements, accounting requirements and law firm management/financial stability requirements.

Why change something that works in practice to something that may well be a risk to all involved?

Responses to specific questions raised in the consultation

Question 1: Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Feedback provided to me by COFAs at the Leeds & Yorkshire COFA Forum and the Newcastle COFA Forum, by delegates at my training courses and by my clients is that they prefer to have the comfort of following prescriptive rules that are contained in one place. They feel that whilst the draft wording of the proposed new Rules is easier to read than the old Rules, it would not be easier to comply with.

The reason that compliance will not be as easy is because of the need to refer to guidance which will be located in a separate location, and because the Rules are not prescriptive; in order to protect themselves they would need to document why action was taken in a particular way.

This has the potential to increase risk for law firms and COFAs and to increase their workloads in order to ensure compliance. Cutting down the length of the Rules by moving guidance elsewhere would be viewed as a backward step that complicates rather than eases compliance.

Point 6 in the Initial Impact Assessment notes that it is *difficult for new entrants to understand and comply with the Accounts Rules* – I would question *why* that is the case. Point 7 in that document notes that *new entrants … may be so intimidated by the detail, length and complexity of the current Rules they are put off from SRA regulation altogether* – this raises the question of the real purpose of this consultation. A reader of the consultation document may conclude that the SRA are more concerned by the impact on their own position rather than that of the public or profession.

Point 13 in the Initial Impact Assessment notes that *simpler rules will make it easier for consumers to understand the key principles* – I would doubt this very much as I do not think that consumers would ever look at the Rules, whatever format they are in.

I agree that the Rules should be simplified by focusing on key principles and requirements for keeping client money safe, although I fear that the proposed approach would increase compliance costs rather than decrease them.

Question 2: Do you agree with our proposals for a change in the definition of client money? In particular, do you have any comments on the draft definition of client money as set out in the draft Rule 2.1 (see Annex 1.1)?

I agree that the Rules could be simplified, particularly the differences between professional and non-professional disbursements.

However, I strongly disagree with the remainder of this proposal. That view is echoed by all in the legal sector that I have interaction with.

Examples provided in the documents accompanying the consultation suggest that "*disbursements for which the solicitor is liable (for example counsel fees)*" should be treated as the firm's money. I feel that it should be pointed out that there are many disbursements like this that the solicitor may pay on behalf of the client, but the solicitor is not actually liable for. The definition should therefore be tightened. It may be easier still for guidance to be provided to solicitors that they make arrangements for clients to pay disbursements directly. This would reduce the use of the client account, rather than treating such funds as office money.

Where the solicitor is responsible for payment of disbursements such as for counsel/experts, but for whatever reason cannot do so, those experts/counsel may stop work. That would adversely impact on the progression of client matters and lead to a loss of confidence in the profession.

Additional guidance would also be required for situations such as where the costs estimated by third party providers do not equal the amounts actually charged. For example, if counsel estimate £1,000 and that is paid by the client to the solicitor and paid into the office account, and counsel subsequently only charge £500. The solicitor will be holding £500 in the office account that is due to the client. This would presumably need to be promptly transferred to the client account or directly back to the client. It would have been much simpler for the solicitor to have retained this in client account from the outset.

The main reason that I do not agree with this proposal, however, is that I am involved in a large number of law firm turnaround/insolvency/closure/orderly wind up projects. I see first hand the desperation of law firm managers in such situations and how the funders/creditors react. All parties naturally attempt to protect their positions. The law firms use all money in the office account to attempt to stay within facilities, whether that money is due to a third party creditor or not. Blocks are routinely placed on making payments to creditors, particularly where they are not *business critical*. Having additional amounts in the office account that are due to creditors would only increase such problems. The law firms would see it as their cash, as would the funders. The disbursements that should be paid on behalf of clients would therefore potentially not get paid. The clients would suffer as client matters stall and it could cause more law firms to fail due to increased public knowledge and reductions in further instructions.

The knock-on impacts could be an increased number of interventions required, thus costing the SRA and the profession more, and would also reduce the faith of the public in the profession generally. It may be that there are other means of redress, but those means take time. Time is usually one thing that clients of law firms do not have; they require attention to the completion of their matter there and then. If this situation is replicated a number of times as a direct result of a change in Rules put forward by the SRA, there is the potential for a huge loss of confidence of the public in the profession. Where the redress requires payment from the Compensation Fund, that would ultimately add risk and cost to the profession as a whole.

Where such money is held in the client account, there is protection against creditors accessing that money. This in turn would allow matters to proceed and for clients to receive the service that they are expecting. Point 24 in the Initial Impact Assessment notes that *consumer confidence in the legal services market is underpinned by an expectation that client money will be safeguarded* – whatever the Rules are, that expectation will not change, but the reality may well do.

The SRA will need to consider what would happen in the scenario that a client makes a payment to a law firm in advance of the work being done and it is paid into the office account. The client then decides to instruct another firm and requests repayment. Due to the firm being in financial difficulty, the bank may prevent the money from being repaid to the client. The client may not be able to afford to pay another firm and therefore cannot receive the legal assistance that they require.

Point 18 of the consultation paper notes that *under the current definition of client money, we treat fees paid in advance (which is client money) differently to fixed fees (which are not)* – this is factually incorrect. All fees paid in advance, including those for fixed fees are currently client money, and for all of the reasons set out in my response, quite understandably so. The difference is with *agreed fees*, not fixed fees. *Agreed fees* do need to be fixed, but there are other requirements in addition – they need to be evidenced in writing, not be capable of being uplifted and are not dependent on completion. The key part of that is not dependent on completion – i.e. the money is due to the firm no matter what. Clearly that is completely different to money being paid in advance that may need to be returned to the client if the work is not completed.

Point 33 in the Initial Impact Assessment notes that *the potential detriment to consumers is therefore likely to be the ease to redress in the event that something goes wrong* – that is a big risk as outlined above, particularly due to the time it will take for the redress which needn't have been required had the Rules not changed. Point 33 continues to say that due to the lower number of firms that are intervened in *it would be disproportionate to design policy based on the risk that something goes wrong* – I would suggest that the low number of interventions and occasions where it does *go wrong* is because of the Rules as they stand now. Changing the Rules in the way proposed is likely to result in more *going wrong*. Point 33 continues to say *the data on interventions also reveals that the current detailed rules do not effectively mitigate against risks to client money* – nor do they force interventions, the proposed Rules may well force more interventions at greater cost to the SRA, profession and public.

Point 35 in the Initial Impact Assessment notes that there are many cases brought before the SDT regarding firms in financial difficulty where they have failed to pay professional disbursements. The proposed new Rules will increase the risk of what is already happening in those SDT cases.

There are other knock-on effects that it is not clear whether the SRA are aware of, or have considered:

VAT issues
If money received for solicitors fees is paid to the firm in advance of a bill being raised, and is now required to be treated as office money, output VAT would be due to be paid to HMRC on receipt, whether or not the solicitor raises an invoice at that point. At present, where such receipts are paid into the client account, it would not trigger such an amount due to HMRC.

The firm would therefore need to either incorporate a manual adjustment in their VAT return, which would be costly in terms of the time required to do that, or raise an invoice as the amounts are received. The invoice would then trigger an amount due to HMRC in their accounting systems.

This proposed change could also be viewed as the SRA encouraging something that they had previously published was a 'bad behaviour' in terms of financial stability of law firms, where they discouraged situations where VAT received by law firms is treated as cash received and is used for other purposes.

Efficiently managing the firm
As the co-author of the Law Society toolkit on financial stability within law firms, I advocate that when bills are raised, law firms monitor recoveries on those bills. They should be comparing the amount of the receipt against the amount of time invested at their charge out rate. If, per the VAT section above, invoices are raised simply to comply with VAT requirements, it will be far more difficult for firms to monitor recoveries as their bills are raised, particularly since those bills may be raised before the work is carried out. This will make the management of firms more difficult, potentially adding to financial instability risks.

Accounting issues – deferred income
If invoices are raised before work is performed, then accounting standards may require an adjustment to be made to the accounts to show those invoices as deferred income. The adjustment would effectively reduce fee income/turnover by the amount of those invoices raised in advance and reflect the amount as being owed back to clients. This would involve greater cost for the law firms in terms of their own accounting teams but also in the amounts paid to their external accountants.

Question 3: Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, would you use a credit card to pay for legal services? If not, why not?

Most law firms that I deal with do not have demand from clients to pay by credit card. That is because the payment amounts are commonly too large for the amount of credit available and also because generally the cost of processing credit card payments is passed on as a charge to those paying. Even a small percentage added to the cost, when the cost is large, is a deterrent from payment by credit card.

In addition, I have been informed by solicitors that their credit card providers will not allow them to receive payment for disbursements by credit card; only for their own fees.

Question 4: Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Agreed. Flexibility to have bespoke arrangements with clients is welcomed, although that flexibility is actually already in place under the current Rules.

Question 5: Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account? In particular do you have any (views on) the new draft Rule 4.2 (see Annex 1.1)?

This would depend on how *promptly* is defined. The main reason that I see for segregating office and client money is to protect client money. If client money is allowed to mix with office money in either the office or the client account, then it would be difficult to protect the client money if, for example the law firm becomes insolvent. It would be easier to have the term *promptly* defined under the various circumstances in which it is used in the Rules. That way, compliance would be easier to achieve. There may then be breaches of the Rules, but it would be down to the compliance officers or reporting accountants to decide whether the breaches were serious enough to report to the SRA or not.

Question 6: Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

The current Rules in respect of LAA matters are different to the main Rules due to the lower risk to clients where transactions are with the LAA rather than the public at large. If the Rules are to change as proposed, then I see no reason for the LAA Rules to be any different to those new Rules.

However, for the reasons set out above, I do not believe that the Rules should be changed as proposed, and in which case, there would still be the need for reduced requirements for LAA matters as in the current Rules.

Question 7: Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

I have no strong views other than reference to point 41 in the Initial Impact assessment where it notes that *the availability of TPMAs may offer improved security and protection to consumers* – Solicitors may feel justifiably aggrieved by that statement as it may infer that the TPMA providers are more trust worthy or knowledgeable than Solicitors.

Question 8: If not, can you identify any specific risks or impacts of allowing TPMA that might inform out impact assessment?

N/A

Question 9: Do you consider it appropriate for TPMAs to be used for transactional monies- particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, way?

N/A

Question 10: Do you have any views on whether we need to retain the requirement to have a published interest policy?

There should be a requirement for firms to have an interest policy and to agree it with clients. If that requirement is elsewhere in the Code, then there is no need to replicate it in the Rules.

Question 11: Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules (see Annexes 1.1, 1.2 and 1.3)?

Point 2.2	How is *promptly* defined?
Point 2.4	How is *promptly* defined?
Point 5.2	Should this not be extended to state that the withdrawals are in line with the policies of the firm and therefore have a requirement for such policies to be in place?
Point 6.1	Who is responsible for the correction of breaches?
Point 8.2	Can guidance be provided on the format of the statements received? Is electronic acceptable?
Point 8.3	Can guidance be provided on the format of the reconciliation statements? Should the Rule be extended to note that reconciliation must be *reviewed and* signed off by the COFA?
Point 11.2	If firms are required to obtain regular statements from the TPMA and ensure that they accurately reflect all transactions on the account, the law firm will need to continue with the accounting and controls that they would if they had not outsourced to a TPMA and there would be no loss of administration, just additional costs to be paid to the TPMA provider.
Annex 1.3	Current Rule 27 "transfers between clients" appears to have been removed, what are the proposed revised requirements?

Question 12: Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, please provide further details.

Annex 1.5

Point 4	Why are withdrawals to make payments to charity not in the main Rules?
Point 6	Why are residual balances due to clients not in the main Rules?

Residual balances
This appears to be the most mis-understood requirement of the current Rules. Guidance is required on the requirements, particularly if it is not covered in the main Rules. For example, current Rule 29.2 requires a separate ledger for each and every client. That appears to be replicated by the intention of the proposed Rule 8.1(b). Many firms combine payments to be made to charity in a single ledger before making the payment. This would be a technical breach of current Rule 29.2 and presumably the proposed new Rule 8.1(b). Specific examples of what can and cannot be done would be helpful.

Question 13: Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

I strongly disagree, as set out in my response to Question 2 above. The Annex notes that the examples raised are likely to be very rare. I do not think that they will be very rare. If the Rules are changed as proposed, they may become far more common.

Question 14: Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

Nothing to add.

Conclusion

In conclusion, I applaud the ambition to simplify the Rules, but the changes to the definition of client money will result in money being held in the office account which will cause complications leading to additional cost to the SRA, the profession and the public. There will also be a loss of confidence by the public in the profession. I would strongly encourage the SRA to re-think at least that part of their proposals.

Andy Poole
Legal Sector Partner
For and on behalf of Armstrong Watson Audit Limited
1 September 2016

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ASB Law LLP

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

This form is designed to be completed electronically—in MS Word. Please save it locally before and after completing it.

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Whilst the Accounts Rules are now clearer and simpler to understand. there are new concerns as to whether they are easier to comply with.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

The proposals to change the definition of client money is a welcome one and it's simplification should no longer make it a hindrance for any newcomers to the rules.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

As a firm, we do use credit cards to pay for legal services. However, the initial feelings that a client would need to seek refund of fees from the credit card company should a firm become insolvent seems rather unhelpful to the client. There have been comments that this is the "SRA making the problem someone else's" for example.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Whilst on the surface this does seem appropriate and will remove all the current rulings about office monies being in client a/c (the 14 day rule), will it not be the case that the opposite will come into force, whereby any client monies in office a/c will be a breach? It would be helpful if the word "promptly" could be more clearly defined as this seems to differ amongst firms and their reporting accountants and, indeed, the SRA. This is noted in Annex 1.5 with both the case studies.

As the amount of office credits will be far greater because costs and disbursements can be paid directly into office account, the task of finding these client monies amongst the office credits will be exhaustive for any medium + sized firm. It will also be more difficult to find office monies that have now been billed and the balance on a/c then becomes client money and should be moved to client a/c as a result.

There is also, the huge risk element that is created by allowing disbursements, in particular, to sit in the office a/c. Counsels and experts fees can run into hundreds of thousands of pounds, this may result in firms not paying these out as quickly as the 2 day rule will no longer be required. This will distort the firm's actual office a/c balance, therefore some form of ruling should be in place to avoid this occurrence. This is noted in Annex 1.4. Again, this will fall under not "safeguarding" client money but there seems to be no time restriction in place for ensuring that the counsels and experts are paid by.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Yes, I see no problems here, though the word "promptly" in Rule 4.2 is again open to interpretation.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Yes

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

Whilst this is not something we as a firm would consider, it can be determined that this arrangement may suit other firms depending upon their position.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

With the interest rules now simplified this does not seem necessary.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to consultation@sra.org.uk, by **21 September 2016**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

Solicitors Regulation Authority
Regulation and Education - SRA Accounts Rules 2017"
The Cube
199 Wharfside Street
Birmingham
B1 1RN

Solicitor's Regulation Authority

CONSULTATION:

LOOKING TO THE FUTURE: ACCOUNTS RULES REVEIW

Submission of the Association of Partnership Practitioners

21 September 2016

1. THE ASSOCIATION OF PARTNERSHIP PRACTITIONERS

1.1 The Association of Partnership Practitioners (**APP**) is a multi-disciplinary organisation whose 400+ members include solicitors, barristers, accountants, tax advisers and bankers. The APP's members include the leading legal, accountancy and tax advisers on limited liability partnerships (**LLPs**) and partnerships (traditional or limited).

1.2 Most APP members also practise through LLPs and partnerships. The membership includes members of the leading UK accountancy firms and many leading UK law firms. More information about the APP can be found at http://www.app.org.uk/.

1.3 The APP welcomes the opportunity to submit its views on the SRA's consultation on the changes to the Accounts Rules.

1.4 This submission has not been approved by all of the members of the APP, but this paper has been prepared and approved by the committee of the APP which includes solicitors, accountants, tax advisers and a barrister.

2. SUMMARY

2.1 While we welcome the consultation and the fact that the SRA has sought to simplify a set of Accounts Rules which have long been considered as onerous and prescriptive, we are concerned that the draft rules presented for consultation have not fully embraced the way that law firms operate in the 21st Century or recognise the inherently different ways that law firms operate depending on their size, nature and practice areas.

2.2 The consultation has indicated that there will be supporting guidance and toolkits available to support law firms and COFAs (indeed there appear to be 16 areas where guidance is planned at least initially) but it is difficult to provide a full response to the proposals when drafts of that guidance have not been published.

2.3 Through the various engagements we have had with our membership and other interested parties, there remains a concern that the new approach, whilst more simplified than in the past, is still prescriptive and firms wish to have more flexibility in how they should manage client funds providing that they can demonstrate outcomes that support the fundamental principle of protecting client money.

RESPONSES TO SPECIFIC QUESTIONS

Question 1 - Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

1. We are pleased that the SRA has sought to simplify the Accounts Rules which have been largely unchanged for many years and have not kept pace with how business practice has evolved.

2. Although the draft Accounts Rules are considerably shorter, we are concerned that some of the 'simplification' will lead to circumstances which cause considerable difficulty for some firms to comply with and could threaten the overarching principle that law firms should protect the interests of their clients including client money.

3. We are not convinced that the Accounts Rules (even if accepted as clearer and simpler) will necessarily be easier to comply with. Some of the changes proposed means firms would have to re-engineer their accounting systems and processes and potentially develop new procedures and controls in certain areas.

4. The difficulty remains in trying to develop a set of Accounts Rules that apply to all law firms (approximately 11,000 of them) but where those law firms span a vast range in terms of size and also client base. What will be suitable and appropriate for a multi-million pound revenue firm which a client base of sophisticated corporate businesses will not be the same as a small partnership or sole practitioner providing residential conveyancing or private client services to largely private individuals.

5. We would prefer to see a set of Accounts Rules that more clearly focus on principles with desired outcomes which would allow individual firms to develop practices that are suitable to the size, scale and nature of their business.

Question 2 - Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

6. We are concerned that the change in definition is too simplistic and we support a law firm being able to exercise some discretion on how it should deal with money received from clients in different circumstances.

7. We agree that at the present time, law firms are largely prevented from invoicing their clients in advance of services being provided, in contrast to other professional advisors, and we believe that some change to the Accounts Rules is necessary to facilitate this.

8. If money in advance of services being provided is to be paid directly into the firm's business account then we believe that this should only be after presentation of an invoice. When money is paid into the firm's business account, however, that will create a VAT point and the solicitor will need to account for output VAT. Where both the solicitor and the client are VAT registered then arguably this does not cause much issue but if the client is not VAT registered then they will be requried to pay the VAT to the solicitor at an earlier point than if billed at the conclusion of the matter.

9. We believe that law firms should be entitled to operate flexibly in how they should deal with fees in advance or requesting money on account of costs in order that they can balance their own commercial interests with those of their client.

10. We believe the position on disbursements needs careful consideration. Although a solicitor may be the party liable to pay Counsel's fees, we are concerned that if money is paid in advance to the Solicitor for Counsel to represent the client in court and, for whatever reason, those funds are used inappropriately by the firm or the firm collapses, then the client faces the risk of having to find further funds to secure the representation in Court. See later for our comment on mixed receipts.

Question 3 - Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

11. We believe that clients should be able to pay for legal services by credit card should they have the ability to do so.

Question 4 - Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

12. The basic answer to the question is 'yes' as we believe it important that a firm should not seek to gain protection through placing its own money in client account. However, our response to question 2 refers and we believe the definition of 'client money' needs to be more flexible to allow firms to develop their own policies that are geared to the fundamental principle of protecting clients' interests.

Question 5 - Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

13. We agree that the focus should be on making sure that the ultimate destination of funds is correct.

14. Allowing mixed receipts to go into the firm's business account potentially introduces greater risk that money that is properly client money is used to support the business and not placed in Client account promptly.

15. The current rule on mixed receipts means that some firms automatically direct all receipts from clients to Client account and then make appropriate transfers thereafter. A change to the rules in this area should allow greater efficiency for these firms with many fewer transfers being required between the client account and the business account.

Question 6 - Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

16. We are satisfied that the SRA's approach on this matter is appropriate.

Question 7 - Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

17. We are supportive of the SRA allowing client money to be held in a TPMA but are mindful that this approach may not be appropriate for many law firms, particularly those who are dealing with client money transactions which may require quick decisions and the ability to deal with payment requests in a very tight timeframe (e.g. in a conveyancing).

18. There may be particular types of firm where this approach is desirable, however. Many US law firms that set up offices in the UK do not handle much volume of client money at all. The current Accounts Rules, however, mean that such firms need to invest in arrangements that can be disproportionate to their activities and we believe that TPMAs may find traction in this type of firm.

Question 8 - If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

19. There must be no suggestion that the protection afforded to clients whose funds are placed in a TPMA is less than that which would be present under a Client account that is managed by the law firm itself.

20. An option may be to require the TPMA provider to report to the law firm periodically on its regulatory compliance to allow the firm to assess whether it should continue to keep funds at that TPMA provider.

Question 9 - Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

21. From our understanding of how TPMAs operate, we believe it would be difficult to for these to be used for transactional monies, particularly in relation to conveyancing. We do not believe that the rules should legislate when TPMAs may or may not be used though - we believe that this should be a decision for the law firm who should be free to develop systems and policies that suit their own operations provided that they are upholding the principles of the SRA Handbook and can demonstrate the appropriate outcomes.

Question 10 - Do you have any views on whether we need to retain the requirement to have a published interest policy?

22. We believe that clients should be made aware of when they will receive interest (or a sum in lieu of interest) on funds held by the solicitor. To that end, we believe the requirement should be retained.

Question 11 - Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

23. Whilst supporting the general direction of travel, we believe the SRA has still missed the opportunity to bring the Accounts Rules up to date and make them feel fit for business in the 21st Century.

24. Some of the language and style of writing the rules should be updated.

25. The use of "you" still has the capacity to cause confusion and could be eliminated without causing any dilution in the understanding or impact of the rules. For example draft Rule 3.1 could be re-drafted as "Client accounts must be held at the branch or head office of a bank or building society located in Engalnd and Wales".

26. 'Costs' and 'bill of costs' should be updated to 'fees' and 'invoice' or ‘fee-note'.

27. We do not understand why the obligation to reconcile client accounts to the client ledger balances is required to be at least every five weeks - why not make this at least at the end of every calendar month? Additionally, the rules could usefully be updated to make it clear that obtaining the bank statement from an online banking system is acceptable rather than requiring the delivery of a paper statement.

28. We also question whether the reconciliation required in 8.3 should require the reconciliation of the liabilities to clients (i.e. the client ledger) to the amounts held in Client accounts and client money held other than in a client account. The current wording has the capacity to miss dealing with those clients who have requested that their funds are not kept in a Client account (for example a bank account in Scotland).

29. Draft Rules 9.1 and 10.1 introduce a reconciliation requirement that is not present in the current version of the Rules and we do not understand the rationale for intorducing them here. Indeed, the manner in which joint accounts are operated may mean it is impracticable for such reconciliations to be prepared. We agree that clients whose funds are held in such arrangements need to be protected but we believe this requirement needs to be revised.

30. We are disappointed that the draft Accounts Rules do not seem to facilitate the handling of client money by multi-disciplinary practices, who may be subject to client money regulations in other parts of the business. As currently written, such a business would be prevented from operating a pooled client money system. We believe that the SRA should allow firms to hold client money in accordance with the rules of another regulator provided those rules had 'equivalence' and that the firm could demonstrate that in so doing that they were upholding the principles in the SRA Handbook and were protecting client funds adequately.

Question 12 - Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

31. It is difficult to provide a full answer to this given that we have not had a chance to examine the planned guidance and toolkits, notwithstanding that the consultation annex provided headings for suggested topics.

32. Although we understand the 'banking facilities' prohibition is there to minimise the risk of solicitors client accounts being used or money-laundering, the current articulation and interpretation of the rules provides challenges to solicitors who wish to provide 'family office' services to clients in a manner similar to those provided by, say, firms of accountants. Guidance on this area would be welcome on how these services could be offered by law firms without contravening the requirements of the Accounts Rules.

Question 13 - Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

33. See our response to questions 12.

Question 14 - Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

34. We have no empirical data or evidence readily available that we can provide.

Bar Council response to the SRA 'Looking to the Future: Accounts Rules review' consultation paper

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Solicitors Regulation Authority (SRA) consultation paper entitled 'Looking to the Future: Accounts Rules review'.[1]

2. The Bar Council represents over 15,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.

3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

Overview

4. The Bar Council views the SRA consultation paper with grave concern, particularly the section concerning changing the definition of 'client money'.

Question 1: Do you consider that the draft Account Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

5. The Bar Council do not have a response to this question.

Question 2: Do you agree with our proposals for a change in the definition of client money? In particular, do you have any comments on the draft definition of client money as set out in the draft Rule 2.1 (see Annex 1.1)?

[1] Solicitors Regulation Authority (2016) 'Looking to the Future: Accounts Rules Review'. http://www.sra.org.uk/documents/SRA/consultations/accounts-rule-consultation.pdf

6. The Bar Council views with grave concern the proposed change to the definition of 'client money'. That concern is based on four reasons:

- The proposal relies on too narrow a conception of what is in the best interests of the client.
- The factual basis of its analysis of the process of paying counsel (and other third parties) is significantly incomplete.
- It over-estimates the effectiveness of the protection currently given to the treatment of professional disbursements by the existing Solicitors Accounts Rules (notably Rule 17.1).
- The proposal replaces a clear and useful rule in the existing SAR with a less clear duty set out in another document - the proposed new Code of Conduct.

The proposed change and its rationale

7. The change proposed under draft SAR 2.1 involves excluding from that definition 'payments to third parties for which you [i.e. firms of solicitors] are liable'. Paragraph 16 of the Consultation Paper ('the Paper') explains that examples of those third parties include counsel.[2]

8. The rationale for the change, explained at paragraphs 18 to 25, is not easy to understand. It is apparently based on the distinction between the existing rules' treatment of fees paid in advance (which are client money) and fixed or agreed fees (which are not). The Paper notes that Multi-Disciplinary Practices regulated by the ICAEW as well as by the SRA have 'issues' - which are not spelt out - because ICAEW rules do not treat fees paid in advance as client money.[3] The Paper says that 'money paid for all fees and disbursements for which the solicitor is liable (for example counsel fees)' should be treated as the firm's money,[4] that keeping a separate client account just for these payments adds to a firm's costs,[5] and that the existing rules 'may encourage or normalise the business practice of requiring consumers [i.e. clients] to pay in advance for services and before the costs have been calculated'.[6]

9. The Paper regards the level of protection currently applied to payment of fees in advance under the existing Accounts Rules as 'significant'. The purpose of that protection is acknowledged: 'It ensures that this money is kept separate from the firm's money and in the event of the firm's insolvency is capable of being returned back to the client if the work has not been done (by the appointed insolvency practitioner or through use of [SRA] intervention powers.'[7] Payment by credit card is identified as a way for clients to take advantage of protections in consumer legislation which mean that 'we [the SRA] can safely reduce the current high levels of consumer protection provided in relation to fees paid in advance.' [8]

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2 Together with experts and couriers.

3 At para 18.

4 See para 7, second bullet point.

5 See para 23.

6 See para 24.

7 Para 23.

8 See para 25.

Where the paid-for work is not completed and payments were not made by credit card, then the client still has access to redress through the Legal Ombudsman.[9]

10. The effect of reduced protection for counsel is dealt with at paragraphs 27, 28 and 32. The SRA's approach is that 'payments for professional services for which the firm is liable should … be treated as any other liability of the firm'. [10] The Paper accepts that 'the proposal removes some protections for those other than the clients (for example counsel and other experts)'.[11] However, it does not regard that removal of protection as significant. 'We consider that these risks in relation to payments for which the solicitor is liable are adequately addressed through clear duties to act in the client's best interests.'[12] These duties are apparently those identified earlier in the Paper [13] as forming part of the draft Code of Conduct: '[4.1] You properly account to clients for any financial benefit you receive as a result of their instructions; [4.2] You safeguard money and assets entrusted to you by clients and others.' The Paper explains how these duties are to be complied with in practice: 'We would therefore expect (a) sufficient accounting records of transactions kept by the firm including client transactions through the firm's business accounts; (b) firms to comply with the standards required in respect of giving adequate cost information, delivering bills, and returning any surplus costs or money promptly.' [14]

11. The SRA's Impact Assessment Note accompanying the consultation discusses how professionals may respond to the proposed change in definition of client money. 'Many professionals will have engaged with firms previously when providing their services and will be in a better position to negotiate their terms of business. These terms, in our view, should not be determined by us and reflected in the Accounts Rules.' [15]

The best interests of the client

12. A significant number of client instructions will involve not only the solicitor but other third party professionals, including counsel, other lawyers and experts. They will need to work with the solicitor in order to achieve an outcome in the best interests of the client. The process is necessarily collaborative and dependent on trust. Confidence that the solicitor will comply promptly with the intended purpose of a payment made by or on behalf of a client is essential for the client. Confidence that payment will be made by the client to the solicitor, and then promptly by the solicitor to the third party, is essential for the third party. Where a solicitor is instructing third party professionals on behalf of a client, he is in effect creating and leading a team. He has a particular responsibility within that team, which its other members do not have, for handling the client's money and dealing with payments from the client to counsel and others. The team is unlikely to achieve the best outcome for the client if the solicitor is freed from the mandatory requirements of rule 17.1 and where his attitude to

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9 Para 30.
10 Para 28.
11 Para 32.
12 Para 32.
13 At para 10
14 Para 32.
15 See Impact Assessment Note at para 19.

paying professional disbursements properly due to third party members of the team is based on the SRA-endorsed approach described at paragraph 28 of the Paper: 'payments for professional services for which the firm is liable should in our view be treated as any other liability of the firm.'

The proposal is founded on an inadequate appreciation of the facts

13. Both the discussion in the Paper and in the Consumer Protection Analysis (at Consultation Annexe 1.4) focus on the position where solicitors ask for payment of counsel fees in advance while ignoring the position in relation to billing and payment of fees for work which counsel has *already* done. Although it is standard practice for solicitors to require clients to pay monies on account in advance of work being done, in a large number (and perhaps the majority) of cases involving counsel it is necessary for counsel to carry out work further to that originally covered by the initial payment on account. This can happen for any number of reasons. When drafting or advising, there may be further instructions or documents than those originally available, or further points may arise that need to be dealt with. In proceedings, where the work necessary will always need to respond to whatever points may be taken by other parties or by the court, the scope of work may ultimately be very different and significantly expanded in scope from what was originally contemplated. Despite the best efforts of rule-makers and judges, hearings get adjourned or overrun. Very often, and perhaps more often than not, the deadlines within which further work needs to be done do not allow for calculation of future fees and requests for and receipt of payments in advance.

14. The consequence of this is that in many cases a very significant part of counsel's fees is billed, at a level calculated on the basis of earlier agreement, after the work has been done. Counsel's clerk prepares a fee note which goes to the solicitor, and the solicitor issues a bill for professional disbursements in respect of counsel's fees which is sent to the client. Although the solicitor may properly issue a bill that covers both costs (i.e. his fees) and disbursements (e.g. counsel's fees), the circumstances of payment will show whether the client's intended purpose in making the payment was to pay some or all of the solicitor's costs or counsel's fees or expert's fees or other disbursements.

15. The solicitor's presentation of a bill to a client for counsel's fees will normally amount to a representation or warranty that the client's payment of such fees will be used to pay counsel. Any failure by the solicitor to do that will be a breach of the representation or warranty as well as a failure to comply with the instructions of the client. If, because counsel's fees and other disbursements are no longer regarded as client money, the client's payment of those fees and disbursements goes into an office account where it reduces the overdraft and where the balance is not sufficient to pay counsel at once or for some time, the solicitor will be unable to act in accordance with his representation or warranty and will be unable to carry out the client's instructions. The distinction under the current SAR between office money and client money, and the requirement to operate an office account and a client account, are necessary and sensible. They work in the best interests of the client and serve to uphold the solicitor's integrity and the reputation of the profession. The removal of counsel's fees from this process appears illogical and should not be done without compelling reason.

The protection currently given to the treatment of counsel's fees and professional disbursements by the existing Solicitors Accounts Rules.

16. The existing SAR (August 2016 edition) provide:

Rule 17: Receipt and transfer of costs

17.1 When you receive money paid in full or part settlement of your bill (or other notification of costs) you must follow one of the following five options:

(a) determine the composition of the payment without delay, and deal with the money accordingly:

(i) if the sum comprises office money and/or out-of-scope money only, it must be placed in an office account;

(ii) if the sum comprises only client money, the entire sum must be placed in a client account;

(iii) if the sum includes both office money and client money, or client money and out-of-scope money, or client money, out-of-scope money and office money, you must follow rule 18 (receipt of mixed payments); or

(b) ascertain that the payment comprises only office money and/or out-of-scope money, and/or client money in the form of professional disbursements incurred but not yet paid, and deal with the payment as follows:

(i) place the entire sum in an office account at a bank or building society branch (or head office) in England and Wales; and

(ii) by the end of the second working day following receipt, either pay any unpaid professional disbursement, or transfer a sum for its settlement to a client account; or

(c) pay the entire sum into a client account (regardless of its composition), and transfer any office money and/or out-of-scope money out of the client account within 14 days of receipt……; or

(d) on receipt of costs from the Legal aid Agency, follow the option in rule 19.1(b)…

17. The intended effect of Rule 17 (and Rule 18) is to ring-fence client money so that it is placed at once, or no later than the end of the second working day after receipt (Rule 17.1(b)), into client account for onward payment to the party – whether counsel, other lawyer or expert – to whom it is due. That was the client's intended purpose in making the payment in response

to a solicitor's bill for costs and disbursements, including professional disbursements yet to be paid.

18. Commenting on the operation of Rule 17.1(b) and compliance with it, the authors of *The Solicitor's Handbook 2015* say this:

> "It is a well-known but wholly improper practice in such circumstances to credit the whole sum to office account and to withhold payment of the unpaid disbursements so that the office overdraft is reduced by the amount owed to counsel and others, possibly many thousands or tens of thousands of pounds."[16]

19. Given the description of this practice and the reference to it in *The Solicitor's Handbook*, which carries the imprimatur of The Law Society, it is surprising that the Paper has no discussion of it. Conduct of this nature not only delays payment to counsel and other third parties but can, if the firm becomes insolvent, prevent such payment being made at all. That defeats the intended purpose of the client in making the payment and limits the scope and level of recovery by counsel or the third party to the payment of a dividend calculated by the liquidator, trustee or insolvency practitioner at the end of the administration of the insolvency and after deduction of the fees charged for the administration. Unlike the client, counsel has no recourse to the Legal Ombudsman for compensation; and the client (having no contractual liability to counsel) cannot approach the Legal Ombudsman for compensation which he can then pass on to counsel.

20. There is, equally, no discussion of how widespread is the incidence of firms' insolvency in circumstances where fees due to counsel are outstanding, either where those fees or part of them have earlier been paid by the client to the now-insolvent firm or where they still remain to be paid at the time the insolvency begins. In principle, the insolvency practitioner should pursue the client for any fees unpaid by the client and there should be no loss to counsel. It is certainly the case that counsel have lost and continue to lose fees as a result of firms' insolvency. Anecdotal evidence [17] suggests that the losses may be considerable and may happen on a regular basis.

21. Further research about these matters would be useful and should be undertaken by the SRA and the Bar Council to provide an informed basis for discussion. Pending the outcome of that research, the conclusion must be that while Rule 17.1 is not difficult to understand and apply, there are evident limitations on the protection it confers on counsel (and experts) for payment of fees for work already done.

22. There is no good case for diluting that protection by excluding counsels' fees from the definition of client money. The exclusion will mean that future protection will rely on a Code of Conduct duty instead of a clear mandatory rule in the SAR. The operation of the duty may be open to doubt where the SRA as regulator is saying that payments for professional services

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[16] At p.125. The authors are Andrew Hopper QC and Gregory Treverton-Jones QC. As at the time of writing, the 2015 Handbook appears to be the most recent edition.

[17] Several instances of loss due to insolvency are known to the Bar Council's Remuneration Committee.

for which a firm is liable should be treated in the same way as any other liability of the firm. One possible consequence of exclusion is foreshadowed at paragraph 19 of the SRA's Impact Assessment Note:[18] that counsel will need to re-negotiate their contractual terms with solicitors.

LAA payments and SAR Rule 19

23. The Bar Council notes the statement at paragraph 45 of the Paper that the SRA is discussing with the Legal Aid Agency to determine whether Rule 19 of the existing SAR can be safely dispensed with relating to LAA payments.

24. Rule 19.1(b) is engaged when the circumstances described in rule 17.1(d) arise – i.e. when the solicitor receives a payment of costs from the LAA. Rule 19.1 provides:

> *"Two special dispensations apply to payments (other than regular payments) from the Legal Aid Agency:*
>
> *(a) An advance payment, which may include client money, may be placed in an office account, provided the Legal Aid Agency instructs in writing that this may be done.*
>
> *(b) A payment for costs (interim and/or final) may be paid into an office account at a bank or building society branch (or head office) in England and Wales, regardless of whether it consists wholly of office money, or is mixed with client money in the form of:*
>
> *(i) advance payments for fees or disbursements; or*
>
> *(ii) money for unpaid professional disbursements;*
> *provided all money for payment of disbursements is transferred to a client account (or the disbursements paid) within 14 days of receipt."*

25. The current Rule 19 provisions therefore allow for LAA payments for counsel's unpaid fees to be paid into an office account provided that the element of it comprising those fees is transferred within 14 days to client account. If a firm's insolvency occurred within those 14 days and before LAA payments for counsel had been transferred to client account, then counsel has no guarantee of receiving those payments either during or at the end of the administration of the insolvency. Like Rule 17.1(b), Rule 19.1(b) is important and useful but provides less than full protection to counsel for payment of their fees once those fees have been invoiced to the client and paid. Where the client is the LAA and a statutory body charged with the spending of public money, there is an overwhelmingly strong public interest in that money being received by the party for whom it is intended. There would need to be compelling reasons for the SRA, itself a statutory regulator, to dispense with Rule 19. The Paper gives no indication of what such reasons may be.

26. The Bar Council wishes to be informed of the outcome of those discussions and will comment on the issue in the light of that outcome.

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[18] See para 11 above.

Remaining Consultation Questions

27 The Bar Council do not have a response to Questions 3 to 14.

Bar Council[19]
21 September 2016

For further information please contact
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[19] Prepared for the Bar Council by the Remuneration Committee.

Bar Services Company Limited (t/a BARCO) response to the Looking to the Future: SRA Accounts Rules Review consultation paper

1. This is the response of Bar Services Company Limited (BARCO) to the Solicitors Regulation Authority (SRA) consultation paper entitled "Looking to the Future: SRA Accounts Rules Review".

2. BARCO is an escrow account service, owned and operated by the Bar Council. Since it was launched in January 2013, BARCO has been assisting barristers and entities to handle client money. In November 2015 the first SRA waiver was issued to a solicitors firm to allow them to use BARCO also.

3. BARCO is regulated by the Financial Conduct Authority (FCA) as a small payments institution under the Payment Services Regulations 2009 (PSRs) but is currently in the process of applying for authorised status with the FCA under the same regulations.

4. BARCO is registered with HM Revenue and Customs under the Money Laundering Regulations (MLR).

5. Client funds held in BARCO are done so in a fully segregated account with Barclays Bank plc and these funds are fully insured against all risks with AIG Europe.

Overview

6. BARCO is responding to only one of the proposals, i.e. "An alternative arrangement to holding client funds – TPMA"

7. In answer to questions 7-9, BARCO is strongly in favour of the SRA allowing the use of third party managed accounts (TPMAs) as an alternative to holding money in a client account.

Question 7: Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

8. Yes, the SRA should allow TPMAs as an alternative to holding client money. BARCO is already holding client funds on behalf of one SRA-regulated entity who successfully

applied for and obtained a Waiver for the existing rules in order to use BARCO as a TPMA. BARCO supports the proposed criteria that a TPMA must meet to ensure there is adequate protection for both lawyers, entities and their clients.

9. The use of TPMAs ensures that there is far greater consumer protection and choice. BARCO is currently registered with the FCA as a small payments institution and as such has adopted the segregation method of safeguarding clients' money. All funds are held in segregated, ring-fenced accounts and cannot be used for any other purpose.

10. When using a TPMA, the consumer is provided with a clear understanding of the third party agreement prior to entering the arrangement, especially surrounding the ability to approve transactions and the right to terminate.

11. Similarly, the use of TPMAs will lower the insurable risk for firms and in turn lower the compensation fund.

12. Allowing the use of TPMAs will help the SRA to achieve its regulatory objectives of promoting competition in the provision of legal services.

Question 8: If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

13. In our opinion, there are no specific risks or impacts that would prohibit the use of TPMAs provided the TPMA provider meets minimum criteria. We would suggest that this be similar to that enforced already by the Bar Standards Board (BSB) [rule rC74]:

- **rC74**

  If you make use of a third party payment service for making payments to or from or on behalf of your client you must:

  1. Ensure that the service you use will not result in your receiving, controlling or handling client money; and
  2. Only use the service for payments to or from or on behalf of your client that are made in respect of legal services, such as fees, disbursements or settlement monies; and
  3. Take reasonable steps to check that making use of the service is consistent with your duty to act competently and in your client's best interests.

We would also add that that the TPMA provider must be adequately insured and operate under the FCA's "Segregation" model as specified in the BSB's guidance on their use:

- **gC110**

  Considering whether your client will be safe in using the third party payment service as a means of transmitting or receiving funds. The steps you should take in order to satisfy yourself will depend on what would be expected in all the circumstances of a reasonably competent legal adviser acting in their client's best interests. However,

you are unlikely to demonstrate that you have acted competently and in your client's best interests if you have not:

1. ensured that the payment service is authorised or regulated as a payment service by the Financial Conduct Authority (FCA) and taken reasonable steps to satisfy yourself that it is in good standing with the FCA;
2. if the payment service is classified as a small payment institution, ensured that it has arrangements to safeguard clients' funds or adequate insurance arrangements;
3. ensured that the payment service segregates client money from its own funds; and
4. satisfied yourself that the terms of the service are such as to ensure that any money paid in by or on behalf of the client can only be paid out with the client's consent.

Question 9: Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMAs be restricted to certain areas of law? If so, why?

14. We consider it entirely appropriate for TPMAs to be used for transactional monies.

15. BARCO has been successfully assisting with commercial conveyancing for some time and can see no reason why the use of TPMAs should be restricted to certain areas of law.

CAROL HARRIS
Director, BARCO
20 September 2015

Solicitors Regulation Authority

CONSULTATION:

LOOKING TO THE FUTURE: ACCOUNTS RULES REVIEW

Submission of BDO LLP

20 September 2016

1. BDO LLP

1.1 BDO LLP is an award winning UK member firm of BDO International, the world's fifth largest accountancy network, with more than 1,400 offices in 154 countries. One of BDO LLP's Sector groups focuses on offering services to clients that operate in the professional services sector. The Professional Services Group provides auditing, tax and advisory services to numerous law firms across the UK including many of the "Top 100" largest national and international firms..

1.2 BDO LLP welcomes the opportunity to provide comments on the SRA's consultation and we provide below our responses to the specific questions raised.

2. SUMMARY

2.1 We agree with the overall objective to simplify the rules, remove prescriptive time limits and reduce regulatory burden where appropriate. We strongly support the idea of principle based rules, which a firm can, to some extent, determine policies and procedures appropriate to the size and complexity of its own business. We are also strongly of the opinion that any set of proposed new rules must be capable of standing on its own to protect client money without the need to refer to other documents such as the Code of Conduct, or to rely on other mechanisms to provide consumers with compensation in the event of an insolvency of a regulated firm. The rules should be capable by themselves of affording consumers with confidence, that they provide appropriate protection of money that has been advanced to a firm to carry out legal services on their behalf, such that in the event of an insolvency of a firm of solicitors, clients can be assured that their money has been appropriately segregated to enable a complete and timely return. Scenario 1 of Annex 1.4 which clearly explains the risks that arise with the new proposed Rules, does not seem to us to produce a complimentary view of the direction in which the industry will move as a result of these proposed new rules. We elaborate on our concerns in the questions below.

RESPONSES TO SPECIFIC QUESTIONS

Question 1 - Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

1. We are pleased that the SRA has taken the opportunity to simplify the Rules.
2. We agree that these Rules are clearer and simpler to follow, especially for new entrants into the market or for those unfamiliar with the previous rules. However, it is critical, as proposed, that the Toolkit guidance for firms is comprehensive and covers the issues a firm may face when dealing with client money. Although some parts of the rules were overly onerous and complicated they did provide more clear guidance which was less reliant on judgement and interpretation. This needs to be replicated in the Toolkit to avoid mis-use of client money. It would have been useful if more details of what is t be included in the Toolkit was available as it is difficult to comment on the adequacy of the amended rules without full details of the additional guidance which will be available.
3. One of our main concerns is that the draft Rules have perhaps been simplified too much and will mean that firms struggle to interpret how to apply the rules. Whilst the Rules might be simpler it does not mean that they are necessarily easier to comply with. This could lead to inconsistencies or misinterpretation in applying the rules which could increase the risk of client money not being properly safeguarded for clients.
4. Overall, whilst there is a need to simplify the rules it is essential that there are no areas that can be misinterpreted. We would prefer to see a clear statement of principles to accompany the Rules that will allow firms some flexibility in applying them according to their size and complexity but will ensure that there is no misinterpretation and will ensure the safeguarding of client money.

Question 2 - Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

5. We have some concerns with the proposed change in the definition of client money. We consider that it could make it more difficult for firms to account properly for client money and lead to reduced protection for clients.
6. We believe this could mean that for many firms it will be more complex to manage payments received by clients in advance. In some circumstances payments in advance that will be in business account might make it harder to understand a firm's true financial position with a bank, particularly when borrowing facilities might be stretched.
7. It will also require care to be taken when dealing with residual monies at the end of the matter. It might lead to a number of residual balances being inadvertently retained in the business account at the end of a matter, without the proper return to the client or transfer to client account.
8. Case study 1, rather than supporting the changes, identifies this issue where client money could be incorrectly retained in the business account. Given the only timeframes specified in the rules is 'promptly' (with no timeframes in this example), the excess of £560 could remain in the business account for some time. The over-simplification of the rules is likely to cause confusion with firms and reporting accountants, making the review work of the latter even more subjective. Also, if such funds are held across many clients, there could be significant amounts of client money incorrectly held in the business account.
9. In addition, we consider that the Accountant's Report which looks primarily at the systems and controls surrounding the operation of the client money account, would carry less meaning if there is money that has been paid into the firm account in the first instance and used by the firm as part of its working capital arrangements that would, save for a fuller

definition of client money without the exemptions, have been protected in the client account in the first instance and therefore within the scope of the Accountant's Report's review.

Question 3 - Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

10. We believe that clients should be able to use credit cards to pay legal fees if they wish.

Question 4 - Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

11. We agree that only client money should be held in a client account, however we have raised our concerns regarding the new definition of client money in response to Question 2 above.

Question 5 - Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

12. We would prefer a regime where any money that the firm receives from a client is immediately segregated and recorded to the account of a client which thereby protects the stability of the client money regime and the statutory trust regime under which this is pinned.
13. The option to pay monies into the office account could surely lead to an increase risk of mis-treatment of client monies, especially for firms in financial difficulties.
14. If this proposed rule change goes ahead, there should be a specified timeframe for any client monies to be transferred to the client account, for example the end of the next working day.

Question 6 - Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

15. Yes, we agree. These additional rules overly complicate the process for firms who deal with the LAA and it seems much more sensible to just apply the broader principals.

Question 7 - Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

16. Perhaps this should be considered separately, as opposed to part of the main change in the Rules. We would not want there to be an increased risk to clients if their money is held by TPMAs and the law firms should be responsible for ensuring that the TPMA is suitable to hold client money with no less protection than if held by the law firm itself. The process and fees charged may mean few firms actually see using TPMAs as a feasible option.

Question 8 - If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

17. No comment – see above

Question 9 - Do you consider it appropriate for TPMAs to be used for transactional monies - particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

18. No comment – see above

Question 10 - Do you have any views on whether we need to retain the requirement to have a published interest policy?

19. It is accepted practice and taken for granted that a firm will account for interest correctly (both by the consumer and law firms) hence we propose that the requirment should remain. Consumers may have large amounts of money held in a firm and will want to have the interest policy confirmed clearly to them in writing.

Question 11 - Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

20. With less prescriptive wording in the Rules and Toolkit, there needs to be appropriate time and training available to COFAs, Reporting Accountants and those individuals involved in dealing with client money more generally. The Code of Conduct is not something we expect many individuals will be that familiar with. This will of course be the responsibility of the COFA or Reporting Accountant but should be supported by guidance material from the SRA, such as references to key sections of the Code of Conduct in the Toolkit.

    Although Rule 6 covers the prompt correction of any breaches, we believe Rule 8.3 should retain reference to any differences identified in the bank reconciliations to be investigated and corrected promptly. The actual performance of the reconciliation is in itself surely not the point of this rule - it is to ensure any differences (likely to indicate missue of client money) are identified and corrected.

21. We would suggest that Rule 8 would benefit from the inclusion of a rule requiring firms to establish written policies and procedures to formalise its application of the rules including what constitutes a reasonable time frame appropriate to the size and nature of their operations.

Question 12 - Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

22. No comment

Question 13 - Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

23. No comment

Question 14 - Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

24. No comment

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

This form is designed to be completed electronically—in MS Word. Please save it locally before and after completing it.

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Yes, however more clarification is required around the word "reconciliations" specifically within rule 10.1 (b).

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

We would like to know what was the driver to the change of this rule. Further clarity is required as to what the SRA hope to achive by this amendment.

Confirmation is also required on whether we can continue with our current practices built around the SRA rules 2011.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

No, we, the firm, do not accept credit cards. We do not see credit card payments as a professional, corporate or responsible banking option. We are users of credit cards, but not in relation to payment of legal services.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Yes, subject to clarity on how we determine treatement of more vague receipts. For example as part of a completion monies will be held on client account, however once the completion monies are dealt with and only funds on account of our costs remain are these then required to be moved into the office account immediately?

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Yes, we already operate on this basis.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

N/A

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

We feel this is dependant on the size of the law firm and their internal controls around client funds. For BLP this is not practical option due to the volume, frequency and urgency of our client account transactions.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

The turn around speed of client payments is our biggest issue. Also adjusting internal procedures around authorisation of client payments would be affected, which could cause potentional weaknesses to cybercrime.

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

No, see our response to question 8.

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

Yes, we believe the SRA should retain the published interest policy to advise firms and hold them accountable to their clients.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

Further clarity is required to draft rule 10.1 (b). This proposal would be time consuming and in effective to the firm. The administration around clients own account reconciliation should not impact on the firms resources. We do not feel that any further amendedments are needed to the current rule 10.

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

Consideration for the removal of the current rules below;

Rule 14 - Further clarity around the donation of unknown client monies to charity, as this does not appear to be mentioned within the draft rules.

Rule 17.1 (c) - Further advice on how we remain professional around this issues

Rule 17.1 (b) (ii) - Clarity required to ensure that unpaid counsel/experts fees etc are still paid in a timely manner.

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

Yes, we do agree and believes this highlights the reasons why the proposed rule 2 is not a viable option.

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

No.

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to consultation@sra.org.uk, by **21 September 2016**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

Solicitors Regulation Authority
Regulation and Education - SRA Accounts Rules 2017"
The Cube
199 Wharfside Street
Birmingham
B1 1RN

BIRMINGHAM LAW SOCIETY

one profession • one region • one voice

Looking to the Future: Accounts Rules review

SRA Consultation

June 2016

September 2016

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

This form is designed to be completed electronically—in MS Word. Please save it locally before and after completing it.

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

The Accounts Rules may be simpler but if the proposed changes do not protect client money then this subjective question becomes irrelevant. As can be noted from our responses to the questions below, we do not agree with the majority of the proposed changes. Client protection is the key issue here not simplicity.

In Weston v The Law Society (1998) Times, 15 July the Lord Chief Justice, Lord Bingham stated that: "The solicitors' accounts rules existed both to afford the public maximum protection against the improper and unauthorised use of their money and to assure them of that protection. Solicitors were accordingly under a heavy obligation, quite distinct from their duty to act honestly, to ensure observance of the rules."

The current high standards required by the Accounts Rules need to be maintained not watered down. All firms need to hold client monies in a consistent manner in accordance with prescriptive rules.

The SRA's argument that the rules need simplifying because not all qualified accountants' reports identifying minor breaches lead to disciplinary investigations does not bear close scrutiny. The very fact that for most firms handling large amounts of client money an annual accountant's report is required operates as a check and balance and as a method of maintaining standards. Also the SRA changed the rules last year so that accountants now have greater discretion in relation to minor breaches. The SRA needs to await the outcome of these changes before reaching any decisions.

It is acknowledged that there are in the Accounts Rules time limits that can cause problems for firms e.g. Rule 17.1 (c) and (e) and Rule 17.3 - transfer of monies earmarked for costs out of client account within 14 days and Rule 17.1 (b) (ii) payment of professional disbursements within 2 days or transfer to client account. An analysis of the advantages and disadvantages of these two time limits would be worthwhile but overall we do not consider that a wholesale transformation of the Accounts Rules is required. Overall the Accounts Rules work well and do not need to be dummed down in a quest for simplicity.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

We vehemently disagree with the SRA's proposals for a change in the definition of client money. The effect of the change will be to transfer to the client the risk of losing their funds. We cannot identify any benefits in making such a change. The present arrangements work well and should be retained. The SRA's proposal offers no client protection and should be rejected.

Once a client's money is paid into office account, it is lost to the vagaries of the financial fortunes of the law firm concerned. The client has no control over those funds. The SRA seems to have conveniently forgotten the recession which began in 2007 and the severe impact of that recession upon the financial stability of law firms. If firms had been permitted to pay funds due for disbursements into office account at that time instead of client account the losses suffered by clients and therefore ultimately by the Compensation Fund would have increased tenfold if not more.

Many firms operate with overdrafts and as soon as client money is paid into office account it can only be drawn out again if the overdraft limit permits. Many firms have a daily battle with cash flow and funds due to clients would have to wait in the queue of outgoings until the overdraft is sufficiently reduced to permit payment.

If the salaries or the rent or the VAT need to be paid those payments will take priority over payments due for Counsel or medical experts. This proposal may cause Counsel and other experts to demand a contractual relationship direct with the clients. It will be an imprudent Counsel who will allow a law firm to pay in arrears for advice. Much more likely is that Counsel will require a payment in advance for work. Gone will be the days when Counsel will rely upon a firm's assurance that the fees have been received in advance and are sitting in client account. Also Counsel and medical experts will be much less likely to agree extended credit periods for contigency fee personal injury cases where they are reassured that when the claim is settled the payment for fees and disbursements will remain in client account and if the professional disbursement is not paid out within 48 hours it has to be transferred to client account. The present Rule 17 (b) and (c) provides reassurance that such professional disbursements will be protected and will not fall into the bottomless pit of office account.

If the SRA's proposal is adopted, it is not clear to whom the client monies that have been placed in office account belong. How does the firm hold the funds? Is it on trust for the client? Who is the beneficial owner of the funds? Do the funds still belong to the client until an invoice is agreed and then payment taken from the funds in office account? Or do the monies belong to the solicitor's firm? If the latter then the firm may be liable to pay VAT on the funds. The ramifications of this proposal have not been closely considered.

The redress/regulatory action set out in Annex 1.4 is technically correct but offers little protection to the client compared to the present arrangements. Placing the monies in client account is a protection in itself. Client account is regarded as

sacrosanct by clients and firms alike. The very fact that the regulated community is required under the current Rules to place monies in client account is sufficient protection in itself. The Administrative Court described client account and client funds as sacrosanct in Levy v SRA [2011] EWHC 740 (Admin). The Solicitors Disciplinary Tribunal also regards client funds and client account as sacrosanct.

The Accounts Rules exist to afford the public maximum protection - please see Weston v Law Society referred to under Question 1 above. The SRA must not interfere with the long established reputation of a solicitors client account as a place of safety for client funds. There is a long line of authorities which emphasise the importance to the profession as an outward sign of the trustworthiness of our profession and a unique selling point.

The SRA's headlong rush to modernise the profession ignores the commercial realities of running a practice and the likelihood that with the best will in the world payments for business expenses will take precedence over payments due for clients from office account especially when the firm is subject to a tightly imposed bank overdraft limit.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

We have no firm views. Firms have been accepting payments for legal services for many years. We are not aware that this method of payment has ever caused any regulatory issues.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

We do not agree with this proposal. We repeat our earlier concerns as to the risks to clients if such a proposal were implemented.

The SRA asserts (paragraph 32) that Principle 4 - the duty to act in the best interests of the client - will be sufficient to protect clients if their payments intended for Counsel's fees and medical reports disappear into the black hole of office account. The SRA should be alert to the fact that most firms are struggling with cash flow issues. It is not a case of "Won't pay" but "Can't pay". Please see the SDT case of SRA v Nowell Mellor, Kirwan, Matthewman, Hackney & Hall SDT 11312-2014 where the firm had received payments for disbursements from the Legal Aid Agency which were paid into office account. The firm was then in such a bad financial position due in the main to problems caused by the late payment of legal aid fees that it could not release the monies from office account in order to pay off the disbursements.At one point the amount owed for disbursements was over £120,000.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

We do not agree with this proposal. The existing rule should be retained.

If mixed monies are paid into client account there is no risk. If mixed monies are paid into office account there is a risk of losing funds if the office account is overdrawn or the firm becomes insolvent. The risk is similar to the risk identified in the response to Questions 2 and 4 above. Office account is subject to commercial and financial pressures whereas client account is not and therefore always acts as a safe harbour.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

We do not agree with the proposed change to the definition of client money so it follows that we do not agree with the proposal to remove the specific Accounts Rules relating the payments from the Legal Aid Agency. We favour retention of the existing Rules.

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

When TPMAs were first mooted by the SRA in 2015, the Birmingham Law Society ("BLS") conducted a non-scientific survey of its members and carried out inquiries with the Lyon Bar, with which it has a close association and which operates the CARPA system. The BLS responded at that time to the SRA's consultation and an extract from the BLS reponse is set out below (section marked in inverted commas).

"The protection of clients' monies is a paramount consideration. The overwhelming majority of firms hold a client account. For a few who never handle clients' monies the opportunity to operate an escrow account would provide no additional benefit or protection. From our inquiries even if the opportunity to have an escrow account were permitted none of the firms with whom we discussed the proposal (in excess of 20 including a representative selection of large national firms to sole practitioners) would elect to move to an escrow account.

The first reason for this is the profession's long established reputation for safeguarding clients' monies and on the rare occasion when something goes wrong the client is reimbursed for any loss either through the solicitors, their insurers or the Compensation Fund (as it stands) . This is the USP of the profession and is valued highly by both the public and the profession: solicitors are trustworthy. Escrow accounts provide no greater protection: indeed in the event of a bank failure it could be argued that they represent a greater risk. Bailing out banks is probably unlikely to happen in the future. Their existence could also undermine the public perception of solicitors: 'they are not to be trusted with our money.' The Bar is in an entirely different position never having historically handled clients' monies, seldom involved directly in transactions and, of course, the Bar is differently structured (all who practise through chambers or from home etc. are sole traders).

It is suggested that the proposal would provide a means of achieving a reduction in cost. The experience of the CARPA system is the exact opposite. It is extremely bureaucratic employing in Lyon very many more people than we suspect do even the largest magic circle firms in London and largest firms here in Birmingham in their accounts departments. Lyon services some 2,000 or so avocats whose activities, it should be borne in mind, are largely confined to the work of the courts/tribunals and, specifically, not property work. In Birmingham and the Black Country, there are over double this number of practitioners and this does not include the wider West Midlands, only a relatively small number of whom are involved directly in court work. The majority will be dealing daily with transactions involving property, estates and a broad spectrum of commercial work.

However, it is not the cost to the practitioner and, ultimately, the client of setting-up or running the bank that has to be taken into consideration. Most firms have arrangements with their banks which in one way or another offset their banking costs for the obvious reason that the banks want to attract clients' monies whilst on deposit with the solicitor. The SRA will know that at any one time these amount to some very large sums. The savings on what would be the normal commercial charges by a bank (which are much higher than for personal banking) are considerable. In a highly competitive market the result is that the client benefits. For the same reason, borrowing to develop the firm can be much easier, which could be an important access to justice consideration.

The Society is far from convinced that any saving in the costs of compliance with the Solicitors' Accounts Rules would make such a difference to a firm's overheads to influence its decision on whether to move to a third party bank account. It is so marginal as to make no difference.

The final, and perhaps uppermost in the mind of a client, would be the inefficiency of the third party banking system. We are advised that in Lyon it will take several days for the CARPA system to get the monies to the client and his/her avocat. It is by no means unusual for a compensation payment to be delayed by a fortnight notwithstanding the bank being in funds. Perhaps the final insult is that no interest is paid out to the client to cover the delay unlike here.

Assume for the purpose of this exercise that all of this is due to Gallic bureaucracy and inefficiency and ignore the experience of practitioners gained over many years of trying to live with a system which many would readily exchange for ours. Say the Anglo-Saxon model would eliminate all of these problems (we suggest this is a flight of fancy but.....). This does not solve the problem of transactional log jams developing where a multiplicity of payments in and out have to take place on the same day, sometimes simultaneously. The best and most common example of this would be the completion of a chain of property sales and purchases. A chain of 3 or 4 is not uncommon and longer chains are not unusual. The solicitors are centre stage, able to monitor the progress of the transaction at first hand, not one place removed. Were a bank operating an escrow account at any point in the chain, the whole series of subsequent transactions would be held-up, possibly for days while the appropriate consents/authorities are being obtained, scrutinised and approved or not as the case may be. Meanwhile clients are left at best frustrated, at worst without a roof over their heads.

It is instructive to note that a CARPA system is not operated by the French Notaires.

For these reasons the BLS does not see third party accounts as a panacea. We anticipate that even if they were available:-

- the take-up rate would be very small;
- in terms of protection for clients, the result would be neutral or possibly riskier;
- would be inefficient;
- would not reduce cost to the client but add to the cost of doing business."

We appreciate that since the above views were submitted to the SRA in 2015 some firms have been permitted to utilise TPMAs on the basis of waivers issued by the SRA. We have no idea of the numbers involved or whether the SRA has obtained feedback from these firms to ascertain whether these TPMAs are for the benefit of clients or whether as the BLS identified in 2015 the concerns regarding delay and cost are borne out. Until that evidence is obtained the BLS remains sceptical as to whether this change is necessary or beneficial to the regulated community or more importantly to the clients.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

Please see response to Question 7 above. Also it should be made clear that any TPMA arrangement needs to be in the name of the firm itself and that this system should not be used for setting up escrow type accounts in ther names of the clients themselves.

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

We pointed out in 2015 that delay would be a problem based upon the feedback from our colleagues in Lyon. Delay in conveyancing could be fatal to a chain of conveyancing transactions and cause inconvenience and cost for clients. More analysis needs to be undertaken before a change of this nature is implemented. Again the BLS is concerned that it would not be in the clients' best interests.

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

We consider that the current rule should be retained. It provides transparency for clients and is in the public interest. An interest policy is an accounting issue and as such should be retained in the Accounts Rules not left to the more general duties under the Code of Conduct.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

Overall we consider that the revision of the Accounts Rules is based upon a misguided approach to the definition of client money. Please refer to the comments made above.

We have the following comments upon the draft Accounts Rules.

The definition of client money in Rule 2.1 is unclear. It is stated to be " relating to legal services delivered by you to a client ...." However we cannot trace a definition in the draft SRA Accounts Rules Glossary for "legal services". We can anticipate considerable differences of opinion between the profession and the SRA as to what constitutes "legal services". The SRA often has a narrow view of the work undertaken by solicitors and this can cause confusion and disagreement.

The definition needs to be clarified as it affects other Rules within the draft Rules - such as the definition of the use of client account as a "banking facility" in Rule 3.3

A better alternative may be that the definition should be linked to the definition of "regulated activities" which is contained in the draft Glossary. However, this definition does need checking against the definition contained in the Legal Services Act 2007. The wording set out in Annex 1.2 of the draft Glossary does not exactly replicate the LSA definition (section 12) and may need amending.

We would also refer to draft Rule 5.1 (c) which provides that client money can be withdrawn from client account "in the circumstances prescribed by the SRA from time to time" This appears to permit the SRA the right to change the rules to suit changing circumstances. Whilst one can see an advantage to this from the SRA's point of view, we are not convinced that it is in the best interests of clients or the profession. Accounts Rules need to be certain, clearly set out so they can be relied upon by all working in solicitors' accounts.

Also we are concerned by the continued imposition upon COFAs of personal liability for breaches of the Accounts Rules. This was not what was intended by the Legal Services Act 2007. The requirement under the LSA was for COFAs (and indeed COLPs) to "take all reasonable steps" to ensure compliance with the Accounts Rules. It is unfair to impose personal culpability upon COFAs for such breaches. The strict liability imposed by Rule 6 should be restricted to the firm and to the managers and not to the COFA who in many cases is not even a manager of the firm but an employee and therefore subject to the overall supervision of the managers.

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

Nothing to add.

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

Nothing to add.

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

Nothing to add.

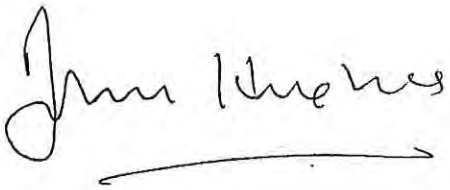
Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to consultation@sra.org.uk, by **21 September 2016**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

Solicitors Regulation Authority
Regulation and Education - SRA Accounts Rules 2017"
The Cube
199 Wharfside Street
Birmingham
B1 1RN



President

Birmingham Law Society

16 September 2016

Cambridgeshire and District Law Society

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

This form is designed to be completed electronically—in MS Word. Please save it locally before and after completing it.

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Yes

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

Yes, but we need to put a time limit on payments to third parties 'i.e. only where paid within XX days of receipt'

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

We have no views on the use of credit cards to pay for legal services. Local firms do accept credit card payments. However, this is again very focused on the private client and not the commercial client. Not all clients have access to the Legal Ombudsman.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Yes

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

We are uncomfortable with this, the safe guards for consumers are maximised by the present system, underwhich funds can be paid into client account first. Funds which are identifyable as office money can then be transferred.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Yes

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

More information required before an answer can be given.

What would be the terms of engagment with the third party? Who would contro; the activities of the TPMA?

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

What is the position so far as claims on the solicitors PII or the compensation fund are concerned? Is there a real risk of reducing client protection?

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

See above Qs 7&8

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

Yes, we should state our policy in order to manage client expectation.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

No

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

No

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

No, as you only consider the position of private clients.

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

No

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Birmingham
B1 1RN

Cardiff Law Society

RESPONSE TO SRA CONSULTATION – SRA ACCOUNTS RULES REVIEW

The Incorporated Law Society for Cardiff and District trades under the name Cardiff and District Law Society (CDLS). CDLS is the largest local law society in Wales. It has a membership of over 1,000 people including solicitors, barristers, legal executives and academic lawyers.

CDLS appoints a number of specialist committees, including a Regulatory Issues Sub-committee.

Through these committees CDLS responds to a number of public consultations on matters which affect the professional lives of solicitors in the Cardiff and District area. CDLS welcomes the opportunity to respond to the SRA's ***Looking to the Future Accounts Rules Review*** Consultation.

Introduction

Whilst the CDLS do not disagree per se with a simplification of the SRA Accounts Rules, they are clear that this must not result in a reduction in protections available to clients to preserve the trust the public places in the profession. CDLS are also of the view that the impact of the proposed amendments to the Accounts Rules should be thoroughly reviewed prior to any implementation. We are concerned that the increased costs in training and administration in implementing the new rules could be significant for firms. The costs and loss of key client protections may significantly outweigh the suggested benefits of the proposed changes.

Question 1 Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

CDLS agree that on the face of it, the draft Rules do appear to be simpler. However, they must be workable in practice and the concern of CDLS is that shorter, more simplified rules can sometimes lead to more confusion in practical situations particularly where there is ambiguity in respect of simpler rules.

It is the view of CDLS that if the new rules are adopted, detailed support and guidance from the SRA should be made available to all firms.

As the simplified rules detail a major change to the current rules in place, CDLS feel that a detailed cost assessment should be conducted by the SRA prior to implementation regarding the increased costs of training and administration costs for firms implementing the new rules.

Question 2 Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

CLDS do not agree with the proposed change to allow money paid for all fees and disbursements for which the solicitor is liable to be treated as office money. Whilst it could be beneficial to certain firms, the loss of client protection is significant. CDLS are concerned that the loss of protection for clients will diminish the trust the public places in the profession as a whole which will of course be of significant detriment to the profession as a whole.

Question 3 Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

It is the view of the CDLS that firms are already able to offer clients the ability to pay by credit card (and indeed many, if not most, already do). The CDLS does not agree with the assertions in the

consultation document that the protections offered by users of credit cards are an adequate replacement for the client protections lost as a result of the proposed changes to the rules.

Question 4 Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

CDLS does not agree with the proposed change in definition of client money.

Question 5 Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account? In particular do you have any views on the new draft Rule 4.2 (see Annex 1.1)?

CDLS agrees with this proposal although would welcome detailed guidance and support for firms in respect of all areas of change in respect of the accounts rules.

Question 6 Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

As we have already indicated, CDLS do not agree with the proposed change of definition of client money and therefore we would not support the proposal to dispensing with the relevant Account Rules in respect of payments from the LAA.

Question 7 Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

CDLS agrees that TPMAs should be allowed as an alternative to holding money in a client account.

Question 8 If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

N/A

Question 9 Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

CDLS note that the use of TPMAs could cause disruption in areas such as conveyancing where the ability to move client money quickly is exceptionally important.

Question 10 Do you have any views on whether we need to retain the requirement to have a published interest policy?

CDLS are of the view that the requirement should be retained. Clients should understand any interest to which they would be entitled.

CDLS believe that it would make sense to have de minimis provisions in respect of low amounts of interest (at an amount defined by the SRA) particularly given the exceptionally low rates of interest at present. The administrative costs involved in calculating low values of interest can often far outweigh the interest due

Question 11 Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules

The views of the CDLS in respect of the draft Accounts Rules are reflected within other answers to the questions within this response.

Question 12 - Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

The CDLS adopts the view of the national Law Society that similar guidance to that prepared by the ICAEW should be developed by the SRA.

Question 13 Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

CDLS has concerns relating to consumer/client protections, particularly in respect of the proposals to change the definition of client money.

CDLS are concerned that the proposed changes will diminish the faith the public holds in the profession and would ask that the SRA take the views of the public in respect of the proposed changes and these should be considered in respect of the likely impact of any change to the rules.

Question 14 - Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

No

CONSULTATION ON LOOKING TO THE FUTURE: SRA ACCOUNTS RULES REVIEW

A response by
The Chartered Institute of Legal Executives

September 2016

For further details

Should you require any further information, please contact;

Maria Seale
Advisor to CILEx
mseale@cilex.org.uk
01234 844648

September 2016

Introduction

1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers.

2. CILEx continually engages in the process of policy and law reform. At the heart of its engagement is the public interest, as well as that of the profession. Given the unique role played by Chartered Legal Executives, CILEx considers itself uniquely placed to inform policy and law reform relating to justice issues.

3. As it contributes to policy and law reform, CILEx endeavours to ensure relevant regard is given to equality and human rights, and the need to ensure justice is accessible to those who seek it.

In Summary

4. CILEx in principle supports the Solicitors Regulation Authority's (SRA) intention to simplify the accounts rules. We recognise that the current Accounts Rules do require review and amendment. We agree, for example, that it is not satisfactory that that technical breaches happen all the time and are just accidents of timing and circumstance rather than wrongdoing or intent and that this needs to be addressed.

5. Our members are regulated by both the CILEx Regulation and the SRA as employees. We need to ensure that their work is not hindered by over-burdensome rules. Outcome based regulation will ensure that there is flexibility within the rules which will also allow for future developments in technology and work practices. CILEx believes however, particularly as its members are stakeholders affected by the proposed changes, that the SRA

should clearly demonstrate by sharing relevant data and evidence the need, expected outcomes and impact of those changes in the rules. For example, how many SDT hearings have been abandoned due to confusion and lack of evidence over the existing accounts rules?

6. CILEx requires more information on the classification of client and business monies to comment on the advantages of changing the rules in this regard. For example, if a firm's client account was frozen or suspended due to irregularities, would the lack of prompt transfer of business monies imply all funds in client accounts are client monies?

7. CILEx's view on the proposed permitting of the use of Third Party Managed Accounts (TPMAs) is that this has the potential to cause delay in transactions and impede of the ability to provide undertakings. Conveyancing transactions, for example, are fast moving and as funds are within the control of the practitioner, undertakings can also be provided in relation to transferring monies. We consider TPMAs will be extremely impractical in this practise area and could result in unacceptable delays in accessing/sending client funds. This will cause additional and unnecessary confusion and will create substantial difficulties both in the calculation of any interest due to clients and in the case of a bank failure.

8. However, CILEx does agree that in some cases TPMAs would benefit sole practitioners, Alternative Business Structures who rarely hold client monies and other specific practice models. Therefore, some flexibility in managing client money would be necessary in order that new barriers to entry into the profession and increased costs are avoided. For example, TPMAs may be required for certain practise areas and not others.

9. CILEx emphasises the urgent need for the SRA to provide full and clear guidance to practitioners to assist with re-training staff in relation to the reformed Accounts Rules. Whilst the consultation paper refers to the new rules being supported by an online toolkit which will comprise of guidance and case studies'[1] and Annex 1.1 provides an indicative list of guidance areas and example case studies, there is no real detail as to the content of that support package and this will be essential if firms are to understand and properly comply with the amended rules.

Responses to specific questions:

Question 1: Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

10. CILEx agrees that the draft rules are simpler than the previous rules. However, supporting guidance will be crucial to mitigate any risk that firms are no longer as clear in their understanding of their the requirements around handling client money due to the removal of much of the prescriptive element of the current regime. Established firms will have their own procedures in place to keep records and evidence to future-proof themselves against SRA inquiries which have developed over many years. Although the consultation paper states that the current rules make it difficult for new entrants to the market, it may be such firms which particularly require guidance and support once the new rules are in place particularly in relation to the management client money. Conversely, it may transpire that in order to be confident of compliance, firms simply retain the "old system" rather than use the simpler rules due to the lack of clarity.

[1] Para 7

Question 2: Do you agree with our proposals for a change in the definition of client money? In particular, do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

11. As above, CILEx are concerned that evidence on the change in how client money is defined is not clear enough. There is a risk that firms will find it hard to differentiate between client and office money; if they then use client money to cover problems (particularly if a firm operates an overdraft), could this lead to firms failing in the future? if funds are not transferred promptly would the delay trigger a referral to the SRA?. This could lead to more firms failing to comply with the rules in the future. There may also be PII consequences to the proposed change. Any perceived increase in risk to client money will attach an increase in insurance premiums.

Question 4: Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

12. Yes, it is noted that consideration has been given to a more flexible approach to what monies are held in client account. Any monies that the client has asked to be retained from a previous case or sent in advance should be held or transferred in client account. CILEx believe that the ultimate destination of the funds with guidelines would provide the flexibility firms require.

Question 5: Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

13. CILEx believes a reference to “promptly” requires guidance. This can mean within 2 weeks to some firms or a matter of days to others. The toolkit should provide examples of when funds are expected to be transferred and when delays are acceptable.

Question 7: Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

14. As discussed in our summary statement in paragraph 7 above, CILEx suggests that TPMAs should only ever be a flexible option rather than becoming a mandatory requirement but CILEx believes that they can only practically apply and therefore add value in certain areas of practise. The SRA's Initial Impact Assessment does not provide any evidence of applicability or value of permitting this new arrangement.

Question 8: If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

15. The use of TPMAs will effectively take the regulation of client money outside of SRA regulation and into the regulation of the FCA. As the SRA has found previously (e.g changes to consumer credit regulation when solicitors undertake that work) this is not always appropriate and TPMAs should not be a stage along the way of transferring regulation to the financial regulators. Managing clients' finances as relates to their legal services is important role for lawyers and this should not be eroded as affects the services they can offer, their USP and consumer choice. Again, we are concerned that practitioners would be unable to provide undertakings to release funds when held by TPMAs.

Question 9: Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

16. No it is not appropriate for the reasons given in the responses to questions 7 and 8.

Question 10: Do you have any views on whether we need to retain the requirement to have a published interest policy?

17. CILEx believes that the requirement to have a published interest policy should be retained. It is clear and demonstrates transparency to the consumer.

Question 11: Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules (see Annexes 1.1, 1.2 and 1.3)?

18. CILEx have provided comments in the Summary at the beginning of this consultation response.

Question 12: Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, please provide further details.

19. Yes, the detail of the proposed toolkit needs be disclosed before comments can be made. However, CILEx suggests that particular attention should be given to examples of how sole practitioners and small firms can comply with the rules with their limited resources.

Question 13: Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

20. The Consumer Impact Assessment does not provide evidence that the Solicitors' Accounts Rules are a barrier to new entrants. There seems to be a contradiction in that there is acknowledgement that consumer protections could be reduced as a consequence to changes in the rules but the Consumer Impact Assessment states that it is not believed that changes will

reduce or dilute the obligation for firms to keep client monies safe. CILEx suggest that further research is required to ensure that the risk to client monies is minimalised. The impact of accounts changes on accountants, the banking sector, suppliers of software and other systems to firms also need further investigation.

Question 14: Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

21. CILEx does not have any relevant data available to share.

Clare Peckett

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Yes

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

Agreed.

The draft definition seems appropriate to safeguard clients, whilst allowing firms to conduct business with integrity, without erroneously finding themselves in technical breach

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

We encourage clients to pay by credit card. We have facilities for clients to pay at the office, over the telephone or using an online facility.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Yes. It will improve efficiency, reduce administration and avoid erroneous default.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Yes. Perhaps a commercially realistic time period, could be proposed as the timescale by which the allocation should take place.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Yes. We only ever receive our costs or money for disbursements for which we are responsible. We cannot see any reason for any separate rules.

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

No comment.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

No comment

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

No

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

NO

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

NO

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

Yes

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

No

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B1 1RN

CMS Cameron McKenna LLP

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Yes, we agree

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

No do not agree, payment of fee's/ 3rd Party costs not yet incurred should remain as client monies and be held on client account until such time the fee has been incurred.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

yes we do accept credit card for payment of fees. Do not feel this is essential aspect to the busness, we are a large Corp firm and seldomly use this method of payment.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

No

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Yes

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Do not know

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

We agree with these proposals subject to a level playing field of protection as for client funds held by solicitors. For example as solicitor's client funds have to be held in bank accounts in E&W whereas the draft rules seem to imply that TPMAs can hold funds in EEA.

If a solicitor chooses to use this service then it is at cost. Is the SRA happy that this cost is appropriate to pass on to our clients.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

See comments under Q7

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

Given a limited knowledge of how Barco works it seems to add additional steps to the process and we are not convinced that this would work in a situation where funds come into a solicitor, get sent to the TPMA and access rules set up and then funds moved back to client.

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

Yes we do require a policy.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

Rule 3 bank of building Society located in England and Wales - being an International Company with offices in Enland and Scotland we have banks located in both entities, we reguarly receive monies into a Scottish branch of the RBS and have to tranfer this to an English Based branch.

Rule 6. We no longer have to report, just correct?

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

Residual client balance

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to consultation@sra.org.uk, by **21 September 2016**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

Solicitors Regulation Authority
Regulation and Education - SRA Accounts Rules 2017"
The Cube
199 Wharfside Street
Birmingham
B1 1RN

Looking to the future: SRA Accounts Rules Review

Response by the Council of Mortgage Lenders
to the Solicitors Regulation Authority consultation paper

Introduction

1. The CML is the representative body for the residential mortgage lending industry that includes banks, building societies and specialist lenders. Our 139 members currently hold around 97% of the assets of the UK mortgage market. In addition to home ownership, CML members also lend to support the social housing and private rental markets. CML members use legal professionals in the course of their mortgage business.

2. We welcome the opportunity to respond to this consultation. We have responded on points of most relevance to our members, namely the proposal on the definition of client money; and allowing the use of third party managed accounts (TPMAs).

General Comments

3. We do not have any objections in principle to simplifying the accounts rules. Our members' concern as clients is that there are no unintended consequences arising from the simplification of the rules, such as firms applying less due diligence in overseeing their client accounts as a result. Firms may also struggle to understand what is needed to achieve compliance with less prescriptive rules.

4. We agree that it is important that the Solicitors Regulation Authority (SRA) maintain separate accounts rules to address the risks around holding client money. Our members rely on solicitors in their everyday business and it is important that solicitors and their clients have clarity as to the rules around the holding of client funds and the safeguards in place to protect clients.

5. We note that the use of a TPMA also introduces another third party into an already complex transaction. This may impact on the process with potential additional costs and delay introduced for consumers at a time when there is a drive to reduce the delays that already exist within conveyancing transactions, due to the interactions required between multiple parties.

New definition of client money

6. We have considered the proposed definition of client money, which makes a change to the way in which money for disbursements are treated – allowing firms to treat money held for fees and disbursements as firm money. We note the potential for increased risk to consumers in relation to payment of disbursements in advance, which would be accounted for as firm money under this proposal and so remove the existing protections relating to client monies. It will be important therefore, to make it clear to clients who provide payments in advance, how that money will be treated.

Alternative to holding client funds - TPMAs

7. We note the varying views on the relative merit of Third Party Managed Accounts (TPMAs), and in particular the extent to which they might have advantages and disadvantages in the conveyancing process.

8. We note that the Legal Services Board June 2015 briefing paper on the issue of alternatives to client accounts suggested that lenders may see the use of TPMAs as reducing the likelihood of theft of client funds, with a corollary benefit to firms using such methods as potentially being favoured for lenders panels. The paper also suggested that lenders may see the use of such accounts as riskier, in terms of reduced client protections given that the TPMA operator would be regulated by the Payment Services Regulator (PSR); and in terms of the safeguarding and security mechanisms in place to protect the funds when compared with client accounts.

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9. It is difficult to provide a definitive view on TPMAs as they are an untested proposition in the market. Lenders might be prepared to use a firm using TPMAs but we do not think that firms will be more likely to be accepted onto a lender panel merely because they are using a TPMA rather than client account, at least initially, unless the lender is content that the use of the TPMA significantly lowers their risks in relation to misuse of mortgage funds.

10. Some lenders may view a TPMA arrangement as riskier, especially initially as the TPMAs will be an untested proposition. Further clarity is required on how the TPMA may be used in the conveyancing process and mortgage lenders will want a good understanding of the control frameworks that will be used to enable them to determine if they are comfortable with the use of a TPMA. Lenders are likely to want to carry out due diligence on the TPMA operator, as an associated service provider which in turn will have a cost implication.

11. Misappropriation of client monies is not limited to the legal profession, and lenders will want clarity on how their mortgage monies will be protected, if a TPMA is used. For example if any form of guarantee/indemnity be provided to lenders in such circumstances or in any negligence action and exactly who will provide such a guarantee/indemnity. If the use of such accounts were to become widespread, lenders may feel that the segregation method of safeguarding set out under the PSR regulations has stronger safeguarding potential than reliance on the insurance or guarantee method, where it is less clear how and whether the client has access to any redress.

12. It will be important to understand how PII insurers view the use of such accounts. If the use of TPMAs was incentivised by lower PII premia and/or a reduction in client compensation fund contributions, we would expect that to be backed by strong evidence that the use of TPMAs meant that there was a significantly lower risk of misuse or loss of client funds. That evidence base will take time to build up. The experience of overseas jurisdictions (such as Singapore and France, singled out in the LSB briefing paper) may assist.

13. This response has been prepared in consultation with members. Enquiries on the content of this response should be sent to jennifer.bourne@cml.org.uk

August 2016

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21 September 2016

Solicitors Regulation Authority
Regulation and Education - SRA Accounts Rules 2017
The Cube
199 Wharfside Street
Birmingham
B1 1RN

Our Ref: SJG

Dear Sirs

SRA Accounts Rules 2017

We are pleased to submit our response to the SRA's consultation on changes to the Accounts Rules.

Crowe Clark Whitehill LLP (Crowe) is a national accountancy practice with over 700 personnel operating from eight offices. Crowe has five strategic sectors, one of which is professional practices; law firms and their partners represent the largest profession within that group. We have deep knowledge and experience of the issues faced by law firms and have regular dialogue with the COFAs from a range of law firms through quarterly breakfast meetings hosted by our London, Midlands and Cheltenham offices.

We seek to engage actively with the SRA and are pleased to have hosted events where members of the SRA's policy and supervision teams have spoken and engaged with the law firms that we have connections with.

In overview, we are pleased that the SRA is proposing to simplify the Accounts Rules. This phase was arguably overdue given the consultations and subsequent changes that have been made to the scope of the work of reporting accountants who report on firms' compliance with the rules.

Although supportive of the general direction of travel, we remain concerned that the approach has still started from a premise that the core of the rules are appropriate rather than going to a blank piece of paper and considering the principles that need to be upheld together with the desired outcomes that firms need to demonstrate.

There is the promise of guidance and toolkits which will enable firms to assess how they should comply with the new rules in different circumstances but without seeing that material at this stage it is difficult to make a full assessment of how successful this approach will be.

One of our principal observations is that the proposed changes do not deal adequately with the changing business environment and especially firms who may be operating or considering operating as a multi-disciplinary practice (MDP). The need for client money arising from legal services for which the SRA is regulator to be kept separate from all other money, including client money from services subject to the rules of another regulator, seems to us to be short-sighted and will not encourage the further development of MDPs.

In the attachment to this letter we provide our response to the specific questions in the consultation paper. We hope you find our observations and suggestions constructive.

Yours faithfully

Crowe Clark Whitehill LLP

Crowe Clark Whitehill LLP

Enc

Consultation question	Crowe response and comment
1 Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?	We appreciate the difficulty faced by the SRA in seeking to develop a set of Accounts Rules that can apply to all the firms that can under its regulatory oversight where the size and nature of these firms can vary widely. The needs of the largest City law firms with sophisticated corporate clients differs from the reasonably-sized provincial firm that has a mix of corporate and private clients, as that firm does to the many much smaller firms that may have just one or two principals carrying out predominantly private client, probate and conveyancing work. There are, of course many other types of firm than those examples as well. Although the draft Accounts Rules are considerably shorter and easier to understand, we do not agree that all the changes will result in a better regulatory outcome. We are concerned that some of the 'simplification' may cause considerable difficulty for some firms to comply with. Our response to the questions that follow will illustrate this. We would prefer to see a set of Accounts Rules that more clearly focus on principles with desired outcomes which would allow individual firms to develop practices that are suitable to the size, scale and nature of their business. The accounting systems for law firms have needed to evolve over the years to enable them to comply with the prescriptive nature of the current rules and firms should not under-estimate how much change may be needed to those systems should the rules be changed as suggested. We fear that many firms may see such changes as ‘too difficult’ and tempted to take the view that if their systems were adequate to comply with the current rules then they will be adequate and appropriate for dealing with the simplified rules and simply make no changes. We do not believe that is the outcome that the SRA is looking for.

Consultation question	Crowe response and comment
2 Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?	We believe that law firms should be able to make fee arrangements with their clients that allow invoices to be raised in advance of services being performed and that payments for such invoices should be regarded as the firm's money. Such practices are commonplace with other professional advisors and we see no reason why law firms should not be able to operate in this manner. We do not support a proposal whereby money received from a client on account of fees may go to the firm's business account where an invoice has not been raised. We believe this has the potential to put client money at risk. There is a VAT point to consider here. If money for fees is paid into the firm's business account, that will create a VAT point and the firm (provided it is registered for VAT and the anticipated service is vatable) need to account for output VAT. Where both the solicitor and the client are VAT registered there is unlikely to be much of a problem but for clients that are not VAT registered (for example private individuals), they will be requried to pay the VAT to the solicitor at an earlier point than if billed at the conclusion of the matter. In our various meetings with COFAs, we have heard a lot of resistance in respect of the proposed change to the definition of client money and many would like to continue with the current practice where money received on account of future fees is held in client account. We believe the Accounts Rules should enable a position where firms may determine their own policy in this regard which may include adopting different practices when dealing with corporate clients compared to individuals. The position on disbursements needs careful consideration and further thought. We believe the nature and reason for the disbursement should be considered rather than simply who bears the liability. There is a concern that if a client paid money on account of, say, Counsel's fees for a court appearance, were paid into the firm's business account and, for whatever reason, those funds are used inappropriately or the firm collapses, then the client faces the risk of having to find further funds to secure the representation in Court.

Consultation question	Crowe response and comment
3 Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?	We have no strong views on this matter other than we believe that clients with the ability to do so should be able to pay for legal services by credit card.
4 Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?	In principle we believe only client money should be held in client account. Our response to questions 2 is relevant here where we outline that firms should be able to determine their own policies for dealing with funds for services received in advance.
5 Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?	We agree that the focus should be on making sure that the ultimate destination of funds is correct and we agree that any necessary reallocation of funds should be made promptly. Allowing mixed receipts to go into the firm's business account potentially introduces greater risk that money that is properly client money is used to support the business and not placed in client account promptly. The current rule on mixed receipts means that some firms automatically direct all receipts from clients to client account and then make appropriate transfers thereafter. A change to the rules in this area should allow greater efficiency for these firms with many fewer transfers being required between the client account and the business account. We suspect, however, that many firms will continue to wish to bank all funds in client account initially as they perceive that this offers the greatest protection to clients.
6 Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?	We are satisfied that the SRA's approach on this matter is appropriate.

Consultation question	Crowe response and comment
7 Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?	We agree with the appraoch but are not convinced that this will be attractive to many law firms, particularly those who are dealing with client money transactions where payments need to be made at short notice (e.g. in a conveyancing). We do believe that the arrangement might be attractive to firms such as the UK offices of US law firms who handle little or no client money. The current Accounts Rules can lead to firms needing arrangements around client accounts and accounting processes that are disproportionate to their activities. TPMAs may be an attractive and viable option for firms such as those.
8 If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?	It is important that clients who funds are held by a TPMA do not have a lesser degree of protection than if their funds were in a client account. We suggest that the TPMA provider should be required to report to the law firm periodically on its regulatory compliance which would allow the firm to assess whether it should continue to keep funds at that TPMA provider.
9 Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?	We believe the use of TPMAs would not be appropriate for transactional monies, particularly in relation to conveyancing. We do not believe that the use of TPMAs should be restricted by regulation. It should be a matter for the law firm concerned to determine that the use of a TPMA is appropriate in the circumstances having regard to the principles of the SRA Handbook and the required or desired outcomes.
10 Do you have any views on whether we need to retain the requirement to have a published interest policy?	We believe the requirement for a published interest policy should be retained. It is important that clients should have clarity on when they will receive interest (or a sum in lieu of interest) on funds held by the firm.

11 Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?	Although we are pleased with the overall approach being taken, we are disappointed that the style of the rules, including some of the language used, still feels rather dated. Some examples are: • The rules could be worded in a more direct way which does not require the use of 'you', which we believe still has the capacity for confusion For example draft Rule 3.1 could be re-drafted as "Client accounts must be held at the branch or head office of a bank or building society located in England and Wales". • 'Costs' and 'bill of costs' should be updated to 'fees' and 'invoice' or 'fee-note'. • The requirement to reconcile client accounts under the proposed Rules 8.2 and 8.3 should be no less frequently than at the end of each calendar month • It should be clear that the requirement to obtain bank statements (and similar documentation) can include downloading such information from online applications. We have noted that the draft rules have introduced requirements that are not in the current rules. For example draft Rules 9.1 and 10.1 introduce a reconciliation requirement for joint accounts and clients' own accounts respectively. The manner in which joint accounts are operated may mean it is impracticable for such reconciliations to be prepared and, whilst agreeing that clients whose funds are held in such arrangements should be protected, we believe this requirement needs to be revised. We question whether the reconciliation required in 8.3 should require the reconciliation of the liabilities to clients (i.e. the client ledger) to the amounts held in client accounts and client money held other than in a client account. The current wording has the capacity to miss dealing with those clients who have requested that their funds are not kept in a client account (for example a bank account in Scotland). A particular area of concern for us is that the draft Accounts Rules do not deal adequately with the development of multi-disciplinary practices (MDPs). Firms that operate MDPs (either within a single entity or within a group of entities) may hold 'client money' subject to the different rules different regulators (for example the Institute of Chartered Accountants in England Wales for accountancy practices or Intellectual Property Regulation Board for patent attorneys). The draft Accounts Rules do not contemplate an MDP being able to handle its various elements of client money in a single, co-ordinated environment and we believe this is short-sighted.

Consultation question	Crowe response and comment
	We believe the SRA should include provisions that a firm should be able to manage its client money in accordance with the relevant rules of another regulator (providing those rules had 'equivalence'). It would remain the responsibilty of the law firm to demonstrate that the approach for handling client money will uphold the principles in the SRA Handbook and afforded appropriate protection to client funds. In our response to previous consultations on the Accounts Rules, we have questioned whether current approach of only requiring a qualified Accountant's Report to be submitted to the SRA is appropriate. Under this regime, the SRA has no way of determining whether a firm has received an unqualified report, has received a qualified report but not submitted it or has not had the relevant work performed. We strongly believe that the SRA should introduce a process that will enable it to gain assurance that all firms that require an Accountant's Report have obtained one. There are a number of options that the SRA could employ for this purpose (and we do not set out a preferrred method here) but we happy to make our suggestions outside of this consultation.
12 Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.	Without having the opportunity to review the planned guidance and toolkits it is difficult to provide a full response to this question. We have seen, however, the consultation annex which outlined the headings for suggested topics. Many law firms whish to provide 'family office' services and, at the current time, feel constrained from doing so given the prohibition on providing 'banking facilities'. We fully support the SRA in its endeavours to ensure that law firms do not unwittingly have client accounts used for money-laundering but we believe further guidance on this area would be welcome.
13 Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.	See our response to questions 12.

Consultation question	Crowe response and comment
14 Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?	No.

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

This form is designed to be completed electronically—in MS Word. Please save it locally before and after completing it.

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

As we have commented in previous consultation responses, we support the Solicitors Regulation Authority's ("SRA's") overall move towards more proportionate and targeted regulation with rules that are updated to also reflect technological changes.

We agree that the current rules are, in places, overly prescriptive in nature and provide additional complexity which is not required. The draft Accounts Rules (Annex 1.1) are therefore much simpler and clearer in that respect.

Nevertheless, they are now open to significant interpretation by individual firms. As such, we would recommend that the SRA provides clear guidance to accompany these rules to assist firms in applying them.

The SRA needs to consider whether these rules will be implemented retrospectively or prospectively as this will have implications, particularly for funds held on account of costs and amounts in respect of unpaid disbursements currently held in the client account, and under what circumstances these would be transferred to the office account.

Further specific comments on the rules are included in the questionnaire below.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

We agree that the the revised definition of client money is much simpler and less complex than the previous definition. We believe one of the important benefits of the proposed definition is it will be very clear what is client money and what is not and there will be limited transfers between office and client accounts, which will assist in ensuring client money is properly segregated. However, as previously commented, we would recommend that the SRA issues clear guidance to assist firms in applying the rules.

Specifically in relation to Rule 2.1, we would encourage the following terms to be defined:

1. "liable" - clarification as to what the SRA believes to be a liable cost of the firm to include the treatment of money received for anticipated disbursements.

2. "promptly" - guidance as to what the SRA would expect to be an acceptable length of time for client money to be banked or returned promptly, acknowledging that this may differ depending on the size of the firm and the context of the application of the word "promptly". For example, returning funds to a client within a month of there being no longer any proper reason to retain these funds may be acceptable, however a delay of a month in banking client money may not be deemed to be prompt.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

The majority of the firms we work with are likely to receive payment for legal services through direct bank transfers, given the amounts of money involved. While it is therefore not something we think will have much of an impact on the majority of our clients, in principal we would agree with the SRA that the use of credit cards may provide some consumer protection under the Consumer Credit Act.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Yes, we would agree that it is appropriate that only client money should be held in a client account. While generally we believe the SRA is right in moving away from being overly prescriptive, we believe that if money that was not 'client money' were permitted to be held in a client account there would be an increased risk of what is client money and what is office money becoming blurred.

A potential risk may exist that in the event of an insolvency, if the client account was found to include some "office" money, then the entire amount in the client account may be subject to challenge or recovery by the firm's creditors.

However, we are aware that a number of firms hold a strong view that money on account of costs should be held within a client account and one solution to this might be to allow payments on account of costs to be held in a 'client fee account' as long as that account was a separate bank account from the other accounts holding client money.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

We agree with this proposal as it is a practical response to a common situation. However, as stated in question 2, we would recommend that the SRA provide guidance on what would be considered a reasonable time limit by which funds should be transferred.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

We have relatively few clients that receive payments from the Legal Aid Agency (LAA) and therefore are unable to comment based on experience. However, we have no reason to believe that there should be specific Accounts Rules in this respect.

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

The current proposed rules around third party managed accounts ("TPMAs") included in rule 11 of Annex 1.1, as they stand are complex for a number of reasons:

1. It should be clear as to what is considered to be a TPMA and who has primary responsibility for funds deposited into such an account. Clients will need to understand the difference in terms of protection that a TPMA has compared with a client account.

2. Rule 11.1 (d) puts a significant onus on the legal firm to safeguard client money without having full control of these funds. The SRA should consider alternative wording for this section.

3. It is unclear as to whether the legal firm should continue to hold central accounting records in relation to such accounts, as well as joint accounts and clients' own accounts. We believe this is a key control to ensure legal firms have overall control over client money held by the firm.

4. Futhermore, rule 11.2 seems to suggest that the legal firm should maintain transaction level detail on all these accounts, which would be a significant administrative burden.

5. We belive that TPMA use may present a risk that client funds are mismanaged due to the solicitor and the third party both believing the other party is exercising safeguards. The operator of a TPMA would not be in a position to prevent a solicitor inappropriately directing funds, since they would not have sight or knowledge of the underlying legal transaction.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

Please see our comments in question 7 above.

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

Please see our comments in question 7 above.

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

We believe that the requirement for solicitors to publish an interest policy is important to allow all clients of a legal firm to be clear on the terms under which they and the firm are engaged.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

In addition to the points made above, we have the following further points to make:

SPECIFIC COMMENTS ON THE PROPOSED RULES

- Rule 4.3 appears to be at odds with the overall concept that funds relating to a firm's costs should be deposited in the office account in the first place (or transferred promptly upon receipt in the client account).

- Further guidance should be provided in terms of how regularly the provisions in rule 8.1(b) should be updated, acknowledging the different sizes of firms covered by these rules.

- Rule 8.3 should also include the requirement to follow up on and deal with reconciling items on a timely basis.

- Within Part 3, rules surrounding the maintenance of central accounting records for joint accounts, client's own accounts and third party managed accounts have been removed. We recommend that this is retained as this is a key control for firms.

OTHER OBSERVATIONS

- We believe an explicit requirement to have suitable and appropriate internal controls over client money should be included, making specific reference to best practice of multiple layers of authority for withdrawals.

- Guidance with regards to the use of a suspense account has been removed. We would seek clarification over whether a suspense account remains acceptable under the revised rules.

- Rule 14(4) of the current rules, which requires firms to inform their clients in writing of amounts retained at the end of a matter and then again at least annually. We would recomment that this is retained.

- We note that there are no rules around what firms should do with residual client money balances where the client is unable to be contacted. We would recommend the inclusion of guidance, particularly around the de minimis threshold.

- We would like greater clarity to be included with regards to the role of the Reporting Accountant which we believe has been removed from the current proposed version of the accounts. In particular the Accountant's Rights & Duties as required to be included in the engagement letter (previously Rule 35), confirmation of the work to be undertaken by the accountant (currently Rule 43A) and current rule 39 over the failure to provide documentation. The latter is important to ensure we obtain all the required information to enable us to complete our work.

- Best practice for regulated industries is the requirement for the regulated entity to make a specific declaration of compliance. While good quality reporting accountants would treat the absence of such direct confirmation to be a scope limitation, we also note that leading regulatory requirements would also include a specific declaration.

- We would like to understand further the interaction between these rules and the Overseas Rules which, since Phase 2, have been presented separately as SRA Overseas Rules 2013.

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

Please see responses to other questions for areas in which we would expect guidance to be provided.

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

Annex 1.4 states that the examples are likely to be very rare. However, in our experience, these events are more common. Furthermore, a number of the redress/regulatory action comments are not preventative and will only come into affect after the event.

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

Not applicable.

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to consultation@sra.org.uk, by **21 September 2016**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

Solicitors Regulation Authority
Regulation and Education - SRA Accounts Rules 2017"
The Cube
199 Wharfside Street
Birmingham
B1 1RN

DLA Piper

Dear Sir,

This is the response of DLA Piper to the consultation "Looking to the Future - Accounts Rules review".

Through our representative on the City of London Law Society's ("CLLS") Professional Rules and Regulation Committee we have been actively involved in and contributed to the preparation of the CLLS response to this consultation. DLA Piper endorses the CLLS response.

In the circumstances transcribing the CLLS response into this email as our own would not serve any practical purpose. We would nevertheless ask that you take the attached copy of the CLLS response as representing the views of our firm on the matters under consultation, and treat it as a separate response.

The City of London Law Society

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Solicitors Regulation Authority
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BIRMINGHAM
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DX 720293 BIRMINGHAM 47

By DX and email: consultation@sra.org.uk

19th September 2016

Dear Sirs

RESPONSE OF THE CLLS PROFESSIONAL RULES AND REGULATION COMMITTEE TO THE SRA'S CONSULTATION "LOOKING TO THE FUTURE: SRA ACCOUNTS RULES REVIEW"

General

1. This consultation is predicated on a presumption that there is an inherent flaw in the current SRA Accounts Rules which needs correcting, and that the solution is simplification per-se. We do not believe that the evidence presented supports this conclusion.

   The consultation fails to consider the extent to which the high standards of conduct, consistently applied by virtue of the depth and breadth of the current rules, have historically prevented material breaches from arising and thus contributed positively to protecting clients and client money. The effect of over simplification, and the flexibility of approach which the draft rules facilitate, could have unforeseen consequences and result in lower standards of conduct generally, and increase the risks for clients and to client money.

2. Your introduction to the consultation sets out the background against which this review is being undertaken. In particular, you cite the following justifications for the review:

   a) The current accounts rules have not changed significantly for many years. They are prescriptive and restrictive, and focussed on ensuring that all firms handle money in the same way.

b) The length and complexity of the current Accounts Rules make it difficult for new entrants to the market to understand what is required of them as well as consumers to understand what to expect when a firm handles their money.

c) Many firms find themselves in technical breach of the Accounts Rules in circumstances where there are no real risks to client money.

With reference to (a), this makes the presumption that prescription and restrictions on how client money can be handled, and consistency in the way different firms handle it, is inherently a bad thing. There are certainly provisions within the current Accounts Rules which are unnecessarily detailed, and thus prescriptive and restrictive for no good reason, which could be dispensed with. But overall we believe the consistency and certainty which the rules impose are a positive thing in connection with the protection of client money. Given the risk of misuse and/or loss associated with client money, you present no evidence that the current rules generally are disproportionate, inconsistent, opaque, or untargeted.

With reference to (b), much of the perceived "complexity" arises from the manner in which the rules are written and the technical terminology used, which is in parts difficult to interpret, rather than arising from its length per-se or the scope and detail of the provisions therein. We agree that a rewrite which rationalises the Rules is needed, and that certain provisions can be safely removed, but caution against discarding helpful provisions which contribute clarity and certainty for the sole purpose of achieving brevity or simplicity.

We accept that the current Accounts Rules are not easy to follow for anyone coming to them for the first time. We do not however believe that the majority of established firms or practitioners have any significant difficulty in understanding nor in applying the current Rules, and many welcome the detail contained in them (see above). We question whether the Accounts Rules have the purpose of explaining to consumers what to expect when a firm handles their money, or can be expected to properly fulfil this purpose. This need can be better met through other means, and should not be allowed to subvert the review.

With reference to (c), no evidence is presented to support your argument that the small number of qualified accountants' reports which lead to any regulatory action is evidence that the Rules are too complicated, or that they are not focussed on the risk. The concerns about the reporting of immaterial technical breaches was addressed in phase 2 of the review of the Accounts Rules, implemented in November 2015, when accountants were given more discretion to exercise judgement as to the materiality of breaches when preparing reports. It is too early to assess whether or not this has been effective in reducing the number of reports which are qualified for reason of immaterial technical breaches only.

Answers to Specific Consultation Questions

1. Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

As discussed above, we do not support the contention that the length of the Accounts Rules in itself an issue, nor do we agree that making them shorter will in itself render them clearer and simpler to understand, and thus easier to comply with. Nor do we accept the premise that the current Rules, nor the consistency of approach they promote, are unnecessarily prescriptive or restrictive, or otherwise inappropriate in connection with the handling of client money.

We agree that the draft Accounts Rules are easier to read, but are concerned some useful provisions have been needlessly discarded and that the flexibility introduced could give rise to unforeseen ambiguities and problems in practice, as explained in this response.

2. Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

a) General

The CLLS member firms all employ experienced cashiering professionals to manage compliance with the Accounts Rules. For such experts, the decision to dispense with the current detailed descriptions and the definitions of office money and office account will not be of particular concern. That said, professionals in some firms have expressed a preference for retaining the current very clear descriptions and definitions.

We are however concerned that the lack of certainty in the drafting of the new definition will challenge firms who do not employ experienced professions and, in particular, will make it more difficult for new entrants to the market to interpret and apply the new Rules, and understand what is required of them to achieve compliance.

b) "Payments for your fees"

We see the revision to the definition of "client money", to exclude payments on account of fees, as problematic when read in conjunction with the prohibition on mixing client and office money (draft Rule 4.1). The draft Rules allow firms to treat money held on account of fees as office money. While this may bring some of the benefits the SRA is seeking, there does not appear to be any good argument for depriving clients of the extra protection that holding the funds in client account brings, or otherwise differentiating this money from any other held on behalf of a client.

There is a clear distinction between an "agreed fee", which is by definition both fixed and payable to the solicitor irrespective of whether the transaction completes or the service is otherwise rendered, and an "on account" payment (irrespective of whether or not this fee is "fixed") which is payable to the solicitor only on completion of the transaction or delivery of the contracted service. Holding money on account of fees in client account clearly ensures that the money is properly protected and reflects current expectations of solicitors and their clients.

In paragraph 24 of the consultation, you argue that treating payments on account of fees as client money "may encourage or normalise the business practice of requiring consumers to pay in advance for services and before the costs have been calculated. The impact of this may be to increase the amount of money in client account in the first place and potential risks to consumers if that money is lost". We cannot see merit in this argument. It seems far more likely that allowing this money to be deposited in the firm's account, and thus available to fund the solicitors business, will normalise the business practice referred to and poses an obvious and direct risk to clients.

Although it may not happen frequently, CLLS member firms will on occasion seek to take security on account of costs from new clients or clients about whom there are credit concerns. The amounts held may be substantial and it is to the mutual benefit of both the client (who will not wish those sums to be sitting in an office account without any protection from the firm's creditors) and the firm (who will wish to have the security that holding money on account brings) to be able to hold that money in client account. Clients are likely to be reluctant to provide funds if the firm cannot hold the

money in client account and, where the firm regards this as essential in order to mitigate its own financial risks, this could lead to difficulties in those clients accessing legal services.

The revised definition of client money will also necessitate systems and process change, which has an associated cost for firms. All of the proprietary legal accounting systems are designed to handle client money as defined by the current Accounts Rules, and changes would be necessary to identify, manage and report on the new categories of office credits occasioned by the revise definition. There would also be an administrative burden in monitoring these office credits, and in ensuring that the money is moved to client account or returned to the client should the purpose for which it was received fail to crystallise. This duplicates existing processes for managing residual client account balances, of which such surplus funds currently form a part.

The consultation also fails to consider the potential tax implications of receiving payments on account into the firms office account. We are concerned that receiving these payments in advance of a supply of services would trigger a VAT tax point, and accelerate the point at which tax must be paid over to the HMRC before the services have been delivered and the income can be properly recognised.

We would therefore recommend that payments deposited on account of costs yet to be incurred should be defined as client money unless the client agrees otherwise (re draft Rule 2.2(b)). It would then be open to the firm to make it clear in their request for monies on account, or state in their standard terms and conditions (clearly communicated to the client), that monies on account would not be held in client account. It would remain open to firms to choose to offer the client the benefit that holding money on account of costs in client account brings. The protection a firm offers for money held on account should then become a matter that clients can take into account when selecting a firm, allowing firms to differentiate themselves from competitors, and increasing choice. Understanding the implications could, however, be a stretch for un-sophisticated consumers.

c) "Payments to third parties for which you are liable"

The drafting causes us concern because the underlying intention is not clear.

We can see administrative benefit for firms in being able to deposit funds for all billed disbursements into the firm's account, removing the current distinction between those disbursements which the firm has already paid and those which are still outstanding. Assuming this is the intention, we suggest that the first paragraph of draft Rule 2.1 should be amended to read "relating to legal services delivered by you to a client excluding payments to third parties in respect of expenses or professional disbursements which the firm has billed to the client".

If the SRA is intentionally drawing a hard line between unpaid professional disbursements for which the Firm is liable and those for which the client is liable, such a distinction would be impossible to operate in practice. When engaging third parties on behalf of clients, it is common practice for firms to expressly exclude liability and this approach would therefore introduce a requirement for the accounts function to assess in each case, at the point of receipt of funds, the extent to which it is the firm or the client that is legally "liable" to the third party. If this is the change the SRA intends to effect, we do not support it.

3. **Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?**

   We have no views on the use of credit cards to pay for legal services.

4. **Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?**

   We share your view that the principle in the current Accounts Rules that only client money can be held in client account, subject to some very limited exceptions, should continue.

   Subject to our comments re payments on account and disbursements in response to consultation question 2, we believe that the definition of "client money" in draft rule 2.1 is appropriate. In particular, we consider that defining client money by reference to "legal services delivered by you" here, and in draft rule 3.3, has removed the ambiguity found in rule 14.5 of the current Accounts Rules regarding what may or may not constitute the provision of a banking facility.

   We are nevertheless concerned that no express allowance is made for situations whereby office money is inadvertently deposited in client account, which would give rise to a new category of technical breaches in circumstances where there is no real risk to client money. Rule 17 of the current Accounts Rules contains provisions which allow office money to be deposited in client account providing it is transferred out within 14 days. To avoid these technical breaches occurring, a similar provision is needed in the draft Accounts Rules which allows office money to be deposited in client account subject to it being transferred out "promptly".

   What amounts to "promptly", in this context and otherwise where this term is used the draft Accounts Rules, should be for the firm itself to decide having regard to the SRA Principles and Outcome 7.2 of the SRA Code of Conduct (or equivalent provision in any revised Code).

5. **Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account? In particular do you have any *(comments on)* the new draft Rule 4.2 (see Annex 1.1)?**

   We would welcome a relaxation which allows, exceptionally, for client money to be paid into office account without it automatically giving rise to a breach.

   In principle, we would also support the proposal that mixed receipts can be paid into either of client or office account at the discretion of the firm involved. We nevertheless recognise that this approach exposes clients to a new risk which they do not face under the current Rules. On balance we believe that mixed payments should properly be paid into client account, as now, subject to an alternative arrangement being agreed with the client or third party for whom the money is held, as set out in draft rule 2.2(b).

6. **Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?**

   LAA funding is not a material consideration for the CLLS member firms. We have no view on whether or not the specific Accounts Rules related to payments from the LAA can be safely dispensed with.

7. **Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?**

   Our position on the use of TMPAs is unchanged from that set out our response to the consultation entitled "SRA's Regulatory Reform Programme", dated 9 June 2015. We have no objection in principle to the use of TMPAs. Our member firms are nevertheless firmly in favour of retaining client accounts as the primary means of managing client money.

   We note that the definition of TMPA requires that the account is held with an FCA regulated institution. This approach addresses concerns we identified previously, and as such appears to be a proportionate and appropriate response to the risks.

8. **If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?**

   Not applicable (note response to consultation question 9 below).

9. **Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?**

   Subject to adequate safeguards and controls being in place, we cannot identify any compelling reason why the use of TPMA should be restricted only to certain areas of law. There may be practical reasons why TPMA might not be a viable alternative to client account, in conveyancing transactions where speed of transfer is important for example, but firms should have the discretion to make their own decision on which solution best serves its business needs.

10. **Do you have any views on whether we need to retain the requirement to have a published interest policy?**

    Rule 8.8 in the draft SRA Code of Conduct for Solicitor, RELs and RFLs (which is also currently being consulted on) contains an obligation to ensure publicity regarding the "circumstances in which interest is payable by or to a client" is accurate or not misleading. We note that there is no equivalent obligation imposed on firms, in either of the draft SRA Code of Conduct for Firms or in the draft Accounts Rules.

    In practice, interest policy will be under the control of firms and not individual practitioners. As such it will be necessary for firms to have a clear policy on interest before individuals can fulfil their personal obligation as above. For this reason, we believe that the requirement on firms to have a published interest policy is necessary, and should be retained.

11. **Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?**

    a) <u>Overarching purpose of the Rules</u>

       Rules 1.1 and 1.2 of the current SRA Accounts Rule set our clearly the purpose of those rules, and the key obligations regulated individuals have in connection with holding and receiving client money. This has historically been a very helpful entry point to understanding what practitioners must deliver to achieve compliance.

       Nothing in the draft SRA Accounts Rules conveys these clear messages. We would recommend that this information is reproduced in the new Rules.

    b) <u>Implementation and transitional provisions</u>

Consideration must be given to minimise the impact of any changes on firms, and allow for a smooth transaction from the current SRA Accounts Rule to the new regime.

If the definition of client money as set out in draft Rule 2.1 is implemented, relief must be given for amounts currently held as client money under the old Rules which is no longer client money as defined by the new Rules. The new Rules should allow for this money to remain in client account until the purpose for which it is held is exhausted, or specify a reasonable timeframe within which the funds should be moved before any breach arises.

To minimise the impact of the changes on business operations, we would suggest that firms be given discretion to decide when they transition from the old to the new Accounts Rules. The choice would be between the date the new Rules come into force or at a date which coincides with the firm's next financial year end.

c) Rule 1: Application section

Rule 6.1 of the current SRA Accounts Rules extended the Principals' responsibility for compliance with the Rules to the COFA of the firm (whether a manager or non-manager). Rule 1.2 of the draft Accounts Rules contains the same provision.

This is out with the statutory responsibilities of the COFA (HOFA) contained in s.92 of the Legal Services Act; the post holder "must take all reasonable steps to ensure compliance", but is not responsible for compliance per-se. This extension of the COFA's role gold plates the legislation, and the opportunity should be taken to remove this unnecessary regulatory burden on the post holder, if the COFA role is retained.

d) Rule 2: Client money

We agree with the concept expressed in Rule 2.3 of the Draft Accounts Rules, which we assume to mean that client money should be available to be paid at the direction of the client, but can see a problem. Modern AML and sanctions regulation means that no bank or law firm can necessarily make money available "on demand" to a client. As the draft rule currently stands each firm will therefore need to enter written agreements with clients for every client account transaction explaining the position, pursuant to draft rule 2.1(b), which will not benefit clients or firms.

The rule would be better phrased as "You ensure that client money is held in an account from which money can be withdrawn without notice unless you agree an alternative arrangement in writing with your client, or third party for whom the money is held".

e) Rule 6.1: Duty to correct breaches upon discovery

Rule 7.2 of the current SRA Accounts Rules make clears it that it is the person causing the breach and the principals of a firm who have a duty to correct it. Rule 6.1 of the draft Accounts Rules simply refers to "you" as having responsibility for correcting any breach. Read in conjunction with draft Rule 1.1, it is not clear as to who has this obligation. It could be interpreted to be an obligation of any and all employees, whether or not they were personally responsible for the breach and, by virtue of draft Rule 1.2, it is also possible that this obligation could extend to the COFA.

Draft Rule 6.1 should expressly state that it is the principals of the firm, and the person responsible for the breach, who are personally responsible for correcting it, and no one else.

f) Rule 8.1: Client accounting systems and controls

As currently drafted, Rule 8.1 of the draft Accounts Rules does not specifically oblige firms to record client and office transactions separately on the client or office side of the client ledger account respectively. We would suggest the following amendments to the drafting of this rule:

8.1 keep and maintain accurate, contemporaneous and chronological records to:-

(a) provide details of all money received and paid from all client accounts and show a running balance of all money held in those accounts;

(b) record in client ledger accounts identified by the client 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 your ***firm***'s business accounts on the office side of the client ledger account;

(c) provide a client account cashbook showing a running total of all client funds.

g) Rule 9: Operation of Joint accounts & Rule 10: Operation of a Client's own account

We note that the draft Rules incorporates an obligation to reconcile joint accounts and client's own accounts "at least every 5 weeks". Rules 9 and 10 of the Current Accounts Rules do not contain equivalent obligations. We have no objection to this change in principle, but the consultation does not explain the harm to clients or to client money arising from operation of the current rules which justifies the administrative burden arising from these new obligations.

h) Rule 11: Third Party Managed Accounts

We are concerned with the drafting of this Rule. Clients have always been able to establish escrow accounts with third parties to deal with transaction payments where that suits the parties. Firms may often be involved in the arrangements, for example advising the client on the terms and helping to set them up, but that should not of itself bring the SRA Accounts Rules into play.

The drafting should be clarified to make it clear that the SRA Accounts rules are only applicable where the TPMA is in the name of the law firm, and the law firm has operational or management control over the TPMA.

i) Rule 12: Obtaining and delivery of accountants' reports

Rule 35 of the current SRA Accounts Rules sets out the rights and duties of the reporting accountant which must be included in the post holder's letter of engagement. These include some important safeguards which have not been reproduced in Rule 12 of the draft SRA Accounts Rules.

As a minimum, we would recommend that accountants are given an express obligation to notify the SRA if they qualify a report. We would expect all CLLS member firms to comply with the obligation to deliver a qualified report to the SRA, but failing to impose any form of obligation on accountants removes a very simple and effective

check. Without this control, the SRA may not know that a firm is in breach of the Accounts Rules or the requirement to deliver a report until it is required to intervene in that firm for some other reason.

j) Rules 5.1(c), 12.8 and 12.10

These draft Rules give the SRA the power to regulate via the back door without proper consultation and scrutiny. Each enables the SRA to prescribe detailed rules or circumstances with what appears to be the sole objective of keeping the Accounts Rules short, rather than assisting either clients or firms with clarity or a reduced regulatory burden.

If a matter needs to be dealt with it should be addressed within the Accounts Rules themselves. For example, provisions dealing with small residual balances, informing clients of the amount of client money still held and the reason for retention, terms with accountants and the form of accountants' reports should all be properly drafted, consulted on and included in the Accounts Rules.

12. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, please provide further details.

Whilst recognising that guidance and case studies can be of value, on balance, we are not in favour of the SRA developing guidance or case studies in this particular context, which we see as additional regulation "by the back door".

It is important that the Accounts Rules are self-contained, and in themselves competent to address the risks associated with handling client money. If the SRA harbours concerns that they cannot achieve this objective without the support of guidance and case studies, then the rationale for this review is brought into question, and the Accounts Rules need to be expanded sufficiently to resolve these concerns and fulfil its stated purpose. There is also a danger that issuing such guidance and/or case studies would have the practical effect of making the new Accounts Rules "long, confusing and complicated" which would defeat the SRA's stated aim of attempting to simplify it in the first place.

If the SRA does produce guidance or case studies, we think it should consult on these, whether formally or informally with stakeholder groups, before they are issued.

13. Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

The majority of CLLS member firms' clients will not be able to avail themselves of the alternative protections or redress referred to in your consumer protection analysis. They will not have access to Legal Ombudsman, the Compensation Fund or want to pay with credit card, and the amounts held may exceed the relevant limits of protection these offer by an order of magnitude.

14. Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

No.

Yours faithfully

THE CITY OF LONDON LAW SOCIETY

Professional Rules and Regulation Committee

Individuals and firms represented on this Committee are as follows:

Sarah de Gay (Slaughter and May, Chair)

Tracey Butcher (Mayer Brown International LLP)

Roger Butterworth (Bird & Bird LLP)

Raymond Cohen (Linklaters LLP)

Sonya Foulds (Freshfields Bruckhaus Deringer LLP)

Annette Fritze-Shanks (Allen & Overy LLP)

Antoinette Jucker (Pinsent Masons LLP)

Mike Pretty (DLA Piper UK LLP)

Jo Riddick (Macfarlanes LLP)

Chris Vigrass (Ashurst LLP)

Clare Wilson (Herbert Smith Freehills LLP)

Farleys LLP

Dear Sirs,

Please see our response to the consultation document below.

Question 1
Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

We can't answer yes or no as whilst the draft rules are certainly reduced in length they must be workable in practice. It would help if the SRA shared with the profession their thinking and any input from other external sources so we can better understand the approach leading to the wording proposed! Ultimately if they are to work they must be more user friendly so it is important the profession understand what thinking lies behind the changes not just the proposed wording!

Question 2
Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

No we do not agree with the proposed change to allow money paid for fees/disbursements for which the solicitor is liable to be treated as office money. We consider that the change would only be pampering to those firms in financial difficulties and would increase the likelihood of inappropriate behaviour.

The requirement to hold client money separate from office money should be retained to protect client money and maintaining acceptable standards within the profession. It is arguably the main 'pillar of trust' upon which members of the public rely when seeking legal services, as they are generally aware that their money is held separately from the firms.

As currently proposed it would undoubtedly increase the costs of our Accountant's auditing us and the work of the investigatory section of the SRA in their management of firms suffering financial difficulties or suspected of being engaged in criminal activity. It would also be likely to increase the length of time to

conclude an SRA intervention due to the greater lack of clarity over what has occurred as client and office monies are mixed. This would in turn adversely affect the profession due to increases in the annual premium for the SRA Compensation Fund.

Question 3
Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

We offer our clients the option to pay by credit card and as in many other business sectors, there is a cost to clients choosing to pay by this method. Whilst it is an appropriate payment method for payment it can in no way provide a complete solution to the proposed weakening of protection that would occur under these overall proposals. Not everyone is sufficiently credit worthy to have a credit card which would lead to a disparity in levels of protection purely due to a person's ability to acquire a credit card. Current all clients are protected equally, regardless of economic status.

Question 4
Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?
Question 5
Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account? In particular do you have any views on the new draft Rule 4.2 (see Annex 1.1)?

Questions 4 and 5 have been answered together. We do not agree with the proposed change in the definition of client money. We are not sure what advantages exist in changing the rules regarding 'mixed payments'. It would assist if the SRA clarified where this suggestion has come from.

This is an unnecessary weakening of a client's protection and would cause difficulties over the calculation of a fair rate of interest payable to a client and would assist in masking criminal activity!

Ultimately if a legal service provider whether; sole practitioner, partnership, LLP, ABS or MDP cannot see the advantages of keeping client money in a separate account

from Office Account then they are unfit to provide legal services.

Question 6
Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

No. As we do not agree with your proposed definition of client money, we do not agree with this proposal.

Question 7
Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

No. The costs of existing TPMA schemes are high and these would have to be passed on to the client and would therefore not be of benefit to them.

Question 8
If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

See our answer to 6 above.

Question 9
Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

No. See our answer to 6 above.

Question 10
Do you have any views on whether we need to retain the requirement to have a published interest policy?

The requirement should be retained. It is right that clients should have clarity over any interest to which they would be entitled.

Question 11
Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

See our answer to 1 above.

Question 12 - Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

We agree with the suggestions made by the Law Society in this respect.

Question 13
Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

There would appear to be significant gaps and omissions in the initial impact assessment which the Law Society have correctly identified and which should be addressed and communicated to the profession to allow us to make an informed decision.

Question 14 - Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

We agree with the views expressed by the Law Society in this respect.

Finally we hope that our response will assist in moving these important areas forward.

Yours sincerely,

David Ruscoe
Business Manager

Gepp & Sons Solicitors

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Yes

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

Yes, but we need to put a time limit on payments to third parties 'i.e. only where paid within XX day of receipt'

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

We have no views on the use of credit cards to pay for legal services. Local firms do accept credit card payments. However, this is again very focused on the private client and not the commercial client. Not all clients have access to the Legal Ombudsman.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Yes

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

We are uncomfortable with this, the safe guards for consumers are maximised by the present system, under which funds can be paid into client account first. Funds which are identifable as office money can then be transferred.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Yes

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

More information is required before an answer can be given.

What would be the terms of engagement with the third party? Who would controls the activities of the TPMA?

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

What is the position so far as claims on the solicitors PII or the Compensation Fund are concerned? Is there a real risk of reducing client protection?

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

See above Qs 7 & 8

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

Yes, we should state our policy in order to manage client expectation.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

No

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

No

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

No, as you only consider the position of private clients.

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

No

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to consultation@sra.org.uk, by **21 September 2016**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

Solicitors Regulation Authority
Regulation and Education - SRA Accounts Rules 2017"
The Cube
199 Wharfside Street
Birmingham
B1 1RN

Glyn Morris

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

This form is designed to be completed electronically—in MS Word. Please save it locally before and after completing it.

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Yes the rules are simpler. Particularly for new firms.

Many existing firms are familiar with the old rules and the software packages accommodate the existing rules but the removal of the technical breaches relating to timing is very welcome and will be easier to comply with.

I feel that accounts staff have always understood the rules, but in larger firms lawyers have struggled. Consumers similarly have no real understanding of the internal workings of client and office funds.

There may be a transitional period where breaches occur as people try to embed the new rules and retrain old practices. One example may be that money received on account is placed in Client Account, okay under the old rules, now triggering a breach under the new rules.

There is really no explaination or guidance as to how "the effective controls and procedures…..should act as an assurance for consumers and give them confidence that their funds will be kept safe." - see initial impact assessment point 12.

Accounting for VAT or valuing WIP under UITF40 for "on account" payments may introduce a new degree of complexity that is currently not experienced by many firms.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

I feel that the change in the definition is a more significant and potential risk to consumers in respect of their money being at risk. I believe that the following should be retained within the definition of client money maybe even by choice of the firm:

i) received on account of a service to be provided - See Consultation point 23 the cost of operating a client account is disproportionately low (as firms will likely have one anyway) vs.the protection afforded the consumer.

ii) Money received on account of disbursements, for example Counsels fees.

Possible solutions might include exceptions for the distinct provision of service for an agreed fee, say less than £1,500 or to allow possibly just 'none reserved' services to be paid in, in more efficient timescales or say for deposits to be taken e.g. 25% of the total estimated fee. This may provide proportionate risk based consumer protection.

Even ethical firms may struggle with the complexity of working capital management. I feel that the risk to consumers is increased where a firm has cash flow pressures not even difficulties. The ring-fencing of professional disbursements and payments on account is a key consumer protection and the current redress is much more straight forward than any of the proposed means in the Impact Statement. Has the SRA considered that almost all overdraft arrangements can be withdrawn, by the bank, without notice?

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

They have their place. We do accept payment by credit card for invoices and, in some limited circumstances, payments on account for clients who are not previously known to the firm. These two methods are under separate Merchant numbers linked to office and client account appropriately.

Complying with the PCIDSS requirements has become easier recently but I imagine that many firms find it hard to comply easily, especially if they use card machines.

Credit card charges are significant and ultimatetly will be passed on to the client.

What about the firm in all this? Credit Card 'Chargeback' enables the Merchant card provider to recall payments made via card up to 18 months from the date of the payment. Where would a firm stand if they accepted client disbursements invoiced in advance that were then recalled through a 'card use' disagreement?

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

If these rules were to become live in their current form, I would like to see the flexibility for me, still to be able to use client account in order to keep 'payments on account' or 'professional disbursements received in advance' properly ring-fenced from office funds.

Consultation Note 30 - I do not percieve the management of payments in advance for work not yet performed or for professional disbursements to be a burden, rather simply as good accounting practice.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Same answer as to question 4 - If these rules were to become live in their current form, I would like to see the flexibility for me still to be able to use client account in order to keep 'payments on account' or 'professional disbursements received in advance' properly ringfenced from office funds.

Consultation point 38 - The money in client account is client money. All firms can tell you at any point in time what is in there. I would assume statutory powers are held over the money in client account. What is more the bank will also assume that they cannot have that money i.e. if overdraft facilities were being withdrawn. For this reason too, I would definitely instist on mixed payments going into client account first.

Rule 4.2 - I am concerned that the definition around 'promptly' is under defined.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

I see no specific need to have separate rules relating to money from the Legal Aid Agency.

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

Probably no. I say that because it is difficult to imagine a situation where I would think I was sufficently comfortable with my own due diligence into an entity, that I do not have the ability to assess as 'safe'.

The following quote makes me think, too: “Consumer Financial Protection Bureau (CFPB) and other regulators are holding financial institutions responsible not only for their own actions but also for those of their vendors and suppliers.” – McKinsey & Company

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

Surely the client would always believe that our firm has verified his funds are safe if we are recommending use of one of these organisations. What if that institution fails? What if it is in special measures with the FCA?

If the client can withdraw the money themselves, why could they not set up their own bank account and use that? Lawyer control of client funds is often crucial to the correct transfer at the correct times ensuring transactions complete as desired. Solicitors on both sides understand and apply the mechanics generally very well.

Does the lawyer have all the responsibility to open the account? In which case considerable cost can be involved. What about money laundering in respect of all the potential parties e.g. many shareholders of a company?

What are the data controls and storage of data locations of the TPMA? How are confidentiality provisions aligned to those of regulated firms?

What if the cut off times are different to those of our bank and transactions are not completed as a result? Where does the fault lie?

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

No knowledge.

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

I would favour the requirement being removed.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

Clarification for the COFA responsibilities not extending to the conduct requirements is welcome.

Shorter set of rules is welcome as is a set of rules removing unnecessary restrictions, prescription and details. They should absolutley focus on removing technical breaches but I am not sure that they achieve the objective to keep money belonging to clients safe or effectively mitigate the danger that client money may be misused in their current form.

Rule 2.1 Is the definitition of 'relating to legal services' too broad i.e. not specific to the matter in hand?

Rule 2.2, 2.4 and 4.2 - I am concerned that the definition around 'promptly' is under defined.

Rule 3.3 - Guidance or examples of exactly what 'agree an alternative arrangement in writing' means and whether this leads you into areas of acting as a bank (providing banking facilities - Rule 3.3) for clients, which is in breach of the rules.

Rule 3.3 - Further examples of what constitutes 'providing banking facilities' would be helpful. For example a client receives disposal proceeds from the sale of a business and requests that future defined tax liabilities are retained by the firm to be paid out in six months time. Perhaps even asking for these to be placed on a 'notice account' to achieve better interest. This requires the firm to read the rules very carefully to be compliant and/or potentially damage a client relationship.

Specific guidance on the ability to retain funds or move them to another transaction where recurring work or multiple matters are taking place. Under the current guidance you might in some instances send money to the client and receive it straight back, increasing cost and generating unnecessary transactions.

Rule 4.3(b) - Does 'covered by the amount held' exclude part payments. If there are some funds not quite covering the total amount, can funds still be paid over?

Rule 5.1(a) - 'for the purpose for which it is being held' does not really provide for circumstances where the purpose may not be known. This may, on occasion be legitimate in cases where clients are not specific. The client may also change the intended purpose, for some reason, in connection with a matter.

Rule 5.2 - What is 'appropriate authorisation'? Guidance and examples would be helpful.

Rule 5.3 - 'Sufficient funds', makes no reference to cleared funds. Banking arrangements are very difficult to navigate for many firms regarding cleared funds for Cheques, Drafts, CHAPS, Faster Payments, BACS direct credit and direct debit and credit card. WIthout better guidance I imagine many transactions complete on

uncleared funds inadvertantly. Guidance and help would be good.

Rule 6.1 - 'Immediately paid into the account' is definitive. There may be practical or logistical challenges or real world issues that do not produce any risk, in fact the efforts of the firm may be reducing risk at that point. Immeadiately (if not within 24 hours) report it to the SRA, maybe?

Rule 7.1 - 'Fair sum' is undefined. Could any of the high street bank interest rates available to a person 'off the street' be described as fair?

Rule 7.2 - this seems entirely impractical to operate to me. What would ever be deemed to be 'sufficient information'? In what form is 'consent' acceptable?

Rule 8.2 - This has to be 'or other notification / evidence from the bank' as many deposit bank accounts cannot produce statements unless there has been movement on that account in the relevant period.

Rule 8.2 and 12.3 - 'Five weeks' is a term I have seen in no other place in my 26 years as an Accountant. What would be wrong with 'at least monthly'?

Rule 11.2 Why do third party managed accounts only have to give regular statements and not 'every five weeks'?

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

There seems little by way of information on how firms may address the real risks to client monies e.g. Cyber or social engineering issues.

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

Case study 1 - We would not accept payment for a medical report by credit card because of chargeback rules. Money is seldom received by a client in personal injury cases, we almost 100% of instances fund them for our clients.

Case study 2 - It does not specify whether the firm still has the money? More details are required on whether any work was undertaken. Arguably there would be time records and correspondence.

Case Study 3 - None of this redress would be anywhere near as risky if the money was placed in client account. Bankrupt is at the far end of matters, I would like to see this include the Bank pull the firm's overdraft due to a change in central policy, after the firm's partners thought cash flow was tight but not critical.

Case Study 4 - This doesn't seem much different from now.

Annex 1.5 I am unsure how operating the payment on account of costs in Case Study 1 is reducing the cost of the regulatory burden of operating a client account on a firm, a key principle of the whole new definition.

Annex 1.5 Case Study 2 - there is little accounting for the fact that funds may not be cleared funds.

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

I would really like the regulation to address the core difference between the need arising to protect individual consumers vs. businesses or companies where a greater degree of knowledge and business acumen is generally present. The rules might therefore have reference the nature of the client to the firm.

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21 September 2016

Dear Sirs

SRA Accounts Rules 2017: Response to the consultation issued June 2016 entitled "Looking to the Future: SRA Accounts Rules Review"

We set out our responses to the various questions included in the above consultation document as follows:

Question 1: Do you consider the draft Accounts Rules are clearer and simpler to understand and easier to comply with?

In our view they are clearer and as a result, we would envisage them being easier for users to understand. We therefore view the revised form to be a significant positive.

In respect of the wording of the question – 'and easier to comply with', whilst we believe this aspect of the question may arise from the sense that, to this point, the rules were almost impossible to fully comply with and the (reasonable) sentiment that this meant that the rules needed recalibration, we feel that it would be of concern if the SRA saw it as being important that they make regulation 'easier to comply with'. It is our view that the consumer would wish to see the regulator ensure that the regulation is proportionate and requires appropriate standards of conduct from its members rather than consider the ease with which a firm could comply. We recommend that the SRA consider the wording used in this area in future statements so that the consumer, and the market generally, has confidence that the intentions in this regard are as they may expect.

Question 2: Do you agree with our proposals for a change in the definition of client money? In particular, do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

The proposal of *"If the payment relates to legal services being provided by the firm to the client (for example fees paid by the client in advance) or services rendered on behalf of the client for which the firm is liable (for example costs relating to the client's matter which might include medical expert fees, counsel fees, or indirect costs such a courier fees) - it does not have to go into client account."*
in paragraph 16 of the consultation is something that we found surprising in the context of the (understandable) recent concern in the market, highlighted frequently by the SRA, that firms may be holding monies provided by clients for settlement of third party disbursements in office account for an excessive period of time in order to improve the law firm's working capital / balance sheet position.

We would have concerns that firms under financial pressure may take client money receipts intended to settle third party disbursements and hold them for an inappropriately long period of time before paying them over to that third party.

From a consumer perspective, it would not seem satisfactory that they may pay monies to the law firm for settlement of these third party amounts only to later discover that those monies had been held in office account, and therefore benefitted the law firm, for a period of time. If the definition is to be changed such that such monies are not considered 'client monies' then we consider that firms should still be required to settle any third party disbursements to which the monies relate within an appropriately short period of time – ideally a few days as there would not appear to be any reason why the law firm would need to hold them for longer.

Another concern arising from this change would be the potential for this to increase the likelihood that if a firm went into administration, there would be significant monies in office account that were 'earmarked' for settlement of third party disbursements. As the majority of these third party disbursements would be of a nature such that the consumer would require the services they related to to progress their case, if the law firm became insolvent and couldn't settle that amount, the consumer of the services would be required to pay once more for them.

The comment within paragraph 17 of the consultation of
"How a firm manages its money should be for the firm to consider having regard to its other obligations in our Accounts Rules, any legal obligations and its assessment of its own financial stability."
is one which we can understand from the perspective of putting the onus on the individual firms to take responsibility for greater 'self-regulation' but the risk to the consumer would appear to be potentially significant. It is our experience that when firms enter periods of significant financial strain their judgment around what constitutes appropriate distinction between 'its money' and client money can deteriorate.

It would be of little consolidation to a consumer who has to pay a second time for third party input to their case to hear that the regulator is 'disappointed that the law firm didn't manage this money appropriately' and knowing that their exposure was greater due to this change in the rules would, we imagine, be of significant concern to that consumer.

The comments in paragraph 23 of
"The level of protection currently applied to payment of fees in advance under the current Accounts Rules is significant. It ensures that this money is kept separate from the firm's money and in the event of the firm's insolvency is capable of being returned back to the client if the work has not been done (by the appointed insolvency practitioner or through use of our intervention powers). However, it also adds costs through the requirement to maintain a separate client account just for these payments and comply with our Accounts Rules."
appear to seek to balance the potential for a consumer to not be able to recover their money in the case of insolvency of the law firm again the apparent additional cost of law firms having to enter advance payments onto their client account ledgers.

It would be useful to understand the extent to which the SRA considers the requirement to put advance payments into client account increase the regulatory cost of a law firm already operating a series of client account ledgers and bank accounts and with a team whose role it is to do this. Our view, which we have tested with a range of law firms and found they share it, would be that the incremental cost of having to place advance payments in client account is negligible. We therefore do not see this as a very strong argument for significantly weakening

the protection afforded to the consumer in relation to their money paid in advance of work being performed.

A number of law firms have also expressed the view to us that having an office account that, at any moment in time, includes the firm's money, plus an amount of money that is passing through the firm to settle committed third party costs will make it more challenging for them to clearly see the amount of uncommitted funds the firm has. Ascertaining their own 'real' balance is something crucial to firms and this makes that less easy to do. In practice we imagine that many firms would continue to place these monies in client accounts so as to maintain that distinction between the funds. We would also imagine that the bankers to the sector would find this proposed change of concern in that they would be receiving management information from their clients showing increased office account balances, inflated by these former client monies that are now no longer distinguished and masking the actual value of 'uncommitted' funds the firm has.

Paragraph 24 appears to be saying that the SRA expects that this will lead to requests for advance payments to become more frequent. From a consumer perspective therefore this would seem disadvantageous – it certainly isn't clear how this assists the regulator's objective of protecting the consumer. It also then highlights that if a firm were to become insolvent, it is likely that they would have more of these monies in their office account and therefore the loss to the consumer would likely be greater. To then suggest, as paragraph 25 seems to, that the issue, captured at a high level in the below table, is finely balanced – essentially isn't something we would see similarly.

Potential downside for consumer	**Potential downside for law firm**
Increased likelihood that they will be asked to pay for services in advance of them being delivered	Incremental cost of administering advance payments through client account
Increased likelihood of them losing a greater amount of money in the case of an insolvency	

The further reason given for considering this to be potentially appropriate – that wider developments in consumer protection may offset this doesn't, in our view, address the exposure to the extent that the current need for this advance to remain in client account affords.

Question 3: Do you have any views on the use of credit cards to pay for legal services?

We understand that in some circumstances, perhaps most notably for services to individual consumers where the value of the legal service is relatively small, the ability to use a credit card to pay for services may be valued. That said, many consumers of legal services may not wish to use their credit card for such transactions and for those with low income who urgently need legal support, they may not have credit cards at their disposal that would allow such payments to be made. They would be left having to fund their requirements through their cash payments and left very exposed due to the absence of the 'client account' protection currently afforded to them. There is a possibility that such consumers may also find themselves using their credit card to pay for legal services in situations where they cannot then afford to settle that credit card balance. Whilst we fully support any effort to make legal services available to consumers of all income levels and backgrounds, it would be a shame if individuals found themselves increasing their personal debt levels beyond that which they can afford. It is also possible to envisage a situation where some of the more vulnerable individual

consumers could be pressured by 'sales pitches' from providers of legal services for say claims or other personal contentious matters. In those situations, it seems more likely that someone would be talked into providing their credit card details than effecting a bank transfer.

If the intention is to lower costs, we also wonder if the fees payable by the law firm on credit card transactions would be more or less than the incremental costs of managing these advance payments through client account. We suspect it may well be a greater cost than currently.

There are three points we would like to make in reference to paragraph 26 – being:

It is commented that:
"For example, if a firm becomes insolvent and a firm was intervened into we would return money collected from the firm's client account (via our Statutory Trust powers). "

1. Instances of intervention by the SRA are relatively rare and it is certainly not all of the insolvencies where this occurs. In cases where the SRA did not intervene – this potential route to redress the loss would not be available. We note also the SRA's (appropriate) repeated recent statements that intervention is something they would seek to avoid where at all possible. It therefore feels this suggestion of potential protection via this route is likely to be of limited practical value to the consumer.
2. It would also appear unlikely that the SRA's compensation fund would be able to stand behind all the potential claims should the instances of insolvency be anything other than trivial.
3. In the case of higher amounts of compensation being required by consumers it is ultimately the law firms who will pick up the increased cost – a risk of a real cost to the law firms that seems greater than the potential saving that may ever arise from this change.

In paragraph 30 it sets out:

"We recognise that our proposals for the definition of client money represent a potential reduction in consumer protection if clients continue to pay for costs in advance and do not pay for these by credit card. In the event that work is not completed, clients would have access to redress through the Legal Ombudsman (LeO) but this takes time and effort to pursue. There are also risks to the client if payments to third parties are not paid by the firm – for instance it might mean that client matter is not progressed as it should. However, for the reasons set out we consider the proposed approach offers a better balance between consumer protection and regulatory burden. "
It is our view that if you were to table this paragraph to a cross section of consumers of legal services and ask them if they shared the view that "for the reasons set out we consider the proposed approach offers a better balance between consumer protection and regulatory burden.", those consumers would not share this view.

Our conversations with individual law firms, and the sentiment heard by our firm when we attended a SFMG session where the consultation was discussed by Chris Handford, Director of Regulatory Policy with a selection of law firms present at the discussion indicates that the law firms themselves do not see this as a 'better balance', with concerns expressed that this could lessen the consumer's confidence in the sector and the protection provided to their money when engaging with solicitors.

It is our view that the SRA should be seeking to ensure that the consumer remains appropriately protected and whilst unnecessary regulatory burden/cost should be eradicated, it should not be an objective to lessen the cost of conducting the business of legal services if it also significantly alters the consumer's rights.

Question 4: Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in client account?

Paragraph 37:
As a general principle, we are content that if a client specifically requests something to be treated in a certain (legally permissible) way then that should be allowed. Our understanding is that is the case under the current rules.

We have a concern that paragraph 37 seems to be replacing a prior need for advance monies to be paid into client account with permission for the client to request that to still be the case. We think it would be unlikely that many consumers are aware of the SRA Accounts Rules and therefore not sure that many would understand this new subtlety (if the definition of client monies were redefined as proposed in this consultation) so wouldn't be aware of the implications of them not requesting an advance payment be held as client monies. This would therefore lessen the likelihood of them requesting such. Our supposition is that if they were aware of the lesser protection offered if it weren't, nearly all of them would.

Question 5: Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account? In particular, do you have any (view on?) the new draft Rule 4.2?

We support this proposed change, so long as guidance is provided in relation to 'promptly' and it is such that this is within a few days and no longer. Otherwise, we envisage that firms in financial difficulty would seek to stretch the definition of 'promptly' so as to support the firm's financial position. The drafting of proposed new rule 4.2 appears appropriate, subject again to the above comment re the word 'promptly'.

Question 6: Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

We do not have a strong view on this question other than to reiterate our concern over the proposed change to the definition of client money.

Question 7: Do you agree with our approach to allowing TPMAs as an alternative to holding money in client account?

In principle we do not see why this area shouldn't be explored further, so long as the protection afforded to the consumer isn't lessened. Our understanding is that there is currently only one supplier of such services to law firms and therefore, if these proposals encourage other providers to develop a service for law firms, this is a positive. Such new entrants would be likely to increase the quality and lessen the cost of delivery to law firms and that in turn will benefit the consumer. We also consider that, if TPMAs are permitted, this may accelerate the progress a new entrant to the market could make – allowing them to utilise an efficient and cost effective TPMA to support their business model rather than them holding back due to a lack of skillset for handling these transactions within the business or the cost of establishing such a system being prohibitively expensive for their model. That can only benefit the consumer of legal services.

Question 8: If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

We are unclear what regulatory monitoring would apply to any such TPMAs and would be keen to understand this further. It is of paramount importance that any such TPMAs are regulated to the extent that the consumer's money remains protected.

Question 9: Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

If the TPMA has appropriate controls in place in relation to the protection of client monies, and the protection afforded to the consumer is not lessened, then we do not have any concerns about this being explored further.

The consultation paper does highlight the fact that the use of TPMAs is not something that the SRA has yet fully explored and therefore we encourage the understanding of the potential impact of use of TPMAs to be increased prior to any decisions being made.

Question 10: Do you have any views on whether we need to retain the requirement to have a published interest policy?

We do not have a concern in relation to this so long as the code of conduct covers it. Our view is that the key requires in this area are:

- a clear statement by the provider of legal services to their client as to what the interest policy is; and
- that that policy is then applied.

Question 11: Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

As commented in our response to question 1, in our view they are clearer and as a result, we would envisage them being easier for users to understand. We therefore view the revised form to be a significant positive. With the exception of the points made earlier in relation to the definition of client money, the rules as drafted read well and we consider that they provide a clear framework for the provider of legal services to follow.

We specifically note two changes to the Rules that we consider to be positive. Firstly, the inclusion of Court of Protection accounts within the scope of the Rules we consider to be a step that will increase the protection offered to vulnerable consumers of legal services. Secondly we consider that the removal of the distinction between regular and professional disbursements aligns the Rules with the modern business world.

Question 12: Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies?

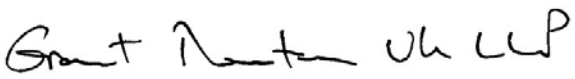
In our view the material published by the SRA in 2015 at the time of the revision to the scope of the reporting accountant's work were incredibly useful in providing context as to what the SRA wished their regulated entities to be focused on. We therefore support any guidance and examples that would set out how the SRA would be likely to expect certain situations / transactions to be treated. We would be happy to provide input to the process of developing this guidance, sharing our experience of common questions / scenarios.

Question 13: Do you agree with our assessment of consumer impacts in Annex 1.4?

Our reading is that the impact assessment appears weighted toward considering the positives for providers of legal services and seems to consider the consumer protection aspects somewhat superficially. We would welcome a review of the impact analysis with greater balance and where possible, we recommend that the SRA seek input from the consumers of legal services. We suspect that if that risk assessment was shared with consumers of legal services, they would not consider it to be as balanced as the SRA might wish.

Should you wish to discuss any of the points raised in this response, please contact Peter Gamson, Head of Professional Practices on 020 7728 2861 or peter.j.gamson@uk.gt.com.

Yours faithfully



Grant Thornton UK LLP

Consultation: Looking to the future - Accounts Rules

Response ID:50 Data

2. Your identity

Surname

Edgerley Harris

Forename(s)

Adrienne

Your SRA ID number (if applicable)

119290

Name of the firm or organisation where you work

Shentons- response for Hampshire Law Society

We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.

Attribute my/our response and publish my/our name.

Please identify the capacity in which you are submitting a response. I am submitting a response…

on behalf of a local law society

Please enter the name of the society.: Hampshire

3.

1. Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

The Society agrees with principle of simplification but does not consider that the current proposals achieve this.

In particular:
1.Toolkit & guidance: the Society is concerned and wishes to highlight the risk that these grow over time; What is their status?
2.Third party a/cs: the Society is not convinced of the need for them.

4.

2. Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

The Society opposes the proposed change as it may bolster a failing firm & put client's matter at risk if disbursement is not paid or money which is held on account is used

5.

3. Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

Many member firms do accept credit card payments and we are aware that clients find this a convenient method of payment.

The Society can see no particular objection to credit cards being used to pay for legal services. The profession is not here to "nanny" the use of credit or take a moral view on its use.

6.

4. Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Yes. The Society opposes the proposal that client money (as currently defined) could be paid in to either client or office account as we consider that the current rule is clear and is (generally) understood.

7.

5. Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

please see previous response

The Society cannot see any need to change the current rule.

8.

6. Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

The Society suggests that the rule remains as it is unless there is some compelling provable reason to alter it.

9.

7. Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

The Society is not convinced on the information provided by the SRA of the need for these accounts or that they would be used.

10.

8. If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

There may be costs implications for firms and therefore for clients and there is the possibility that they would make payment processes more complex which will not necessarily benefit clients.

11.

9. Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

See previous reply

12.

10. Do you have any views on whether we need to retain the requirement to have a published interest policy?

The Society recommends retention of the current rule. It allows firms flexibility in setting their own policy.

13.

11. Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

The Society broadly supports the Law Society's response. In particular:
1. Solicitors client a/cs pose no more risk than 3rd party managed ac/s;
2. Given the option, solicitors are unlikely to use alternatives to client a/cs;
3. There could be significant unintended consequences associated with even a permissive change e.g. an unwelcome impact on the Compensation Fund

14.

12. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

No- the Society is not in favour of toolkits and further guidance

15.

13. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

no- for the reasons already given.

However, case studies could be useful for training purposes, especially if they have been considered by the Regulatory Sub Committee of the Law Society or by the Compliance Committee

16.

14. Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

none, at this stage

Looking to the Future: Accounts Rules Review

ICAEW welcomes the opportunity to comment on the *Looking to the future: Accounts Rules Review* published by Solicitors Regulation Authority on 1 June 2016, a copy of which is available from this link.

This response of 20 September 2016 has been prepared on behalf of ICAEW by the Audit and Assurance Faculty. Recognised internationally as a leading authority and source of expertise on audit and assurance issues, the Faculty is responsible for audit and assurance submissions on behalf of ICAEW. The Faculty has around 7,100 members drawn from practising firms and organisations of all sizes in the private and public sectors.

This ICAEW response reflects consultation with the ICAEW Solicitors Group. The Solicitors Group Committee is made up of experts who work in a financial and management capacity within law firms and accountants in practice who specialise in advising law firms. The committee benefits from working relationships with other bodies and interested parties in the legal environment. The special interest group provides support to members including newsletters, events and networking opportunities available through icaew.com/solicitors

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ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 145,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

For more information, please contact representations@icaew.com

icaew.com

MAJOR POINTS

Support for a review of the Accounts Rules and removal of unnecessary prescription

1. We welcome the SRA's review of its Accounts Rules. The Accounts Rules have not changed significantly for a number of years and a comprehensive review has been overdue. We are generally supportive of a move to a more principles-based set of requirements for keeping client money safe, though are very mindful of the challenges that this brings, as outlined in our response below.

2. We agree that some of the existing Accounts Rules are overly prescriptive and complex and therefore welcome the removal of the some of the prescription which previously has added little to protecting client money.

Not convinced by SRA motivations for change or that the perceived objectives will be achieved by these proposals

3. The key motivations for these proposed changes appear to be a desire to reduce the cost of legal services and to ease entry into the legal services market for new providers. Firstly, we are not convinced that these are appropriate motivations for seeking these changes to the Accounts Rules and, secondly, do not believe that these objectives in any event would be met by the proposed changes.

4. We are not convinced by the argument that the length and complexity of the current Accounts Rules make it difficult for new entrants to the market to understand what is required of them as well as consumers to understand what to expect when a firm handles their money. In any regulated market new entrants should be expected to get to grips with new technical issues and the need to protect client monies should outweigh any concerns about the length of the Accounts Rules. Clients don't need to know (and generally won't want to know) about the details of the Accounts Rules. Their primary concern will be that there are rigorous rules in place to protect their monies.

5. We recently met with SRA representatives and noted a desire through these proposed changes to give law firms greater opportunities to improve their working capital which in turn was seen as a method to encourage new entrants into the sector. While we accept that law firms inevitably will have working capital challenges to deal with, we don't consider this to be a suitable justification for these proposed changes. Indeed, consumers would expect that these monies would be allocated to the specific work they have engaged the solicitor to do and not to be pooled together, for example, to reduce an overdraft balance. As explained in this response an effective commercial lending market already exists to assist the funding of viable law firm businesses in respect of working capital. Forcing this funding on the consumers, who often will be vulnerable individuals, is not a desirable outcome in respect of protecting clients' interests or providing them with access to justice.

Question the SRA's approach to the review

6. We would question the SRA's approach to its review. The starting point in this review seems to have been the existing Accounts Rules and which of these rules can be simplified or cut. Yet we would expect a comprehensive review of this kind to begin with considering and articulating what the SRA's objectives are, would include an assessment of what the risks are to not meeting these objectives and exactly where they lie and then principles would be developed to specifically safeguard against these identified risks.

7. There is no evidence in the consultation paper that such a detailed analysis has been performed. While the consultation paper quotes statistics on regulatory action to suggest that the Accounts Rules are too complicated and are not focused on the key risks to client money, it doesn't elaborate on what these specific risks are. Without evidence to support what the key

risks are and where they lie, consumers may well question the SRA's objectives and whether the level of client protection available to them has therefore been reduced. We therefore believe that the SRA needs to make a clearer public interest case for these proposed changes.

8. In order to achieve its objectives the SRA should consider setting out clearly what it believes the risks to client money to be and then require firms to assess those risks as they are applicable to the firm, and to document their assessment of the risks and their response to those risks. This would then underpin the Accounts Rules and individual firms' compliance with them. For example, the FCA is very clear that the overriding purpose of its client money and client asset rules is to allow orderly and timely return of client money and assets in the event of firm failure. Therefore their rules focus on segregation, record keeping and the suitability of third parties with whom client money and assets are held, whether these are banks or other third parties.

A need for clear and specific guidance

9. While one justification for the proposed changes appears to be to reduce barriers to entry for new law firms, a move to more principles-based requirements may have the opposite effect in that law firms may find the new rules even more challenging to apply. They may be unclear about what exactly is expected of them and what controls and processes to put in place. Many may simply not have the resources or skills to develop the systems needed to support the proposed new rules.

10. A move to more principles-based requirements may lead to an increase in the cost of legal services as firms get to grips with developing their own approach to managing client money, and in turn this may lead to inconsistencies in interpretation and application. For instance, the proposed rules make several references to 'promptly' and 'appropriately' and inevitably law firms and their Reporting Accountants will need guidance on how they should interpret these, particularly as what might be deemed 'prompt' for one rule might not be considered the same for another. If the SRA is to introduce these new Accounts Rules, it is of vital importance, therefore, that it develops very clear and concise guidance to support law firms and their Reporting Accountants in applying them.

11. The Reporting Accountant's work (and therefore cost) is likely to increase in situations where law firms instigate bespoke systems for management of client monies. The existing Accounts Rules provide for more of a consistent approach across the legal sector which can help to deliver economies of scale in terms of undertaking such assignments. It is possible such increases could be mitigated if the SRA acknowledges, in so far as is possible, that an approach where law firms continue to implement and apply the 2011 version of the rules would be acceptable – as it is highly likely that many law firms will seek to make minimal changes to their existing arrangements.

12. There is also likely to be significantly more scope for disagreement between law firms and Reporting Accountants over the application of the proposed new rules, given the lack of framework for the Accountant's Report at the moment, that only qualified Accountant's Reports are required to be sent to the SRA and the proposal to remove the requirements of the Reporting Accountant's work from the proposed Accounts Rules. Reporting Accountants will need benchmarks that they can refer to in order to justify their decisions.

Risks to consumer protection and access to justice from proposed changes to the definition of client money

13. We do not believe that the change in definition of client money provides any benefit in terms of reducing the cost of legal services or encouraging new providers to enter the legal market – indeed, it is likely that this redefinition will lead to an increased financial failure rate in law firms which will restrict the availability of legal advice and access to justice and increase the cost of legal services.

14. As some firms would now fall outside of a requirement for an Accountant's Report (as they no longer have client money under the proposed definition), it is difficult to see how the SRA would know about and be able to intervene in time in a law firm before a client has suffered a financial loss. Unlike many other Regulators, the SRA does not specifically monitor the financial strength of law firms regulated by them or seek financial information on a regular basis.

15. There is an important public interest issue here which goes beyond a desire to simplify the Accounts Rules for law firms and that could undermine the trust the public places in the legal profession. We believe that the proposed new definition poses a number of significant risks, including an increased risk to the consumer, in particular, the more vulnerable members of society. One of the arguments put forward to support the protection of client funds following this redefinition is through the protections afforded to clients by using credit cards to secure payment to law firms for their services. We believe this provides limited protection or benefit to consumers.

16. The SRA may argue that these proposals simply put law firms on a similar commercial footing to other service providers, including accountants. However, we believe that there is a strong rationale for why legal services should be treated differently from the protection afforded to consumers of other services.

17. The protections that should be provided to consumers of legal services must take into account the nature of the 'product' / 'service' consumers are accessing and the circumstances under which they do so. As with deemed basic human rights to education and healthcare in the UK, access to legal services and, in effect, access to justice is a key attribute that underpins our society. Most individuals accessing legal services in the UK do so with limited knowledge. In many cases they will do so under distress or duress and they will do so out of a basic essential need to live.

18. This isn't the case for the purchase of many other products or services, which to a significant extent are discretionary and not essential to preserve basis wellbeing. The difference is clearly illustrated by looking at the types of legal services provided. These include services covering domestic violence and abuse, crime and protection of victims of crime, the protection of children and parental rights, medical negligence, immigration and property services that ensure people have accommodation. These are essential services that consumers have to make to preserve their wellbeing as human beings.

19. Protecting client funds in these circumstances represents a fundamental element of the protection that a Regulator to this sector must provide in order to ensure trust is maintained between providers of these services and consumers so that services, and ultimately justice, can be accessed with confidence. There is, however, a significant risk that the proposed redefinition of client money may damage the trust consumers have in the legal market and, in turn, limit access to legal services and justice.

RESPONSES TO SPECIFIC QUESTIONS

Q1: Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

20. While we acknowledge a desire to have simpler rules that are easier for law firms to comply with, the key question for the SRA here should be whether the proposed new Accounts Rules as drafted meet the SRA's objectives and safeguard against the risks that it has identified to client monies.

21. The Accounts Rules underpin the integrity surrounding a solicitors' management of client money when they are entrusted by their client to hold funds in connection with a legal matter. They also act as a pivotal framework to assist the SRA in discharging two of its key objectives which are:

1) Protection of the consumer; and
2) Upholding the law.

22. The primary focus when considering any potential changes to the Accounts Rules should therefore be to consider the impact they might have on these underlying objectives.

23. The key motivations for these proposed changes, as outlined in the consultation paper and in discussions with the SRA, appear to be:-

- Reducing the cost of legal services; and
- Easing entry of new providers into the legal services market.

24. We are firstly uncertain whether these are appropriate motivations for seeking changes to the rules and secondly, and more fundamentally, we do not believe that the proposed changes will be effective in achieving either of these objectives. Instead, we believe that these changes could damage the intended purpose of the rules in securing the underlying objectives set out in paragraph 21 above.

25. In terms of whether the proposed new Accounts Rules are clearer and simpler to understand and comply with, there are elements of simplification within the proposed rules which we believe will be beneficial to law firms in that certain aspects of the current rules were unnecessarily prescriptive. However, while the proposed rules are shorter and less prescriptive than the existing rules, this does not, of itself, make them clearer, simpler or easier to comply with.

26. The proposed new Accounts Rules are more outcomes focused and while we are generally supportive of a move to a more principles-based set of requirements for keeping client money safe we recognise that this brings significant practical challenges for the SRA and for the majority of law firms.

27. The guidance that the SRA is intending to give to support these proposed rules has not been published and so it is difficult to give a comprehensive assessment of how they would be applied in practice. Without clear and specific guidance, we believe that there are likely to be more inconsistencies in interpretation and application, as well as more disagreements with the Reporting Accountant.

28. We anticipate that many law firms may find the proposed Accounts Rules more difficult to comply with as they simply do not have the internal resources and skill sets to develop the systems that would be needed to support the proposed new rules. They have previously relied on their regulator to provide the supporting framework to assist them in protecting client money. Introducing the proposed re-definition of client money will be difficult for many firms because this, in itself, will require them to develop some new procedures and approaches for the management of receipt of monies from clients in the future.

29. There is an assumption in the consultation that the degree of detail in the existing Accounts Rules is currently problematic for firms. However, in our view many law firms are likely to continue to want to use the existing rules as a framework to operate within, potentially only making minor changes on the less practical areas such as for specific timeframes attached to particular rules.

30. We also believe that the proposed Accounts Rules are likely over time to increase the cost of legal services for a wide range of reasons including:
    - Costs of internal management and operational skills required in law firms;
    - Costs of developing their own approach to managing client money; and
    - Regulatory costs will increase in various ways.

31. The SRA's approach taken to this review seems to have been based on an assessment of which existing Accounts Rules can be cut or simplified. However, we would have expected to see a more comprehensive review which firstly considered and articulated the SRA objectives, then provided an assessment of the risks to not meeting these objectives and where they lie and finally set out principles that would safeguard against these risks, supported by detailed guidance. The consultation does not include this.

Q2: Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

32. We have significant concerns surrounding the proposed change in definition of client money. We believe a primary driver for this proposed change is to remove from scope a large element of client funds which are currently afforded protection in order to remove a range of law firms from the scope of holding client money. While we acknowledge that there may be a reduction in the number of firms holding client money as a result of such a change we do not believe this, in itself, is a justifiable reason to reduce the protection to such consumers where they are providing funds to law firms and it simply reflects a reduction in regulation.

33. There is an important public interest issue for the SRA to consider here which could impact on the trust the public places in the legal profession and which goes beyond a desire to simplify the Accounts Rules for law firms.

34. As noted in our response to question 1, we do not believe that the perceived objectives of reducing the cost to legal services and increasing the ability and ease for new entrants to join the market place will be achieved by the proposed changes. In contrast we believe these proposals could have the opposite effect in the medium term.

35. As it currently stands, law firm clients have the protection offered by holding money in a client account and we believe that if changes are to be made to the definition of client money, the SRA needs to make a clear public interest case for why these changes are needed, which includes a more detailed analysis in the consultation of what the risks are, where they arise and how these will be safeguarded under the new rules.

36. The new definition of client money specifically excludes payments for solicitor's fees and payments to third parties for which the solicitor is or will become liable to settle. We believe that there are a number of significant risks from this change in definition, including an increased risk to the consumer, in particular, the more vulnerable members of society, as illustrated in the examples below.

Example 1 - Criminal trial with barrister's fees paid on account

37. In this scenario a client pays the law firm their life savings for their barrister's fees upfront to fund a complex legal case where LAA funding is not available. The amount involved is significant and the client concerned is unable to pay using a credit card because they are unable to access such credit and in any event the amounts required are too high to fund in this way.

38. Under the new definition of client money the law firm could take these monies to the office account. The law firm then uses these monies to pay other expenses, for example, wages, drawings and does not pay the barrister to provide the advice to the client. The law firm becomes insolvent and it has not paid the barrister's fees. As a result the vulnerable client will have lost their funds. The legal ombudsman may be able to provide some compensation but in this case it is going to be insufficient to meet the barrister's fees.

39. The client concerned will have been denied access to justice as a result of having entrusted their monies to a law firm which has used them to fund the law firm's own business rather than

meeting the liability of the barrister's fees for which the monies were provided. The client will also have suffered considerable financial loss.

Example 2 - Clinical negligence case with money paid in advance for medical experts reports

40. In this scenario a client cannot secure funding for essential medical tests and reports to support a negligence case. LAA funding is also not available in any form. The client takes personal borrowing to support the costs of legal advice and expert fees in the interim.

41. Instead of using those monies for their intended purpose the law firm uses them to fund operation expenses and drawings by the owners in the interim. The law firm subsequently becomes insolvent and the vulnerable client loses their funds. The legal ombudsman may be able to provide some compensation but in this case it would be insufficient to meet all the costs concerned.

42. It is not a responsibility of the SRA to support failing law firms. However the SRA's objectives do include protecting the consumer and promoting the upholding of the law. By default this requires the availability of legal advice to consumers, both in terms of a sufficient range of legal service providers in the market place and also sufficient public trust to use them.

43. In our opinion it is likely that the re-definition of client money will result in an increased financial failure rate of law firms in the short to medium term which will restrict the availability of legal advice to consumers, increase the cost of such services and damage the confidence consumers have in approaching law firms for legal support. This will impact on the ability of the SRA to meet its core objectives.

44. As some firms will fall outside of the requirement to maintain a client account and to have an Accountant's Report, it is unclear how the SRA will know about, and be in a position to intervene in, these firms before it is too late and the client (and other third parties) suffer a financial loss. Unlike a number of other Regulators, the SRA does not specifically monitor the financial strength of law firms regulated by them or seek any financial information on a periodic basis.

45. We know that a large number of law firm failures arise not from a lack of profitability but as a result of bad cash management – in short, profits are drawn before they are earned leaving insufficient cash to run the business.

46. On first glance one might assume that making it easier for law firms to take their costs at an earlier date from the client account would improve this position. The reality, in our view, is that this will simply encourage firms to draw out cash for personal use at an earlier point. While one can argue that this should not happen; in reality current and past behaviours in law firms strongly suggest this is likely to be the case. This would then lead to more law firm financial failures but with the added complication that more clients (consumers) will be financially affected by such failures than is currently the case. In our view it is the more vulnerable members of society that will be affected in such situations.

47. The SRA may counter argue that the firm would know that the monies are for fees and disbursements and should be used for this purpose and that placing the money into a client account as currently would be the case does not, in itself, prevent firms from knowingly or dishonestly using these funds. However, the proposed changes in the rules mean that the SRA's key principle of 'only using client money for its intended purpose' is only covered in proposed rule 5, which only deals with money held in a client account. As this is not client money under the new rules the principle would not seem to attach to it.

48. The point we want to illustrate here is that this is not merely about dishonesty, which clearly no set of rules could totally overcome. One needs to consider the vast majority of honest law firms

who genuinely aim to protect their client's money. In this context we need to remember that the office account is one big pool of funds which will have lots of transactions going in and out. It will now be a significant burden (and cost) under the new rules for law firms to implement systems that manage the office account and clearly confirm to them at any point in time what actually 'belongs' to the firm. For many firms such systems will not work and this ultimately will result in inappropriate spending of 'client' money. The only way around this would be to set up a separate office account for payments on account which would rather defeat the objective here in operational terms.

49. In terms of the protection afforded by the Legal Ombudsman and the use of credit cards, we believe in both cases this provides only limited protection for consumers. We provide more comments on the use of credit cards in response to question 3. In respect of redress via the legal ombudsman this has limited scope. It is also naïve to assume this will have no impact on the future cost of legal services and it also ignores the practical hardship this will bring on vulnerable consumers having to follow these processes through to secure the return of their funds. Making a claim under any of the options highlighted in the consultation paper is likely to be an onerous task for the public and they may find it difficult to make a successful claim in the absence of access to files and time records, let alone understanding the work done and being able to prove how much of the service they have had as compared to the payment on account made, i.e. the value of their net claim to be made. Clients would have little chance of knowing whether any settlement offered is right or wrong without engaging another professional to review the relevant information and advise them and thus at more cost.

50. Further consideration is also required in our view as to whether the proposed definition of client money would be a correct legal interpretation. A number of solicitors have expressed concern to our members that, in their opinion, money on account of fees and money on account of disbursements which the solicitor will incur on behalf of a client actually represent monies held on trust by the solicitor. For the solicitor to take those funds and use them for anything other than delivering those services (internal or external) for that specific client could be a breach of trust under law.

51. There is merit in considering what the view would be of a member of the public providing money on account to a law firm to pay for disbursements and whether they would have any realistic expectation that in the meantime such monies may be used to fund the drawings of the partners in that law firm.

52. There is currently an active and effective market mechanism for law firms to access funding for working capital including:
    - Partner / owner capital;
    - External bank funding – direct or indirect; and
    - Third party investment (following the Legal Services Act).

53. We have seen no evidence that a lack of funding to the legal sector inhibits either the entry of new suppliers to the market or increases the cost of legal services. The change in the definition of client money will encourage law firms to use client money in place of this commercially available funding.

54. In returning to the apparent motivations for these proposed changes, we believe it is unlikely that this proposed change in definition will reduce the cost of legal services. In contrast this is likely to lead to an increase in financial failures in law firms in the medium term which will increase the cost of regulation and interventions and eventually flow through to consumer pricing over time. Providing legal services is a comparatively complex activity and so the attraction of an 'easier' definition of client money is unlikely to be a compelling reason to attract any new competition to the legal sector.

55. The proposed new definition of client money is fundamental to the proposed rule changes and we have given further commentary on this issue in our response to question 11 below.

Q3: Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

56. One of the arguments put forward to support the protection of client funds following the redefinition of client monies is through the protections afforded to clients by using credit cards to secure payment to law firms for their services.

57. In our view this provides limited protection or benefit to clients for the following reasons:

Access to legal services and justice

58. A credit card facility will not be available to a large proportion of the population. Often those individuals in society who have the most restrictive access to legal services will equally not be able to secure personal credit to use a credit card. Proposing a system that provides protection to clients using credit cards will produce a two-tier system within society giving those who can secure a credit line access to legal services with fair protection and those in society who cannot and this seems inequitable.

59. At a time when the restriction on the availability of funding, and limited access to justice, is already highly visible through the restriction in LAA funding in recent years, we believe this will present another further damaging restriction to access to justice and legal services for the most vulnerable in society.

60. If the legal sector is provided with the ability to access payments on account at an earlier point as office money it is highly likely that over time firms will naturally become policy driven to extract payment from clients for their work at an earlier point.

61. In effect it will become normal practice for clients of law firms to have to pay for services at an earlier point in the service cycle. While this may be seen as favourable to the law firms in terms of providing them with earlier access to working capital (which incidentally is of course available to them already in the commercial lending market from banks) in our view this will also lead to a large part of the consumer society being excluded from accessing law firms services.

Frequency of credit card use

62. Our members have indicated that some law firms will accept payment by both debit and credit card however the use of credit card in their experience is relatively low because:-
    - In many cases the credit limits available are low compared to the cost of legal services;
    - The interest rates available to credit card holders are prohibitive; certainly for securing legal services; and
    - The charges that credit card providers make to law firms will actually increase the cost of accessing legal services.

Ability to accept credit card payments

63. The costs to a law firm business of accepting credit card payments are significant. This will be a disproportionate cost to smaller law firms and is likely to result in a further contraction in the size of this part of the legal sector.

64. Smaller law firms often provide a practical option for more vulnerable members of society to access legal services. Increased requirements for firms to provide payment by credit card is likely to have the effect of pushing up the cost of legal services to a section of the population who are least able to access the market already.

Medium term costs to law firm

65. The concept of using a credit cards to give protection to clients is that ultimately the credit card provider would suffer the risk of non-payment (eg, if law firms fail to deliver their services and the client makes a claim on their credit card)

66. It is unlikely that using credit cards would provide any reduction to the cost of legal services because credit card providers would naturally build such costs into the charges they levy on law firms, for example, credit card providers will charge law firms for the services and, in addition, if credit card providers suffer losses on advances to law firms (eg, because the law firm becomes insolvent) then, over time, the cost to law firms of accessing credit card receipt will also increase.

67. If not done so already, we would strongly recommend that the SRA seek input directly from credit card providers as they may have some concerns to raise here.

Credit limits

68. Even if a client does have access to a credit card, it is unlikely that they will have a sufficient level of credit to cover any significant law firm services or disbursements. If we consider the types of cases where there are perhaps greater risks to the client of the law firm holding their money on the office account eg, where specialist third party services such as barristers and experts are involved or where simply the legal fees will be high; using a credit may simply just not be possible.

Encourages debt in society

69. Suggesting that legal services are best purchased by credit card to afford protection to clients promotes the use of debt in society. We are not convinced that legal services are an appropriate product to be purchasing on credit and there is also a risk that such actions encourage parts of society who are often in distress and least able to afford debt to take on a further burden.

70. The use of a credit card might not be a significant issue to those wanting to cover the costs of a conveyance transaction or even undertaking a small commercial transaction as these people entering these transactions are more likely to have the resources to take such risks. More detailed consideration is needed, however, for those most vulnerable in society who may be forced into a need to purchase legal services and in turn to use credit to achieve this as a result of changing attitudes from law firms.

Q4: Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

71. At present mixed funds (office and client) can be paid into the client account, providing office funds are transferred within 14 days. This approach provides practical flexibility simply because in many cases the firm will be receiving amounts from clients or third parties which are a mixture of office and client money. The requirement to transfer office money out in itself provides both good discipline to ensure a law firm is keeping control over what money belongs to who and more importantly it helps to protect against teeming and lading (hiding shortfalls) in client money more generally. So at some point the firm needs to make an assessment of what money is client and office and reallocate appropriately.

72. We believe that greater protection for the consumer is provided here if mixed monies continue to be paid in the first instance into a client account with a requirement to promptly transfer monies to the office account that are not client money.

73. In our view the current requirement for transfers of all office monies to be made to the client account within 14 days is restrictive. A better approach would be to rely on the term ‘promptly’ here but for the SRA to provide some practical scenario-based guidance. Reporting Accountants will often find breaches of rules around the timescales in these areas which present no risk to client funds and no indication of a poor control system.

74. An ancillary point to raise here is how law firms account for VAT on receipts from their clients. Under VAT rules there is a requirement for the firm to account for VAT to HMRC at the 'VAT point'. It is likely that the change in definition of client money proposed will mean that the VAT point will be earlier for law firms on their services. So when they receive the payment on account, which would now be defined as office money, they would need to account to HMRC for VAT on this receipt even though they may not have technically raised an invoice to the client at this point. There will be similar considerations to take into account for amounts received from clients in respect of disbursements and this will be more complicated. The main points on the VAT front to make are:
    - There will be administrative costs and challenges to law firms to manage an earlier VAT point;
    - Any cash benefit from receiving monies from clients at an earlier point, for operational purposes, will be reduced as a result of 20% of those monies often going straight to H M Revenue & Customs; and
    - Software systems will in many cases need to be amended in law firms to manage the change; it is likely that significant costs will arise to firms as a result.

75. All of the above will add to the cost of legal services in the short to medium term.

Q5: Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

76. While this change to the current position provides greater choice to law firms they would still need to allocate funds to the correct account in a reasonable timeframe.

77. The existing approach of requiring mixed payments to be paid into the client account in the first instance affords the greatest protection to consumers in a range of situations.

78. We are not sure that providing law firms with a choice in this situation is beneficial to either the firm or the consumer. In our view such a provision would have no impact on reducing the cost of legal services, providing access to justice or encouraging new entrants to the sector; it would simply reduce consumer protection.

Q6: Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

79. The proposed new definition of client money would in effect make the specific provisions in respect of LAA largely redundant because the LAA provisions allowed payments on account of disbursements and fees to be treated as office money – which of course is what the new definition of client money more generally is now proposing.

80. As previously highlighted we do not agree that the proposed definition of client money is appropriate but if this approach is adopted then we agree that the specific LAA provisions could be removed from the rules and it would be a matter for the LAA to manage their requirements over the control of their funds with firms directly through contract terms.

81. In this context the experience of law firms in managing LAA payments on account in their office account is an interesting indicator of the problems that are likely to arise if law firms are allowed to mix payments on account with other office monies.

82. Our members have indicated that they have seen a range of examples in law firms in recent years where firms have suffered financial difficulty and sometimes failure as a result of losing control over the payments on account received from the LAA. While this has not been helped by the lack of information available from the LAA to confirm amounts outstanding at times, the main point is that law firms have frequently relied on the funding from the LAA to fund their

business. When demands for recoupment have then been issued by the LAA there has been a number of outcomes:

- Heightened risks to consumers over their legal matters;
- Other client funds held were exposed to higher risks; and
- The LAA (and the public) have suffered losses as a result of recoupments not being secured.

83. The experience of firms managing LAA funds as advance payments is therefore an early indicator of the challenges the SRA and the legal sector more generally are likely to face in the future if the proposed changes to the definition of client money is applied.

Q7: Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

84. The SRA is keen to provide the legal sector with choice and we understand the rationale for this is a combination of allowing the free market to operate and to attract new legal providers to the market but also to reduce the cost of legal services and increase access to justice.

85. In theory, therefore, the concept of allowing TPMAs would seem to promote these objectives. However the SRA also has a role in protecting the interests of consumers and needs to consider what, if any, real benefit to consumers the option of using TPMAs will provide.

86. By introducing TPMAs as an alternative to holding a client account, it appears that the SRA would pass its responsibility for the regulation of client monies received by law firms across to the FCA through reliance on the FCA regulatory regime. This regime in itself is in our view very different to the existing SRA protections.

87. When we met with SRA representatives in July 2016, we flagged a number of concerns about the use of TPMAs as an alternative to holding money in a client account. We strongly believe that the SRA needs to consider to what extent the selection and monitoring of TPMA providers is equivalent to the requirements of the SRA's Accounts Rules regime and what steps need to be taken to ensure that consumers fully understand the differences between the two approaches, about how their money will be treated as well as what legal protection will be afforded by the TPMA arrangement as compared to a law firm holding money in a client account.

88. Given the requirements in the proposed Accounts Rules we do not see how these proposals would be commercially viable for law firms or, indeed, would be in the interests of consumers.

89. In terms of detailed comments on the draft wording of the proposed new rule please see our response to question 11.

Q8: If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

90. See our response to question 7 above.

Q9: Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

91. It seems unlikely that TPMAs will practically work in situations where transactional work is concerned. Of course there is a possibility that a new product may be developed over time that achieves this but none has been developed outside the legal sector to date and there are clear applications where such a product could be used already.

92. It is difficult to see how the SRA could prescribe what types of work could be undertaken through TPMAs if they are going to approve their use more generally.

93. For a large number of law firms this would lead to a situation where they need two systems operating; commercially it is hard to see how such firms would want to operate in this way. So where they undertake transactional work we would think they would be less likely to consider using TPMAs. This has been our members' experience to date in discussing the matter with law firms.

Q10: Do you have any views on whether we need to retain the requirement to have a published interest policy?

94. It is important to note that at present law firms do not pay their clients interest on client funds they pay an amount 'in lieu' of interest in certain circumstances. The difference historically has been important due to the taxation and administration that would be associated if real interest was paid to clients rather than compensation for lost interest they would have otherwise received on their funds.

95. The proposed rule 7.2 can be interpreted to mean that law firms can mitigate their obligation to pay any such compensation to clients. For example a standard written agreement with every client saying that the firm 'does not account for payments in lieu of interest on client funds held and that such amounts are taken into account when agreeing the charges applied for services' could easily achieve this. Potentially such a clause could even be included in a standard client care letter providing the client's attention is drawn to this fact at the start of the matter. While there are background requirements in relation to respective bargaining positions in such arrangements if this is taken in the context of being covered in part by the overall fee and in conjunction with the proposed rule changes here we believe law firms could justify such an approach.

96. Our members suggest that the administration for law firms of these payments in lieu of interest is cumbersome and disproportionate in most cases to the value provided to the client. Our members also indicate that in their experience interest payment policies are not effectively and consistently applied in some law firms. So removing the obligation to pay a sum in lieu of interest is likely to provide an opportunity to reduce the cost of legal services by reducing the administrative burden for law firms and the cost of regulation.

97. In terms of an interest policy, we understand that many law firms continue to apply an interest policy which is similar to that contained in the Solicitors Accounts Rules 1998.

98. It would, however, be important for the client care letter to clearly state at the outset whether the firm has a policy of making payments in lieu of interest on client funds held because some law firms may hold significant amounts of client monies for significant periods for clients.

Q11: Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

99. We believe that a number of the proposed Accounts Rules will need to be supported with clear and concise guidance and we would question whether it is really appropriate for some of the existing requirements to be moved to guidance (which will be non-mandatory) rather than in the Accounts Rules. See our more detailed comments on individual rules below.

100. **Rule 2: Client money.** It has been highlighted in discussions with the SRA that they see an 'inconsistency' in the existing rules regarding the treatment of money for an 'agreed fee' (office monies even where the work has not been done and/or the bill hasn't been raised) and 'payments on account of costs' (client monies). Until recently the SRAs definition of an agreed fee (the 'cast iron' nature of the 'fixed' and the 'not dependent on completion' elements) had meant that much of what might be thought of commercially as an agreed fee didn't fall into this category. The impression from recent discussions with the SRA is that in fact 'agreed fee' is more widely drawn and the definition is met in many more instances than expected. It is not

clear to us at this stage what has prompted this change in view over time and in our opinion it is not what the current rules (rule 17.5) actually mean.

101. Either way there doesn't seem to be any consumer protection rationale behind defining 'money on account' of work where the fee element is not 'fully fixed' and the work not yet done or billed as non-client money. All the attendant concerns regarding masking working capital issues in law firms provide a more compelling argument for this money to remain client money.

102. Further concerns arise where the 'disbursement' element of those costs is also non-client money without a clear definition of what the SRA mean by using the term 'liable'. The proposed rules only refer to a distinction between those where legally the client is personally liable (for example, SDLT, HMLR registration fees) versus those the firm will be liable for (by virtue of them instructing the professional, obtaining the search on their own account).

103. The SRA has focused on the different treatment of professional and non-professional disbursements and hence that on receipt the money for these professional disbursements will be non-client monies. The SRA explains that the extent to which this will be the case will mean quite a large number of firms may well no longer hold any client money at all but we would query this and what is meant by the term 'liable'.

104. In respect of professional disbursements we would presume that the point at which the firm becomes 'liable' for them (in terms of both timing and amount) is when the professional has finished their work (or that stage of their work) and presumably billed the law firm. If this is the intention under the new rules then it would seem all the changes are doing is requiring monies received for those unpaid (but fully incurred) professional disbursements to be banked into a business account; when the firm actually become liable for them (i.e. the professional has billed the law firm). This is currently allowed with a requirement to deal with the payment within 48 hours.

105. However, it is not clear from the proposed rules and recent comments from the SRA would suggest that it is actually proposing that all money on account (including fees and disbursements – again excluding SDLT etc.) would be non-client. It seems likely that a large amount of such money received in this way is based upon estimates rather than known amounts.

106. Rule 2.2(b) could be interpreted to mean that a blanket comment in client care letters would enable the firm to hold all money outside a client account. We think it is highly likely firms will interpret the rule as drafted in this way.

107. Rule 2.3 will most likely be interpreted to mean that a blanket comment in client care letters would enable the firm to hold client money in an account which is not repayable on demand. It is also unclear from the rule whether the requirement here is per client (as the rule works currently) or whether it would be acceptable for a firm to transfer a 'hard core' of the client balance they never really use to a longer term deposit that is for a fixed term as long as they could justify that any monies likely to be needed are available 'on demand'.

108. Given the problems that have arisen over many years with firms not managing residual balances and because the rules prior to the introduction of rules 14.3 and 14.4 were not prescriptive, the rule written in 2.4 looks to be encouraging more of the same problems to arise. It has taken a long time to get this subject into the Accounts Rules and it seems a backward step to now remove it and make the issue less transparent, particularly if the firm is able to make the decision, based on guidance but with no rule setting a de-minimis limit.

109. **Rule 3: Client Account.** Rule 3.3 on banking facilities appears to be less robust than the existing rule and in our view makes it easier for law firms to fall into the position where they are providing such services. We have already raised concerns on this with SRA representatives to clarify whether this was the SRA's intention here. If it is the intention then we are not clear on

the rationale for changing the wording. We note that there will be guidance in this area but are conscious that the SRA has been highlighting the seriousness of this problem for some time now so it would seem odd to make the requirements less robust here.

110. **Rule 4: Client money must be kept separate.** The interaction of this rule with the proposed definition of client money (excluding payments for the firm's fees and payments to third parties for which the firm is liable) is confusing. This rule appears to deal with situations where the client has provided a round sum payment to the law firm (or where the law firm have received funds from a third party) and where fees have not been outlined or agreed with the client.

111. It is not clear why in rule 4.3 (b) payments on account of fees rendered could not be made from a client account i.e. as well as 'specific sum identified in the bill" which is what is stated in the rule. It is illogical not to be able to use money in Client Account to pay part of an agreed fee invoice i.e. either the amount due on the fee or if lower and available the sum in Client Account for that client. In general rule 4.3(b) seems to be at odds with the SRAs view about money on account being non-client (office) when those funds held are 'non-specific'.

112. There is merit in our view of rule 4 requiring the consent of the client for the transfer of monies to settle the invoices as this leaves the client with control over their money and removes the existing challenges of understanding what element of the client funds represents money earmarked for the settlement of fees.

113. **Rule 5: Withdrawals from client account.** We would suggest the reference to withdraw in this rule be replaced with pay, as in reality no firm ever 'withdraws' money e.g. in cash, as most payments will be made by electronic transfers or BACS through the banking system. Rule 5.1 (b) needs to include joint as well as sole instruction(s) to make payments.

114. **Rule 7: Pay interest where appropriate.** We have given considerable comment on the requirement to make payments in lieu of interest earlier in this response. Rule 7.2 as currently drafted appears to provide law firms with an easy way to simply opt out of paying these amounts. On balance we consider that this has benefits but it is unlikely to be what the SRA envisages in this rule. If the rule remains then it should be clear that the amount being paid is a sum in lieu of interest.

115. **Rule 8: Client accounting systems and controls.** We would suggest that rule 8.1 (b) should also require a current balance on the ledger. Rule 8.1 (c) looks similar to (a) and appears dated and irrelevant to firms given the use of computerised systems. We would suggest that rule 8.1 (c) be combined with rule 8.1 (a). In rule 8.3 client account reconciliations should include building societies as well as banks and there is no requirement within this to investigate or resolve reconciliation differences but unless this is done client money could be at risk. Rule 8.4 requires law firms to keep a central record of bills or other written notifications of costs but this would appear unnecessary in a computerised system as information will be available for retrieval on a search and most of this would need to be maintained for VAT and HMRC purposes anyway, as well as allocated to the client file (manual or electronic).

116. **Rule 9: Operation of joint accounts** and **Rule 10: Operation of a client's own account.** We are unclear why there appears to be a new reconciliation requirement introduced in rule 9.1 and 10.1 for joint accounts and client's own accounts. Under the existing rules, reconciliations are not currently required for either of these.

117. **Rule 11: Third party managed accounts.** Rule 11.1(b) and (c) and 11.2 make it uncommercial for law firms to even contemplate TPMAs. Rule 11.1(b) and (c) effectively means the risk of client money management ultimately remains with the firm even though it is outsourced. The wording is widely drafted, for example 'ensure your client's money is safe'. Rule 11.2 requires the firm to check every single transaction that the TPMA undertakes. This represents a duplication of work as they will need to maintain their own accounting and client

ledger systems to do this and all they will have achieved is that the physical transactions will be organised elsewhere. While appearing to give law firms the option of using TPMAs, law firms are unlikely to see any commercial benefit from doing so based on how rule 11 is currently drafted.

118. **Rule 12: Obtaining and delivery of accountants' reports**. We note that the requirements in rule 43A are not contained with the proposed Accounts Rules and in the absence of the guidance on this, it is difficult to comment on this proposed rule. We note that the terms of engagement and whistleblowing responsibilities are specifically excluded from rule 12. The SRA since 2015 require Reporting Accountants to form opinions based on professional judgement. Whistleblowing rights and protections are an important aspect which underpins the ability of the Reporting Accountant to undertake their work under this regime and we would have expected to see these in the rule. We also believe that rule 12 should be clearer about who can provide an Accountant's Report and the manner in which it is prescribed.

Q12: Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, please provide further details.

119. Please see answers to question 11. We also believe that further guidance should be provided in relation to reconciliation differences.

120. Annex 1.5 on initial reading appears to largely be a list of all the old rules now being excluded from the proposed new rules and being represented as guidance instead. The proposed guidance areas appear wide ranging and we would be pleased to input further into these areas and widen them as required in the future.

121. It is important in our view for the SRA to accept that many firms will, however, seek to make minimal changes to their existing operational arrangements if the rules are changed. To this extent many law firms are likely to adopt the approach of retain the 'old rules' as they were previously acceptable and make only minor changes where they have to or where there are clear practical benefits and no risk to client funds (e.g. specific timeframes for compliance with the 'old' rules might be relaxed). It would be helpful for the SRA to make comment on this expected approach by firms in these circumstances and provide positive guidance and assurance (or otherwise) to those firms on how they might operate under any new regime.

Q13: Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

122. Annex 1.4 suggests that the scenarios presented may only arise in 'extreme' cases. We think this is unrealistic and that the problems highlighted in this annex will be common place in law firms under the proposed rules and, in particular, the proposed definition of client money.

123. The consumer protection analysis in our opinion appears relatively brief and we believe there are far great repercussions for consumers, particularly those who are vulnerable consumers and those who already find it difficult to access legal services in the current market place. In our view a much deeper analysis of the possible repercussions of the proposed changes is required.

124. The annex focuses largely on how clients might suffer if law firms take the clients' money and do not use it to deliver the service or the third party product but instead use those monies to fund the law firms (or indeed the drawings of the owners). As outlined earlier in this response we do not believe the protections afforded by the Legal Ombudsman or the use of credit cards are appropriate responses in such situations.

125. There is a strong risk that public confidence in the provision of legal services could be greatly damaged with these proposed changes. While the SRA should not be responsible for maintaining the reputation of the legal sector it cannot ignore the fact that damage to its

reputation will, by default, discourage consumers from taking legal advice, thereby inhibiting access to justice.

126. An expected outcome, in our opinion, which will arise from the proposed changes, is that the general integrity over the management of client funds will deteriorate over time. There will be a higher volume of law firm financial failures, higher profile client financial losses and adverse client experiences. All of this will lead to increased regulatory and operating costs for the sector as a whole and will damage access to legal advice by the general public.

127. These overarching risks and impacts on the consumer are not in our view fully explored in Annex 1.4.

128. We also think that Annex 1.4 could usefully have included a scenario where monies have been misappropriated from a TPMA, highlighting what actions consumers would be able to take to recover their monies.

Q14: Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

129. We understand that many law firm financial failures have arisen not as a result of lack of profits but as a result of overdrawing by the owners before profits are collected. The proposed change in the definition of client funds is likely, as a result of human nature, to result in an increased propensity for law firms to extract profits at an earlier date. Previous discussions and work with the interventions teams supports the above assertions.

130. With the proposed change in the definition of client money it is likely that in the short term the level of interventions and financial failures will actually fall – because during this period some firms will in effect be using client money to support their on-going drawings or to support a failing business.

131. In the longer term, however, we expect the number of interventions will increase considerably and at this point the challenge which will exist for the SRA will not only be to manage the large number of on-going client matters from a legal perspective but also to handle much more significant shortages of client funds (eg, disbursements not met and fees paid in advance where no service has been provided). Over time this will lead to a combination of higher regulatory costs (intervention and indemnity fund calls) and other costs associated with law firms such and PII premiums, costs of credit from banks and cost for the provision of credit card facilities to law firms from providers. All of these costs will ultimately flow back and push up the cost of legal services.

132. The commercial lending market continues to provide an active and important part in funding law firm businesses (eg, providing working capital funding). This is an arm's length service and, in effect, a law firm has to demonstrate its own ability to successfully run a business to secure such funding. The change in the definition of client money, will in effect, place the clients in the position of providing the same working capital funding to the law firm in the future in a non-discretionary way. There is no external scrutiny – where banks provide the funding for working capital they continue to ensure the business is viable; clients providing their money on account have no ability to do this. The client will not actually appreciate that this is happening. For example, if a client pays a law firm £5,000 for a medical report disbursement to be prepared at the start of a matter they would not realistically anticipate that in the meantime their money may be used to pay the salaries of the firm or the partners drawings.

133. Overall there appears to be a view within the SRA that helping firms reduce working capital by using client funds at an earlier point will both encourage new entrants to the sector and reduce the cost of legal services. In our view it will do neither and is not a sound basis for changes to rules intended to protect client money.

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

This form is designed to be completed electronically—in MS Word. Please save it locally before and after completing it.

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to consultation@sra.org.uk, by **21 September 2016**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

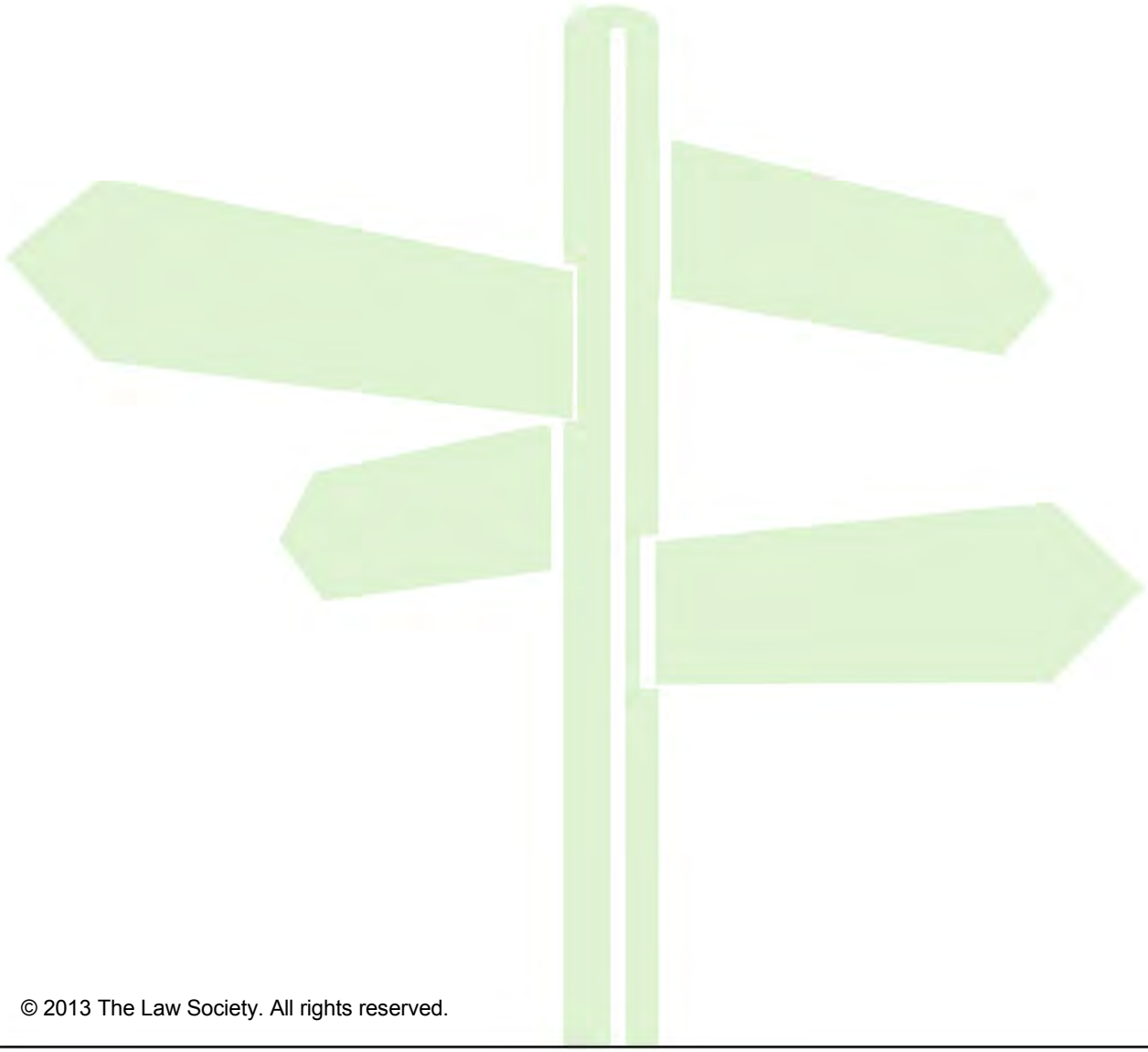
Solicitors Regulation Authority
Regulation and Education - SRA Accounts Rules 2017"
The Cube
199 Wharfside Street
Birmingham
B1 1RN

The Law Society

Looking to the Future: Accounts Rules review

Junior Lawyers Division response to SRA consultation

September 2016



LOOKING TO THE FUTURE: ACCOUNTS RULES REVIEW

Junior Lawyers Division Respons - Response

About the Junior Lawyers Division

The Junior Lawyers Division (JLD) is a division of the Law Society of England and Wales. The division, which has a committee with an independent voice, was established in 2008 to support:

- Legal Practice Course students
- Legal Practice Course graduates
- Trainee solicitors
- Solicitor up to five years qualified

The JLD is one of the largest communities within the Law Society with approximately 70,000 members. Membership of the JLD is free and automatic for those within its membership group.

The JLD provides members with an opportunity to:

- Network and connect with other junior lawyers
- Discuss issues of concern
- Benefit from training, advice and career guidance
- Ensure their views are heard
- Contribute to JLD campaigns, lobbying activities and consultation responses

For further information about the JLD visit the JLD website – www.lawsociety.org.uk/juniorlawyers

Consultation response

In June 2016 the Solicitors Regulation Authority published proposals to review the SRA Accounts Rules 2011 ('the Accounts Rules'), which govern the handling of client money by those the SRA regulate. This was part of the SRA's ongoing regulatory reform programme.

The SRA state that the core purpose of the Accounts Rules is to ensure that money belonging to clients is kept safe. Their objective is to rationalise and simplify the rules. In addition they aim to remove any unnecessary restrictions, prescription and detail while, at the same time, maintaining appropriate consumer protections.

Set out below are the JLD's responses to the questions asked in the consultation.

Question 1: Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

With fewer rules, the draft Accounts Rules do indeed seem simpler. However, whether they are easier to comply with remains to be seen, and will depend on the quality of the guidance to be produced.

Question 2: Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

No, the JLD is concerned about the proposal that all money due to third parties from the solicitor is to be treated as the firm's money, which we consider gives less protection to clients. In an insolvency situation, it needs to be abundantly clear what money is client money, so that those clients can have any money due to them returned quickly, rather than being mixed up in a pool to be distributed to creditors.

Question 3: Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

Yes, the JLD considers that the use of credit cards, which is commonplace in other aspects of spending can be a practical way for clients to manage the payment of fees and disbursements, and could offer more protection for some consumers as well as increasing access to justice. Sometimes, individuals can be requested to pay amounts which, to that person, are extremely large sums not immediately available, and so a credit card payment is more practical. We ask the SRA to look into the levels and application of such protection in more detail but in principle, are in favour of increased use of credit card payments.

Question 4: Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Yes. In addition, Please see our response to question 2.

Question 5: Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

This could become confusing with comsumers/ third parties paying monies into both accounts. Further, the word 'promptly' is unclear. Whilst it is agreed that the current time period of 14 days is restrictive and results in a number of breaches of the accounts rules, a set time frame is supported.

Question 6: Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

The JLD does not support the proposed change to the definitiopn of client money (see above). However the JLD supports the simplification of a accounting for monies received from the LAA as it takes a significant amount of time and is of relatively low risk. The JLD queries how this would affect monies received from a third party which the LAA has funded and particularly how this would be recouped by the LAA.

Question 7: Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

The JLD is generally agreeable to the option to use TPMAs, however we wonder how the TPMAs will be managed and the use of TPMAs by solicitors be regulated (if at all), other than a requirement to only use TPMAs which are subject to FCA regulation. More information about this proposal is required.

Paragraph 42 of the consultation refers to 'desirable features' of a TMPA. Will these be compulsory? Will there be any restriction or regulation specific to the use of TMPAs in this context?

Question 8: If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

Overall, the JLD considers that more work needs to be done in considering the risk and impact of the use of TPMAs.

Paragraph 50(b) outlines when a firm may be able to use a TPMA. One of the conditions is that firms must be able to 'demonstrate suitable arrangements'. More information needs to be provided to firms about how to demonstrate this, for example, a set of criteria would be useful.

TPMA's are regulated by the FCA. How will this be monitored?

Question 9: Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

The JLD supports the use of TPMAs so long as there is no detriment to the client/ third parties in terms of consumer protection. We wonder whether TPMAs would add an additional layer of administrative burden, rather than making things simpler.

Question 10: Do you have any views on whether we need to retain the requirement to have a published interest policy?

The JLD is of the view that this is still necessary.

Question 11: Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

Overall the JLD welcomes simplicity. However, the JLD is concerned (due to the reasons outlined above) that some of the proposals reduce consumer/ third party protection.

Question 12: Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

As we explain in our response above, a simplification of the wording of the Accounts Rules must work alongside clear guidance. We think that case studies would assist greatly.

Question 13: Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

As we explain above, we broadly agree with the work done so far, but consider that more investigation into the risks as a result of applying the new rules needs to be undertaken before their implementation.

Question 14: Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

The JLD would request that the SRA engage further with firms who have day-to-day knowledge of the positive and negative impacts of the current account rules, and would welcome the announcement of further research into the administrative and economic nuances of applying the current rules.

Junior Lawyers Division
September 2016

Consultation: Looking to the future - Accounts Rules

Response ID:70 Data

2. Your identity

Surname

Matthews

Forename(s)

Katherine

Your SRA ID number (if applicable)

150162

Name of the firm or organisation where you work

Boddy Matthews Limited

We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.

Attribute my/our response and publish my/our name.

Please identify the capacity in which you are submitting a response. I am submitting a response…

on my own behalf as a solicitor in private practice

3.

1. Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Yes

4.

2. Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

No comment

5.

3. Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

There is scope for use of credit cards in certain practice areas defending on handling charges imposed.

6.

4. Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

yes

7.

5. Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Fine providing allocation is made promptly as you say

8.

6. Having regard to our proposed definition of client money, do you agree that we can safely dispense with

the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

No comment

9.

7. Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

No

10.

8. If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

11.

9. Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

12.

10. Do you have any views on whether we need to retain the requirement to have a published interest policy?

Not required

13.

11. Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

Simplification is to be commended.

14.

12. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

15.

13. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

16.

14. Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

Response on behalf of Kent Law Society to the SRA's Consultation: Looking to the Future: SRA Accounts Rules review

1. **Do you consider that the draft accounts rules (annex 1.1) are clearer and simpler to understand and easier to comply with?**

   On the face of it, these rules are simpler and easier to follow. The problem is that less prescriptive rules are usually more difficult to administer in practice because they create uncertainties as to whether a firm is compliant. The SRA proposes to provide an online toolkit comprising guidance and case studies, but we have no confidence, on the basis of other SRA toolkits, that this will give sufficient guidance to regulated firms.

2. **Do you agree with our proposals for changing the definition of client money? In particular, do you have any comments on the draft definition of client money as set out in the draft rule 2.1 (see annex 1.1)?**

   The SRA's proposal is that money paid by the client in relation to the solicitors' fees and disbursements (especially for example Counsel's fees) be treated as firm's money and not client's money. Consequently, it can be paid into office account. It is no doubt true that this change will enable some regulated firms not to have client accounts. On balance, however, we do not agree with this change, which would leave the distinction between client money and office money too vague. In addition, if a firm became insolvent, currently money paid on account could be returned to the client but it is unclear what the status of that money would be if it was attributable to fees and disbursements. This would not accord with the requirement to keep client money safe. There would also be practical difficulties for reporting accountants in understanding where money had gone, increasing the complexity of client account reports. The proposals also do not contain any safeguards against improper access to the money.

3. **Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, would you use a credit card to pay for legal services? If not, why not?**

   Many of our firms do enable clients to pay for legal services by credit card and we believe that this is a positive thing, enabling consumers to pay for legal services in the same (convenient) way in which they pay for other expensive shopping. However, some smaller firms report that they no longer accept credit cards. Some cited the amount of compliance required by Worldpay which they felt was disproportionate to the small number of clients who pay by credit card. The majority apparently pay by BACs. The SRA seems to think that the protection afforded to consumers by credit card companies is adequate compensation for the loss of protections which consumers would suffer when instructing unregulated entities to carry out legal work for them. This is a completely unacceptable excuse for denying consumers protection from unregulated entities.

4. **Do you consider it appropriate that any client money (as defined in draft rule 2.1) should be held in a client account?**

   Yes, subject to our answer above to question 2 that we do not agree with the proposed change in the definition of client money. We support the view that the SRA should continue to apply the current principle that client money should be held

in client account, subject to the rules on mixed payments, under which office money must be transferred out of client account within 14 days of receipt.

5. **Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account? In particular do you have any views on the new draft rule 4.2 (see annex 1.1)?**

   See answer to above: we agree that mixed monies can be paid into client account as long as funds are then allocated promptly. We do not, however, agree that mixed monies can be paid into business accounts. Firms would have to have safeguards to ensure that such money in a business account was safe, which would create needless complication. Payment into a business account could also trigger liability for VAT.

6. **Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific accounts rules related to payments from Legal Aid Agency (LAA)?**

   No. We do not agree with the proposed new definition of client money and so cannot support this proposal.

7. **Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?**

   This is something on which the SRA has consulted before and we reiterate our previous answer that in principle we agree that third party managed accounts would be helpful for some (small) firms. It is unlikely that many firms would want to use third party managed accounts but we have no objection to the introduction of TPMAs, bearing in mind that it could be attractive for very small firms, but would not be useful to most firms.

8. **If not can you identify any specific risks or impacts of allowing TPMAs that might inform our impact system?**

   TPMAs could have implications for client protections out of the Compensation Fund if the SRA were to decide that these firms did not need to contribute. It is also not clear whether professional indemnity insurance providers would offer improved terms for those using TPMAs. Finally, it is unlikely that the use of TPMAs would eliminate determined theft.

9. **Do you consider it appropriate for TPMAs to use transactional monies – particularly in relation to conveyancing? Or should the use of TPMAs be restricted to certain areas of law? If so, why?**

   We do not have any objection to use of TPMAs across all areas, subject to the points we have made in answer 8 above. We are, however, concerned that the use of TPMAs in areas such as conveyancing, which rely on the ability to move money quickly, could disrupt legal processes.

10. **Do you have any views on whether we need to retain the requirement to have a published interest policy?**

    The current requirement should be retained because clients need to understand any interest to which they are entitled.

11. Do you have any comments on the draft accounts rules either as a whole or in relation to specific accounts rules (see annexes 1.1, 1.2 and 1.3)?

See answer to question 1.

12. Are there other areas related to the accounts rules that should be included in the toolkit for firms through guidance or case studies? If yes, please provide further details.

The SRA needs to develop proper guidance.

13. Do you agree with our assessment of the consumer impacts in annex 1.4? Do you have any information to inform our understanding of these risks further?

We believe that the SRA's impact assessment is inadequate. There should be a wider assessment on equality and diversity implications in particular for small firms and, most importantly, for clients. It is hard to understand how the SRA thinks that its approach offers a better balance between regulatory burden and consumer protection when it hasn't done any work on predicting the number of firms which would no longer need to operate a client account.

14. Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

The SRA should undertake research, if it does not already have the necessary information, in order to finalise its impact assessment.

20 September 2016

Kidd Rapinet LLP

Consultation Question 1

Reducing the number of rules or the wording of the rules does not necessarily mean that the rules have been simplified or become less burdensome in many instances it is quite the opposite.

The use of vague adjectives that are left open to interpretation can cause uncertainty e.g. promptly, responsible, fair, appropriately for all stakeholders and in particular the COFA and Managers of a Firm. We all know that tribunals etc. are likely to change their interpretation of such words as time goes by.

There is no mention of materiality in the rules yet Auditors for the SRA Audit have been given much greater powers to use their professional judgement in the conduct of the audit which will include materiality. This appears to leave the responsibility of the COFA and Managers out of synch with the responsibilities of the Auditor and the COFA needs to be able to rely on the Auditor to assist in the verification of adherence by the Firm of the Accounts Rules. It would appear that the COFA will still have to consider if a 1p breach should be reported to the SRA?

The more uncertainty for Compliance Officers; the greater the potential for a higher number of reports to the SRA.

Consultation Question 2

Change of Definition of Client Money;

Pros;

- Point (c) is a positive inclusion as it will remove the confusion where a Frim is acting say under a Power of Attorney etc. and conducting the financial affairs of a vulnerable client that the funds are in fact client funds and the Firm is not inappropriately using the Client Bank Account as a banking facility. Thereby improving the safety of vulnerable clients' monies.

Cons;

Point (a);

- Paying money on account of fees and disbursements into the office bank account has the potential to cause complex issues with tax points under VAT regulations.
- For Statutory Accounts purposes any monies paid on account into the office bank account will need to be separated out and shown as a creditor – this will mean more complex recording of transactions and software amendments.
- The legal profession is geared up to holding funds in client bank accounts and moving the funds promptly i.e. The 14 day rule to the office account when required. These proposals actually just turn the system around and make new but equally burdensome requirements the other way around for which Firm's do not have the

software or the procedures in place to cope with and will therefore potentially create a raft of breaches. Surely to reduce the number of qualifications a simple removal of the unnecessary 14 day rule would suffice. No client suffers if a Firm fails to move monies from client account into office account promptly just the cash flow of The Firm suffers. Or can this alternative treatment be optional i.e. can choose to still pay monies on account into client account?

- This would be harder for the Accounts Department and COFA to monitor and control and Auditors to check and would be more dependent on individual fee earners in the Firm notifying the Accounts Department when funds needed to be transferred to client account.
- The COFA would no longer be able to use an Office Credit Balance Report as a key daily control.
- A Firm's office bank balance would not represent money owned by the Firm and could be misleading to stakeholders.
- Where is the protection of the Client's money that is paid into the office bank account?
- Would clients'/public understand or just think the legal profession is profiteering?

Consultation Question 3

The Firm accepts payment by credit or debit card for fees.

Consultation Question 4

Monies on account of fees and disbursements should be still be able to be treated as client money and paid into the client bank account in order to allow Managers to retain control and secure client funds.

Consultation Question 5

Mixed Monies

Provided that the "promptly" does not turn into the overly burdensome 14 day rule for any amount of money. There is a greater risk where the mixed payment is paid into an office account than when it is paid into a client account and this should be reflected in the wording of the rule rather than trying to reduce the number of words in the rule.

Consultation Question 6

No comment

Consultation Questions 7-9

TPMAs

Would not suit firms with a large amount of transactions as clients are very exacting and expect prompt, quick and accurate service. Adding another layer to the time taken to conduct transactions would cause extra work, time, delays to clients and increase security risks.

There would be no benefits to outweigh the additional time and costs.

Consultation Question 10

By having a published interest policy the clients know where they stand from the outset.

Consultation Question 11

Rule 9.1 (b) and rule 10.1 (b)

Rule 9.1 states that Rule 2 does not apply – therefore theses funds will not be on a client ledger or recorded in a client cash book etc. In which case how are they to be included in the 5 weekly reconciliation of client control account to client bank accounts to client ledger listings as required by rule 8.3?

KRESTON REEVES

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Our ref GHJ/JEM

21 September 2016

Solicitors Regulation Authority
Regulation & Education Team
The Cube
199 Wharfside Street
Birmingham
B1 1RN

Dear Sirs

SRA Regulatory Reform Programme
Looking to the Future: SRA Accounts Rules Review

We wish to express our view on sections of the above consultation document published in June 2016.

1. About Kreston

1.1 We, Kreston Reeves LLP, are a member firm of the Kreston network. Kreston International is a global network of independent accounting firms. Established in 1971, the network currently ranks as the 12th largest accounting network in the world. Kreston now covers over 100 countries and provides a resource of over 21,000 professional and support staff.

1.2 Kreston has over 10 members based in the United Kingdom. Several of these members have contributed toward or share the views contained within this consultation response. Those accounting firms are as follows:-

- BHP Chartered Accountants
- Bishop Fleming
- Clive Owen LLP
- Duncan & Toplis
- James Cowper Kreston
- Kreston Reeves LLP
- Mitchell Charlesworth
- Peters Elworthy & Moore

1.3 The Kreston members listed above act for clients from all sectors of business, including many solicitor practices. These range from small sole practitioners holding very little client money to larger practices with many partners.

1.4 In addition to traditional accountancy services, the Kreston members listed in point 1.2 above, act as reporting accountants for a number of their solicitor clients. The firms undertake the SRA Accounts Rules examination for their solicitor clients as well

as providing ongoing support at other times of the year with the availability of in-house experts who specialise in the Accounts Rules.

2. Why we are responding to the consultation

2.1 You will see from the above that, as a network, we deal with a wide range of solicitor practices and a very significant element of our services is the provision of the SRA Accounts Rules examination and completion of the accountant's report.

2.2 We pride ourselves on our ability to assist our solicitor clients in respect of the Accounts Rules and believe that we play a key role in mitigating the risks that could potentially be posed to client money in those practices.

2.3 In this response, references are to the consultation document unless otherwise stated.

3. Overall observations

As reporting accountants, we are supportive of the SRA's desire to simplify the rules governing solicitors whilst still maintaining an adequate level of protection around client money.

Whilst we do like the current prescriptive rules, we often find our solicitor clients have breached the rules because they do not always seem to 'fit in' with the real world. Finding a balance between being over the top and too relaxed is fundamental, in our opinion, because if the rules are too relaxed, we fear that standard of accounting will drop in some solicitor practices which could result in a risk of loss of client money.

4. Observations on questions raised in the consultation paper

4.1 Question 1: Do you consider that the draft Accounts Rules are clearer and simple to understand and comply with?

The draft Accounts Rules do appear to be clearer and easier to understand. This should lower barriers to enter the market and make it easier for fee earners to be in compliance with the rules and will allow them more time to focus on client work rather than administrative tasks.

In our opinion, the draft Rules do retain the most important areas which we consider fundamental to ensuring that client money is being adequately looked after.

We are pleased to note the retention of the requirement to perform a five – weekly three way reconciliation since this provides us with comfort that client money is adequately recorded.

We also consider the draft rule 5.3 of great importance and so are pleased to see it feature in the draft Rules. Our fear would be that without this rule, overdrawn client ledger accounts would become common and temporary borrowing between clients would not be unusual.

Naturally, we are also extremely pleased to note that the draft Rules retain the requirement to obtain an Annual Accountant's Report. We believe that the

performance of an external review by an accountant is necessary to ensure a decent standard of client accounting is maintained. As with all things in life, there will always be those who try to get away with doing as little as possible but we believe that an annual visit from the accountant will help to ensure that a basic standard of accounting and protection around client money continues to exist, which in turn will provide consumers with confidence.

It is our finding that most of our solicitor clients have indicated that the external annual accountant's review of client money is important to them. In particular, we have found that the firm's COFA will seek comfort from our visit that their records and decision making in respect of breaches that have incurred in the year is sufficient.

4.2 Question 2: Do you agree with our proposals for a change in the definition of client money?

We agree that in its present form, the definition of what constitutes client money can be a difficult concept to grasp. We therefore accept that a simplification of the definition would aid solicitor practices in preventing breaches. In particular, we have found that the distinction between professional disbursements and other disbursements is a tricky concept to explain. We therefore understand the thought process behind simplifying the definition of client money.

Our concern is that, through changing the definition of client money and allowing firms to bank money into office account for disbursements where the practice is liable could lead to misappropriation of those funds. Rather than being used to pay the expert or professional, the money could get absorbed into office account and used for other practice expenditure. Of further concern is if the practice were to become insolvent, would the experts lose out? Whilst we appreciate the ambition to reduce the amount of money passing through client account and potentially allowing more firms to make use of the exemption from having to obtain an Accountant's Report, we actually consider it to be less complicated if all money recovered from a client, whether to pay stamp duty or medical fees, was paid into client account and transferred to office account when needed to settle the disbursement.

With regard to the distinction between fixed fees and fees in advance, we agree that the difference in treatment is an odd concept. We think that the proposal that all fees are treated the same is an excellent way to achieve simplification. We are concerned, however, that there is an implication that payments on account could be banked into an office bank account. Is there not higher risk that work might not actually be started or moved along quickly if the solicitor has already managed to earn some money for doing nothing? We hope that this risk will be minimal, as the majority of solicitor practices act in their clients best interests.

We note that the intention here is to reduce burden for those firms who only have a client bank account for the receipt of payments on account, but we wonder how many solicitor practices will actually benefit from this change at the possible risk to the client.

4.3 Question 3: Do you have any views on the use of credit cards to pay for legal services?

As reporting accountants, we are observing that solicitor practices are moving away from a reliance on cheques but are more intent on using computerised banking. Whilst some of the firms we act for do accept payment by credit card, this type of transaction is actually minimal when considering the number of transactions they deal with as a whole. Whilst we appreciate that the use of credit cards comes with

consumer protection, we feel that the reliance on more clients using credit cards is misplaced, as we cannot foresee this method of payment becoming the most popular when online banking is quick and easy for both the solicitor and the client.

We are concerned at the suggestion in paragraph 26, that if the SRA believe that there may be more claims on the compensation fund as a result of change in treatment of money received in advance, that this will impact the review of Professional Indemnity Insurance and compensation arrangements. It is our opinion that Professional Indemnity Insurance is still costly to obtain and any further cost added to premiums would surely create further financial burdens and barriers to entry, rather than mitigate them.

We note that SRA's comments with regard to 'when things go wrong' and that there are a number of routes to pursue when a client loses out. Whilst this is comforting to know that there are mechanisms in place, the relaxation around client money should surely not be so great that the SRA has to justify it by outlining where a client can seek compensation. We feel that prevention of a loss to a client is key, rather than reliance upon compensation systems after the event.

4.4 Question 4: Do you consider it appropriate that only client money should be held in a client account?

We believe that accounting records would become too messy and complicated if solicitor practices were able to bank anything other than client money in a client bank account. When the funds in a client bank account tally up with the total of the matter balance listing, there is comfort that all individuals' client money is present. If the waters were muddied with the inclusion of office money, it would make it incredibly difficult to identify if any clients money was missing. We therefore agree with the proposal that only client money should be held in a client bank account.

4.5 Question 5: Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account?

We believe that the flexibility proposed here is a positive change. Our concern would be that monies would be banked into office and the client portion then forgotten about. We would then be concerned, as in point 4.2 above, that the money could become absorbed by some other practice expense.

Having said this, we believe this risk is low since most of our solicitor clients successfully deal with mixed receipts under the current regime and rarely forget to transfer the office money out of client account.

Our only suggestion though, would be to provide some form of guidance with what the SRA considers to be 'prompt' so that we can advise our solicitor clients when they are in danger of breaching the rules if they do not allocate monies quickly.

4.6 Question 6: Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific accounts rules relating to payments from Legal Aid Agency (LAA)?

We accept that the Rules governing monies received from the LAA will be redundant under the revised definition of client money, however, given the comments in paragraph 4.4 in respect of losses, we do not feel that the Rules can be dispensed of at this stage.

We have already commented that the proposed method for recovering losses to clients appears to be convoluted, but the fact that LAA losses would not be covered by the compensation fund is not ideal and an alternative needs to be thought of if LAA monies will be allowed to be put into office account.

From our solicitor clients, it is our understanding that LAA firms are becoming fewer in number in recent years, but the wider political implications of 'lost' LAA money would surely result in doubt on consumer protection as a whole.

4.7 Question 7: Do you agree with our approach to allowing Third Party Managed Accounts (TPMAs) as an alternative to holding money in a client account? Question 8: If not, can you identify specific risks or impacts of allowing TPMA that might inform or impact our assessment? Question 9: Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMAs be restricted to certain areas of law?

As the SRA is seeking to reduce administrative burden, it seems that Third Party Managed Accounts is one way in which it could be achieved. However, we cannot foresee some of our larger solicitor client money accounts embracing this alternative. Maintaining control of client money accounts in-house would be much easier for them, given the level of transactions that they handle on a daily basis.

We can see the appeal of TPMAs being for those solicitors where client money transactions are minimal. They may also appeal to those who only receive client money for fees in advance. However, under the revised draft Rules, that money would actually be allowed to be banked into the office account and therefore would there actually be any use for a TPMA?

We believe from the detail in the consultation paper that TPMAs would allow firms to absolve themselves of client money regulations and therefore reduce the administrative costs and fees from an annual accountants visit. We would be interested to know, however, what the fees would be for the use of a TPMA. As is mentioned in the consultation paper, for this concept to be workable, the fees for a TPMA would need to be commercially attractive.

Overall, we feel that TPMAs provide a workable alternative to holding client money accounts.

We do, however, consider TPMAs to only be suitable for simple client money accounting. We understand from previous consultations that the idea would involve a dual approval process i.e. both the solicitor and the client would need to log in to approve the release of funds. In a simple fees only transaction, this could work well. We believe, however, that this would only cause a layer of red tape for conveyancing, when completion is time critical, or probate matters, when transactions are too frequently required. It is our opinion therefore that TPMA's would not be appealing for certain types of law.

4.8 Question 10: Do you have any views on whether we need to retain the requirement to have a published interest policy?

As reporting accountants, interest has been outside of our work remit for many years now. We check that interest has been paid when fair and reasonable to do so.

It is our opinion that a published interest policy assists in avoiding ambiguity of when a client can expect to receive interest. However if the interest policy is to be covered in the Code of Conduct then we feel that this would be sufficient in ensuring fair and reasonable interest is paid.

4.9 Question 11: Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

With regard to draft Rule 12.2, we have found there to be ambiguity around when the average should be calculated. It is assumed that reconciliations are performed at each month end; however, a firm could hold more client money at the end of the month than in the middle, therefore tripping the average balance limits when at the other part of the month, the practice may not be near the thresholds. We would comment that the Rule should be specific as to how the SRA intend practices to calculate the average client money balance since the requirement to obtain an Accountants Report when you hold little client money is burdensome and costly.

Furthermore, some practices may breach the thresholds outlined in Rule 12.2(b)(i) but only have incurred a small number of client account transactions in the period. We wonder whether there would be any merit in considering the number of transactions as well as the quantum with regard to Rule 12.2.

4.10 Question 12: Are there any other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies?

We are very supportive of an online guidance package and would strongly urge that this is available to reporting accountants as well as solicitors.

Many of our solicitor clients welcome further clarification to the Rules so guidance and scenario planning would be a welcome addition to the revised Rules.

Conclusion

We have no further points to add to the points raised in the consultation paper. Our overall view is that the draft Rules will lift some administrative burden and also reduce confusion. In theory, this should lead to good compliance with the Rules, however, we are strongly of the opinion that if the Rules are to be shortened and relaxed to such a degree, that the SRA continue to require a mandatory independent accountants visit. Without that, we fear that relaxed rules would lead to consumer doubt over the level of importance and protection placed on their hard earned money.

If you wish to discuss any of the points raised in this response, please do not hesitate to contact Gordon Jones, Kreston Reeves' Head of Professional Firms, at the office details listed on the first page of this letter.

Yours faithfully

Kreston Reeves LLP

Lane and Co Solicitors

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

On the whole - Yes, the rules are clearer and simpler to understand however the proposed change to redefining Client money will certainly not ensure the accounts rules are easier to comply with.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

NO! "Excluding payments to third parties for which the Firm is liable", to treat this as a liability of the Firm and therefore held in Office / Management account would run the risk of this money being utilised for items it is not meant for. It would give an incorrect impression of assets belonging to the Firm. As this is correctly identified as a liability of the Firm, would it not be more sensible for the money to 'belong to the Client' until the invoice becomes due, this would enable the Firm to keep the money separate form General Office accounts.

As the SRA are now allowing Firms to take more responsibility for their procedures, should this be a matter for individual Firms to decide how best to protect Client monies and their Clients interest?

In theory I understand the proposals could reduce bank charges, PI costs accountants cost but I feel in reality the safety of Client and/or third party monies could easily be compromised.

A further consideration should also be the use of accounting packages - if changes need to be made to these to accommodate the redefinition, it will be the consumer who would have to pick up the costs ….. The SRA have indicated that they have consulted with account package providers to discuss the feasibilty of this change - this is not the case with our providers.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

Although this is a service we have considered in the past it is not something we would be happy with pursuing.

One of our services is Debt Recovery, if we received payment from a debtor by credit card, we would not pass this money on to our client until we are sure the payment is cleared funds and cannot be revoked. Our understanding of the use of credit cards is that these payments can be recovered up to and over the 6 month period.

This would also give the ability to the Client to recall a payment made to us for solicitor costs and/or court fees if they were not happy with either the advice given or the outcome of their case.

Consumer / Client care is paramount, however Business Care is also of paramount concern.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

I do agree that only Client money should be held in Client account, however I think there is a fine line between what is and what is not considered Client money.

As previously stated, I do understand that the payment of 3rd parties is the liability of the Firm I believe that money held on account for those 3rd parties should belong to the Client until the invoice becomes due.

To treat this money as 'Office' money does not make sense as it does not belong to the Firm.

In your own consultation you write (point 32) -

"We would therefore expect: sufficient accounting records of transactions kept by the firm including client transactions through the firm's business accounts."

As you yourself refer to the 'client transactions' surely they should be accounted for through the client account?

You also state that "Data from the Compensation Fund shows you paid out over £3m for payments consumers were liable for the HMRC and the Land Registry" - this is obviously a significant amount of money - however what percentage of law firms contribute to that figure? Is this a small number of firms all owing large sums or a large number of firms owing smaller figures? Please do not penalise the masses.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Yes, this is a clear and concise rule which is easy to follow.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Is the proposed redefinition of client money partly to enable the SRA to dispense with the specific Accounts Rules relating to payments from the LAA?

I do not agree with your proposed definition and I do not agree that firms dealing with LAA monies should have separate rules.

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

If Firms feel that they are not able to safeguard client money and wish to use TPMA's then I do feel that this option should be available. I would be interested to see the amount of 'red tape' that would be a necessity to all parties to facilitate this.

I sincerely hope that the SRA are not 'trying this out' before making it obligatory for all firms. It would be inappropriate to penalise the masses for the small number of firms who present themselves as high risk in respect of safeguarding client funds.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

As previously stated, I feel the amount of "red tape" that will be necessary between the Firm / the TPMA and the Client will be substantial, this would be amplified in a firm such as ours where we recover debts for our clients. Where there is volume of client monies being held for numerous clients the paperwork necessary would be prohibitive and possibly catastrophic.

Normally fast and efficient turn around of collection of debts and payment out to client will be much more arduous and time consuming, our clients are used to a speedy recovery system which over the last few years has gone from awaiting clearance of cheques to immediate cleared funds with BACS receipts and therefore on occasion same day pay out to clients. This time scale would not be possible with a 3rd party and it would be our clients who would suffer.

If the SRA feels that client money is at risk within the existing structure then it should be that those firms which are identified as at greater risk should have assistance in increasing their procedures to protect client money rather than introducing a 3rd party over which the firm has no control.

Surely we should all be concentrationg on streamlining procedures rather than broadening them.

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

As stated - using TPMA's seems to show a loss of confidence in Legal firms. If TPMA's are going to be used I can not see any advantage in restricting their use to certain areas of law. Client money is client money regardless of the sums being held.

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

I think it is good practice to have a published Interest Policy - the client is informed up front of the policy and therefore removes any doubt or possible disagreements at a later date.

If this is removed from the rules it is something that we would continue to do as it gives a transparent view of the way in which we will work.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

I feel that streamling the rules is a good thing and many changes proposed do make the rules easier to understand and regulate.

As already stated the new definition of client money would in my opinion be a huge mistake which would cause confusion and encourage firms to try "imaginative accounting" to enable them to continue safeguarding their clients funds whilst trying to accommodate the new rules.

TPMA's may be a suitable alternative for some as long as it is not forced on others.

I am interested to know why you continue to talk about reconcilliations 'at least every 5 weeks' - would the term monthly not be an easier option?

Clarification of Rule 13 would be appreciated. When you state that all accounting records must be stored securely for at least 6 years, can these records be stored digitally or must they be hard copies?

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

Yes - I do agree with your impact assessment, however it is not just client monies that should be considered, management funds and the liabilities of the firm must be easily identifiable.

How many accounting software firms who provide legal accounting systems have been consulted prior to this proposal? Any changes that would be needed need to be funded, who will have to pay for this?

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

Being part of a COFA networking group we have at length discussed these proposals with an SRA representative. The response was virtually unanimous against the redefinition of client monies.

I hope the response to this consultation is as clear.

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to consultation@sra.org.uk, by **21 September 2016**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

Solicitors Regulation Authority
Regulation and Education - SRA Accounts Rules 2017"
The Cube
199 Wharfside Street
Birmingham
B1 1RN

Response to SRA consultation on

Looking to the Future: Accounts Rules review

Overview

1. The Law Centres Network is the membership body for Law Centres in England, Wales and Northern Ireland, each of which is a not-for-profit legal practice providing legal help and advice in civil law, with a particular focus on social welfare law. Law Centres support the rule of law and, as part of it, universal access to justice. In particular, they target their services at the most disadvantaged and vulnerable people and groups in society, helping make their rights a reality and aiming to tackle the root causes of their poverty or disadvantage.
2. Law Centres are embedded in local communities and run by committees of elected local people drawn from community, legal sector and health sector organisations. The Law Centres Network ('LCN', the trading name of the Law Centres Federation) has coordinated and represented Law Centres collectively since 1978. There are currently 44 Law Centres across the UK represented by the Network. They are primarily funded by a mix of civil legal aid contracts, local authority grants or contracts and fixed-term project grants from charitable trusts and foundations.
3. LCN members work with clients who are vulnerable, often because of social, cultural and/ or economic disadvantage. A good training for those involved in assessing improper or unprofessional activities must include understanding the context within which clients can be vulnerable when involved in a legal action.
4. No less important is to understand the complexities that solicitors face in managing not only the action but also the needs, expectations, behaviours and responses of a vulnerable client. This can result in cases taking longer, needing more careful attention and producing high degrees of pressure for the solicitor. Law Centre work in this area can also result in a complexity of financial transactions, liabilities and incurred fees that cut across more than one regulator's rules, for example, FCA SRA and OISC. We recommend that the pressure inherent in such work is recognised and acknowledged in future changes in the Accounts Rules.

Comments

5. We recognise the extensive research that supports the draft rule changes. We have limited resources to provide a full response to every point in the consultation and have focussed on gaining members' views on and discussions with SRA on the concurrent consultation on *Looking to the Future* regulatory framework changes. We offer the following comments on the key items that affect LCN members and recognise that discussions outside of this Response will continue, particularly around TPMAs.

6. LCN supports and endorses the principles of the consultation, that client money should be kept safe, and that systems controls and accounting processes applied, should be appropriate to the high risk represented in handling client money whilst balanced with the need for clarity and flexibility in managing the practitioner's business.

7. We agree with the changes to the definition of client money (draft Rule 2.1) at 2.1 (b) and 2.1(c). (Question 3)

However we would suggest that para 2.1(a) would provide better protection for client money if re-drafted along these (or similar) lines:

...relating to legal services delivered by you to a client, including payments for your fees directly from a private client, but excluding payments for

- *Fixed fee services which charge has been previously agreed by the client*
- *your fees and disbursements from a third party and*
- *payments to third parties for which you are liable, ...*

8. Our reasoning for striking this balance between money handling efficiency and client detriment is:

- The client paying fees for services in advance and not on a fixed fee basis, is making a payment on account without certainty of the full cost. Payment into the client account is a better protection of that money pending delivery of an invoice. It also provides an incentive for solicitors to ensure that clients receive a bill of costs promptly and efficiently,
- When Solicitors regularly pay disbursements and other liabilities on behalf of a client, although raised by the Solicitor, it is to progress a case and the client has agreed those liabilities: there is no detriment to the client in payment into the firm's account. Often the timing of the liability for a disbursement is out of the control of the practitioner, for example an invoice for a medical report, and does not occur neatly on an occasion when it is appropriate for the solicitor to deliver a bill, interim or otherwise, to the client which would eventually enable a transfer to office account,

- Paying advance costs for disbursements / similar liabilities into client account can cause cash flow problems particularly where a third party is involved, where the timing of such receipt relates to other systems and cannot be controlled by the practitioner; examples are Legal Aid Agency payments for fees and disbursements (which have under current rules been paid into client account) and interim legal costs for example, where the bill is awaiting assessment.

9. We consider that this approach will still achieve the intention of clarity and reduction in the detailed rules around disbursements, whilst giving the client certainty and protection of money for costs that are paid generally on account.

Following the same principle for clarity and definition, we endorse the principle that only client money should be paid into client account, with the exception being for mixed payments (paragraph 38/Question4)). We agree the proposition that mixed payments can be paid into client or business account as long as the funds are then allocated promptly to the correct account (paragraph 39 / Question 5).

10. We welcome the discussions that are in progress with the Legal Aid Agency to manage a more effective and flexible set of rules. We recommend that there is recognition that providers receiving LAA monies, such as Law Centres and other social welfare law providers, are often those with the least or no 'cushion' of private client costs from other work, that can assist with cash flow, and thus are most in need of flexibility and speed of access to funds paid in.

11. We agree with the use of TPMAs in controlled circumstances (Questions 7-9) and support the plans to further explore and enable the use of TPMAs as an alternative to holding money in a client account with safe guards. We welcome the opportunity to discuss with the SRA the most appropriate type of arrangement for regulated solicitors in Law Centres and a toolkit that has guidance particularly for the use of Special Bodies.

Law Centres Network

For further contact:

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Leeds & Yorkshire COFA Forum
Response to the SRA Consultation
Looking to the Future: SRA Accounts Rules Review
June 2016

Proposed changes

The SRA's consultation document proposes to

- Simplify the Accounts Rules: by focusing on key principles and requirements for keeping client money safe, including:
    - Keeping client money separate from firm money
    - Ensuring client money is returned promptly at the end of a matter
    - Using client money only for its intended purpose
    - Proportionate requirements for firms to obtain an annual accountant's report

  This will put the focus on what is important and allow firms greater flexibility to manage their business. The Accounts Rules will also be simpler and easier to understand – increasing compliance and reducing compliance costs. The Accounts Rules will be supported by an online toolkit which will comprise of guidance and case studies to aid compliance.

- Change the definition of client money: to allow money paid for all fees and disbursements for which the solicitor is liable (for example counsel fees) to be treated as the firm's money. Money held for payments for which the client is liable, such as stamp duty land tax, will continue to be treated as client money and therefore required to be held in client account. The impact of the proposed change in definition is expected to remove the need to have a client account for some firms and therefore reduce the associated compliance costs. The changes may also reduce the number of firms required to obtain an accountant's report through the subsequent reduction in the client account balance.

- Provide an alternative to the holding of client money: through the introduction of clear and consistent safeguards around the use of third party managed accounts (TPMA) as a mechanism for managing payments and transactions.

Background

I am the Legal Sector Partner at Armstrong Watson, a top 35 UK firm of accountants. I have exclusively specialised in acting for solicitors for over 10 years.

I host and facilitate The Leeds & Yorkshire COFA Forum, a grouping of COFAs from various law firms based in Yorkshire. The group meets quarterly to help each other in their roles; share best practice; discuss appropriate systems and controls to implement; and assess the impact of changes within the profession, including regulatory changes and SRA consultations.

Time has been spent in the Forum meetings for the group of COFAs to review all of the documents provided by the SRA in connection with this consultation. This response is a summary of the discussions held by those COFAs and has been approved by the Forum.

Although this response has been written in the first person – "I", "my" etc., the views are of the Forum in total rather than my own.

Summary

Feedback provided by COFAs at the Leeds & Yorkshire COFA Forum is that they prefer to have the comfort of following prescriptive rules that are contained in one place. They feel that whilst the draft wording of the proposed new Rules is easier to read than the old Rules, it would not be easier to comply with.

The most common response has been "if it isn't broke, don't fix it".

It is not clear how the current Rules prevent competition and innovation or why new entrants cannot understand the Rules when lawyers have done so for many years.

It is not clear why the SRA needs to make the changes as proposed. The proposals note that it is to reduce burdens and cost on regulated firms. I fear that the proposals will have the opposite effect. My reasoning for this is set out in my response. Particularly where judgement is required, lawyers and reporting accountants will be forced to take additional steps to justify what actions they have taken since the black and white requirements are no longer there.

The proposals are likely to have some far reaching impacts, some of which have been identified by the SRA including cost to the SRA, profession and the public plus a loss of confidence by the public in the profession. Other impacts don't appear to have been considered including VAT requirements, accounting requirements and law firm management/financial stability requirements.

Why change something that works in practice to something that may well be a risk to all involved?

Responses to specific questions raised in the consultation

Question 1: Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Feedback provided to me by COFAs at the Leeds & Yorkshire COFA Forum is that they prefer to have the comfort of following prescriptive rules that are contained in one place. They feel that whilst the draft wording of the proposed new Rules is easier to read than the old Rules, it would not be easier to comply with.

The reason that compliance will not be as easy is because of the need to refer to guidance which will be located in a separate location, and because the Rules are not prescriptive; in order to protect themselves they would need to document why action was taken in a particular way.

This has the potential to increase risk for law firms and COFAs and to increase their workloads in order to ensure compliance. Cutting down the length of the Rules by moving guidance elsewhere would be viewed as a backward step that complicates rather than eases compliance.

Point 6 in the Initial Impact Assessment notes that it is *difficult for new entrants to understand and comply with the Accounts Rules* – I would question *why* that is the case. Point 7 in that document notes that *new entrants … may be so intimidated by the detail, length and complexity of the current Rules they are put off from SRA regulation altogether* – this raises the question of the real purpose of this consultation. A reader of the consultation document may conclude that the SRA are more concerned by the impact on their own position rather than that of the public or profession.

Point 13 in the Initial Impact Assessment notes that *simpler rules will make it easier for consumers to understand the key principles* – I would doubt this very much as I do not think that consumers would ever look at the Rules, whatever format they are in.

I agree that the Rules should be simplified by focusing on key principles and requirements for keeping client money safe, although I fear that the proposed approach would increase compliance costs rather than decrease them.

Question 2: Do you agree with our proposals for a change in the definition of client money? In particular, do you have any comments on the draft definition of client money as set out in the draft Rule 2.1 (see Annex 1.1)?

I agree that the Rules could be simplified, particularly the differences between professional and non-professional disbursements.

However, I strongly disagree with the remainder of this proposal. That view is echoed by all in the legal sector that I have interaction with.

Examples provided in the documents accompanying the consultation suggest that "*disbursements for which the solicitor is liable (for example counsel fees)*" should be treated as the firm's money. I feel that it should be pointed out that there are many disbursements like this that the solicitor may pay on behalf of the client, but the solicitor is not actually liable for. The definition should therefore be tightened. It may be easier still for guidance to be provided to solicitors that they make arrangements for clients to pay disbursements directly. This would reduce the use of the client account, rather than treating such funds as office money.

Where the solicitor is responsible for payment of disbursements such as for counsel/experts, but for whatever reason cannot do so, those experts/counsel may stop work. That would adversely impact on the progression of client matters and lead to a loss of confidence in the profession.

Additional guidance would also be required for situations such as where the costs estimated by third party providers do not equal the amounts actually charged. For example, if counsel estimate £1,000 and that is paid by the client to the solicitor and paid into the office account, and counsel subsequently only charge £500. The solicitor will be holding £500 in the office account that is due to the client. This would presumably need to be promptly transferred to the client account or directly back to the client. It would have been much simpler for the solicitor to have retained this in client account from the outset.

The main reason that I do not agree with this proposal, however, is that I am involved in a large number of law firm turnaround/insolvency/closure/orderly wind up projects. I see first hand the desperation of law firm managers in such situations and how the funders/creditors react. All parties naturally attempt to protect their positions. The law firms use all money in the office account to attempt to stay within facilities, whether that money is due to a third party creditor or not. Blocks are routinely placed on making payments to creditors, particularly where they are not *business critical*. Having additional amounts in the office account that are due to creditors would only increase such problems. The law firms would see it as their cash, as would the funders. The disbursements that should be paid on behalf of clients would therefore potentially not get paid. The clients would suffer as client matters stall and it could cause more law firms to fail due to increased public knowledge and reductions in further instructions.

The knock-on impacts could be an increased number of interventions required, thus costing the SRA and the profession more, and would also reduce the faith of the public in the profession generally. It may be that there are other means of redress, but those means take time. Time is usually one thing that clients of law firms do not have; they require attention to the completion of their matter there and then. If this situation is replicated a number of times as a direct result of a change in Rules put forward by the SRA, there is the potential for a huge loss of confidence of the public in the profession. Where the redress requires payment from the Compensation Fund, that would ultimately add risk and cost to the profession as a whole.

Where such money is held in the client account, there is protection against creditors accessing that money. This in turn would allow matters to proceed and for clients to receive the service that they are expecting. Point 24 in the Initial Impact Assessment notes that *consumer confidence in the legal services market is underpinned by an expectation that client money will be safeguarded* – whatever the Rules are, that expectation will not change, but the reality may well do.

The SRA will need to consider what would happen in the scenario that a client makes a payment to a law firm in advance of the work being done and it is paid into the office account. The client then decides to instruct another firm and requests repayment. Due to the firm being in financial difficulty, the bank may prevent the money from being repaid to the client. The client may not be able to afford to pay another firm and therefore cannot receive the legal assistance that they require.

Point 18 of the consultation paper notes that *under the current definition of client money, we treat fees paid in advance (which is client money) differently to fixed fees (which are not)* – this is factually incorrect. All fees paid in advance, including those for fixed fees are currently client money, and for all of the reasons set out in my response, quite understandably so. The difference is with *agreed fees*, not fixed fees. *Agreed fees* do need to be fixed, but there are other requirements in addition – they need to be evidenced in writing, not be capable of being uplifted and are not dependent on completion. The key part of that is not dependent on completion – i.e. the money is due to the firm no matter what. Clearly that is completely different to money being paid in advance that may need to be returned to the client if the work is not completed.

Point 33 in the Initial Impact Assessment notes that *the potential detriment to consumers is therefore likely to be the ease to redress in the event that something goes wrong* – that is a big risk as outlined above, particularly due to the time it will take for the redress which needn't have been required had the Rules not changed. Point 33 continues to say that due to the lower number of firms that are intervened in *it would be disproportionate to design policy based on the risk that something goes wrong* – I would suggest that the low number of interventions and occasions where it does *go wrong* is because of the Rules as they stand now. Changing the Rules in the way proposed is likely to result in more *going wrong*. Point 33 continues to say *the data on interventions also reveals that the current detailed rules do not effectively mitigate against risks to client money* – nor do they force interventions, the proposed Rules may well force more interventions at greater cost to the SRA, profession and public.

Point 35 in the Initial Impact Assessment notes that there are many cases brought before the SDT regarding firms in financial difficulty where they have failed to pay professional disbursements. The proposed new Rules will increase the risk of what is already happening in those SDT cases.

There are other knock-on effects that it is not clear whether the SRA are aware of, or have considered:

VAT issues
If money received for solicitors fees is paid to the firm in advance of a bill being raised, and is now required to be treated as office money, output VAT would be due to be paid to HMRC on receipt, whether or not the solicitor raises an invoice at that point. At present, where such receipts are paid into the client account, it would not trigger such an amount due to HMRC.

The firm would therefore need to either incorporate a manual adjustment in their VAT return, which would be costly in terms of the time required to do that, or raise an invoice as the amounts are received. The invoice would then trigger an amount due to HMRC in their accounting systems.

This proposed change could also be viewed as the SRA encouraging something that they had previously published was a 'bad behaviour' in terms of financial stability of law firms, where they discouraged situations where VAT received by law firms is treated as cash received and is used for other purposes.

Efficiently managing the firm
As the co-author of the Law Society toolkit on financial stability within law firms, I advocate that when bills are raised, law firms monitor recoveries on those bills. They should be comparing the amount of the receipt against the amount of time invested at their charge out rate. If, per the VAT section above, invoices are raised simply to comply with VAT requirements, it will be far more difficult for firms to monitor recoveries as their bills are raised, particularly since those bills may be raised before the work is carried out. This will make the management of firms more difficult, potentially adding to financial instability risks.

Accounting issues – deferred income
If invoices are raised before work is performed, then accounting standards may require an adjustment to be made to the accounts to show those invoices as deferred income. The adjustment would effectively reduce fee income/turnover by the amount of those invoices raised in advance and reflect the amount as being owed back to clients. This would involve greater cost for the law firms in terms of their own accounting teams but also in the amounts paid to their external accountants.

Question 3: Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, would you use a credit card to pay for legal services? If not, why not?

Most law firms that I deal with do not have demand from clients to pay by credit card. That is because the payment amounts are commonly too large for the amount of credit available and also because generally the cost of processing credit card payments is passed on as a charge to those paying. Even a small percentage added to the cost, when the cost is large, is a deterrent from payment by credit card.

In addition, I have been informed by solicitors that their credit card providers will not allow them to receive payment for disbursements by credit card; only for their own fees.

Question 4: Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Agreed. Flexibility to have bespoke arrangements with clients is welcomed, although that flexibility is actually already in place under the current Rules.

Question 5: Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account? In particular do you have any (views on) the new draft Rule 4.2 (see Annex 1.1)?

This would depend on how *promptly* is defined. The main reason that I see for segregating office and client money is to protect client money. If client money is allowed to mix with office money in either the office or the client account, then it would be difficult to protect the client money if, for example the law firm becomes insolvent. It would be easier to have the term *promptly* defined under the various circumstances in which it is used in the Rules. That way, compliance would be easier to achieve. There may then be breaches of the Rules, but it would be down to the compliance officers or reporting accountants to decide whether the breaches were serious enough to report to the SRA or not.

Question 6: Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

The current Rules in respect of LAA matters are different to the main Rules due to the lower risk to clients where transactions are with the LAA rather than the public at large. If the Rules are to change as proposed, then I see no reason for the LAA Rules to be any different to those new Rules.

However, for the reasons set out above, I do not believe that the Rules should be changed as proposed, and in which case, there would still be the need for reduced requirements for LAA matters as in the current Rules.

Question 7: Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

I have no strong views other than reference to point 41 in the Initial Impact assessment where it notes that *the availability of TPMAs may offer improved security and protection to consumers* – Solicitors may feel justifiably aggrieved by that statement as it may infer that the TPMA providers are more trust worthy or knowledgeable than Solicitors.

Question 8: If not, can you identify any specific risks or impacts of allowing TPMA that might inform out impact assessment?

N/A

Question 9: Do you consider it appropriate for TPMAs to be used for transactional monies- particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, way?

N/A

Question 10: Do you have any views on whether we need to retain the requirement to have a published interest policy?

There should be a requirement for firms to have an interest policy and to agree it with clients. If that requirement is elsewhere in the Code, then there is no need to replicate it in the Rules.

Question 11: Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules (see Annexes 1.1, 1.2 and 1.3)?

Point 2.2	How is *promptly* defined?
Point 2.4	How is *promptly* defined?
Point 5.2	Should this not be extended to state that the withdrawals are in line with the policies of the firm and therefore have a requirement for such policies to be in place?
Point 6.1	Who is responsible for the correction of breaches?
Point 8.2	Can guidance be provided on the format of the statements received? Is electronic acceptable?
Point 8.3	Can guidance be provided on the format of the reconciliation statements? Should the Rule be extended to note that reconciliation must be *reviewed and* signed off by the COFA?
Point 11.2	If firms are required to obtain regular statements from the TPMA and ensure that they accurately reflect all transactions on the account, the law firm will need to continue with the accounting and controls that they would if they had not outsourced to a TPMA and there would be no loss of administration, just additional costs to be paid to the TPMA provider.
Annex 1.3	Current Rule 27 "transfers between clients" appears to have been removed, what are the proposed revised requirements?

Question 12: Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, please provide further details.

Annex 1.5

Point 4	Why are withdrawals to make payments to charity not in the main Rules?
Point 6	Why are residual balances due to clients not in the main Rules?

Residual balances
This appears to be the most mis-understood requirement of the current Rules. Guidance is required on the requirements, particularly if it is not covered in the main Rules. For example, current Rule 29.2 requires a separate ledger for each and every client. That appears to be replicated by the intention of the proposed Rule 8.1(b). Many firms combine payments to be made to charity in a single ledger before making the payment. This would be a technical breach of current Rule 29.2 and presumably the proposed new Rule 8.1(b). Specific examples of what can and cannot be done would be helpful.

Question 13: Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

I strongly disagree, as set out in my response to Question 2 above. The Annex notes that the examples raised are likely to be very rare. I do not think that they will be very rare. If the Rules are changed as proposed, they may become far more common.

Question 14: Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

Nothing to add.

Conclusion

In conclusion, I applaud the ambition to simplify the Rules, but the changes to the definition of client money will result in money being held in the office account which will cause complications leading to additional cost to the SRA, the profession and the public. There will also be a loss of confidence by the public in the profession. I would strongly encourage the SRA to re-think at least that part of their proposals.

Andy Poole
For and on behalf of The Leeds & Yorkshire COFA Forum
20 September 2016

Sent by email only to: consultation@sra.org.uk

21 September 2016

Dear Sir/Madam

Looking to the future: Accounts Rules Review

The Legal Services Consumer Panel welcomes the opportunity to respond to the Solicitors Regulation Authority's consultation on reviewing the Accounts Rules.

We support a move towards principles based regulation because we recognise that overly prescriptive rules lack the capability of being applied flexibly to a changing sector with multiple and diverse players. We also note that a principles based approach is more likely to produce behaviour which fulfils the regulatory objectives, and is easier to comply with. In contrast, detailed rules may leave gaps, produce inconsistencies, lead to rigidity, and may be susceptible to creative compliance.

However, there are also risks and challenges attached to the principles based approach, amongst which are; uncertainty, unpredictability, lack of accountability, inappropriate skills and mind-set of the regulators and the regulated community to make it work, as well as the proliferation of accompanying guidance. Therefore, to be successful a principles based approach in itself is generally not sufficient. What must accompany this approach is appropriate supervision and enforcement, accountability, and crucially the identification of fixed points where more detailed rules might be needed. In our view, dealing with client money is one area where a principles based approach needs to be supported by clear rules and outcomes for the following reasons:

- misconduct poses high risk to the regulatory objectives
- a reduction in consumer protection would lead to consumer detriment which may be significant for vulnerable consumers
- the commercial incentives for firms to get it right are weak

Although we agree with the SRA's overall direction towards a principles based approach, we have some concerns about the details. Our response focuses on these in the hope that it stimulates further consideration and improvement of the proposals under consideration.

Definition of Client Money

The Panel agrees that there should be a clear and standardised definition of client monies. However, the proposed change is problematic because it removes a fundamental consumer protection. Consumers who pay in advance for services and/or for their disbursements will no longer benefit from the protection of their money being automatically returned should the firm become insolvent. They will become unsecured creditors. This is a significant reduction in consumer protection. The SRA argues that this will remove the need for some firms to have both a client and office account, reducing the associated compliance costs of running client accounts. While the Panel is sympathetic to the desire or obligation to reduce regulatory cost or burden, where this involves a reduction in consumer protection we expect to see clear evidence of the savings and positive impact on firms. This evidence has not been made available. Although the SRA has clearly set out the reductions in consumer protection, and outlined the potential impact of these by using illustrative examples, the assertions around savings and other advantages for firms are not backed up with the evidence necessary to gauge whether the right balance has been struck. It is extremely difficult to assess the trade-off between reduced protection and the alleged benefits of reduced cost and burden to firms.

Moreover, the SRA states that firms will still be required to deposit stamp duty and land tax into client accounts. This suggests that client accounts will continue to exist alongside office accounts for some firms. If client accounts continue to exist, the Panel finds it difficult to understand how the costs of maintaining them will be reduced by simply removing the requirement for advance fees and disbursements to be deposited into them. If the argument is that some firms will no longer need to have clients' accounts because they do not deal with property or probate matters, then the Panel expects to see a detailed assessment of the type of firms these are, or might be, their numbers and so on. Consideration may then be given to whether these firms can bypass the need to have a client account by not taking client money in advance of service. Instead, such firms could charge a fixed fee or bill on invoice. Indeed what is missing from the consultation is a detailed consideration of other options that may simplify the account rules and reduce regulatory burdens for solicitors.

It is important to emphasise that firms have the option to offer services on a fixed fee basis thus avoiding the burden of running client accounts. Firms may also contract out the management of client accounts. Furthermore, firms may choose to bill on completion of services or at specific times e.g. at key milestones. Against these considerations, we feel that it is disproportionate to shift the burden of loss onto consumers. If solicitors require advance payments before work is carried out, then the funds should continue to be protected. Solicitors have the benefit of knowing that the money for the work they are undertaking is there for them to draw on when the work is completed. Consumers deserve to be reassured that their money is safe and protected in the event of the firm becoming insolvent. Anything less, in lieu of solid evidence, puts consumers at a disproportionate risk, and is likely to incentivise poor behaviour.

We note that the Financial Services and Markets Act 2000 enshrines a similar principle into legislation. This ensures that client money is kept separate and not used by financial firms for their own purposes.

Finally, the Panel is also concerned about the associated relaxation of the requirement on some firms to submit their accounts. Again we note that there has not been a thorough analysis of the number of firms this would impact, and how it may affect consumers. Crucially, there is no consideration of the perverse incentives this may lead to. It is our view that the redefinition of client accounts along with a relaxation of the requirement to report, is likely to create incentives that may produce very poor outcomes for consumers.

Mixed Accounts

The Panel's position on the redefinition of client money has informed its position on mixed accounts. Our concerns over reduced consumer protection outlined above lead us to conclude that mixed money should not be paid into office accounts. Instead, we support the proposal to pay mixed money into client accounts and for the money to be redistributed promptly afterwards. The use of the word 'promptly' may be problematic for providers and other professionals', for example reporting accountants. The SRA needs to understand how providers might interpret this word. It should also consider guidance in this area with a focus on good outcomes.

The Panel strongly disagrees with the SRA's assertions that section 75 of the Consumer Credit Act 1974 can act as a safety net for consumers, or be relied upon as a result of the reduction in consumer protection flowing from the redefinition of client money.

The Panel notes that it is not an easy task to make a claim under section 75. Aside from the hassle of making a claim against the credit card company and having to provide all the necessary evidence, and exercise the persistence necessary to pursue it, there is the question of consumer choice and access. In the Financial Conduct Authority's occasional paper 17 on Access to Financial Services in the UK[1] evidence shows that access to credit cards is patchy, particularly for vulnerable consumers; consumers who may need help with immigration, family, welfare or housing law. These consumers will not necessarily have a credit card, or may have little prospect of obtaining one.

The report notes that one large bank turned down over 90% of applicants who had thin or empty credit files, and 30% of applicants in rented accommodation compared with 10% of home owners. Also, there are varying attitudes towards borrowing among retired consumers with resources, some rarely go overdrawn or take on debt. 65% of this group have a credit card, but the outstanding balance is often less than £50 and balances are almost always paid off each month. These older people may have legal problems yet would not necessarily want to use a credit card or, in the case of those on a budget, will have chosen not to have a credit card in the first place. It should also be noted that if payments are made online, it is fairly common for some businesses to charge more for payment by credit card so they can recover the merchant acquirer fee. This cost is likely to be passed on to consumers, making legal services arguably more expensive.

Furthermore, section 75 applies only where there is a relationship between the lender, supplier and creditor. If the consumer makes a cash withdrawal, or pays via money transfer into their own personal account (as is widely available and promoted by credit card companies) that money will not be protected under section 75 because the necessary link between the borrower/supplier/creditor will not be considered as existing. We also note that the circumstances under which a section 75 claim would be successful is restricted to misrepresentation and or breach of contract. This is a narrow set of criteria.

The Panel is not convinced by the assertion that rights in other consumer protection legislation can be relied upon by the consumers, especially as these have not been outlined in detail by the SRA. Consumers do have recourse to the courts, but evidence shows that consumers are often reluctant to pursue litigation, even at the Small Claims Court which is geared towards a litigant in person, for numerous reasons. More importantly there is also an upper limit of £10,000 for small claims proceedings, lower than the upper limit of £30,000 under section 75 of the Consumer Credit Act. And there are court fees to also take into consideration. Indeed the varying levels of monetary remedies available in the

[1] https://www.fca.org.uk/publications/occasional-papers/occasional-paper-no-17-access-financial-services-uk

routes suggested by the SRA is another reason against the proposal to redefine client account. At present consumers enjoy a uniform remedy should something go wrong; a full refund.

Finally, the Panel cannot agree with the passing on of responsibility to another regime, one designed to be a backstop for consumers relying on a financial services product. This is in our view tantamount to abdicating responsibility that must reside with the SRA who are obliged to protect consumers of legal services.

Compensation Fund

The SRA notes that the compensation fund also offers some consumer protection. However, in the Panel's research and report into financial protection arrangements in 2013 we argued that the present arrangements are unsatisfactory. Specifically we highlighted the discretionary nature of the SRA's compensation pay outs. We also highlighted that in some cases there are tests that must be met before a grant can be paid, for example a hardship test, and that the criteria for such tests are not always transparent. Other evidence suggests that claims on compensation funds can be rejected for reasons such as being out of scope.

The assertion that consumers can rely on the compensation fund must be balanced against the SRA's wider proposals to deregulate this area by not making it mandatory for all the individuals it regulates to contribute to the fund. It is unclear whether solicitors who do not operate a client account will be required to contribute into the compensation fund. This will clearly have an impact on what protection is ultimately available to consumers.

Third Party Managed Accounts

The Panel agrees with the SRA's proposal to allow firms to use alternatives to holding client money through the use of a Third Party Managed Account. We agree that this should be an option for firms and not a mandatory requirement. We are also supportive of the criteria outlined by the SRA. However, in our view these are mandatory criteria, not just desirable ones. They are fundamental to ensuring that the proposal works in both the interest of consumers and providers;

- there is independence of the third party from the transacting party
- there is transparency of status and ownership of the third party
- that the third party is regulated by the Payment Services Regulator (under the umbrella of the Financial Conduct Authority)
- that there are clear mechanisms for dealing with disputes
- that there are clear provisions for termination of the arrangements

We hope our comments and concerns serve to improve the thinking behind these proposals. Crucially, we would suggest that this consultation would benefit from including the necessary evidence to justify some of the significant changes it proposes. Without this evidence it is difficult to gauge the impact of the proposals on consumers and other stakeholders.

If you would like to discuss this further please contact Lola Bello (lola.bello@legalservicesconsumerpanel.org.uk).

Yours sincerely

Elisabeth Davies
Chair

SRA Consultation: Looking to the future: Accounts Rules Review

Response by Leicestershire Law Society

About Leicestershire Law Society

Leicestershire law Society was founded in 1860 as an organisation for local solicitors. Its current objects include representing the interests of its members locally and nationally. Further information can be found on our website www.leicestershirelawsociety.org.uk.

Response

Overall we support the published Response of The (national) Law Society. In particular we would endorse the simplification of the Accounts Rules provided the new rules genuinely do simplify financial compliance for solicitors and reduce the administrative burden on their staff without reducing client protections.

We see this as especially important in Leicestershire where, despite the unprecedented local mergers and changes to legal practice over the past few years, both the City and County continue to be served by sole practitioners and other small entities both traditional general practices and more modern niche entities. Many remain family businesses within in particular the ethnic minority communities serving the most vulnerable members of society such as asylum seekers.

Whilst we are not averse to the idea of Third Party Managed Accounts we would like to know more about how these would actually work (payments to Counsel and expert witnesses for example) and interact with the Compensation Fund for example and the current Rules on Residual Client Balances.

We also share the scepticism of The Law Society on the proposed definition of client money, to exclude payment on account of costs and certain disbursements, thus putting client monies at risk and with the greater likelihood of abuse (our region has been dubbed the "Money Laundering and Terrorism capital of the UK after London") and the possibility of clients becoming unsecured creditors for which the statutory "consumer" remedies would be insufficient. That would damage the solicitor brand.

Such changes would also prove difficult for local firms in respect of both the cost of changing the financial systems, staff training etc and in dealing with third parties such as banks who would want to know how much money in the office account was held on trust pending completion of the work and how much was office money available to the firm.

Thus we also endorse the conclusion of The Law Society that before proceeding further with the proposed changes the SRA should undertake research into whether and to what extent the proposed changes will result in reduced expense and administration and the effect on vulnerable service users and groups within the Equality Act protected categories.

Leicestershire Law Society
Non contentious business sub committee
September 2016

Consultation: Looking to the future - Accounts Rules

Response ID:89 Data

2. Your identity

Surname

Lambert

Forename(s)

Linda

Your SRA ID number (if applicable)

Name of the firm or organisation where you work

LLBSolicitors'Services

We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.

Attribute my/our response and publish my/our name.

Please identify the capacity in which you are submitting a response. I am submitting a response…

as another legal professional
Please specify:: SRA Accounts Lecturer and Self Employed Cashier

3.

1. Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

They are simpler
No not easier to understand

4.

2. Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

No
You are assuming that as the Firm has an obligation to pay a third party it is irrelevant who makes such funds available

5.

3. Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

Not particularly
One small firm does
my commercial firm does not
another sole practitioner does not

6.

4. Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

No-On account of fees and disbursements should still be held in client account, banks can not use the client account funds to pay the Firm's liabilities, if in Office they can.

7.

5. Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Yes

8.

6. Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Yes always thought this should just be office monies

9.

7. Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

No should not even be contemplated!

10.

8. If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

It will definitely slow up any process of transferring monies and likely to impede legal work for sale/purchases of land, and other assets.
Cannot see there would be any benefit in using such a system.

11.

9. Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

No for transactional monies.
Use of TPMA's do not benefit clients, our first priority, nor firms in delivering legal services

12.

10. Do you have any views on whether we need to retain the requirement to have a published interest policy?

I think it is unnecessary as we should hold monies for as little time as needs be. As solicitors we are not there to act as a financial institution and interest polices could imply that is what we are trying to do!

13.

11. Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

I understand the need to reduce the number of rules but I think this has been taken too far. Those such as myself who lecture the current rules can see duplication and obfuscation in parts. There also appears to be little thought given to the safety of client funds being held for future expenditure which appals me. Firms with good cash flow will probably be safe enough to cover such future payments, those on the bread line or struggling will not.There are plenty of small to medium sized firms that still look at eh Office account and think we are doing fine, what if most of the funds are really owed or to be owed to third parties. We as a profession should not only be trustworthy with 3rd party funds but also be able to prove by holding such funds separately to the funds belonging to the firm its self.

14.

12. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

You should include Office bank reconciliation's as well as Client Bank reconciliation's on a monthly basis to ensure even the smallest practice is keeping their records up to date and that information recorded is reflecting what has happened at the banks.

15.

13. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

16.

14. Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

Liverpool Law Society Response to the SRA Consultation document – Looking to the Future – SRA Accounts Rules Review

LLS represent over 2,500 members of the legal profession in the Merseyside area. Members are solicitors, barristers and academics. This paper has been produced by the Society's Regulatory Committee. It sets out the LLS response to SRA's consultation, "Looking to the Future – SRA Accounts Rules Review".

LLS appreciates that the SRA's proposals are intended to allow firms to have greater flexibility in order to manage their businesses. Further, that the SRA has also attempted to make the rules simpler and easier to understand in an effort to increase compliance and reduce compliance costs.

At a superficial level, the proposed changes appear to simplify the governance of solicitors' accounts. However, LLS is concerned that less prescriptive rules may prove difficult to administer for both firms and accountants, as they will create uncertainty as to whether a firm is compliant. LLS also query what evidence exist to show consumers of legal services are concerned with the Solicitor Accounts Rules such that making the rules simpler for consumers is good reason for change.

LLS also has concerns that, by effectively removing the need for some firms to have a client account and reducing the number of firms required to obtain an accountant's report, transparency as to the financial dealings of a proportion of firms will be decreased. In turn, this will make it harder to detect any genuine wrongdoing. Reference is made in the consultation to the fact that over 50% of firms that hold client money received a qualified accountant's report in the period June 2012 to December 2013 but only 179 of those were referred for consideration for further regulatory action. LLS ask does that factor justify the changes proposed. Wouldn't an alternative that maintained the current safe guards be to retain the need for annual accountant's reports save in relation to those firms who are currently exempt but for the reports to exclude what are considered by the accountant to be technical breaches?

Question 1
Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

LLS feels that the rules are simpler and, at a superficial level, they are not difficult to comply with. However, there is some concern amongst LLS members that by being less prescriptive that the current rules, the new rules could create uncertainty as to whether a firm is compliant – particularly in more complex situations.

As to the definition of client money Rule 2 of the draft rules, it is not clear in the rules themselves when money received from a client can be paid into office account as being payments the firm's fees. It is noted that para 4.3 refers to providing a bill of costs or other written notification and further that the examples set out in the consultation suggest that an estimate of costs would suffice but the profession would benefit from having the position set out clearly in the rules themselves. Furthermore, how can it be said that fees advanced pursuant to a written notification but have not yet incurred are the firm's money. This clearly raises issues of consumer protection and increases the risk of money being lost if paid away by the firm for other purposes. In the case of litigation this may mean the client no longer has the money to pursue his case, engage experts in time to meet court deadlines and ultimately that the case may be lost. That a client may have recourse to protections if he paid by credit card or to the firm's insurers is not a satisfactory solution as it places the onus of the consumer to take steps to rectify the problem.

There is no clause 2.1(c) referred to at 2.2(a).

There was also some comment by LLS that the new obligation covering interest payments i.e. the requirement to pay a 'fair sum' of interest on any client money held appears to be a watering down.

Question 2
Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

See above LLS see the benefit to firms to assist cash flow. However, there is real concern about the detriment to consumers and the likelihood that dishonest solicitors/ firms that are not financially viable will evade detection for longer.

Question 3
Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

LLS agrees with the use of credit cards to pay for legal services and a number of its members have confirmed that their firms accept credit card payments.

Question 4
Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

We agree that only client money should be held in client account but we are concerned that money paid for work yet to be undertaken, whatever the fee in question, can be treated and used as office money. LLS consider this to be one of the biggest risks of the new changes and believes the change could result in payments made by the clients to meet, say, expert fees being left unpaid, with the result the client is left high and dry. LLS do not believe looking at historical claims to the compensation funds made under the current regime represents relevant data.

Question 5
Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account ? In particular do you have any (sic) the new draft Rule 4.2 (see Annex 1.1)? (sic)

Yes.

As to Rule 4.2 -see above.

Question 6
Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Yes.

Question 7
Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

Yes but further information is required on TPMAs and the LLS believes the TPMA market needs to evolve and improve its offering before there will e any significant up take.

Question 8
If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

N/A.

Question 9
Do you consider it appropriate for TPMAs to be used for transactional monies - particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

LLS has no objection in principle to this but feels that it will be down to individual firms to take a view as to whether they can comply with deadlines in conveyancing etc if they use a TPMA. The concensus

as at the end of last year was that TPMA providers could not responded quickly enough in the case of the volume conveyancing firm.

Question 10
Do you have any views on whether we need to retain the requirement to have a published interest policy?

LLS has no objection to this provided that clients do receive a 'fair sum' as envisaged.

Question 11
Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

See above.

Question 12
Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, please provide further details.

Generally, LLS felt that the profession would benefit from more case studies covering trickier scenarios rather than just relatively straightforward ones.

Question 13
Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

As mentioned above, LLS is concerned that the proposals will result in less overall transparency about the handling of monies by some firms and will increase the risks for consumers.

Question 14
Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

N/A.

Lupton Fawcett

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

This form is designed to be completed electronically—in MS Word. Please save it locally before and after completing it.

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

I believe that the draft rules are more complicated, whilst the end result is clear, the way of achieving this may prove to be difficult. The draft rules may also be difficult to manage from an administration and interpretation perspective.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

On the whole, I agree with the proposal for the change in the definition of client money, but would want some flexibilty surrounding the proposal of being able to hold certain monies in office account as opposed to client account.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

Yes, we accept credit and debit card payments for both client and office account payments. One area that we find difficult to manage is the accounting for VAT on the card charges, for example, a final bill is sent to a client and they opt to pay by card, when the payment is being taken, the client is advised of the amount of the charges plus the amount of VAT that is applicable. A receipted VAT invoice should then be sent to the client accounting for the card charges and VAT, if the client then opts to pay this bill by card payment we again should send a VAT invoice to the client and so on and so on.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

On the whole I find it appropriate that only client money is held in client account, but would want the option to be able to hold monies in relation to, for example, payments on account of costs and/or unpaid professional disbursements in either client or office account. Depending on the individual circumstances of a matter there may be times when it would be beneficial to hold monies in client account as opposed to office account, so a choice is needed.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Yes, I agree with the proposal and believe that the flexibility of mixed receipts being able to be paid into client or office account will be beneficial.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Yes, I believe the proposed definition of client money removes the need of a separate rule for LAA payments.

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

This is not something that we would engage in and I feel that this should not be made compulsory but should be optional. It may be something that smaller firms or sole practioner's may find benefical.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

I have a number of concerns in allowing TPMA's as an alternative to a client account, the first one being the loss of control over being able to make payments from our account, any delays in a payment being made by the TPMA could have serious implications to our clients or our firm. We would also be liable for any mistakes made by the TPMA as we are ultimately responsible for ensuring our clients money is protected and treated correctly as set out in the Accounts Rules but who would be governing the TPMA's and who is their professional body?

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

One of the other reasons we would not engage a TPMA is in relation to property transactions. When a solicitor is dealing with a sale or purchase and is dealing with anothter firm of solicitors an undertaking is given that determines when the appropriate funds will be released. If there is a chain involved in a property deal, to ensure that funds are sent in a timely manor to enable the whole chain to complete on the agreed date the undertaking is given. The undertaking enables all the legal firms involved in the deal to comply with professional conventions as well as the Accounts Rules. My concern is that a TPMA may not comply as legal firms do with the usual solicitors undertakings and if they don't that not all the parties property transactions complete on the agreed date.

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

I believe that there is the requirement to have a published interest policy.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

One of my concerns is the risk of smaller firms being able to breach the proposed rules more easily. As monies may be able to be held in office account in relation to money on account of costs and unpaid professional disbursements, there is maybe the risk that monies could be misappropriately used to fund nominal expenduture.

With regards to TPMA's, there is a risk that they may not act in the way that solicitors do in handling client monies, which comply with the convention of a solicitors practice and not necessarily the Account Rules.

I find the flexibility of the rules regarding the timescales being removed a positive step but believe we would need to determine our own 'timescales' to ensure actions are carried out.

Whilst, the flexibilty of the rules in some ways in a positive thing I believe that from an implementation and management perspective that it could prove to be more time consuming.

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

Improper use of a client account - providing banking services/facilities. I think it would be beneficial to provide a couple of case studies or additional guidance via the toolkit, including what payments can be made on behalf of a client and what payments should not.

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

Generally speaking I agree with the risks and re-dress outlined in Annex 1.4.

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

The proposed changes to the rules may prove to be more time consuming from a management perspective for many firms and it may have been more benefical to target firms that are at risk of non-compliance.

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to consultation@sra.org.uk, by **21 September 2016**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

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The Cube
199 Wharfside Street
Birmingham
B1 1RN

Consultation: Looking to the future - Accounts Rules

Response ID:37 Data

2. Your identity

Surname

Martin

Forename(s)

Malcolm

Your SRA ID number (if applicable)

123741

Name of the firm or organisation where you work

Morrisons Solicitors LLP

We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.

Attribute my/our response and publish my/our name.

Please identify the capacity in which you are submitting a response. I am submitting a response…

on my own behalf as a solicitor in private practice

3.

1. Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

No

4.

2. Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

I do not agree.
This rule should not change.

5.

3. Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

My does accept credit cards for fees.

6.

4. Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

I disagree with draft Rule 2.1 and therefore cannot consider it appropriate.

7.

5. Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

No

8.

6. Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

No

9.

7. Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

No

10.

8. If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

There could be negative unintended consequences associated with this proposal. For example, if firms do decide to opt for third party managed accounts in large numbers, it could have implications for client protections such as the Compensation Fund if the SRA were to decide that these firms did not need to contribute. It is unclear whether professional indemnity insurance companies would offer improved terms for those using TPMAs. Furthermore, it would seem unlikely to eliminate determined theft.

11.

9. Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

No

12.

10. Do you have any views on whether we need to retain the requirement to have a published interest policy?

This policy should be retained.

13.

11. Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

The changes are not needed by the public or the profession.

14.

12. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

-

15.

13. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

-

16.

14. Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

You have not provided data, only anecdote.

RESPONSE TO SRA'S LOOKING TO THE FUTURE CONSULTATION

MANCHESTER LAW SOCIETY

This response is being submitted on behalf of Manchester Law Society ("MLS") members to the SRA's consultation paper "Looking to the Future". By way of background, MLS has a membership of just under 3000 solicitors and firms. It is one of the Joint 5 Local Law Societies along with Birmingham, Bristol, Liverpool and Leeds. MLS has an active COLP and COFA Forum which meets every 2 months.

Initial Overview – A Solution Looking for a Problem?

Before responding to the specific questions in the consultation, we feel it necessary to make a number of initial observations. When considering the responses to the questions, we ask that the SRA considers them in light of these preliminary points:

1. The proposals are a solution looking for a problem. There is a distinct lack of evidence supporting the need for such radical changes. No evidence has been produced to show that the current Code and Principles do not work in practice.
2. The Code and Principles currently do not add to the length of the Handbook significantly. It is the other rules that make the Handbook unwieldy.
3. Having assimilated OFR, the 2011 Code and its several subsequent updates, the proposed revamp is unnecessary and unhelpful. Evolution rather than Revolution is preferable.
4. In an attempt to accommodate solicitors in unregulated businesses and/or in-house solicitors, it is felt that the SRA has forgotten about/not fully considered the impact on traditional solicitors in traditional law firms. An alternative would be for a separate Code/guidance for those in the unregulated sector and some changes to the Practice Framework/Authorisation rules. Please also see para 13 below regarding in-house solicitors.
5. The proposals are premature. It is understood that the Competition and Markets Authority ("CMA") final report on the Legal Services Market is expected in December 2016. Rushing into making such significant proposals at this stage in the knowledge that a highly relevant report is due to be published is cavalier particularly when , what is likely to be an informative report , is awaited.
6. It is very difficult for the profession to respond in a "vacuum" without being able to see the full picture including proposed changes to the Practice Framework Rules , the promised additional guidance and the SRA's enforcement policy, to name but a few.
7. The language in the proposed new Codes is so vague that firms and individual solicitors will spend even more time than they do now trying to work out if they are compliant or not, thus creating confusion and an increase in costs. The example case studies currently provided are at best unhelpful and at worst misleading or wrong.
8. Providing training in traditional firms will become more complex because of the vague language and also who the Code(s) will apply to. It opens up the possibility of conflicts between the firm and employees in situations where the firm seeks to apply a universal standard across the board but an individual solicitor argues that it does not fit with

his/her interpretation of their personal obligations. It will also add to complexity for training non-qualified staff.

9. Once appropriate guidance is provided, we question whether we will end up with a Handbook that is significantly shorter or clearer.
10. In the end, no matter how the Code is drafted, good honest solicitors will do their utmost to uphold the standards set for them (and yet may still find they are in breach because of the vague nature of the Code and/or as a result of the SRA taking a different view on enforcement). Our concern is that the proposed changes will only ultimately benefit the unscrupulous/incompetent/inexperienced.
11. The primary purpose of our regulatory framework is to protect the consumer and the public interest. There is a risk that the current proposals could erode consumer protections and undermine trust in the profession.
12. Why are no questions asked about Legal Professional Privilege? It is a potentially very significant issue and despite addressing it themselves, the consultation does not ask those responding to provide views. Any proposed impact upon LPP should be subject of proper consultation. Our overriding concern is that it will be very difficult for clients to understand the potential significance of the absence of LPP at the time of incepting a retainer with an unregulated business. Potential issues of conflict between the employer and a regulated employee arise with LPP as with insurance.
13. As regards solicitors practicing in-house, it is good that under the SRA proposals the whole code would apply to all solicitors but there are some things which need to be looked at from an in-house perspective. The first is defining who the client is for an in-house solicitor. For example, an in-house solicitor may be employed by an organisation with various group companies so query if the solicitor is advising Topco or all of the companies in the group. What if the in house solicitor is asked to put something in place for the whole group which benefits some companies in the group but could adversely affect other companies in the group? This is linked to the conflict issue for in-house solicitors. More detail needs to be given by the SRA, either in the code or in case studies, to deal with this. Second, the position relating to pro bono advice is still not clear – query if in house solicitors need to get waivers and what about PII? The position needs to be clear as the current regime deters in-house solicitors from giving pro bono advice. In summary, the SRA proposals generate more questions than answers for the in-house solicitor.

Our response is not, and should not be seen as a vested interest criticising the proposals in order to safeguard their profession, or the status quo. Quite the contrary. We understand the potential issues and feel we are especially well placed to comment upon them, and to identify areas of genuine potential concern/risk for clients.

Please see responses to the specific questions attached

Manchester Law Society

21 September 2016

Solicitors Regulation Authority

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

This form is designed to be completed electronically—in MS Word. Please save it locally before and after completing it.

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Yes - However the amendments are not positive, even though they may be easier to comply with.

Where is the SRA's evidence of a need to simplify the rules?

In practice all fee earners and admin staff like rules. These rules are not 'Black and White'

Many if not all IT systems have parameters set in the back ground to ensure compliance with the current rules. Any change will be very costly and again the proposed rules can be misinterpreted and hard to comply with as they can be intrerpeted differently by many practices.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

Strongly disagree with the proposed definition.

These changes put 'Clients funds' at RISK

Problems with 3rd party costs and payments of such will cause problems and disputes.

If disbursement providers start to regularly see money they are entitled to disappear, they may be reticent to provide credit and clients might then need to look at litigation funding arrangements. This could ultimately see a massive increase in costs to consumers.

Furthermore, these proposals are just a charter for teeming and lading. A solicitor could fill any hole in client account with money he/she is not beneficially entitled to.

The rationale of the SRA proposals appears to be that some firms will not need to operate client account at all and /or to remove more firms from the accountants report regime. No figures are given as to how many firms this might affect and what the claimed saving in compliance costs for those firms might be. This is a massive change and there should be evidence of substantial benefits for a significant section of the profession in order to justify this change. the SRA has not provided such evidence and it appears as though the SRA has not properly considered what the "unforeseen consequences" will be.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

No negative comment.

The option to pay by Credit Card has a positive effect on cashflow.

By way of further comment, we are aware that many firms accept receipts from clients using cards but there are still additional charges borne by the firm in accepting these. At a time where fees are constantly being challenged by clients and sometimes reduced as a result, it seems commercially unfair to have to absorb these additional charges too, especially when it's quite easy to make fast payments directly into the Solicitors Client Account by the client. Not all firms make the "admin charge" for using a card, though they should do!

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

No - All mixed funds should be paid into client account.

Any third party costs can then be paid as and when fall due. This ensures the business bank account balance doesn't hold funds that should be paid to 3rd party liabilities

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

No - All mixed funds should be paid into client account.

If 3rd party costs were paid into the business account and the bank foreclosed, these liabilites would still be outstanding.

The same is thought of clients money on account of costs. ie if your client pays £2,000 for costs and in reallity it only costs £1,200, the clients refund wouldn't be made if the bank foreclosed. Therefore the client can not be paid.

These points highlight the lack of security for clients funds

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

If the definition of client money is to be changed, we cannot see any difficulty in dispensing with the specific Accounts Rules relating to payments from the LAA.

The fundamental point as already stated is that we cannot see any reason or justification for the change in the definition.

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

Strongly Disagree - The individual firm has no control over the funds and we feel it would be unworkable.

Firms would have to place reliance on 3rd parties to ensure payments have been made.

Statements and transactions cannot be check by the individual firms, as they would have no access to their systems/data.

There is little if any evidence that a TPMA would be safer or cheaper.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

No Control of how and when funds have been paid.

Limited information availible, especially when advising in conveyancing cases.

There would also be added costs.

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

No - Advice on the receipt/payment of funds is extremely timely in conveyancing matters

Client service would be greatly effected. How can a firm for example, advise of exchange or completion of a conveyancing matter in a timely fashion.

The SRA hasn't published any evidence of how this works in practice.

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

Leave the rule in - As interest is still due

If the rule was abolished then maybe but until that times comes leave.

We all know the rates we receive are poor, this may change in the future.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

Leave as they are.

The new rules are too uncertain and have many grey areas..

As we all know people work better with rules

We could not see any specific provisions in relation to deductions from damages in CFA funded matters. Where there is an ATE policy the contract of insurance is between the insurer and the client albeit the solicitor usually administers the process. So is it a solicitor or client liability? If the solicitor deducts the premium from damages but does not pay the ATE provider is there a shortage? If counsel on a CFA, so part of counsel's fee will be paid by the client out of damages subject to the cap, then is that a client or solicitor liability? New Rules 5.1 (a) and (b) suggest you can only withdraw money from client account for a proper purpose - if it comes in as damages it must at least start life a client money - before you calculate the bill and see what the other side pay, you don't know how much to deduct. This is even more confusing if the TPI ia also paying some of counsel's fee – is that a client or solicitor liability?

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Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

A full comprehensive toolkit would be required. This would need to give extensive guidance and may be too lengthy to review or even work in practice.

we doubt that once detailed guidance has been provided, the rules would be any shorter than they are now.

If these new rules are not implemented there is no need to change.

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

Yes

The points made highlight the risks to clients funds.

Therefore the change in definition of 'Client Funds' should not happen

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

Just review your potential impact as to why these changes shouldn't happen.

COLP/COFA roles were the SRA's way of dropping internal auditors into firms. Audtors are also being used to assess and place value on the internal controls of a firm.

The above all point to others doing the job of the SRA to monitor and control.

Why would we want changes that make 'Client Funds' harder to protect?

Thank you for completing the **Consultation questionnaire form**.

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The Cube
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B1 1RN

Mayor Brown International LLP

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

We have seen the City of London Law Society (CLLS) detailed response to the consultation and wish to adopt the same responses.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

We have seen the City of London Law Society (CLLS) detailed response to the consultation and wish to adopt the same responses.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

We have seen the City of London Law Society (CLLS) detailed response to the consultation and wish to adopt the same responses.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

We have seen the City of London Law Society (CLLS) detailed response to the consultation and wish to adopt the same responses.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

We have seen the City of London Law Society (CLLS) detailed response to the consultation and wish to adopt the same responses.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

We have seen the City of London Law Society (CLLS) detailed response to the consultation and wish to adopt the same responses.

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

We have seen the City of London Law Society (CLLS) detailed response to the consultation and wish to adopt the same responses.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

We have seen the City of London Law Society (CLLS) detailed response to the consultation and wish to adopt the same responses.

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

We have seen the City of London Law Society (CLLS) detailed response to the consultation and wish to adopt the same responses.

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

We have seen the City of London Law Society (CLLS) detailed response to the consultation and wish to adopt the same responses.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

We have seen the City of London Law Society (CLLS) detailed response to the consultation and wish to adopt the same responses.

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

We have seen the City of London Law Society (CLLS) detailed response to the consultation and wish to adopt the same responses.

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

We have seen the City of London Law Society (CLLS) detailed response to the consultation and wish to adopt the same responses.

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

We have seen the City of London Law Society (CLLS) detailed response to the consultation and wish to adopt the same responses.

Thank you for completing the **Consultation questionnaire form**.

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Birmingham
B1 1RN

Mayfield Bell

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Yes, in most respects.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

Yes, the change is a sensible one.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

Our firm is too small to justify setting up arrangements to take credit cards. In practice this is almost never requested anyway.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Yes, subject to the ability to separate out mixed payments.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Yes.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

It is important that these are available as an option, for example to firms which would otherwise not need to maintain a client account.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

The terms of deposit protection under FCA rules should be made clear in the terms of any agreement for the use of a TPMA which the client is asked to accept.

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

There is no need for TPMAs to be mandatory in any area of law but they should be available as an option in all.

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

Yes, firms should be asked to state what their policy is in order that clients are fully informed.

However, the default requirement for firms to pay a 'fair sum of interest' is out of date and should be abolished.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

The requirement in rule 8.3 for a client account reconciliation to be 'signed off' is unclear in meaning and unnecessary in practice as the COFA and the firm's managers are in any event responsible for compliance with all of the Accounts Rules (rule 1.2).

The thresholds in rule 12.2(b) are helpful. However the figures are low and need to be kept under regular review. There should also be a facility for firms to apply for a waiver if the average or maximum balances are exceeded by modest amounts.

The rule in 12.5 is presumably aimed at firms which are closing down. However, as drafted it could apply to firms which simply hold no client money at a particular time. Therefore the drafting should be improved to make the intention clearer.

Also, it is not self-evident why even a firm which is closing down should be required to produce a report if it was previously able to rely on the exemptions in rule 12.2. The requirement to produce a report in these circumstances could be left to the discretion of the SRA if it has reasonable grounds to suspect dishonesty, for example.

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

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The Cube
199 Wharfside Street
Birmingham
B1 1RN

Consultation: Looking to the future - Accounts Rules

Response ID:7 Data

2. Your identity

Surname

Elsom

Forename(s)

Benedict Lee

Your SRA ID number (if applicable)

Name of the firm or organisation where you work

Medical Reports Ltd

We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.

Attribute my/our response and publish my/our name.

Please identify the capacity in which you are submitting a response. I am submitting a response…

on behalf of my firm.
Please enter your firm's name:: Medical Reports Ltd

3.

1. Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

n/a

4.

2. Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

Absolutely not. Experts Fees and disbursements should remain as client money. The proposal outlined will have a devastating effect on experts and service providers who provide services on behalf of clients on a deferred fee basis. If the client account rules are changed as proposed service providers such as ourselves would be unwilling to fund the costs that we currently fund as we would receive no protection in the event of either an intervention or insolvency.

We have experienced this with the intervention of Blakemores Solicitors which if your proposed rules were in place would have left my firm with £327,000 of debt that we could not recover.

The ramifications would in our opinion be that service providers would require payment upfront before offering to undertake work on solicitors behalf. This could lead to consumers being in a worse position as solicitors would need to set up funding loans for clients before instructing experts and counsel in order to pay their fees immediately.

Any loans would be subject to interest not currently incurred meaning the consumers you are trying to protect are at best financially worse off and at worst prevented from accessing legal services.

5.

3. Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

N/A

6.

4. Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

NO as defined previously

7.

5. Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

N/A

8.

6. Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

N/A

9.

7. Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

No

10.

8. If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

N/A

11.

9. Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

n/A

12.

10. Do you have any views on whether we need to retain the requirement to have a published interest policy?

N/a

13.

11. Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

N/A

14.

12. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

N/A

15.

13. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

16.

14. Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

Yes. I have a historical trail of evidence available obtained through the Blakemores Intervention and the subsequent administration.

Menzies LLP

Dear Sirs

Response of Peter Noyce for and on behalf of Menzies LLP

My general comments applying to your Question 2 are as follows :-

* The ring-fencing of all clients' money (as presently defined) is of great reassurance to the general public.
* The present treatment of clients' money assists the Solicitors "trusted relationship" with their client.
* The delegation by the COFA to his / her Accounts team is assisted by the prescriptive nature of the Accounts Rules aided by the inherent disciplines imposed. This ensures that client monies are retained in a area separate, safeguarded, from the Solicitor's or firm's own "office" monies.
* The Solicitor's, law firm's and businesses generally can become less protective of clients money when it is in their own office account, it becomes "theirs". In my experience it is not an area that many businesses are good at, being able to set aside monies relating to deposits etc and recognising deferred income as a concept. The present system sets law firms apart in a very positive way from many other businesses. The existing Rules deal with this very well. The earlier transferring of clients' money relating (falling out of Clients' money definition) I believe is a step too far. Not only due to the risk of these being confused with the Solicitors own money but the likely advanced income recognition where appropriate policies and systems will not be set up.
    - Solicitors already struggle to set aside sufficient reserves for tax, VAT etc and this would simply be a dangerous accounting concept to introduce; I can see the SRA having to compensate members of the public in years to come when Solicitors get in to further trouble having accelerated turnover given this earlier receipt of funds in to Office account. This will lead to a damaged reputation of the legal sector as a whole and to its Regulator and therefore I see the proposals leading to criticism of the SRA for lack of

foresight. Law firms do not fail due to a lack of profit but a lack of cash, the advancement of clients monies in to Office will lead to a confused recognition of these funds leading to incorrect Management Information and cash management issues in the years ahead.

- If we take a scenario where a law firm ceases the confusion over what is and what is not client money will be very distressing for members of the public who assumed their money was safe, again leading to reputational damage to the sector as a whole and ultimately the Regulator.

Yours faithfully

For Menzies LLP

Peter Noyce
MENZIES LLP PARTNER

Middlesex Law Society

Solicitors Regulation Authority
Regulation and Education - Policy - Handbook 2017
The Cube
199 Wharfside Street
Birmingham
B1 1RN

Date: 20th September 2016

Dear Sirs

RE: RESPONSE TO SRA CONSULTATION ON THE NEW HANDBOOK AND ACCOUNTS RULES

The Middlesex Law Society has over 400 firms and membership engaged in a wide range of firms and activities. Also we believe we are home to the highest number of ethnically diverse small firms in the country. We have a high number of firm closures in recent years following withdrawal of legal aid generally and criminal legal aid in particular. We are also concerned to note the high incidence of conduct failures many of which occur in relation to the management of firm's client banking accounts.

In order to retain the trust and confidence of the public we serve our members believe it is essential that there should be no confusion or ambiguity as to what their professional title means. If the title solicitor is presented to the public then whatever the business format it should mean the same thing for any user and carry the same obligations. There is a single basis for regulating the solicitors' profession which ensures that all members comply with the same standards and offer to clients the same level of assurance and protection in case of default. Neither users of services nor practitioners can know at the outset of any case where it will lead. The SRA consultation cuts across this principle at many different levels and undermines public protection.

Whilst our members are in favour of simplicity and clarity in their conduct rules they do not believe that can necessarily always be achieved through brevity. We believe that the measures proposed will harm disproportionately our small firm members, newly qualified members and solicitors from ethnic minorities. We believe this will harm them also in relation to firms with larger resources who may not offer better quality services over the longer term but may compete in the short term. This is made possible by relaxation of requirements for supervision and any effective means of enforcement for breaches of competition and other laws which harm smaller firms and sole practitioners.

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The majority of our members undergo a client account audit each year and that provides an important endorsement for their integrity by setting standards for handling client money. Even if the change in the definition of 'client money' proposed by the SRA were to result in a short term cash flow benefits to our members the potential damage to the reputation of the profession as a whole were it to occur would do serious harm to other members.

Society relies upon the SRA as our independent regulator to put its resources to ensure that it is carrying out its duties to regulate to the best possible standards. Our members who pay for this want it carried out efficiently at the best price possible. We are not persuaded that SRA has in any way accomplished its fundamental purpose or is in any position to take on the objective of expanding its role into unregulated markets. We do not believe that this was intended or agreed under the Legal Services legislation.

We are not convinced that the SRA understands the variety of cultures and practices that operate in the unregulated markets and warn that the public should not be enticed and put at risk by deregulating in the way that is suggested. We do not believe this would solve any of the complex problems caused by withdrawal of legal aid. Our experience in the markets we serve would suggest that 'unmet need' is highest amongst those who are unable to afford legal help of any kind at any price.

At present any solicitor who is qualified can offer services to any unregulated business (without paying any fees to SRA) with the restriction that they should not use the professional title of 'solicitor'. That title is clearly linked to authorisation and a full range of regulatory protection which prevents harm for the public. Watering this down will do nothing to reduce 'unmet need' and everything to facilitate serious harm to the public.

There are many practices that operate in the unregulated market using methods of 'selling' non essential services and charging fees and extras. There are a number of former solicitors - struck off or who have left the profession as regulated firms will not employ them- who operate in these markets. These types of firm are anathema to the regulated profession. For solicitors to compete in this market and operate using similar methods can only bring the reputation of solicitors into disrepute. It does not appear that any research has been carried out into this aspect.

The SRA is, in our view, using its powers to intervene in the legal services market and manipulate regulation to create a new and distinct market. The ethics of a profession is to provide services to meet need –rather than create demand and the proposal is contrary to this principle. A clear example of the way in which business practice has led to harm and mistrust is the case of motor insurance premiums. These are reported to be higher because of a 'compensation culture'. That culture, if it exists, has been fed by an unregulated cold calling and other market practices that lack transparency or accountability. The new proposed code does not prohibit cold calling.

In relation to the Accounts Rules we agree that simplification and modernisation of the rules is overdue. Some of our members were initially attracted to the redefinition of 'client money' but now see that it involves a high risk and that the trust of the public in the profession could easily be harmed by any case default whether accidental or deliberate. We favour clear definitions for 'legal costs' and 'disbursements' that are clear and easily understood and do not throw additional risk on the Compensation Fund. Above all they must be capable of being enforced effectively.

There are many examples in our geographic area of solicitor default and we believe these would be increase and be made worse by the change proposed. Other proposals in the Accounts Consultation we consider to be sensible.

Overall, we judge the proposals to be ill thought through and undeveloped in large areas of crucial importance. This includes enforcement, regulator costs for all the changes and how future funding costs will be allocated between the different parts of the solicitor markets that would be created.

Solicitors should not be sub- divided in their regulation in the way the SRA has suggested and the proposals should be presented as a whole rather than broken down in the hope of gaining limited approval by stages.

The tinkering with the regulatory system in place should cease and the regulator should be focused on running its operations in a transparent and efficient manner at reasonable cost. Relevant information in relation to matters proposed has not been not been provided to the profession. In order to build trust the SRA should disclose the information it has in relation to regulation of the profession under its current Code and tell the profession what it knows of the unregulated markets where it wishes to extend its jurisdiction.

Yours faithfully

ARIYA SRIHARAN

President

Consultation: Looking to the future - Accounts Rules

Response ID:65 Data

Name of the firm or organisation where you work

Minster Law Solicitors

We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.

I/we have a specific confidentiality requirement as follows.: Only publish company name not my own.

Please identify the capacity in which you are submitting a response. I am submitting a response...

on behalf of my firm.

Please enter your firm's name:: Minster Law Solicitors

3.

1. Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Yes

4.

2. Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

We agree with the proposals for a change in definition - and agree with draft definition that has been proposed.

5.

3. Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

We do not currently accept credit card payments - we only have a tiny number of transactions where the client pays the firm directly and therefore the administration time and costs associated with credit card payments is prohibitive for the number of potential transactions.

We have however, previously accepted credit card payments as a payment method and view this generally as a good flexible option for consumers - and we believe that many consumers would generally expect to be able to make payment in this way.

6.

4. Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

We consider that the principle should continue to apply that only client money be held in a client account, with the limited exception around the treatment of mixed payments.

7.

5. Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

We have some concerns about this proposal. We absolutely agree that we need to retain the ability to pay mixed monies into client account, as long as they are allocated promptly (in the current rules defined as 14 days) to the correct account - this is essential for practical purposes.

However, we have some reservations about extending this to being able to pay mixed monies into a business account and believe that this could increase the likelihood of misuse of client funds, or client funds being held for a lengthy period of time in a business account - particularly as 'promptly' does not appear to have been specifically defined in the proposed rules.

8.

6. Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

As this does not impact our firm, we do not have a view on this specific issue.

9.

7. Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

We do not envisage that the use of TPMAs is likely to be appropriate/practical specifically for our firm. However, the use of TPMAs may be useful for certain firms and certain transactions and we do not object in principal to this, provided the appropriate consumer protection safeguards are in place.

10.

8. If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

Not applicable.

11.

9. Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

It may be appropriate to restrict the use of TPMAs to certain areas of law - however we don't envisage that TPMAs would be a practical or useful tool for our firm and therefore do not have a strong view on the specifics of the use of TPMAs.

12.

10. Do you have any views on whether we need to retain the requirement to have a published interest policy?

Whilst we don't believe that the requirement to have a published interest policy is an onerous requirement, and would therefore be happy for this to be retained in the Accounts Rules - as long as this is reflected in the provisions of the draft Code of Conduct of Solicitors as has been proposed, we are fine with that.

13.

11. Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

We believe that the Accounts Rules, as drafted, do achieve the objective of rationalising and simplifying the rules, whilst maintaining appropriate consumer protections and continuing to fulfill the core purpose of ensuring that money belonging to clients is kept safe.

14.

12. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

No.

15.

13. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

We agree with the assessment.

16.

14. Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

No.

RESPONSE TO SRA CONSULTATION –

MONMOUTHHSIRE INC ORPORTED LAW SOCIETY

SRA ACCOUNTS RULES REVIEW

The Monmouthshire Incorporated Law Society represents solicitors and other legal service providers across South East Wales.

We write to respond to the SRA's **Looking to the Future Accounts Rules Review Consultation**.

Introduction

We believe that a detailed impact assessment should be carried out of the proposed amendments to the Accounts Rules prior to any implementation. We are concerned that the increased costs in training and administration in implementing the new rules could be significant for firms. We also wish to guard against any reduction in client protection that may result from the changes and any resultant effect on public confidence in the profession. The costs and loss of important client protections must not outweigh the benefits of the proposed changes

Question 1 Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

We agree that on the face of it, the draft Rules do appear to be simpler. However, they must work in practice and our concern is that shorter, simplified rules can sometimes lead to more confusion in practical situations if there is ambiguity.

Therefore if the new rules are adopted, detailed support and guidance from the SRA should be made available to all firms.

Also a detailed cost assessment should be conducted by the SRA prior to implementation regarding the increased costs of training and administration costs for firms implementing the new rules.

Question 2 Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

We do not agree with the proposed change to allow money paid for all fees and disbursements for which the solicitor is liable to be treated as office money. Although it could be beneficial to certain firms, the loss of client protection is significant and may result in a loss of public confidence in the profession.

Question 3 Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

We believe that most of our member firms are already able to offer clients the ability to pay by credit card However, we do not agree that the protections offered by users of credit cards are an adequate replacement for the client protections lost as a result of the proposed changes to the rules.

Question 4 Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

We do not agree with the proposed change in the definition of client money.

Question 5 Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account? In particular do you have any views on the new draft Rule 4.2 (see Annex 1.1)?

We agree with this proposal although would welcome detailed guidance and support for firms in respect of this change and indeed all areas of change in respect of the accounts rules.

Question 6 Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

We do not agree with the proposed change of definition of client money and therefore we would not support the proposal to dispense with the relevant Account Rules in respect of payments from the LAA.

Question 7 Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

We agree that TPMAs should be allowed as an alternative to holding money in a client account.

Question 8 If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

N/A

Question 9 Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

We note that the use of TPMAs could cause disruption in areas such as property where money must be moved quickly to effect a completion.

Question 10 Do you have any views on whether we need to retain the requirement to have a published interest policy?

We consider that the requirement should be retained as clients should understand any interest to which they would be entitled.

We believe that it would make sense to have de minimis provisions in respect of low amounts of interest (at an amount defined by the SRA) particularly given the exceptionally low rates of interest available presently. The administrative costs involved in dealing with low values of interest can often far outweigh the interest sum.

Question 11 Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules

Our views are reflected within other answers to the questions within this response.

Question 12 - Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

We agree and adopt the view of the Law Society of England and Wales that similar guidance to that prepared by the ICAEW should be developed by the SRA for firms.

Question 13 Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

We are concerned about consumer/client protections, particularly in respect of the proposals to change the definition of client money.

We also repeat our concern that the proposed changes will diminish the faith the public holds in the profession. We would ask that the SRA take the views of the public into account in respect of the proposed changes, and their likely impact, by carrying out a detailed impact assessment prior to any implementation.

Question 14 - Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

No

Nabarro LLP

Question 1:
Yes!

Question 2:
Change the definition of client money
Although this change will benefit a great many small firms by taking them below the threshold for having an accountants report, which must be right, for larger firms this will not be the case. We regularly receive money from our clients, which includes funds on account of our costs as well other liabilities such as stamp duty. Having to treat the single receipt differently would add administrative burden without adding any benefit to our client. Therefore, as long as firms were allowed to continue treating these funds as client money without being in technical breach then I would support such a change.

Question 3:
Currently, we do not facilitate payment by credit cards as the vast majority of our clients are corporations and payments to us come via the electronic banking system. As a consumer, I would wish to pay by credit card.

Question 4
I think greater flexibility is required around this point. It is more important that each firm keeps accurate accounting records so that it is possible to readily distinguish within a client account what the money is for. Firms should then be allowed to hold what would otherwise technically be classified as office money in the client account.
Point 24. This appears to be in conflict with rule 4.3, which seems to suggest that money held to pay our costs should only be transferred to office account after having submitted a bill of costs. Some more clarity around this concept would be welcome.

Point 26. We would not wish to see the Compensation Fund being depleted by having to refund consumers who have paid their fees in advance to firms that have gone into liquidation. Inevitably, the burden will then fall back on the larger firms to underwrite the Compensation Fund by way of additional

contributions.

Payments to third parties.
Although we welcome this change, the arrangement with some third parties, particularly Counsel, is changing so that solicitors are no longer liable for their fees. Where this is the case what would the SRA's position be with regard to the treatment of money on account to settle their fees? Treating monies received for different Counsel differently would add to the administrative burden without adding any value for our clients. Again, as long as each firm had the flexibility to apply their own rules which were in the best interest of our clients then this change would work.

Question 5
Agreed, flexibility is the key.

Question 6
I agree, the LAA should not be treated any differently to any other client.

Question 7
Yes, although, they must be regulated institutions.

Question 8
The risk with TPMAs is that they are likely to need to carry out KYC on our clients, which would be another administrative burden upon the client without adding any value to the client.

Question 9
If it is appropriate to use TPMAs, then there should be no reason to restrict hem to any particular area of law.

Question 10
With interest rates so low it is no longer a major issue, however, higher interest rates could come back, at which point firms should be encouraged to have a policy. It is hardly an administrative burden.

Question 11
Rule 12.2. The SRA need to be very careful about which firms require an

accountant's report. The larger firms are likely to wish to continue for their systems and processes to be audited as this is regarded as good governance, whilst the smaller firms might choose not to. However, it is the smaller firms who are probably a higher risk, albeit for smaller amounts.

Question 12 – Tool kit

Question 13

The protection offered to consumers under the new arrangements is less than under the existing rules. However, other industries where clients are requested to pay money on account are equally exposed so why should legal sector be any different. My concern is one that relates to the reputation of the profession. In the examples given, all relate to either dishonesty or poor management of the business. This equally applies to the other industries who have a poor reputation for taking money on account and not delivering the service. It only takes a small minority to damage the reputation of the majority. Therefore, for this to work, solicitors should be encouraged to ring fence monies received from clients so that in the event of a liquidation, the client does not become an unsecured creditor.

Charles Furness-Smith
Director of Finance
NABARRO LLP

Newcastle COFA Forum
Response to the SRA Consultation
Looking to the Future: SRA Accounts Rules Review
June 2016

Proposed changes

The SRA's consultation document proposes to

- Simplify the Accounts Rules: by focusing on key principles and requirements for keeping client money safe, including:
    - Keeping client money separate from firm money
    - Ensuring client money is returned promptly at the end of a matter
    - Using client money only for its intended purpose
    - Proportionate requirements for firms to obtain an annual accountant's report

  This will put the focus on what is important and allow firms greater flexibility to manage their business. The Accounts Rules will also be simpler and easier to understand – increasing compliance and reducing compliance costs. The Accounts Rules will be supported by an online toolkit which will comprise of guidance and case studies to aid compliance.

- Change the definition of client money: to allow money paid for all fees and disbursements for which the solicitor is liable (for example counsel fees) to be treated as the firm's money. Money held for payments for which the client is liable, such as stamp duty land tax, will continue to be treated as client money and therefore required to be held in client account. The impact of the proposed change in definition is expected to remove the need to have a client account for some firms and therefore reduce the associated compliance costs. The changes may also reduce the number of firms required to obtain an accountant's report through the subsequent reduction in the client account balance.

- Provide an alternative to the holding of client money: through the introduction of clear and consistent safeguards around the use of third party managed accounts (TPMA) as a mechanism for managing payments and transactions.

Background

I am the Legal Sector Partner at Armstrong Watson, a top 35 UK firm of accountants. I have exclusively specialised in acting for solicitors for over 10 years.

I host and facilitate The Newcastle COFA Forum, a grouping of COFAs from various law firms based in the North-East. The group meets quarterly to help each other in their roles; share best practice; discuss appropriate systems and controls to implement; and assess the impact of changes within the profession, including regulatory changes and SRA consultations.

Time has been spent in the Forum meetings for the group of COFAs to review all of the documents provided by the SRA in connection with this consultation. This response is a summary of the discussions held by those COFAs and has been approved by the Forum.

Although this response has been written in the first person – "I", "my" etc., the views are of the Forum in total rather than my own.

Summary

Feedback provided by COFAs at the Newcastle COFA Forum is that they prefer to have the comfort of following prescriptive rules that are contained in one place. They feel that whilst the draft wording of the proposed new Rules is easier to read than the old Rules, it would not be easier to comply with.

The most common response has been "if it isn't broke, don't fix it".

It is not clear how the current Rules prevent competition and innovation or why new entrants cannot understand the Rules when lawyers have done so for many years.

It is not clear why the SRA needs to make the changes as proposed. The proposals note that it is to reduce burdens and cost on regulated firms. I fear that the proposals will have the opposite effect. My reasoning for this is set out in my response. Particularly where judgement is required, lawyers and reporting accountants will be forced to take additional steps to justify what actions they have taken since the black and white requirements are no longer there.

The proposals are likely to have some far reaching impacts, some of which have been identified by the SRA including cost to the SRA, profession and the public plus a loss of confidence by the public in the profession. Other impacts don't appear to have been considered including VAT requirements, accounting requirements and law firm management/financial stability requirements.

Why change something that works in practice to something that may well be a risk to all involved?

Responses to specific questions raised in the consultation

Question 1: Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Feedback provided to me by COFAs at the Newcastle COFA Forum is that they prefer to have the comfort of following prescriptive rules that are contained in one place. They feel that whilst the draft wording of the proposed new Rules is easier to read than the old Rules, it would not be easier to comply with.

The reason that compliance will not be as easy is because of the need to refer to guidance which will be located in a separate location, and because the Rules are not prescriptive; in order to protect themselves they would need to document why action was taken in a particular way.

This has the potential to increase risk for law firms and COFAs and to increase their workloads in order to ensure compliance. Cutting down the length of the Rules by moving guidance elsewhere would be viewed as a backward step that complicates rather than eases compliance.

Point 6 in the Initial Impact Assessment notes that it is *difficult for new entrants to understand and comply with the Accounts Rules* – I would question *why* that is the case. Point 7 in that document notes that *new entrants … may be so intimidated by the detail, length and complexity of the current Rules they are put off from SRA regulation altogether* – this raises the question of the real purpose of this consultation. A reader of the consultation document may conclude that the SRA are more concerned by the impact on their own position rather than that of the public or profession.

Point 13 in the Initial Impact Assessment notes that *simpler rules will make it easier for consumers to understand the key principles* – I would doubt this very much as I do not think that consumers would ever look at the Rules, whatever format they are in.

I agree that the Rules should be simplified by focusing on key principles and requirements for keeping client money safe, although I fear that the proposed approach would increase compliance costs rather than decrease them.

Question 2: Do you agree with our proposals for a change in the definition of client money? In particular, do you have any comments on the draft definition of client money as set out in the draft Rule 2.1 (see Annex 1.1)?

I agree that the Rules could be simplified, particularly the differences between professional and non-professional disbursements.

However, I strongly disagree with the remainder of this proposal. That view is echoed by all in the legal sector that I have interaction with.

Examples provided in the documents accompanying the consultation suggest that "*disbursements for which the solicitor is liable (for example counsel fees)*" should be treated as the firm's money. I feel that it should be pointed out that there are many disbursements like this that the solicitor may pay on behalf of the client, but the solicitor is not actually liable for. The definition should therefore be tightened. It may be easier still for guidance to be provided to solicitors that they make arrangements for clients to pay disbursements directly. This would reduce the use of the client account, rather than treating such funds as office money.

Where the solicitor is responsible for payment of disbursements such as for counsel/experts, but for whatever reason cannot do so, those experts/counsel may stop work. That would adversely impact on the progression of client matters and lead to a loss of confidence in the profession.

Additional guidance would also be required for situations such as where the costs estimated by third party providers do not equal the amounts actually charged. For example, if counsel estimate £1,000 and that is paid by the client to the solicitor and paid into the office account, and counsel subsequently only charge £500. The solicitor will be holding £500 in the office account that is due to the client. This would presumably need to be promptly transferred to the client account or directly back to the client. It would have been much simpler for the solicitor to have retained this in client account from the outset.

The main reason that I do not agree with this proposal, however, is that I am involved in a large number of law firm turnaround/insolvency/closure/orderly wind up projects. I see first hand the desperation of law firm managers in such situations and how the funders/creditors react. All parties naturally attempt to protect their positions. The law firms use all money in the office account to attempt to stay within facilities, whether that money is due to a third party creditor or not. Blocks are routinely placed on making payments to creditors, particularly where they are not *business critical*. Having additional amounts in the office account that are due to creditors would only increase such problems. The law firms would see it as their cash, as would the funders. The disbursements that should be paid on behalf of clients would therefore potentially not get paid. The clients would suffer as client matters stall and it could cause more law firms to fail due to increased public knowledge and reductions in further instructions.

The knock-on impacts could be an increased number of interventions required, thus costing the SRA and the profession more, and would also reduce the faith of the public in the profession generally. It may be that there are other means of redress, but those means take time. Time is usually one thing that clients of law firms do not have; they require attention to the completion of their matter there and then. If this situation is replicated a number of times as a direct result of a change in Rules put forward by the SRA, there is the potential for a huge loss of confidence of the public in the profession. Where the redress requires payment from the Compensation Fund, that would ultimately add risk and cost to the profession as a whole.

Where such money is held in the client account, there is protection against creditors accessing that money. This in turn would allow matters to proceed and for clients to receive the service that they are expecting. Point 24 in the Initial Impact Assessment notes that *consumer confidence in the legal services market is underpinned by an expectation that client money will be safeguarded* – whatever the Rules are, that expectation will not change, but the reality may well do.

The SRA will need to consider what would happen in the scenario that a client makes a payment to a law firm in advance of the work being done and it is paid into the office account. The client then decides to instruct another firm and requests repayment. Due to the firm being in financial difficulty, the bank may prevent the money from being repaid to the client. The client may not be able to afford to pay another firm and therefore cannot receive the legal assistance that they require.

Point 18 of the consultation paper notes that *under the current definition of client money, we treat fees paid in advance (which is client money) differently to fixed fees (which are not)* – this is factually incorrect. All fees paid in advance, including those for fixed fees are currently client money, and for all of the reasons set out in my response, quite understandably so. The difference is with *agreed fees*, not fixed fees. *Agreed fees* do need to be fixed, but there are other requirements in addition – they need to be evidenced in writing, not be capable of being uplifted and are not dependent on completion. The key part of that is not dependent on completion – i.e. the money is due to the firm no matter what. Clearly that is completely different to money being paid in advance that may need to be returned to the client if the work is not completed.

Point 33 in the Initial Impact Assessment notes that *the potential detriment to consumers is therefore likely to be the ease to redress in the event that something goes wrong* – that is a big risk as outlined above, particularly due to the time it will take for the redress which needn't have been required had the Rules not changed. Point 33 continues to say that due to the lower number of firms that are intervened in *it would be disproportionate to design policy based on the risk that something goes wrong* – I would suggest that the low number of interventions and occasions where it does *go wrong* is because of the Rules as they stand now. Changing the Rules in the way proposed is likely to result in more *going wrong*. Point 33 continues to say *the data on interventions also reveals that the current detailed rules do not effectively mitigate against risks to client money* – nor do they force interventions, the proposed Rules may well force more interventions at greater cost to the SRA, profession and public.

Point 35 in the Initial Impact Assessment notes that there are many cases brought before the SDT regarding firms in financial difficulty where they have failed to pay professional disbursements. The proposed new Rules will increase the risk of what is already happening in those SDT cases.

There are other knock-on effects that it is not clear whether the SRA are aware of, or have considered:

VAT issues
If money received for solicitors fees is paid to the firm in advance of a bill being raised, and is now required to be treated as office money, output VAT would be due to be paid to HMRC on receipt, whether or not the solicitor raises an invoice at that point. At present, where such receipts are paid into the client account, it would not trigger such an amount due to HMRC.

The firm would therefore need to either incorporate a manual adjustment in their VAT return, which would be costly in terms of the time required to do that, or raise an invoice as the amounts are received. The invoice would then trigger an amount due to HMRC in their accounting systems.

This proposed change could also be viewed as the SRA encouraging something that they had previously published was a 'bad behaviour' in terms of financial stability of law firms, where they discouraged situations where VAT received by law firms is treated as cash received and is used for other purposes.

Efficiently managing the firm
As the co-author of the Law Society toolkit on financial stability within law firms, I advocate that when bills are raised, law firms monitor recoveries on those bills. They should be comparing the amount of the receipt against the amount of time invested at their charge out rate. If, per the VAT section above, invoices are raised simply to comply with VAT requirements, it will be far more difficult for firms to monitor recoveries as their bills are raised, particularly since those bills may be raised before the work is carried out. This will make the management of firms more difficult, potentially adding to financial instability risks.

Accounting issues – deferred income
If invoices are raised before work is performed, then accounting standards may require an adjustment to be made to the accounts to show those invoices as deferred income. The adjustment would effectively reduce fee income/turnover by the amount of those invoices raised in advance and reflect the amount as being owed back to clients. This would involve greater cost for the law firms in terms of their own accounting teams but also in the amounts paid to their external accountants.

Question 3: Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, would you use a credit card to pay for legal services? If not, why not?

Most law firms that I deal with do not have demand from clients to pay by credit card. That is because the payment amounts are commonly too large for the amount of credit available and also because generally the cost of processing credit card payments is passed on as a charge to those paying. Even a small percentage added to the cost, when the cost is large, is a deterrent from payment by credit card.

In addition, I have been informed by solicitors that their credit card providers will not allow them to receive payment for disbursements by credit card; only for their own fees.

Question 4: Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Agreed. Flexibility to have bespoke arrangements with clients is welcomed, although that flexibility is actually already in place under the current Rules.

Question 5: Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account? In particular do you have any (views on) the new draft Rule 4.2 (see Annex 1.1)?

This would depend on how *promptly* is defined. The main reason that I see for segregating office and client money is to protect client money. If client money is allowed to mix with office money in either the office or the client account, then it would be difficult to protect the client money if, for example the law firm becomes insolvent. It would be easier to have the term *promptly* defined under the various circumstances in which it is used in the Rules. That way, compliance would be easier to achieve. There may then be breaches of the Rules, but it would be down to the compliance officers or reporting accountants to decide whether the breaches were serious enough to report to the SRA or not.

Question 6: Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

The current Rules in respect of LAA matters are different to the main Rules due to the lower risk to clients where transactions are with the LAA rather than the public at large. If the Rules are to change as proposed, then I see no reason for the LAA Rules to be any different to those new Rules.

However, for the reasons set out above, I do not believe that the Rules should be changed as proposed, and in which case, there would still be the need for reduced requirements for LAA matters as in the current Rules.

Question 7: Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

I have no strong views other than reference to point 41 in the Initial Impact assessment where it notes that *the availability of TPMAs may offer improved security and protection to consumers* – Solicitors may feel justifiably aggrieved by that statement as it may infer that the TPMA providers are more trust worthy or knowledgeable than Solicitors.

Question 8: If not, can you identify any specific risks or impacts of allowing TPMA that might inform out impact assessment?

N/A

Question 9: Do you consider it appropriate for TPMAs to be used for transactional monies- particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, way?

N/A

Question 10: Do you have any views on whether we need to retain the requirement to have a published interest policy?

There should be a requirement for firms to have an interest policy and to agree it with clients. If that requirement is elsewhere in the Code, then there is no need to replicate it in the Rules.

Question 11: Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules (see Annexes 1.1, 1.2 and 1.3)?

Point 2.2	How is *promptly* defined?
Point 2.4	How is *promptly* defined?
Point 5.2	Should this not be extended to state that the withdrawals are in line with the policies of the firm and therefore have a requirement for such policies to be in place?
Point 6.1	Who is responsible for the correction of breaches?
Point 8.2	Can guidance be provided on the format of the statements received? Is electronic acceptable?
Point 8.3	Can guidance be provided on the format of the reconciliation statements? Should the Rule be extended to note that reconciliation must be *reviewed and* signed off by the COFA?
Point 11.2	If firms are required to obtain regular statements from the TPMA and ensure that they accurately reflect all transactions on the account, the law firm will need to continue with the accounting and controls that they would if they had not outsourced to a TPMA and there would be no loss of administration, just additional costs to be paid to the TPMA provider.
Annex 1.3	Current Rule 27 "transfers between clients" appears to have been removed, what are the proposed revised requirements?

Question 12: Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, please provide further details.

Annex 1.5

Point 4	Why are withdrawals to make payments to charity not in the main Rules?
Point 6	Why are residual balances due to clients not in the main Rules?

Residual balances
This appears to be the most mis-understood requirement of the current Rules. Guidance is required on the requirements, particularly if it is not covered in the main Rules. For example, current Rule 29.2 requires a separate ledger for each and every client. That appears to be replicated by the intention of the proposed Rule 8.1(b). Many firms combine payments to be made to charity in a single ledger before making the payment. This would be a technical breach of current Rule 29.2 and presumably the proposed new Rule 8.1(b). Specific examples of what can and cannot be done would be helpful.

Question 13: Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

I strongly disagree, as set out in my response to Question 2 above. The Annex notes that the examples raised are likely to be very rare. I do not think that they will be very rare. If the Rules are changed as proposed, they may become far more common.

Question 14: Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

Nothing to add.

Conclusion

In conclusion, I applaud the ambition to simplify the Rules, but the changes to the definition of client money will result in money being held in the office account which will cause complications leading to additional cost to the SRA, the profession and the public. There will also be a loss of confidence by the public in the profession. I would strongly encourage the SRA to re-think at least that part of their proposals.

Andy Poole
For and on behalf of The Newcastle COFA Forum
20 September 2016

Newcastle upon Tyne Law Society

Consultation SRA Accounts Rules 2017

This response has been submitted on behalf of the
Newcastle upon Tyne Law Society, College House, Northumberland Road, Newcastle upon Tyne NE1 8SF. Telephone 0191 2325654 and
e mail: mail@newcastlelawsociety.co.uk

We are a long established independent local law society, with approximately 900 members operating in the north east of England covering the area from Berwick upon Tweed in the north to Durham City in the south. We have members who work in large city centre practices and those who are rural sole practitioners. We have members that work in firms that deal with legal aid and those that do none at all, together with a few highly specialised practices dealing with narrow areas of work. We do not object to our response being published.

Kate Goodings
Director of Operations
Newcastle upon Tyne Law Society
19th September 2016

1. **We support and endorse the Response to this consultation submitted by the Law Society of England and Wales and dated September 2016**

2. **We have the following additional comments to make.**

3. The aspiration in every sector is to have simple rules that are easy to operate. It is a fact however, that rules which people have learnt to operate over time become simple through experience and familiarity. This is the position we are in now. People know how to operate the existing rules and the rules fulfil their purpose. Changes should not be made unless there is a clear and definable benefit likely to result. We have not seen compelling evidence of a need to change in this the consultation.

4. It is very important that the effect of the proposed changes on the operation of existing accounts software must be established and published as a prerequisite and before any changes are actioned. If firms are going to be embroiled in costly updating exercises to their IT and current processes and programmes then the intended “simplification” becomes an actual complication.

5. We do not agree with the change to the definition of client money. We are unsure of the practical value of the benefits that are meant to result from the proposed changes. As stated above we are concerned that this proposed change might impact upon current accounting software leading to additional expense for the firm. We consider the point regarding insolvency and professional disbursements outlined in para 23 of the Law Society Response (September 2013) merits careful consideration.

6. No objection for clients to pay their bills by credit cards. The protection afforded by the Consumer Credit Act 1974, however, was always intended as an “add on” to those protections that already existed, not an alternative or replacement. Many people choose not to pay by credit card because of the small extra charges that are imposed across many sectors or clients may not have a credit card at all. Bear in mind that a £14bn class action has recently been lodged against Mastercard alleging unlawful charging policies No one knows how this may impact on consumer behaviour in the future. We would also like to see an answer to the point made in para 31 of the Law Society Response (September 2016). It is important to consider the impact on compensation fund contributions going forward.

7. We do have any objections per se to the use of TPMA’s but we do not think they are appropriate for transactional monies especially in the field of conveyancing.

19th September 2016

Consultation: Looking to the future - Accounts Rules

Response ID:79 Data

2. Your identity

Surname

Khan

Forename(s)

Ahsan

Your SRA ID number (if applicable)

330870

Name of the firm or organisation where you work

Shoosmiths LLP

We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.

Attribute my/our response and publish my/our name.

Please identify the capacity in which you are submitting a response. I am submitting a response…

on behalf of a local law society

Please enter the name of the society.: Northamptonshire Law Society

3.

1. Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

No. There needs to be further guidance in respect of the change to the definition of client money particularly in respect of what constitutes costs and disbursements. Smaller firms will find it difficult to implement the new Rules and the costs of training and changes to IT systems and software to incorporate the changes will need to be considered.

4.

2. Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

Guidance and clarity is required as to what exactly constitutes client money. Further details need to be given as to what protections are in place to protect clients.

5.

3. Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

Not everyone has a credit card and so it does not appear to be a widely used method for paying for services. Also, there will be costs to the firm by their Banks for taking payment by credit card. The firm may need to charge that cost to the client making payment by credit card undesirable. It would not be appropriate for clients that are in financial difficulty, such as clients requiring debt related advice, to pay by credit card and increase indebtedness.

6.

4. Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

The definition requires greater clarity and guidance and so there is always the problem that if funds are

mixed by mistake, the firm would be heavily penalised.

7.

5. Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

The difficulty here is what is meant by "promptly" and further guidance will be needed. Firms would incur costs of training staff and implementing processess and procedures in respect of the changes.

8.

6. Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Payments from the LAA does not need any specific Account Rules but clarity will need to be given that payments from the Legal Aid Agency are classified as client money under the new definition.

9.

7. Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

This must be an option rather than a requirement. However, there is unlikely to be a take up of this, particularly from small firms. It is not known how much it will cost for firms to use TPMAs. It may be useful to have a cost benefit analysis. Also, firms will want to know how it fits with the compensation fund and what safeguards are in place for protecting monies. Also, firms will want to know who the regulator of such an account will be.

10.

8. If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

There may be a risk that any misuse is not discovered in a TPMA. It is not clear how any insurances for this money will be underwritten. Ultimately, there is no guarantee that the money in TPMAs is any safer than in a client account.

11.

9. Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

There may be difficulties with conveyancing as conveyancing transactions rely on speed and ease of access to monies, particularly when complying with undertakings.

12.

10. Do you have any views on whether we need to retain the requirement to have a published interest policy?

No view

13.

11. Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

No

14.

12. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

Not that we can think of at this stage

15.

13. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

There should be guidance and case studies for small firms. New firms should have easy access to support and guidance.

16.

14. Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

The impact should be considered on existing firms, clients and costs of training and new software. Perhaps free training ought to be offered for small firms.

Ren Buss

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

We very much concur with the stated objective of simplifying the Accounts Rules and making them easier to understand for our Clients, Members and Employees.

Focus should be on risk of loss to client rather than prescriptive process that is ineffective or inefficient and which complicates and delays client administration without adding benefit.

The rules are shorter and initially appear simpler and clearer. However without visibility of the proposed additional guidance documents (notably the proposed "Toolkit" plus the finalised revisions to the linked Codes of Conduct) it is difficult to form a view as to their adequacy, overall comprehensibility and difficulties likely to arise as to practical application and interpretation.

Should these changes be adopted there are already obvious potentially significant practical difficulties in implementing such a radical change to Accounting process and we cannot afford to ignore these. There is proven difficulty in persuading international suppliers to develop UK regulatory customisations to core Legal Practice Management Systems on a timely basis. Significant system / processing changes would need to be effected to support the proposed changes as detailed below and the complexity of change required to both system and manual process and associated time and cost, need to be considered.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

No. The proposed change adds significant practical operational difficulties and potential confusion for Clients, Employees and Members. We are concerned that it is counter to the proposed objective of clarity and simplification and potentially increases financial risk for clients and disbursement suppliers.

The idea that all monies received in respect of payments for fees and for payments to third parties for which the Firm is liable, is office money is practically very difficult to implement.

Firstly the tax issues - if monies received relate to services not yet billed then a VAT point is triggered on receipt of funds and our systems have to be capable of recognising and recording the associated liability. Alternatively, we will need to put in place systems to recognise if a receipt re Fees and Disbursements that are the Firm's liability, have not been billed and to ensure that a bill is raised as soon as monies are received into Office.

Monies received for services not yet delivered will need to be recorded as Payments in Advance to support Accounting Revenue Recognition principles and our systems will need significant adjustment to enable this to occur and to maintain detailed Client by Client records to validate the Advance fees liability.

Accounting for monies received for disbursements not yet billed will pose similar issues with even more complexity if we have to determine if we have already received the service or even already paid the related suppliers invoice.

The proposed distinction between disbursements where the Firm is liable (Counsel Fees) and where the client retains liability (Court Fees, SDLT) is in practice far from clear. How can we be sure that an expert/ supplier has been instructed as agent or principal and therefore whether funds should be categorised as Office or Client?

The disbursements that cause operational difficulty and inefficiency are large volume low value identical sums as with Land Registry and Court Fees. We would welcome the opportunity to process receipts and payments practically through Office Account within the overriding principle that no loss to client should arise as a consequence of our actions.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

We accept Credit Cards in limited specific circumstances ie on behalf of a client when collecting Rent arrears and where the client is fully aware that payment may be rescinded.

We have no intention to expand their use. In part this is because of inherent uncertainty and the fact that we have no redress should the Credit Card Company revert to us and enforce clawback. Our liability is unlimited should fraud be alleged but a customer can dispute a "customer not present transaction" for up to 6 months. If this exposure could be mitigated through our bankers, then we may be more positive towards payment via credit card.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Yes, however given the proposed revised definition of Client monies and the afore mentioned uncertainty of the nature of disbursement items, there are issues with the new definition.

We should make every effort to maintain records of sums we are holding on behalf of clients accurately and contemporaneously and to provide full analysis as required.

However it is also no loss to the client if we delay moving funds from Client to Office in settlement of our bills.

Similarly it is no loss to our client if (under the proposed new rules) we choose to hold funds received to meet the transaction related disbursement cost for which the Firm is liable, in Client account.

The current Rule 17.3 requiring money earmarked for costs (once the bill of costs or other written notification of costs incurred has been delivered) to be transferred out of client account within 14 days, is unnecessarily prescriptive. It requires significant additional work to monitor and accurately determine a situation which is actually to the client's (interest) benefit and the Firm's cashflow disadvantage. The proposed new rules restate this process (4.3(a)) but do not give any indication of prescriptive deadline - "promptly" is presumably relevant.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Yes, we should continue to encourage funds to be paid into the correct account and to then allocate and transfer to the correct place promptly if this proves to be necessary.

Please note the apparant inconsistency of proposed Rule 4.3 which, as drafted, requires continuation of current process (ie deliver bill before taking client funds in payment) which is now inconsistent with definition of Client Money. This states Client Money should exclude "payments for your fees and payments to third parties for which you are liable" So if we become aware that "Client" funds as recorded relate to fees, even if unbilled, we should be moving those to Office. How does this requirement / remedy of breach interact with rule 4.3 which continues the existing requirement that bill has first to be raised and delivered before funds can be transferred to Office?

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

We do not deal with Legal Aid matters so have no current detailed knowledge

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

Whilst understanding that this could benefit some smaller firms by removing the administrative requirement to maintain in house Client Accounts we are concerned about the practicalities of administration and maintaining effective control.

What level of control and compliance would rest with the solicitor (Firm) with whom the associated legal transactional work was placed ie in respect of safeguarding funds from misuse, residual balances etc.

How would we operate effective client service provision with an intermediary in place? What visibility of transactional data would there be and where would responsibility lie ie transaction delivery, AML etc

Would we have to effectively supervise the transaction "one removed" ?

What would the increased costs be for the client? How would we ensure we were not providing Financial Advice in suggesting use/ being connected with a particular TPMA?

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

See above

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

See above

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

This should be retained to achieve clarity for the Client. However it should be in a form that changes to interest rates can be effected without the need for a client wide notification process.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

The proposal as drafted will not achieve the stated objectives

Additional specific issues:

Rule 3.3 We welcome specific inclusion of reference to "not use a client account to provide banking facilities to clients or third parties" In practice this current rule has been extended to also cover Office account and recogniton of that in the new rules would be helpful.

Clarification of the extent of the rule would also be helpful as this appears to precisely replace the current rules (14.5) where the SRA view of what constitutes "providing banking facilities" through a Client account appears to be increasingly prescriptive and not such as to encourage innovation and modern business practice.

For example where we provide a similar service to a large client (repeat property purchase, or claims advice etc etc) under a Group engagement letter, we have been told that we must only hold client funds for specifically identified matters ie we cannot hold funds in client that will be needed as soon as a new opportunity / instruction is identified. This seems inconsistent with the requirement which states that client account movements must be in respect of an underlying transaction or a service forming part of normal regulated activities which of course they are.

This restriction is preventing appropriate timely delivery of transaction service, unless the Firm funds the required disbursements in breach of SAR rules, because of administrative lag ocassioned by the client's own internal processes. Thus an opportunity can be lost or delayed unless a decision is taken to provide interim funding.

Rule 3: Client Account - should we not also include acceptability of Bank or Building Society located in Scotland? This is a nuisance when we operate service that is UK wide. Exclusion of Scotland also seems inconsistent given development of TPMAs

Part 3 Section 9 What are we reconciling to with regard to Joint Accounts and Client's own accounts - we do not hold records of Cash Book Balance and Client Ledger Total for Joint Accounts that we do not control or for Client's own accounts.

There is increasingly an issue with obtaining monthly statements from the banks as their production only occurs if a transaction occurs on the account or an interest payment is triggered. With falling interest rates we are increasingly finding statements are not produced monthly.

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

Have not had opportunity to review tool kit so cannot comment

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

No Think you are overstating the practicality of TPMA's and do not fully apprecaite practical difficulties of changed definition of Client monies and disbursement liability aspects.

The environment and regieme you are proposing is welcome in its focus on risk and flexibility of delivery but as drafted the rules have gone too far away from the previous position. Clear Guidance is required which will enable us to deliver a sufficiently robust regulatory environment without disadvantaging our Client.

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

No

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to consultation@sra.org.uk, by **21 September 2016**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

Solicitors Regulation Authority
Regulation and Education - SRA Accounts Rules 2017"
The Cube
199 Wharfside Street
Birmingham
B1 1RN

Richard Fearnley

Dear Sirs

I have considered the consultation paper and draft rules. I will leave it to others more directly affected by the proposals to comment on their substance. My own purpose in commenting is to point to the need for changes to the form/wording of the draft rules.

My particular concern (as someone who gained considerable experience of drafting rules and orders that became statutory instruments when I was employed in the Civil Service) is with respect to the attempt in the draft rules to create obligations by language which merely describes what a person does. For example, in linguistic terms, "You ensure that client money is paid promptly into a client account..." in rule 2.2 is just a statement about what someone ('you') does. If they do it, the statement is true; if they don't do it, the statement is false. But that, in linguistic terms, does not of itself create an obligation.

The general convention in rule drafting terms (as with legislation generally) is that 'must' needs to be used to create an obligation, as in 'you must ensure that client money is paid promptly into a client account'. My own view, then, is that the word 'must' should be inserted into every rule that at present merely describes an action or behaviour. This is for clarity as well as following normal drafting practice. Moreover, these rules are addressed primarily to solicitors and others in legal practice, so that the 'must' usage is one that they will be vastly familiar with and understand instantly because of their experience and training (which is surely what clarity is about). I attach a file (SAR 1A) showing the draft rules with tracked amendments illustrating this approach. In fact, as becomes clear from a full reading of the draft, those preparing it have demonstrated that this is actually the natural approach anyway, because the 'must' usage has been retained in a number of places, thereby giving rise to an inconsistency in approach between different parts of the draft.

If, despite the above, there is an insistence that the rules drawn so as to describe actions or behaviours rather create obligations are to be preferred (though I cannot think why), then (a) there needs to be some wording that requires the reader of the rules to translate described actions and behaviours into obligations, and (b) the draft should be reworded to remove the inconsistencies that have been retained (see the

second attached file (SAR 1B) for an example of this). Otherwise there is a risk of creating uncertainty due to the general rule that a change of approach to the wording is taken to herald a change in meaning.

The attached files also contain one or two further suggestions/comments.

Richard Fearnley
Retired Solicitor/Civil Servant responding for myself only

Consultation: Looking to the future - Accounts Rules

Response ID:23 Data

2. Your identity

Surname

Wallis

Forename(s)

Richard

Your SRA ID number (if applicable)

Name of the firm or organisation where you work

Myerson Solicitors LLP

We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.

Attribute my/our response and publish my/our name.

Please identify the capacity in which you are submitting a response. I am submitting a response…

in another capacity
Please specify: Legal Cashier

3.

1. Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Yes

4.

2. Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

Not completely - from a procedural standpoint it will be far more difficult for legal accounts staff to determine the nature of an office credit and whether it is valid.

The current system of money being held in client until proven to be office money seems much safer and easier to police than the inverse.

5.

3. Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

We do accept card payment which we find a useful and integral part of our credit control process

6.

4. Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Yes - with the proviso that I believe money on account should still be considered client money

7.

5. Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

This would make life easier in terms of worrying about which bank details are given out but without clarity of office credits may be more difficult to police

8.

6. Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

yes

9.

7. Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

There is always the fear that without complete visibility and management of client funds errors can occur which are out of your control.

As a Legal Cashier I would be concerned that responsibility would ultimately fall to support staff and I would feel uncomfortable attempting to juggle transactions where I had no sight of the funds or ultimate control of them.

The more stages you incorporate in to a transaction the more likely an error will occur

10.

8. If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

My main concerns would be

1) Lack of sight of funds
2) Lack of control over the funds
3) An overly long chain of instructions to request transactions which may result in greater scope for error

11.

9. Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

Please see my previous repsonse

12.

10. Do you have any views on whether we need to retain the requirement to have a published interest policy?

I think it is unnecessary to specify in the rules

13.

11. Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

In general I feel the more streamlined rules are an improvement.

As a Legal cashier I worry that we have enough trouble at times getting Fee Earning staff to adhere to the current rules and this is definitely a "watering down" of those rules in terms of specifics. It is very hard for support staff to argue their case already and if the rules become one large grey area it may cause the role to become untenable.

Currently in many law firms it is only due to the diligence and experience of the accounts staff that breaches do not occur. I fear that as the rules are diminished so the quality of accounts staff will be proportionately "dumbed down" by law firms which ultimately will place client monies at greater risk.

14.

12. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

15.

13. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

16.

14. Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

I would strongly advise getting as much input as possible form the legal support staff who ultimately will be ones applying and policing these rules.

Riverview Law

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Yes.

Riverview Law, as an ABS, welcomes the SRA's proposals to allow regulated businesses to have greater flexibility in order to manage their businesses and also by making the rules simpler and easier to understand we agree this should help to increase compliance and reduce compliance costs.

The definition of client money is drafted more clearly and is simplier to understand. The draft Accounts Rules are now more aligned to how a commercial business would practice.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

Yes. We agree with the wording too as it is better aligned to the firm running as a business in terms of cash flow and simplifying the process in terms of receiving client money.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

We do offer credit card payments to customers.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Yes we agree that it is only appropriate that client money should be held in a client account.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Yes, we agree with the proposal on mixed monies.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

No comment as we do not receive LAA payments.

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

Yes we agree.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

Not applicable as we agree with the proposal.

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

Yes as long as the TPMA is FCA regulated. However there may be some practical issues that need to be resolved such as speed of access to the monies which may make use of TPMA not suitable for certain transactions such as conveyancing.

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

We do not believe that there should be a requirement for a published interest policy. It should be left up to the firm to decide whether to publish or not, as it may or may not be appropriate depending on the customer base and area of law that the firm is practising in. Our only observation is that we favour tansparency with the customer and believe that customers should receive a 'fair sum' so as not to be disadvantaged by thos proposal.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

We do believe that the changes proposed are fit for purpose, approporaite and proportionate in order to reduce the red tape and burden in terms of administration of client monies.

The biggest point is the significant impact of VAT. By requiring cash to be transferred to the office account from the client account at the point of deposit, the VAT becomes due at that point. This could have a significant impact on the cash flow of the business. It would be better to allow funds to stay in client account if the practice want them to i.e. make the timing of the transfer at the discretion of the business.

Second point – Without a copy of the guidance then the consultation is very limited as the guidance could be very strict and more cumbersome than the current rules. We need to see it before we can fully understand what the changes might be.

Generally a move to treat solicitors funds the same as any other supplier is fine but things like 14 day transfer rules shoulder tightened up to 3 or 5 days.

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

More case studies would be welcome, especially on more difficicult scenarios.

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

No comment

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

No comment

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to consultation@sra.org.uk, by **21 September 2016**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

Solicitors Regulation Authority
Regulation and Education - SRA Accounts Rules 2017"
The Cube
199 Wharfside Street
Birmingham
B1 1RN

Our ref: NATS/
Your ref:

25 Farringdon Street
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Solicitors Regulatory Authority
Regulation and Education – SRA Accounts Rules 2017
The Cube
199 Wharfside Street
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B1 1RN

rowan.williams@rsmuk.com

21 September 2016

Dear Sir or Madam

Consultation: Looking to the future – SRA Accounts Rules Review

We welcome the opportunity to comment on the proposals set out in the SRA Accounts Rules Review.

We are generally supportive of the movement towards a more principles based approach to the SRA Accounts Rules and of the proposals to provide a degree of simplification to the rules.

We agree that the SRA Accounts Rules are in need of revision. However, we believe that in amending the SRA Accounts Rules there is an opportunity for the SRA to provide a clear conceptual framework which sets out the over-arching objective of protecting client money, identifies what the SRA considers to be the greatest risks to client money and demonstrates how the draft SRA Accounts Rules 2017 achieve the objective by addressing the identified risks.

We are concerned that this opportunity to provide a clear link between the Rules and the risks to client money may be missed. The draft SRA Accounts Rules 2017 are considerably shorter than the SRA Accounts Rules 2011 but seem to have been drafted as if simplification and shortening are the overall objectives rather than drafting new rules that meet the objective of protecting client money by addressing the risks. In our opinion one way of reducing the need for detailed prescriptive rules would be for the SRA to require firms and individuals to whom the SRA Accounts Rules apply to assess and document how the risks to client money identified by the SRA apply to them and to document their response to those risks, such as how their systems and controls address the risks.

It would be helpful if the SRA explained its rationale for the proposed change to the definition of client money such that monies which relate to payment of solicitor fees fall outside of the definition of client money. If the purpose of this proposed change is to align the treatment/status of such transactions with similar equivalent arrangements for advanced payments in the wider commercial world then this should be stated. It appears as if the motive for this change is to try and reduce the instances of non-compliance with the SRA Accounts Rules and the number of firms within the scope of Accountants' reports. Whilst we are not necessarily opposed to the change, these do not appear to us to be valid reasons for making it.

It is unclear as to the motivation for the proposed use of TPMA. Does this provide greater consumer protection or is it merely a method by which the responsibility to the consumer is transferred to the TPMA and its regulator rather than law firms and the SRA?

We are concerned at the degree of emphasis that the consultation places upon the consumer's willingness/ability to pay for legal services by credit card. Our detailed response to question 3 refers.

The consultation document refers to future guidance being provided. Whilst we welcome application guidance, because it has not been provided at the time of the consultation this has a significant effect on the ability of respondents to make an informed evaluation of the matters consulted upon. We therefore urge the SRA to publish its proposed application guidance before the proposed changes to the SRA Accounts Rules are finalised.

We are concerned that the changes to the Reporting Accountant's responsibilities are unclear (see our response to question 11 in respect of rule 12).

Our detailed responses to the consultation questions are set out in Appendix 1 attached.

If you would like to discuss any aspect of our response please contact Rowan Williams.

Yours faithfully

RSM UK Audit LLP

1) Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

We observe that whilst the draft SRA Accounts Rules 2017 ("SAR 2017") are fewer in number compared with the SRA Accounts Rules 2011 ("SAR 2011"), many of the draft SAR 2017 rules appear to be replicas or near replicas of the current rules. Consequently the degree of clarity and complexity in respect of those rules will be broadly unchanged. As the guidance that the SRA is intending to provide has not been published with the draft rules it is difficult to assess whether or not the new rules will be simpler to understand or easier to comply with. In our opinion this consultation will not be fully effective because, without all the relevant material, respondents cannot give fully informed opinions.

Law firms are familiar and comfortable with the strict rules based requirements of the SAR 2011 and may find the application of the more judgemental principles-based regime which is being proposed challenging. In addition there is a risk that different interpretations of the rules by different firms lead to inconsistencies in application and client money being put at risk as a result.

2) Do you agree with our proposals for a change in the definition of client money? In particular, do you have any comments on the draft definition of client money as set out in the draft Rule 2.1 (see Annex 1.1)?

We observe that the proposed changes remove from the current definition of client money those monies which are expected to become the solicitor's money on or before completion of the matter to which they relate. This has the effect of treating payments received in advance (of services being performed) in a manner which is consistent with other businesses in the wider commercial world.

Whilst we have some reservations, on balance we support this change in definition as there is no particular reason, other than past practice, why consumers of legal services should be afforded more protection for payments made in advance than other consumers. However, we question the motives of the SRA in making this change as we are not convinced that removing some firms from the scope of the requirement to have an accountant's report is consistent with the stated objective of protecting client money, or is necessarily beneficial to consumers of legal services.

It would be helpful if there was an explanation of the rationale for the proposed change. We expect that the proposed change may have the effect of reducing the number of reported breaches but are struggling to understand how this links with the objective of protecting clients' money.

The proposed change to the definition of client money would permit solicitors to have access to those monies received in advance, earlier than is the case under the existing rules. The resultant apparent improvement to solicitor practices' cash flows could mask, or delay the identification of potential solvency/going concern issues. Therefore we recommend that the SRA takes steps to formally monitor the financial stability of law firms such as by requiring financial returns and/or accounts to be submitted on a regular basis. This might be annually or more frequently depending on the risk perceived by the SRA.

3) Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, would you use a credit card to pay for legal services? If not, why not?

We have the following observations in respect of the use of credit cards to pay for legal services:

Firstly consumers may not be aware of this as an option. Is it the intention of the SRA to require solicitors to have the facilities to accept payment for legal services in this manner? Many members of the general public do not engage solicitors frequently or on a recurring basis and consequently it may not occur to them that payment by credit card could be an option. Not all law firms may offer this option for the settlement of fees. Therefore clients of some firms may be in a more advantageous position than others in terms of the protection they have but the nature of the legal services being provided may be the same.

Secondly there is the question of accessibility, since not all consumers of legal services have credit cards and it seems inequitable that some consumers will have more protection than others by virtue of their credit status. Additionally some consumers may have credit cards with balances that they cannot afford to pay off. Consequently adding further debt to their credit cards would be an expensive way to access the protection offered by paying via a credit card.

Thirdly banks would normally make charges to businesses which permit payment by credit card. In such cases these charges are often ultimately borne by the consumer.

Therefore, in our opinion, it is for each firm to make the commercial decision as to whether it will accept payment by credit card but the facility to make such payments and the protection this gives consumers should not be seen as a substitute for the adequate protection of client money for all consumers of legal services. Nor should the fact that it is possible to pay for legal services by credit card used as a justification for changing the definition of client money or to reduce the responsibility of law firms and the SRA for that protection.

4) Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Yes – regardless of the definition only client money should be held in client account. The rules, as they do currently, need to allow for the fact that a solicitor may receive a mixture of client and office money in one receipt and for the fact that some client money (particularly if the definition is not amended but also in other circumstances) may become office money.

5) Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

We agree that this is a practical expedient but consider there should be an actual time limit on transferring funds to the correct account. The instructions should be given /transfer made/cheque paid in by the end of the business day following receipt. With electronic banking this should be achievable and is in line with the deadlines set by the Financial Conduct Authority ("FCA") in its client money rules.

6) Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

We agree with this proposal.

7) Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

We agree in principle that TPMAs may be a permitted alternative to holding money in a client account. However, we question whether this will be an attractive alternative for law firms and consider that the proposed rules in this area need further work. For example it is not clear how the SRA envisage TPMAs will be instructed nor what is meant by "reasonable steps" in Rule 11.1 (d), or what is intended by Rule 11.2 – are law firms required to keep their own record of transactions on the TPMA, which seems to defeat one of the purposes of having such arrangements? . There need to be clear lines of responsibility between the law firm and the TPMA provider and these will also need to be communicated in the law firm's terms of business.

There may also be other practical matters that require additional rules or guidance such as identifying when client money becomes the responsibility of the TPMA provider if it is received by the law firm, which, notwithstanding Rule 11.1(a), is what we would anticipate most law firms and their clients would expect, and the implications of a single client objecting to the use of a TMPA. This is not an exhaustive list of the practical issues that may surround the use of TMPAs.

We believe there should also be more specific requirements regarding the selection and monitoring of the TPMA providers by law firms and for ensuring consumers understand how their money is being treated and who is responsible for its safety.

8) If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

Not applicable

9) Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so why?

Any restrictions the SRA places on the use of TPMAs should be for regulatory reasons or because of a particular identified risk to client money. Unless there are specific risks in our opinion the provisions of the SRA Accounts Rules should apply equally to all client money (however defined). There may be practical issues with using TMPAs for transactional monies but these will be for the law firms to resolve with the providers.

10) Do you have any views on whether we need to retain the requirement to have a published interest policy?

It is in the interests of consumers for law firms to communicate their policy on interest since some consumers may have significant amounts of money held by the solicitor for long periods. This would be consistent with the Code of Conduct requirement to treat clients fairly.

11) Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules (see Annexes 1.1, 1.2 and 1.3)?

Overall comments
As we have set out in our covering letter, the SRA has not included in this consultation what it considers the risks to client money to be, so the draft SAR 2017 are lacking in context. We recommend the SRA identify the risks to client money and explain how the draft SAR 2017 link to the protection of client money. By comparison the FCA makes it clear that its overriding objective is to protect client money in the event of firm failure, even though its client money rules are also intended to prevent theft or misuse of client money.

We support the overall direction towards a more principles and less rules based approach to the SRA Accounts Rules but there is a risk that there is insufficient detail for firms and so the draft SAR 2017 as currently drafted may be open to interpretation. This could give rise to inconsistencies in application and put client money at risk. In addition there may be a perceived a risk among law firms and Reporting Accountants that an outcome focussed approach could lead to assessing compliance with the SRA Accounts Rules with the benefit of hindsight, when problems arise, particularly if the SAR 2017 themselves are open to interpretation.

We observe that the draft SAR 2017 do not reflect the changes to banking practices such as internet/electronic banking. In our opinion this revision of the Rules is the ideal opportunity for them to be brought up to date to reflect current practices.

Potential omissions from the draft SAR 2017

There appear to be some significant omissions from the draft SAR 2017 that could give rise to practical difficulties in dealing with certain aspects of client money – for example old residual balances. It may be difficult for firms to identify whether such balances would meet the new definition of client money or not. There is a risk of firms transferring to office account amounts/balances that should remain in client account and of firms being unable to deal with old residual amounts that are client money or are unidentified. Other areas where we recommend the SRA consider whether more detail is required are set out in our comments on individual rules below.

Detailed comments in respect of the draft SAR 2017

	Rule	Comment
1.	Rule 2	Whilst it is clear in the consultation document that the change in the definition of client money is intended to exclude amounts received on account of fees it is less clear from the actual definition and therefore we suggest the definition is clarified.
2.	Rule 2.2(a)	This Rule refers to Rule 2.1 (c) but Rule 2.1 has no lettered subsections.
3.	Rules 2/4/6	Some guidance on what is meant by promptly would be useful because what is prompt in returning money to a client at the end of a matter may not be prompt in paying client money into client account or rectifying a breach. If it is the intention that the timescales are the same then this should be made clear. In our opinion there should be an absolute deadline for paying client money into client account such as the end of next working day. Such a tight deadline may not be appropriate for returning money at the end of a matter.
4.	Rule 3	We recommend that the SRA considers strengthening the requirements for client accounts so that they are set up as trust accounts with the law firm obtaining confirmation from the bank or building society that it has no right of set-off with the firm's own money.
5.	Rule 3	We recommend that the proposed guidance and case studies includes examples of what constitutes the provision of banking facilities through client account. For example does retention of money at the end of a matter to be used in some future matter constitute provision of banking facilities, or the payment of residual money at the end of the matter to someone other than the client, at the client's request, as a gift say?
6.	Rule 4.3	If the money is for payment of the firm's costs it will not be client money under the new definition. It is not clear how this rule applies in the light of the proposed new definition of client money. This rule could also be interpreted to mean that money cannot be received in advance of costs without a bill being raised, although we doubt this is the intention. If it is, this will increase rather than decrease the administrative and compliance burden for firms.
7.	Rule 5.1	This rule does not deal with the withdrawal of office money from client account – money received as part of a mixed receipt could be in client account and should be removed rather than left there.
8.	Rule 5.1	This rule appears to conflict with Rule 4.3 and not to allow client money that is to be used in settlement of the firm's fees, and therefore that becomes office money, to be withdrawn from client account. If money is being held for the purpose of settlement of fees (5.1 (a)) it is not client money under the new definition.
9.	Rule 8	There is no requirement to record client account and office account transactions on separate sides of a client ledger – this may lead to poor quality records if firms are tempted to use one client ledger for all of the transactions.
10.	Rule 8	There is no requirement to identify, investigate or rectify any discrepancies that arise from the periodic reconciliations. This could result in shortfalls of client money going undetected and/or uncorrected. In our view there should be a time limit on rectifying discrepancies so that any shortfall of client money is replaced immediately (by the end of the working day following that on which the shortfall is identified) even if this replacement is temporary. We recognise this might be seen as onerous but believe it would act as an incentive to ensure significant discrepancies do not arise. We note that the term "running balance" is a colloquialism and might not be understood. We suggest that there is a requirement for accounting records to show the current ledger balance and that the historical balances before and after each transaction should be capable of being retrieved.
11.	Rule 8	There is no requirement for the balance of monies held for an individual client to be ascertainable. This is a basic control to prevent or detect use of one client's money for the another client's matter and whilst we

	Rule	Comment
		recognise the aim of the SRA to be less prescriptive in the draft SAR 2017, we believe that to include such a requirement would not be unduly onerous and that the potential benefits in protecting client money outweigh any possible downside.
12.	Rule 8	This Rule does not include a requirement for the client ledger total used in the periodic reconciliations to be the total of the individual balances or to exclude debit balances. We recommend the requirement is changed to." and to the total of liabilities to clients in relation to client money held excluding any debit balances." Without making the reconciliation requirement more specific it is hard to see how the requirement meets the objectives in the draft SAR 2017 of protecting client money.
13.	Rule 11	We suggest including requirement for law firms to carry out due diligence on TPMA providers and periodically review the use of TPs who provide TPMAs to them for their continued suitability.
14.	Rule 11	This rule suggests that the use of TPMAs is on a client by client basis. However, other material within the consultation paper suggests that TPMAs might be an alternative to the solicitor firm operating a client account at all. It would be helpful if this could be clarified and if the latter is the case we request that the SRA considers whether guidance is required or an exception needed to cover the situation where a firm uses a TPMA and a new client insists the firm holds the money or there is some other reason why client money cannot be held in the TPMA?
15.	Rule 11.2	We recommend the SRA provides more guidance with regards to the responsibility for record keeping and reconciliations in situations where the TPMA provider is taking instructions from the solicitor in respect of making payments and depositing receipts.
16.	Rule 12	The draft SAR 2017 no longer contain direct reporting responsibilities for the reporting accountant. We would welcome an explanation for this given current thinking and requirements in other regulatory regimes. If there are situations where the SRA would expect a direct report we recommend the SRA consider incorporating appropriate provisions into the draft SAR 2017.
17.	Rule 12	This rule does not include any requirements in relation to the work to be undertaken by Reporting Accountants. Our response to the consultation on Accountants' Reports commented on the lack of framework for these reports. While we do not believe the current Rule 43A is adequate in this regard, the position is now exacerbated by the removal of all requirements in relation to accountants' work from the rules. The current Accountant's Report regime requires the Reporting Accountant to assess the risk to client money and design procedures to respond to those risks. Notwithstanding the lack of framework, in principle we support this approach. However, the Reporting Accountant's Form (AR 1) also has references to specific rules for which the Reporting Accountant is required to have performed work to assess compliance with those rules. The proposed Rule 12 is silent in this respect so it is difficult to see how Reporting Accountants will be able to sign reports on this basis.
18.	Rule 12	We believe the lack of framework for Accountants' Reports together with absence of any requirements for Reporting Accountants' work in the draft SAR 2017, could result in more disagreements between Reporting Accountants and firms on which they report. The draft SAR 2017 are open to interpretation and without any benchmarks for Reporting Accountants' testing or reporting there is a risk of inconsistency in identifying breaches that may put client money at risk and in determining whether breaches are of such significance that a qualified report should be made. Such inconsistencies would undermine the value of Accountants' Reports in identifying risks to client money
19.	Rule 12	Whilst we support the principle of exemption from the requirement to

	Rule	Comment
		obtain an Accountant's Report where the amounts of client monies held or throughput is small we have some questions and observations as follows: i) How were the "de-minimus" limits arrived at and how do they link to the risks to client monies? ii) The calculation/determination could be open to manipulation. Either some transactions might be delayed or accelerated or the timing of the reconciliations varied to avoid breaching the limits. iii) The £250,000 limit would always cause the average £10,000 balance to be breached unless the number of periodic reconciliations was more than 25. We suggest that the two criteria of the average balance and a maximum balance be retained but that the maximum balance should be the balance at any time during the period and not by reference to reconciliation dates.
20.	Rule 12	We suggest that each solicitor firm makes an annual declaration to the SRA which states either that the solicitor firm has obtained an Accountant's Report or that it is not required to obtain such a report because the client monies held fall below the limits set out in rule 12.

12) Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, please provide further details.

Until this guidance is published it is difficult to comment. For example it is not clear whether the guidance is only going to give examples of compliance with the draft SAR 2017 or whether it will also give examples of scenarios that could result in non-compliance, or where there are areas of judgement in application of the draft SAR 2017.

13) Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

It would appear that there is an over reliance on the possible protections offered to consumers from using credit cards to pay legal fees and in our opinion this is inappropriate (see detailed response to question 3). Also the change in definition of client money could result in fewer firms being required to contribute to the compensation fund but the impact analysis suggests that consumers who have paid fees in advance could also claim on the fund in the event of loss. Therefore the pool of available funds could be reduced but the pool of possible claimants the same.

14) Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

The impact assessment asserts that simplifying the SRA Accounts Rules will reduce the barriers to entry to the profession. We would question the evidence to support this as it seems unlikely that the requirements of the SRA Accounts Rules, even in their current form, are a significant barrier to entry when there are many commercial software packages available that will provide client money accounting and record keeping.

We would welcome more details to support the assertion in the impact assessment that simpler and easier to understand rules will increase compliance and reduce the costs. Less rigorous rules may result in less compliance as the penalties for non-compliance are not seen as a disincentive and it may be easier for firms to rationalise or take a more laissez-faire approach to compliance with the Rules, particularly in the face of commercial and other pressures facing law firms. We accept there may be a reduction in costs for firms that will no longer require an Accountant's Report as a result of the proposed definition of client money but we struggle to see where there will be any significant reduction for other firms if they continue to maintain strong systems and controls over client money.

Those with well-established effective systems may be reluctant to change these despite any simplification of the rules.

One of the redresses in the first three scenarios in the consumer protection analysis is that the issue will be reported as a breach of the SRA Accounts Rules. In each case it is not clear whether the SRA expects these matters would be reported by the law firm as part of the COFA reporting or by the Reporting Accountant. In none of the case studies is the money in question client money under the proposed new definition and therefore it would not be subject to an Accountant's Report. We consider these examples should be made clearer as there is a risk that unrealistic expectations about the role of the Reporting Accountant could be created.

Response by Shoosmiths LLP to the SRA consultation:

Accounts Rules review

Question 1: Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

1. It is difficult to fully assess the overall impact of the changes without considering the other, parallel developments and the combined impact that these may have on consumer protection and the reputation of the legal profession in safeguarding client funds.

2. Considering the Accounts Rules in isolation, the draft rules appear to present simplification and greater flexibility for firms to choose their own approach to safeguarding client money and managing their business. However, this should not be at the expense of client protection and must be workable when applied to day to day practice, without causing unintentional negative consequences and additional ongoing administrative costs, beyond the costs relating to changes to accounting software and training that a change of this extent will inevitably necessitate.

3. The simplification and flexibility may also allow the Rules to be interpreted in ways which do not match the SRA's expectations and it is vital that additional, detailed supporting guidance is made available. Continued supporting guidance, revisions and updates must be clearly advertised to avoid risks of non-compliance.

4. In the initial years after introduction, the potential for confusion (as accepted interpretations develop) and therefore disagreement between a firm and their accountants will be greater. The SRA and indeed a firm's accountants will need to be cognisant of this.

5. We also have concerns over specific points within the draft Rules.

Question 2: Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

6. The proposed change in the definition of client money raises concerns. We agree with the comments made by Law Society that the assessment of the risk in relation to this proposal may be inadequate and that the benefits do not appear to have been weighed against other options achieving the same outcome with lesser difficulties and risks.

7. If "Client money" no longer includes funds received in advance to pay the firm's fees and disbursements and if these "on account" monies are required to be held as Office monies, there is a reduction in client protection, an increased risk of poor behaviours and could present practical difficulties in compliance as it becomes more difficult for firms to understand and reconcile ledgers leading to difficulties in identifying client money held erroneously.

8. Development of systems, processes and re-training of staff (extending to reporting accountants) will be necessary to allow effective identification of any such funds. Payments on account of costs will need to be recorded as an office credit, resulting in an overall office credit balance which has not historically been allowed and which accounting software may not previously allowed or considered.

9. Holding client funds separately from firm's monies is vital in protecting client money and maintaining professional standards in the treatment of such funds. This is acknowledged in the Consultation document - the level of protection currently applied to these funds is significant and ensures money is kept separate from the firm's money, making the return of funds in the event of insolvency more straightforward. This view is also supported by the Law Society and, as quoted by the Law Society, by Supreme Court judgement, where it is explained current regulations provide protection for firms from inappropriate claims whilst ensuring client money is not used for a firm's own purpose. The proposed change may make it more difficult for clients of firms in

financial difficulty to be reimbursed as the advance may have already been spent or absorbed into funding of the practice, as Section 85 of the Solicitors Act 1974 will not apply.

10. Although one aim is to reduce the administrative burden of the requirement for some firms to submit a report from their accountant, added complexities around the recording of funds received on account and the reconciliation of ledgers may adversely affect the cost of audits and of obtaining reports. Where a report is not required, such firms may be encouraged to use funds received on account of costs for other purposes, particularly at times of large payments for tax, VAT etc. There could also be the temptation to delay raising VAT invoices – funds would already be held as firm's money but onward payment of VAT could be postponed.

11. Clarification regarding the VAT treatment of on account monies paid into Office account may be necessary. Currently, by holding funds received "on account" in client account, we are able to only account for VAT when we raise an invoice, in accordance with HMRC guidance "The receipt of a payment into the client's account does not represent receipt of payment for VAT purposes". As funds will no longer be paid into client account, will it be viewed that VAT should be accounted for when on account funds are first paid into the office account because it will represent an actual tax point for VAT? Again, accounting for this situation may require development of systems and processes.

12. Despite concerns around the changed treatment of funds received on account of costs, it does seem reasonable that payments in relation to billed but not paid professional fees should be treated as firm's/office monies, removing an additional administrative complexity which rarely has any impact on the overall sum due to or from a client nor any overall client detriment.

Question 3: Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

13. We do accept credit card payments in settlement of our legal services and regard the ability to do so as attractive to both us and our clients. From the firm's perspective, there is a risk of "chargebacks" being applied to receipts taken using this method although these should be rare. This method does allow payers to easily recoup funds without needing to contact the entity to whom funds were paid who is in turn notified by the card provider. Where this does happen, very little information and background into the chargeback is provided and funds are taken directly out of the bank account from where they were originally credited.

14. Despite this, use of credit cards may not be adequate replacement for lost client protection and may not extend to a wide enough range of clients, for instance, small businesses and larger corporations, as well as to individuals who do not have credit card finance available to them, creating a disparity in the levels of protection.

15. Of course, there may also be an additional cost to clients who choose to pay by this method, suggesting a further detrimental impact.

Question 4: Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

16. As we have shown concerns with regard to the change in the definition of client money and the levels of client protection provided, we cannot agree with this proposal as it stands.

17. If the definition of client money is changed, to allow payments on account of costs to be held in the client account or in office account, additional flexibility would be available to firms without necessarily detrimentally affecting the client.

Question 5: Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

18. We do not agree with the proposal that mixed monies can be paid into the client or business account as it presents a potential loss to client protection.

19. For this reason, it would seem more appropriate to continue to adopt the current process whereby mixed funds are paid into client account, with office funds separated and allocated to the correct account within a specified time.

20. We would further suggest "promptly" is given a more prescriptive definition or augmented with appropriate guidance. Whilst firms can choose to impose their own time frames, the temptation may be to continue to apply the current 14 day time frame which does not necessarily represent sensible management of firm's money, nor is it particularly prompt.

Question 6: Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

21. Subject to the points raised regarding the definition of client money in Questions 2 and 4, it seems reasonable that funds from the LAA are dealt with in the same manner as other funds. The treatment of funds should be based on their purpose, not from whom they are received.

Question 7: Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

22. Allowing the use of TPMAs seems a sensible option although it would not be particularly beneficial to this firm.

Question 8: If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

23. No comment

Question 9: Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

24. It does seem that there may be difficulties in the use of TPMAs in conjunction with transactional monies due, as suggested by the SRA, to the speed required in moving funds.

Question 10: Do you have any views on whether we need to retain the requirement to have a published interest policy?

25. Although it is advisable that clients are made aware of a firm's interest policy, the content of the draft Rules should be sufficient for the purpose of the Rules.

Question 11: Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

26. We note that the Law Society suggest that there is a lack of robust or persuasive evidence on the need for the change and can appreciate their concerns in relation to the impact of changes on the profession, consumers etc.

27. There is an increased risk to the client presented by the change in the definition of client money, particularly where firms are operating with an overdraft in office account – this could breach the requirement that solicitors safeguard money and assets entrusted to them by clients.

28. Changes to the Accounts Rules, particularly around the changes to the definition of client money, may present issues with firms' systems, resulting in enhancements and development being necessary. Together with ensuring all staff, finance and legal, are up to date and understand the new Rules will incur costs and administrative challenges, which could preclude easy adoption of

the new Rules. This should be taken into consideration at the point of further proposals and timing of implementation.

29. The draft new Rules do remove some of the more prescriptive rules which should positively impact on the levels of breaches needing to be recorded and assessed internally. This would reduce the associated administrative burdens and allow firms to work with their auditing accountants to achieve a balanced view with regard to the processes surrounding safeguarding client monies.

Question 12: Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

30. No comment

Question 13: Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

31. The number of scenarios presented is limited and therefore may lead to concerns as to whether all the potential consequences have been considered.
32. In relation to those highlighted where the client does not pay by credit card and has the associated protection, there could be increased delays in compensation. Relying on credit card protection may not offer sufficient protection to a wide enough range of clients, for instance, small businesses and larger corporations.

Question 14: Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

33. No comment

Shoosmiths LLP

20 September 2016

Simmons & Simmons LLP

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

The simplificiation of the rules is a welcome change and we are pleased that the content has been written in a way that is simple and easy to understand.

However, we do have concerns that the content has been reduced to such an extent that key areas of control are missing e.g. there is no mention of timings in the draft rules. The current timings around recording client transactions and ensuring money is in the correct account ensures client money is maintained and held properly. The removal of these timings suggests that there is no specific requirement in these areas.

These items may well be covered in the 'online toolkit' but this will need to be relevant to both small and large firms and it must be clear as to whether the information contained within the toolkit is part of the rules or just 'guidance'. It must also be clear as to at what point firms will be in breach of the rules.

Reducing the content of the rules has meant that some areas have been removed completely. For example there is no mention of any restrictions on transfers between clients and designated deposit accounts are not defined at all.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

The new definition of client money is certainly much easier to understand but there are certain elements we have concerns about.

Unpaid disbursements - we agree that money received in relation to unpaid disbursements does not need to be client money.

Money on account of costs - we believe that keeping money on account of costs in client account is in the best interest of both the client and the firm. If the money is held in the firm's account there are questions around how to account for the money and monitor it's useage. If an invoice was raised and the money on account was not allocated correctly for example, would this be a breach of the rules? Holding the money in client account makes it clear that the funds still do not belong to the firm until the point that an invoice has been issued. This gives our client more confidence that their money is being held safely, does not get wrapped up in the firm's money in the event of bankrupty and does not require a change to our current systems.

This also raises another issue related to covenants for bank loans. Keeping the money in the firm's account would be counted as part of the asset base and falsely gives the impression that firm is more cash rich than is actually the case. While we would have processes in place to ensure this did not happen we are less confident about small firms ability to record this accurately. Likewise this would apply to pension scheme coventants also.

You have stated that 'the impact of the proposed change in definition is expected to remove the need to have a client account for some firms and therefore reduce the associated compliance costs'. We would however anticipate there being other 'costs' in relation to keeping track of the money in some other way.

We would also question what firms will do when a client overpays/double pays one of our invoices. This is something that we encounter on a regular basis and the current rules expect these funds to be transferred 'promptly' to client account. Under the proposed rules what type of money is an overpayment? Does it have to be dealt with promptly (and what constitues promptly)? Wouldn't smaller firms stilll require a client account for these types of funds?

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

Being a large city law firm with mainly corporate clients we currently do not accept credit card payments and do not believe we will benefit from doing so in the future.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

While we disaree with the removal of some items from the definition of client money (see our points raised in question 2) we believe that the rules should be set so that only client money be held in a client account. Giving the option to tailor the account to suit each law firm only leads to confusion and reduces the standardisation of the audit process.

There needs to be consistency across the industry, and allowing choices leads to unnecessary complexity. For example will it be a requirement to be consistent within a firm?

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Yes. But we believe there should be definition around the timing of the transfer.

In reality you are only given the choice of account when the funds are in the form of a cheque, most of the money we receive is by bank transfer. When the funds come into the wrong account, or are a mixed payment, then we already transfer them to the correct place within 48 hours. Therefore we believe the rule change to be agreeable but some timings should be put in place.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

We do not deal with Legal Aid money and therefore cannot comment on this question.

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

This is not an option that our business would currently consider. The number of client account transations that we have would be too large to consider passing onto a third party to manage. We also have the ability to control the accounts and the funds are 'available on demand' (within reason) which we do not feel would be the same in the case of the TMPAs.

We feel that the use of TMPAs should be more established before being used to facilitate legal transactions. It would become quite complex if clients began asking for their money to be held in TMPAs when we as a firm did not feel it was appropriate for our business.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

No.

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

We believe it should be left to each firm to use the accounts as they see fit.

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

Giving client's information about their money up front is always the best policy. We would continue to provide this information and see the benefits in ensuring smaller firms make the policy visible to all.

Consistency allows clients to know what they can expect from all legal providers. While under the current interest rates the sum in lieu of interest paid is not competitive, this may become more of a issue as the base rate increases.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

We note that there are several areas of the current rules that are not covered at all by the draft proposal:

- no requirement to write to clients every year to let them know how much we are holding for them;

- no mention of suspense accounts and their usage;

- no guidance on whether receiving client money for a member of the firm is client money or not;

- no definifion of designated deposit accounts;

- no caution on transfers between clients;

- no guidance on bank authorisation policy;

- no policy on how to deal with residual balances.

What is not clear is whether these rules are no longer applicable or whether they will be included in other areas, such as the code of conduct or in the toolkit. Either way it needs to be clarified if these continue to be rules or not.

The rules surrounding the requirement to complete bank reconciliations for joint accounts seems to have changed. The draft rules now require reconciliations to be complete every five weeks by both parties. We would recommend that this requirement be limited to just the first party on the account.

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

Please see the list of 'missing' guidance we refer to in question 11.

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

We do agree with the analysis however do not agree with the statement that the examples are 'likely to be very rare'. As previously mentioned we believe there is great risk to clients if money on account of costs is placed in the firm's account.

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

No.

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to consultation@sra.org.uk, by **21 September 2016**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

Solicitors Regulation Authority
Regulation and Education - SRA Accounts Rules 2017"
The Cube
199 Wharfside Street
Birmingham
B1 1RN

Consultation: Looking to the future - Accounts Rules

Response ID:3 Data

2. Your identity

Surname

Singleton

Forename(s)

Elizabeth Susan

Your SRA ID number (if applicable)

78030

Name of the firm or organisation where you work

Singletons

We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.

Attribute my/our response and publish my/our name.

Please identify the capacity in which you are submitting a response. I am submitting a response…

on behalf of my firm.
Please enter your firm's name:: Singletons

3.

1. Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Yes.

4.

2. Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

I do not hold clients' money. I think it is useful if money held from a client to pay counsel's fees and against solicitors' fees is no longer clients' money. Currently I cannot for example take any payment in advance from a client against my fees because I do not hold clients' money. If the rule were changed I would be able to ask for that money in appropriate cases.

5.

3. Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

I do not accept credit card payments as there is a charge from the payer.
I do have one subscriber to a legal journal I own who pays via pay pal.
Most clients pay by bank transfer which presumably is cheaper for the solicitor than a credit card anyway so preferable. Some pay by cheque by post.

6.

4. Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Yes

7.

5. Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Yes although I have not looked at it carefully as I do not hold cilents' money myself.

8.

6. Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Probably, but not looked at it closely.

9.

7. Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

Sounds a good idea.

10.

8. If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

11.

9. Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

I think for consumer work on residential properties it would be better to stick with solicitors' client accounts for safety. Third parties can go bust.

12.

10. Do you have any views on whether we need to retain the requirement to have a published interest policy?

Yes, interest rates might reach double figures again in future. Currently there is virtually no interest but that can change. I remember paying 12% interest.

13.

11. Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

No. I do not hold clients' money and have not read them.

14.

12. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

15.

13. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

16.

14. Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

Just make sure that none of the changes mean that those of us who do not hold clients' money have any extra regulatory requirements or anything that involves more of our time than we currently do.

Consultation: Looking to the future - Accounts Rules

Response ID:88 Data

2. Your identity

Surname

Kevin

Forename(s)

Christopher James

Your SRA ID number (if applicable)

Name of the firm or organisation where you work

Slater Gordon Solutions Legal Limited

We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.

Attribute my/our response and publish my/our name.

Please identify the capacity in which you are submitting a response. I am submitting a response…

on behalf of my firm.
Please enter your firm's name:: Slater Gordon Solutions Legal Limited

3.

1. Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Yes.
Shortened rule book is much easier to follow but still covers the key principals

4.

2. Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

Yes.
The change will enable the firm to run more efficiently as the compliance under the current definiton requires the firm to undertake a significantly higher number of transcations both on the office and cleint accounts. This in turn will make system ledgers less complex and easier to follow

5.

3. Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

N/A - Due to the high value payments the firm makes credit card is not feasible

6.

4. Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Yes. Only having client money within the client account would make it far easier to control and in turn safeguard client money

7.

5. Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new

draft Rule 4.2 (see Annex 1.1)?

No issue with this change however as good practice the firm would contiue to bank mixed monies into client and transfer office money out as this would be less of a risk to client funds

8.

6. Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

N/A

9.

7. Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

N/A

10.

8. If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

N/A

11.

9. Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

N/A

12.

10. Do you have any views on whether we need to retain the requirement to have a published interest policy?

Would be good practice to continue with this as provides clarity to the client

13.

11. Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

From our perspective they provide no additional risk to the business whilst allowing an appropriate level of commercial flexibility to run an efficient large scale business. In terms of the client account the more clear cut we can make the money that is due to the client the better as greatly assists in balance monitoring and quality assurance (ie nothing would be old in client account without a very good and specific reason).

In relation to the definition of client money Rule 2.1. Please make clear that insurance premiums held by firms under risk transfer arrangements with insurers are not client money

14.

12. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

Have not reviewed in full but seems adequate

15.

13. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

Duplicate Question

16.

14. Is there any information, data or evidence that you can provide or direct us towards that will assist us

in finalising our impact assessment?

N/A

Sole Practitioners Group

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

We do not consider them clearer or simpler to understand and easier with which to comply.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

No. Contrary to the suggestion of simplification the proposed definition is more complex.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

No.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Yes, save when mixed funds are received. Office funds should be transferred within a reasonable time.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

We would prefer that mixed funds are paid into client account initially as this provides better consumer protection.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Yes, we agree that then rules relating to payments from the Legal Aid Agency can be safely dispensed with. Firms would only ever receive money for payment on account of the firm's costs or for disbursements (for example, counsel's and expert fees). The continued obligation to reconcile accounts and keep accurate records will ensure that any monies received and not utilised by the firm will be dealt with appropriately and returned to the LAA promptly where necessary . In addition, firms will be bound by the terms of their contract with the LAA and subject to the LAA's own Accounts Rules and monitoring regime.

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

No because we are concerned that client protection may be compromised and TPMAs will result in increased administrative overheads.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

We are concerned about failure of the account holder.

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

No. There is flexibility, security and relatively low administrative overheads for the management of a solicitors' account which we find compelling.

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

A rule common to all firms is desirable.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

We are concerned that they could lead to a inflated figures for office/business account giving rise to a false impression of a firm's profitability/assets.

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

We are concerned that the toolkit may result in additional costs for sole practitioners and small firms.

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

We find that all your examples arise principally as a consequence client money (as presently defined) not being paid into client account as per the account rules. We regards any such change as retrograde.

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

In our experience the current views are clear and well defined. The proposed changes introduce an element of vagueness and consumer risk that is undesirable.

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to consultation@sra.org.uk, by **21 September 2016**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

Solicitors Regulation Authority
Regulation and Education - SRA Accounts Rules 2017"
The Cube
199 Wharfside Street
Birmingham
B1 1RN

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

This form is designed to be completed electronically—in MS Word. Please save it locally before and after completing it.

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

I do not consider them simpler or indeed clearer to understand neither is it easier with which to comply.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

No. The proposed definition is more complex.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

No.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Yes, if mixed funds are received then office funds should be transferred within a reasonable time. Your suggestion would only create a window for more misappropriation of money.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

I would prefer that mixed funds are paid into client account first as that gives the client more protection.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Yes, I agree that rules relating to payments from the Legal Aid Agency can be safely dispensed with as firms would only ever receive money for payment on account of the firm's costs or for disbursements. The continued obligation to reconcile accounts and keep accurate records will ensure that any monies received and not utilised by the firm can be dealt with appropriately and then returned to the LAApromptly. In any event firms will be bound by the terms of their contract with the LAA and the LAA's own Accounts Rules and monitoring regime.

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

No, I would be concerned that client security would be compromised and this would further increase administrative overheads.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

I would be concerend about the security processes where their account may be breached or the organisation going into administration.

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

No. At the moment there is flexibility, security and relatively low administrative overheads for the management of a solicitor's account which I find compelling.

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

There should be a rule which is common to all firms.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

I am concerned that any change as proposed in this consultation could lead to inflated figures for office/business account which would give rise to a false impression of a firm's profitability/assets. It would also cause an abuse of client money.

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

The Accounts Rules as it is can be streamlined rather than introducing new features thus exposing the client and the solicitor to additional risks of fraud as well as administrative overheads.

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

I agree with the assessment of the Impacts on the consumer but not the redressal as proposed by you.

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

I am of the view that there is sufficient evidence of the impact on the consumer/client and if the proposed changes are introduced it would put the consumer/client at a greater risk.

Thank you for completing the **Consultation questionnaire form**.

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URGENT BY FAX
0121 616 1999

Dear Sirs

RE: Cheshire and North Wales Law Society
Response to the SRA Consultation document
Looking to the Future – Flexibility and Public Protection and – SRA Accounts Rules Review

I am writing further to our Committee Meeting yesterday to enclose the formal response of the Cheshire and North Wales Law Society.

Yours sincerely

Mark Brown
Hon. Secretary
Cheshire & North Wales Law Society

Taylor Brown Solicitors
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Cheshire and North Wales Law Society

Response to the SRA Consultation document

Looking to the Future – Flexibility and Public Protection and – SRA Accounts Rules Review

The CNWLS represent Solicitors in the geographical area covering North Wales and Cheshire – from Anglesey to Chester to Northwich. This papers sets out the thoughts of the Committee of the CNWLS on Flexibility and Public Protection and the SRA Accounts Rules Review.

We are a smaller Law Society and do not have the opportunity or resources to consider such "weighty matters" in the same way as other Law Societies, however as a Committee we felt it was very important to respond. We have therefore called upon our close relationship with Liverpool Law Society. Having read their response, we wish to fully endorse its contents and would add the following thoughts.

Flexibility and Public Protection

It is understood that the SRA is aiming to increase the supply and variety of legal services for the benefit of consumers.

However, it is felt that the Rule of Law should be the first and paramount concern. The protection of consumers can only be fulfilled if the Rule of Law is at the heart of all decisions made in relation to regulation.

The Committee are concerned that the SRA's proposals for solicitor and firm regulation, if accepted, will leave clients and consumers with less protection and could result in a 'two-tier' solicitor profession.

The SRA proposals will enable solicitors to work for unregulated entities providing unreserved legal activities to the public. Such solicitors will be subject to a new Code of Conduct for Solicitors but the organisations they work for will not be subject to the SRA's proposed new Code of Conduct for Firms.

This has potentially serious implications in a number of areas including: client protection, legal professional privilege, professional supervision, competition and the standing of the solicitor profession. There are also a number of areas of ambiguity in the proposals which MUST be clarified by the SRA.

The proposed changes will place individual solicitors working in unregulated organisations in a difficult and uncertain position.

The Committee has noted – particularly through the involvement with the Law Society's National Conference for Local Law Societies, that preserving the solicitor brand and encouraging the profession to "stand up and take responsibility for itself" is at the heart of what the SRA seeks to do – this is reflected in the requirements for CPD.

It is also at the heart of what the Law Society is seeking to do. In recent years, it seems that the SRA has fundamentally shifted in its approach to the Law Society, its Members and regulation – which from the practitioners' viewpoint is a huge breath of fresh air. It would seem a great pity were the SRA to "overstep the mark" by damaging the perceived integrity and standing of Solicitors. Solicitors must be allowed to practice with certainty within one single regulatory regime. This will retain the authenticity of the Solicitor brand and maintain the Rule of Law.

SRA Accounts Rules Review

It is understood that the SRA is aiming to allow firms greater flexibility in management of their businesses by making the rules simpler. This is also to reduce "red tape" and compliance costs. Both of these aims are considered to be praiseworthy.

Whilst the proposed changes appear to simplify the Solicitor Accounts Rules, the CNWLS is concerned that less detailed and prescriptive rules will prove difficult to administer for both firms and accountants. There is already a great deal of uncertainty about whether firms are compliant. CNWLS do not believe that their clients are concerned with the Solicitor Accounts Rules. Using this to change the Rules is not considered good reason.

The integrity of Solicitors and their Firms or organisations is at the heart of the Profession. Removing the need for some Firms to have a client account and reducing the number of Firms requiring an accountant's report will be seen to remove transparency and accountability and therefore strikes at the heart of the Solicitors' integrity and ability to uphold the Rule of Law. This will make it harder to detect any genuine wrongdoing.

We note that LLS have Reference is made in the consultation to the fact that over 50% of firms that hold client money received a qualified accountant's report in the period June 2012 to December 2013 but only 179 of those were referred for consideration for further regulatory action. The Committee agree that this does not justify the changes proposed.

Diana Williams President
Cheshire and North Wales Law Society
20th September 2016

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By DX and email: consultation@sra.org.uk

19th September 2016

Dear Sirs

RESPONSE OF THE CLLS PROFESSIONAL RULES AND REGULATION COMMITTEE TO THE SRA'S CONSULTATION "LOOKING TO THE FUTURE: SRA ACCOUNTS RULES REVIEW"

General

1. This consultation is predicated on a presumption that there is an inherent flaw in the current SRA Accounts Rules which needs correcting, and that the solution is simplification per-se. We do not believe that the evidence presented supports this conclusion.

   The consultation fails to consider the extent to which the high standards of conduct, consistently applied by virtue of the depth and breadth of the current rules, have historically prevented material breaches from arising and thus contributed positively to protecting clients and client money. The effect of over simplification, and the flexibility of approach which the draft rules facilitate, could have unforeseen consequences and result in lower standards of conduct generally, and increase the risks for clients and to client money.

2. Your introduction to the consultation sets out the background against which this review is being undertaken. In particular, you cite the following justifications for the review:

   a) The current accounts rules have not changed significantly for many years. They are prescriptive and restrictive, and focussed on ensuring that all firms handle money in the same way.

b) The length and complexity of the current Accounts Rules make it difficult for new entrants to the market to understand what is required of them as well as consumers to understand what to expect when a firm handles their money.

c) Many firms find themselves in technical breach of the Accounts Rules in circumstances where there are no real risks to client money.

With reference to (a), this makes the presumption that prescription and restrictions on how client money can be handled, and consistency in the way different firms handle it, is inherently a bad thing. There are certainly provisions within the current Accounts Rules which are unnecessarily detailed, and thus prescriptive and restrictive for no good reason, which could be dispensed with. But overall we believe the consistency and certainty which the rules impose are a positive thing in connection with the protection of client money. Given the risk of misuse and/or loss associated with client money, you present no evidence that the current rules generally are disproportionate, inconsistent, opaque, or untargeted.

With reference to (b), much of the perceived "complexity" arises from the manner in which the rules are written and the technical terminology used, which is in parts difficult to interpret, rather than arising from its length per-se or the scope and detail of the provisions therein. We agree that a rewrite which rationalises the Rules is needed, and that certain provisions can be safely removed, but caution against discarding helpful provisions which contribute clarity and certainty for the sole purpose of achieving brevity or simplicity.

We accept that the current Accounts Rules are not easy to follow for anyone coming to them for the first time. We do not however believe that the majority of established firms or practitioners have any significant difficulty in understanding nor in applying the current Rules, and many welcome the detail contained in them (see above). We question whether the Accounts Rules have the purpose of explaining to consumers what to expect when a firm handles their money, or can be expected to properly fulfil this purpose. This need can be better met through other means, and should not be allowed to subvert the review.

With reference to (c), no evidence is presented to support your argument that the small number of qualified accountants' reports which lead to any regulatory action is evidence that the Rules are too complicated, or that they are not focussed on the risk. The concerns about the reporting of immaterial technical breaches was addressed in phase 2 of the review of the Accounts Rules, implemented in November 2015, when accountants were given more discretion to exercise judgement as to the materiality of breaches when preparing reports. It is too early to assess whether or not this has been effective in reducing the number of reports which are qualified for reason of immaterial technical breaches only.

Answers to Specific Consultation Questions

1. Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

As discussed above, we do not support the contention that the length of the Accounts Rules in itself an issue, nor do we agree that making them shorter will in itself render them clearer and simpler to understand, and thus easier to comply with. Nor do we accept the premise that the current Rules, nor the consistency of approach they promote, are unnecessarily prescriptive or restrictive, or otherwise inappropriate in connection with the handling of client money.

We agree that the draft Accounts Rules are easier to read, but are concerned some useful provisions have been needlessly discarded and that the flexibility introduced could give rise to unforeseen ambiguities and problems in practice, as explained in this response.

2. Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

a) General

The CLLS member firms all employ experienced cashiering professionals to manage compliance with the Accounts Rules. For such experts, the decision to dispense with the current detailed descriptions and the definitions of office money and office account will not be of particular concern. That said, professionals in some firms have expressed a preference for retaining the current very clear descriptions and definitions.

We are however concerned that the lack of certainty in the drafting of the new definition will challenge firms who do not employ experienced professions and, in particular, will make it more difficult for new entrants to the market to interpret and apply the new Rules, and understand what is required of them to achieve compliance.

b) "Payments for your fees"

We see the revision to the definition of "client money", to exclude payments on account of fees, as problematic when read in conjunction with the prohibition on mixing client and office money (draft Rule 4.1). The draft Rules allow firms to treat money held on account of fees as office money. While this may bring some of the benefits the SRA is seeking, there does not appear to be any good argument for depriving clients of the extra protection that holding the funds in client account brings, or otherwise differentiating this money from any other held on behalf of a client.

There is a clear distinction between an "agreed fee", which is by definition both fixed and payable to the solicitor irrespective of whether the transaction completes or the service is otherwise rendered, and an "on account" payment (irrespective of whether or not this fee is "fixed") which is payable to the solicitor only on completion of the transaction or delivery of the contracted service. Holding money on account of fees in client account clearly ensures that the money is properly protected and reflects current expectations of solicitors and their clients.

In paragraph 24 of the consultation, you argue that treating payments on account of fees as client money "may encourage or normalise the business practice of requiring consumers to pay in advance for services and before the costs have been calculated. The impact of this may be to increase the amount of money in client account in the first place and potential risks to consumers if that money is lost". We cannot see merit in this argument. It seems far more likely that allowing this money to be deposited in the firm's account, and thus available to fund the solicitors business, will normalise the business practice referred to and poses an obvious and direct risk to clients.

Although it may not happen frequently, CLLS member firms will on occasion seek to take security on account of costs from new clients or clients about whom there are credit concerns. The amounts held may be substantial and it is to the mutual benefit of both the client (who will not wish those sums to be sitting in an office account without any protection from the firm's creditors) and the firm (who will wish to have the security that holding money on account brings) to be able to hold that money in client account. Clients are likely to be reluctant to provide funds if the firm cannot hold the

money in client account and, where the firm regards this as essential in order to mitigate its own financial risks, this could lead to difficulties in those clients accessing legal services.

The revised definition of client money will also necessitate systems and process change, which has an associated cost for firms. All of the proprietary legal accounting systems are designed to handle client money as defined by the current Accounts Rules, and changes would be necessary to identify, manage and report on the new categories of office credits occasioned by the revise definition. There would also be an administrative burden in monitoring these office credits, and in ensuring that the money is moved to client account or returned to the client should the purpose for which it was received fail to crystallise. This duplicates existing processes for managing residual client account balances, of which such surplus funds currently form a part.

The consultation also fails to consider the potential tax implications of receiving payments on account into the firms office account. We are concerned that receiving these payments in advance of a supply of services would trigger a VAT tax point, and accelerate the point at which tax must be paid over to the HMRC before the services have been delivered and the income can be properly recognised.

We would therefore recommend that payments deposited on account of costs yet to be incurred should be defined as client money unless the client agrees otherwise (re draft Rule 2.2(b)). It would then be open to the firm to make it clear in their request for monies on account, or state in their standard terms and conditions (clearly communicated to the client), that monies on account would not be held in client account. It would remain open to firms to choose to offer the client the benefit that holding money on account of costs in client account brings. The protection a firm offers for money held on account should then become a matter that clients can take into account when selecting a firm, allowing firms to differentiate themselves from competitors, and increasing choice. Understanding the implications could, however, be a stretch for un-sophisticated consumers.

c) "Payments to third parties for which you are liable"

The drafting causes us concern because the underlying intention is not clear.

We can see administrative benefit for firms in being able to deposit funds for all billed disbursements into the firm's account, removing the current distinction between those disbursements which the firm has already paid and those which are still outstanding. Assuming this is the intention, we suggest that the first paragraph of draft Rule 2.1 should be amended to read "relating to legal services delivered by you to a client excluding payments to third parties in respect of expenses or professional disbursements which the firm has billed to the client".

If the SRA is intentionally drawing a hard line between unpaid professional disbursements for which the Firm is liable and those for which the client is liable, such a distinction would be impossible to operate in practice. When engaging third parties on behalf of clients, it is common practice for firms to expressly exclude liability and this approach would therefore introduce a requirement for the accounts function to assess in each case, at the point of receipt of funds, the extent to which it is the firm or the client that is legally "liable" to the third party. If this is the change the SRA intends to effect, we do not support it.

3. **Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?**

   We have no views on the use of credit cards to pay for legal services.

4. **Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?**

   We share your view that the principle in the current Accounts Rules that only client money can be held in client account, subject to some very limited exceptions, should continue.

   Subject to our comments re payments on account and disbursements in response to consultation question 2, we believe that the definition of "client money" in draft rule 2.1 is appropriate. In particular, we consider that defining client money by reference to "legal services delivered by you" here, and in draft rule 3.3, has removed the ambiguity found in rule 14.5 of the current Accounts Rules regarding what may or may not constitute the provision of a banking facility.

   We are nevertheless concerned that no express allowance is made for situations whereby office money is inadvertently deposited in client account, which would give rise to a new category of technical breaches in circumstances where there is no real risk to client money. Rule 17 of the current Accounts Rules contains provisions which allow office money to be deposited in client account providing it is transferred out within 14 days. To avoid these technical breaches occurring, a similar provision is needed in the draft Accounts Rules which allows office money to be deposited in client account subject to it being transferred out "promptly".

   What amounts to "promptly", in this context and otherwise where this term is used the draft Accounts Rules, should be for the firm itself to decide having regard to the SRA Principles and Outcome 7.2 of the SRA Code of Conduct (or equivalent provision in any revised Code).

5. **Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account? In particular do you have any *(comments on)* the new draft Rule 4.2 (see Annex 1.1)?**

   We would welcome a relaxation which allows, exceptionally, for client money to be paid into office account without it automatically giving rise to a breach.

   In principle, we would also support the proposal that mixed receipts can be paid into either of client or office account at the discretion of the firm involved. We nevertheless recognise that this approach exposes clients to a new risk which they do not face under the current Rules. On balance we believe that mixed payments should properly be paid into client account, as now, subject to an alternative arrangement being agreed with the client or third party for whom the money is held, as set out in draft rule 2.2(b).

6. **Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?**

   LAA funding is not a material consideration for the CLLS member firms. We have no view on whether or not the specific Accounts Rules related to payments from the LAA can be safely dispensed with.

7. **Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?**

   Our position on the use of TMPAs is unchanged from that set out our response to the consultation entitled "SRA's Regulatory Reform Programme", dated 9 June 2015. We have no objection in principle to the use of TMPAs. Our member firms are nevertheless firmly in favour of retaining client accounts as the primary means of managing client money.

   We note that the definition of TMPA requires that the account is held with an FCA regulated institution. This approach addresses concerns we identified previously, and as such appears to be a proportionate and appropriate response to the risks.

8. **If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?**

   Not applicable (note response to consultation question 9 below).

9. **Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?**

   Subject to adequate safeguards and controls being in place, we cannot identify any compelling reason why the use of TPMA should be restricted only to certain areas of law. There may be practical reasons why TPMA might not be a viable alternative to client account, in conveyancing transactions where speed of transfer is important for example, but firms should have the discretion to make their own decision on which solution best serves its business needs.

10. **Do you have any views on whether we need to retain the requirement to have a published interest policy?**

    Rule 8.8 in the draft SRA Code of Conduct for Solicitor, RELs and RFLs (which is also currently being consulted on) contains an obligation to ensure publicity regarding the "circumstances in which interest is payable by or to a client" is accurate or not misleading. We note that there is no equivalent obligation imposed on firms, in either of the draft SRA Code of Conduct for Firms or in the draft Accounts Rules.

    In practice, interest policy will be under the control of firms and not individual practitioners. As such it will be necessary for firms to have a clear policy on interest before individuals can fulfil their personal obligation as above. For this reason, we believe that the requirement on firms to have a published interest policy is necessary, and should be retained.

11. **Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?**

    a) <u>Overarching purpose of the Rules</u>

       Rules 1.1 and 1.2 of the current SRA Accounts Rule set our clearly the purpose of those rules, and the key obligations regulated individuals have in connection with holding and receiving client money. This has historically been a very helpful entry point to understanding what practitioners must deliver to achieve compliance.

       Nothing in the draft SRA Accounts Rules conveys these clear messages. We would recommend that this information is reproduced in the new Rules.

    b) <u>Implementation and transitional provisions</u>

Consideration must be given to minimise the impact of any changes on firms, and allow for a smooth transaction from the current SRA Accounts Rule to the new regime.

If the definition of client money as set out in draft Rule 2.1 is implemented, relief must be given for amounts currently held as client money under the old Rules which is no longer client money as defined by the new Rules. The new Rules should allow for this money to remain in client account until the purpose for which it is held is exhausted, or specify a reasonable timeframe within which the funds should be moved before any breach arises.

To minimise the impact of the changes on business operations, we would suggest that firms be given discretion to decide when they transition from the old to the new Accounts Rules. The choice would be between the date the new Rules come into force or at a date which coincides with the firm's next financial year end.

c) Rule 1: Application section

Rule 6.1 of the current SRA Accounts Rules extended the Principals' responsibility for compliance with the Rules to the COFA of the firm (whether a manager or non-manager). Rule 1.2 of the draft Accounts Rules contains the same provision.

This is out with the statutory responsibilities of the COFA (HOFA) contained in s.92 of the Legal Services Act; the post holder "must take all reasonable steps to ensure compliance", but is not responsible for compliance per-se. This extension of the COFA's role gold plates the legislation, and the opportunity should be taken to remove this unnecessary regulatory burden on the post holder, if the COFA role is retained.

d) Rule 2: Client money

We agree with the concept expressed in Rule 2.3 of the Draft Accounts Rules, which we assume to mean that client money should be available to be paid at the direction of the client, but can see a problem. Modern AML and sanctions regulation means that no bank or law firm can necessarily make money available "on demand" to a client. As the draft rule currently stands each firm will therefore need to enter written agreements with clients for every client account transaction explaining the position, pursuant to draft rule 2.1(b), which will not benefit clients or firms.

The rule would be better phrased as "You ensure that client money is held in an account from which money can be withdrawn without notice unless you agree an alternative arrangement in writing with your client, or third party for whom the money is held".

e) Rule 6.1: Duty to correct breaches upon discovery

Rule 7.2 of the current SRA Accounts Rules make clears it that it is the person causing the breach and the principals of a firm who have a duty to correct it. Rule 6.1 of the draft Accounts Rules simply refers to "you" as having responsibility for correcting any breach. Read in conjunction with draft Rule 1.1, it is not clear as to who has this obligation. It could be interpreted to be an obligation of any and all employees, whether or not they were personally responsible for the breach and, by virtue of draft Rule 1.2, it is also possible that this obligation could extend to the COFA.

Draft Rule 6.1 should expressly state that it is the principals of the firm, and the person responsible for the breach, who are personally responsible for correcting it, and no one else.

f) Rule 8.1: Client accounting systems and controls

As currently drafted, Rule 8.1 of the draft Accounts Rules does not specifically oblige firms to record client and office transactions separately on the client or office side of the client ledger account respectively. We would suggest the following amendments to the drafting of this rule:

8.1 keep and maintain accurate, contemporaneous and chronological records to:-

(a) provide details of all money received and paid from all client accounts and show a running balance of all money held in those accounts;

(b) record in client ledger accounts identified by the client 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 your ***firm***'s business accounts on the office side of the client ledger account;

(c) provide a client account cashbook showing a running total of all client funds.

g) Rule 9: Operation of Joint accounts & Rule 10: Operation of a Client's own account

We note that the draft Rules incorporates an obligation to reconcile joint accounts and client's own accounts "at least every 5 weeks". Rules 9 and 10 of the Current Accounts Rules do not contain equivalent obligations. We have no objection to this change in principle, but the consultation does not explain the harm to clients or to client money arising from operation of the current rules which justifies the administrative burden arising from these new obligations.

h) Rule 11: Third Party Managed Accounts

We are concerned with the drafting of this Rule. Clients have always been able to establish escrow accounts with third parties to deal with transaction payments where that suits the parties. Firms may often be involved in the arrangements, for example advising the client on the terms and helping to set them up, but that should not of itself bring the SRA Accounts Rules into play.

The drafting should be clarified to make it clear that the SRA Accounts rules are only applicable where the TPMA is in the name of the law firm, and the law firm has operational or management control over the TPMA.

i) Rule 12: Obtaining and delivery of accountants' reports

Rule 35 of the current SRA Accounts Rules sets out the rights and duties of the reporting accountant which must be included in the post holder's letter of engagement. These include some important safeguards which have not been reproduced in Rule 12 of the draft SRA Accounts Rules.

As a minimum, we would recommend that accountants are given an express obligation to notify the SRA if they qualify a report. We would expect all CLLS member firms to comply with the obligation to deliver a qualified report to the SRA, but failing to impose any form of obligation on accountants removes a very simple and effective

check. Without this control, the SRA may not know that a firm is in breach of the Accounts Rules or the requirement to deliver a report until it is required to intervene in that firm for some other reason.

j) Rules 5.1(c), 12.8 and 12.10

These draft Rules give the SRA the power to regulate via the back door without proper consultation and scrutiny. Each enables the SRA to prescribe detailed rules or circumstances with what appears to be the sole objective of keeping the Accounts Rules short, rather than assisting either clients or firms with clarity or a reduced regulatory burden.

If a matter needs to be dealt with it should be addressed within the Accounts Rules themselves. For example, provisions dealing with small residual balances, informing clients of the amount of client money still held and the reason for retention, terms with accountants and the form of accountants' reports should all be properly drafted, consulted on and included in the Accounts Rules.

12. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, please provide further details.

Whilst recognising that guidance and case studies can be of value, on balance, we are not in favour of the SRA developing guidance or case studies in this particular context, which we see as additional regulation "by the back door".

It is important that the Accounts Rules are self-contained, and in themselves competent to address the risks associated with handling client money. If the SRA harbours concerns that they cannot achieve this objective without the support of guidance and case studies, then the rationale for this review is brought into question, and the Accounts Rules need to be expanded sufficiently to resolve these concerns and fulfil its stated purpose. There is also a danger that issuing such guidance and/or case studies would have the practical effect of making the new Accounts Rules "long, confusing and complicated" which would defeat the SRA's stated aim of attempting to simplify it in the first place.

If the SRA does produce guidance or case studies, we think it should consult on these, whether formally or informally with stakeholder groups, before they are issued.

13. Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

The majority of CLLS member firms' clients will not be able to avail themselves of the alternative protections or redress referred to in your consumer protection analysis. They will not have access to Legal Ombudsman, the Compensation Fund or want to pay with credit card, and the amounts held may exceed the relevant limits of protection these offer by an order of magnitude.

14. Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

No.

Yours faithfully

THE CITY OF LONDON LAW SOCIETY

Professional Rules and Regulation Committee

Individuals and firms represented on this Committee are as follows:

Sarah de Gay (Slaughter and May, Chair)

Tracey Butcher (Mayer Brown International LLP)

Roger Butterworth (Bird & Bird LLP)

Raymond Cohen (Linklaters LLP)

Sonya Foulds (Freshfields Bruckhaus Deringer LLP)

Annette Fritze-Shanks (Allen & Overy LLP)

Antoinette Jucker (Pinsent Masons LLP)

Mike Pretty (DLA Piper UK LLP)

Jo Riddick (Macfarlanes LLP)

Chris Vigrass (Ashurst LLP)

Clare Wilson (Herbert Smith Freehills LLP)

Consultation: Looking to the future - Accounts Rules

Response ID:73 Data

2. Your identity

Name of the firm or organisation where you work

ILFM

We may publish a list of respondents and a report on responses. Partial attributed responses may be published. advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisa appear on any published list of respondents.

I/we have a specific confidentiality requirement as follows.: Should be published as ILFM

Please identify the capacity in which you are submitting a response. I am submitting a response...

on behalf of a representative group

Please enter the name of the group.: ILFM

3.

1. Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier t with?

The ILFM has canvassed the views of its members.

The majority of ILFM members providing views on the consultation consider the proposed accounts rules to be clearer, easy to understand a to comply with. There was a general view that although the rules were easier to comply with they did not necessarily protect client money to levels and that strong internal processes and controls will be required, with the current accounts rules providing much more guidance and cla There is an increased ability to interpret, and the rules in parts are appearing too vague, this allows many loopholes for firms to argue compl the accounts rules increasing risk to client money. The majority of ILFM members raised concerns over payment of funds on account into o account as a risk to money provided by a client or third party.

In the absence of the online toolkit it was concluded that there was inadequate information available to assess if sufficient guidance and support will be given in order to comply with the proposed accounts rules.

4.

2. Do you agree with our proposals for a change in the definition of client money? In particular do you hav comments on the draft definition of client money as set out in the draft Rule 2.1?

ILFM members were divided over the change in definition of client money. The majority of members raised concerns that money on accoun office account would be used to fund the business during times of financial difficulty particularly around periods of Vat payments or payroll change in approach could mask borrowing requirements of firms.

Some members are concerned with the cost to the profession of the proposed changes including changes to accounting software and to retraining of staff.

The ILFM have previously raised directly with the SRA that payments on account directed to the business account may trigger the necessity for a Vat invoice to be raised and that accounting adjustments may be required in relation to deferred income.

There is potential for the proposals to increase the amount of administration within the finance department of a legal business where subsequent credit notes may need to be raised to correct payments on previously invoiced funds, in addition there may be a temptation for firms to inflate the time spent on matters as to avoid the necessity to refund their clients.

Delays in progressing work where payment has already been receipted are also possible. The proposals do not define clearly when funds held in the business account become client money:

a) on production of a balancing invoice to the client

b) on delivery of a balancing invoice to the client

with the latter providing opportunity for delay in returning surplus client funds. It is likely to prove difficult for firms to monitor funds received on account against time incurred.

Where matters are concluded and funds held in office account, firms who regularly reach overdraft limits

may be prohibited from returning client money promptly where they are unable to withdraw funds from the office account. The ILFM consider that there is also risk to clients where firms fall into liquidation and/or are intervened and an overdrawn business account balance may prohibit the progression of a client matter with funds lost or subject to claims which often take significant time to resolve. Further expense may be incurred by the client where they may need to seek alternative legal advice quickly and have lost professional disbursement funds such as counsels fees or medical fees due to the firms overdraft or closure.
The ILFM would request that the SRA provide clear guidance in relation to undertakings which may fall within the incurred liabilities of the business but which may not always become payable by the business/client.
In conclusion the ILFM recognises that the number of firms requiring a reporting accountants report may be reduced if the proposed definition is agreed and that this will reduce the cost to some firms, we do however consider that there is an increased risk to clients and their money under the proposals, this is supported by the majority of our members responses. We would counter propose that the exemption criteria for requiring a reporting accountant report be amended to include consideration of firms that hold a specific client balance after consideration of funds held on account.

5.

3. Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

The majority of our members have the facility for receiving credit card payments with some avoiding their clients paying that way due to the costs incurred by the firm for such transactions.
Members have reported as high as 4% being charged by the card companies and that the cost is not always known at the point of submission. Generally these costs are passed on to the client as recharges but where the cost at submission is unknown the firm may incur losses.
Firms are generally accepting payments by credit card for their invoice payments or for funds on account only. Card terminals may be currently set to credit the client account and the proposals to change the definition of client money will therefore require alterations by firms to remain compliant.
The ILFM would like to highlight that passing on credit card charges to clients or third parties is a recharge not a disbursement and may require additional administration via the necessity to raise a vat invoice for each credit card charge passed on to the client.
The use of credit cards may therefore increase the cost of legal services to the consumer as it is likely they will be passed on by the firm who may decide to introduce a credit card administration fee.

6.

4. Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

The majority of ILFM members agreed that only client money should be placed into client account, however concerns over the definition of client money including payment on account were included in those responses as previously stated.
Concerns were also raised in relation to the cost of retraining staff on the proposed definition of client money.
Where funds are misdirected the ILFM considers that the funds should be moved without delay to the correct account.

7.

5. Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Most ILFM members were in favour of this proposal but it was strongly felt that the definition of 'promptly' needs clarification.

Members identified that this proposal may increase administration for the cashiers office.

The ILFM recognises that the diversity of clients using legal services may require some flexibility on

receiving funds into client and business accounts generally. It is our view that mixed receipts received and directed into a bank account by the firm itself should remain as defined in the current rules (paid into client account in the first instance) in order to afford increased protection to clients in the event of firm liquidation or exceeding overdraft facilities. However where electronic receipts are made by clients or third parties it may be out of the firms control and we do not consider that it would be fair for the SRA to consider this non compliance where every effort has been made by the firm to direct the funds into the correct bank account. We consider that a requirement to move funds to the correct bank account immediately would be a more practical application.

8.

6. Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Members views were restricted due to the reduction of firms practising legal aid. Those members who actively worked within firms still practising legal aid opposed the removal of the accounts rules surrounding legal aid agency payments.
Concerns were raised that surplus amounts could easily remain within a firms office account under the new proposals and that this was not only immoral but against the public interest (using public funds). It is considered that many legal aid firms are likely to be those with overdraft facilities being used and that third party payments were placed at higher risk of loss where funds were held in office account.
The ILFM strongly opposes the proposal to remove the accounts rules relating to legal aid.

9.

7. Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

ILFM members responding to the consultation were evenly split in their views on TPMA's with half in favour and half not. The majority of respondents did however agree that TPMA's were not suitable for conveyancing transactions.
Many members remain unclear whether moving to TPMA's will still require the firm to obtain a reporting accountants report. Members are also unclear on whether it is possible to have a TPMA and a client account where the firm practices in conveyancing and non conveyancing transactions and whether funds from a client account can be transferred to a TPMA under such circumstances.
The ILFM considers that there is a lack of information and practical understanding around the workings of TPMA's. We do however recognise the diversity of the profession and agree that an option not a requirement is appropriate for firms to decide around holding client money.

10.

8. If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

ILFM members raised concerns that TPMA would slow transactions down. It was generally considered that TPMA's would incur additional costs to firms and that more administration would be needed internally to release and record transactions.
Lack of firms control is a key area of concern as is consideration of fraud detection and security surrounding funds held by other parties.
TPMA's holding funds in one bank account may reduce the protection to clients where amounts held exceed the FCA compensation amount per banking group of £75,000. Many large firms will use multiple bank accounts and clients have the option to have funds placed into different client accounts to award some protection.

11.

9. Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

ILFM members generally reiterate that this system does not appear appropriate for conveyancing transactions, it is therefore restrictive, this is mainly due to the time required to release funds with members considering that transactions will be slowed considerably by its use.

12.

10. Do you have any views on whether we need to retain the requirement to have a published interest policy?

The majority of ILFM members consider that it is necessary to continue to have an interest policy available to clients and that it is in the client best interests that this is set out clearly for them. It is considered by our members that this provides clarity for the client and sets out their rights to interest clearly from the onset of a matter. It is considered a risk to clients that if the necessity for a published policy is removed that clients will be unaware that they are entitled to payment and that firms will not pay over interest. Having a policy is also considered useful internally and prohibits some clients receiving preferential terms to other clients.

An interest policy should be retained to protect clients and their rights to interest. It is not considered adequate to require a fair amount of interest be paid when 'fair' is not further defined.

13.

11. Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

ILFM members have generally welcomed the review overall and the removal of specific rules that deal with non material breaches such as 14 day rule, however the member responses have highlighted concerns over the definition of client money in particular, with this being a real concern around protection of client funds and identification of funds in office account. Some members feel that the rules are being relaxed too much with some preferring the prescriptive approach of the current rules as this provides them guidance and certainty of compliance. Generally there is a view that the proposed rules do not offer the same level of client protection as the current format.

During the consultation period there has been a real concern regarding the definition of client money and in particular payments on account into the office account, this will require a number of changes for firms internal policies with associated direct and indirect costs. The ILFM consider that money provided by clients and/or third parties is better protected ring-fenced within a client account and strongly oppose the changes of definition of client money, the reasons have been provided throughout this consultation. If the SRA continue with the change in definition flexibility should be provided to firms on how they deal with payments on account and where such funds are held.

The ILFM are also surprised that the necessity for 5 weekly bank reconciliations has not been extended to the business bank account in light of the proposed changes to the definition of client money.

14.

12. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

ILFM members have identified that further guidance is required around Vat on payments of account if the proposed changes to the definition of client money goes ahead.

In the absence of any requirement to reconcile business bank accounts the ILFM would like to see guidance in identifying and reconciling liabilities held in office account.

15.

13. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

see Q12

16.

14. Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

The ILFM have facilitated a meeting with a number of accounting software providers in order to assist with the impact assessment.

The Law Society

SRA consultation: Looking to the Future: Accounts Rules Review

Law Society response

September 2016

Introduction

1. The Law Society of England and Wales ('the Society') is the professional body for the solicitors' profession in England and Wales, representing over 165,000 solicitors. The Society represents the profession to Parliament, Government and regulatory bodies and has a public interest in the reform of the law.

2. The response to this consultation, "Looking to the Future: Accounts Rules Review", should be considered together with the Society's response to the SRA's consultation, "Looking to the Future - flexibility and public protection", which reviews the Principles, Code of Conduct and Practice Framework Rules within the SRA Handbook.

3. These consultations are being conducted in parallel with various other developments with implications for the profession and the market for legal services in England and Wales. These include:

    - a forthcoming consultation by the SRA on changes to professional indemnity insurance and Compensation Fund arrangements;
    - the Competition and Markets Authority's market study on supply of legal services in England and Wales[1]; and
    - a possible Government proposal for reorganisation of legal services regulation.

4. The staged and piecemeal nature of changes makes it difficult to fully understand and properly assess the cumulative impact, on consumer protection and on the standing of the profession at home and internationally. There is serious concern that the proposals, which would significantly change the Accounts Rules, have not had adequate prior analysis and the impacts for solicitors, the market in general, consumers, and on equality and diversity implications are unclear.

Summary

5. In summary, the SRA proposes to:

    a. Simplify the Accounts Rules and it sets out four key principles for simplifying the Accounts Rules:
        i. keeping client money separate from the firm's money
        ii. ensuring client money is returned promptly at the end of a matter
        iii. using client money only for its intended purpose
        iv. proportionate requirements for firms to obtain an annual accountant's report.

    The consultation paper includes a draft set of rules and explains that these will be supported by an online toolkit comprised of guidance and case studies.

    b. Change the definition of client money to allow money paid for all fees and disbursements for which the solicitor is liable to be treated as the firm's money. Money held for payments for which the client is liable, such as stamp duty land tax,

[1] https://www.gov.uk/cma-cases/legal-services-market-study

will continue to be treated as client money and therefore required to be held in a client account.

c. Allow solicitors to use third party managed accounts (TPMAs).

6. In anticipation of this review, the Law Society published a discussion paper in January 2016, asking the profession for their views on the Accounts Rules and if, and how, they should be changed.[2] We were impressed by the high number and quality of the responses received and we are grateful to our members whose views have been crucial in developing our policy positions.

7. The Law Society supports the principle of simplification of the Accounts Rules; however, it is vital that the new rules are practical and genuinely simplify compliance for solicitors without reducing client protections. The current rules are burdensome but they work; if it is not possible to simplify the rules in a way that reduces administrative burden, the current rules should be retained.

8. The Society supports the permissive change to allow the use of TPMAs as an alternative to client accounts. We can see that for some firms, the change would be beneficial although it is unlikely that this rule change will be utilised by the majority of the profession. TPMAs tend to be expensive and there are some areas of law, such as conveyancing, where the use of such accounts does not appear feasible. Indeed, there are a great many benefits associated with solicitors being able to operate client accounts where for example, clients rely upon the ability of solicitors to move client money, or cancel the movement of client money, quickly and at short notice.

9. We understand that the SRA has already issued a waiver to some firms who wish to operate TPMAs. It would be helpful to understand the experiences of these firms and whether or not the perceived benefits have been realised.

10. The Society does not agree with the proposed change in the definition of the client money. The Society is not persuaded that the risks for clients would be offset by the suggested benefits of the proposed change; in particular, we are concerned about consumer protection issues and whether firms operating with an overdraft in the office account would be in breach of requirements to protect client assets and might incentivise poor behaviour.

11. Furthermore, there is a lack of evidence on the need for the change and we have identified significant gaps in the Impact Assessment, in particular, the impact of the change on solicitors, consumers, third parties such as banks and accountants, and on the market as a whole. It would be helpful to understand what other options were considered as well as the assessment made of the likely impact on the finances of firms and protections on clients. The arguments and evidence provided in the consultation paper and the impact assessment appear superficial and little information is provided on the potential disbenefits and risks of making the changes. The case for these changes is not robust or persuasive on the evidence.

[2] Link to Law Society discussion paper - http://www.lawsociety.org.uk/news/stories/law-society-launches-consultation-on-sra-accounts-rules/

Question 1
Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

12. On the face of it, the draft Rules appear simpler; however, it is important that they are workable in practice and that all relevant research and data is considered before decisions are made. This evidence should be collected and shared with the profession. In the interests of openness and transparency, and given the significant impact that the proposals would be likely to have, stakeholders should be given the opportunity to refine their views and advice to the SRA once this evidence has been considered in the consultation.

13. We know that solicitors would like the rules to be simplified. Out of the options we provided in our discussion paper, the most popular (65 respondees) was for a simplified set of rules. Members were keen for there to be a "serious attempt to reduce the regulatory burden." Others thought that it was important to update the rules and bring them into line with current business sectors and industries and said that the rules should be made more user friendly.

14. It is important to note that a significant number (49 respondees) were in support of retaining the rules as currently worded. These members raised concerns around negative unintended consequences, increased bureaucracy and administrative cost. It was felt that these could either put smaller firms out of business or lead to additional costs being passed on to clients. Others suggested that, even if the rules were simplified, "the fall back position would always be 'what was in the old rules' as they have always safeguarded us." While the simplified rules would be more attractive for new entrants, it is vital that detailed guidance and support is made available.

15. It would be helpful to understand what assessment has been made of the practical implications for firms given the changes might necessitate changes to accounting software and the re-training of staff, all of which would have a cost for firms. These matters should be taken into consideration when the SRA decides how to take forward its proposals and develops a timeline for implementation of any changes.

16. The Society recommends that a financial impact assessment of the proposed changes to the Accounts Rules should be undertaken and the outcome should be provided to the profession. In particular, the profession should be informed whether or not there would be cost implications, for example in relation to software, before final decisions are made.

Question 2
Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

17. No, the Society does not agree with the proposed change to allow money paid for all fees and disbursements for which the solicitor is liable to be treated as the firm's money. The change may be appealing to some firms but the shift in risk from the solicitor to the client is unacceptable. In the Society's opinion the benefits are outweighed by loss of client protections, the risk of incentivising poor behaviours, and the practical difficulties that firms might face trying to comply with the rules.

18. The consultation posits that it is disproportionate to require firms to maintain separate client accounts when the only client money they hold concerns fees and professional disbursements and that "wider developments in consumer protection mean that we can safely reduce the current high levels of consumer protection provided in relation to fees paid in advance." In particular, the SRA refers to the protections provided by credit cards (see question 3, below) and states that:

> *"This issue is finely balanced but overall we consider that wider developments in consumer protection mean that we can safely reduce the current high levels of consumer protection provided in relation to fees paid in advance. For instance, consumers may choose to pay by credit card and take advantage of the protections available in consumer legislation if the supplier does not provide the agreed services in part or in full"*

19. The Law Society is not convinced that the assessment of risk in relation to this proposal is adequate (for further detail see answer to questions 3 and 13) and believes that the risks and benefits do not appear to have been weighed against other options that would achieve the same outcome for the solicitor without introducing the difficulties and risks associated with this proposal.

20. The requirement to hold client money separate from a firm's money is an important requirement: both in terms of protecting client money and maintaining accepted standards across professions as to how client money should be treated. This is something that was raised by Lord Hope in the Lehman Brothers Supreme Court judgement in 2012[3]. Lord Hope stated that it is important to have both a declaration of trust and the segregation of client money in order to protect funds in the event of a firm's insolvency. He refers to these as 'elementary principles' and explains:

> *"That is why r14.1 of the Solicitors Regulation Authority Accounts Rules 2011 provides that client money must without delay be paid into a client account, except when the rules provide to the contrary."*

21. Lord Hope explains that these principles were adopted by the Financial Services and Market Act 2000. The financial services legislation ensures that client money is kept separate and not used by firms for their own purposes, it protects firms from claims of

[3] https://www.supremecourt.uk/cases/docs/uksc-2010-0194-judgment.pdf

creditors and it allows money to be returned to clients without delay. "The clients whose money has been segregated will be assured that their client money entitlement is not depleted by having to share the money in the clients' account with others who may have claims against the firm, such as those whose client money has not been segregated and those for whom the firm does not hold any client money at all."

22. The Society believes that the proposals raise a number of unanswered questions and, depending on the answers, could raise significant problems. Insufficient consideration has been given to these in either the main body of the consultation paper or the impact assessment. It is presumed that payments on account of costs and disbursements will be recorded on the office side of the ledger creating a credit balance, which current accounting software would inhibit or possibly prevent. It would be useful to know what other costs there are likely to be for solicitors; for example, will firms need to update accounts software and if so, how much will this cost the profession as a whole? Would PII be affected and, if so, how? Have banks been consulted to determine their views? It is possible that they would look less favourably on the production of normal management accounts to indicate current trading as holding client money in the firm's account may lead to the firm's finances appearing more favorable than they actually are.

23. The definition of disbursements is important and has given rise to enforcement process in the past. The treatment required for client disbursements and the charge of VAT thereon must be set out clearly. Practical difficulties also arise in trying to envisage how the proposals would work for firms - particularly small firms - that operate an overdraft in their firm's account or move from surplus to deficit on their office account. Would such firms be breaking the new Rule 4.2 that the SRA is proposing? How would a firm that regularly uses an overdraft facility be affected? What would happen if a bank suddenly recalled the overdraft facility on the firm's account? Will firms need to open a third trust account for fees in advance on account and professional disbursements? If so, this would increase rather than reduce the administrative burden. Treating fees and professional disbursements as firm's money may also lead to messy ledgers and office credits. This could also be a problem in the event of an SRA intervention and it could take longer and be more difficult to understand and reconcile ledgers.

24. This proposal, in conjunction with the change adopted in November 2015 (which exempted practices obtaining accountant's reports under certain circumstances[4]) as the SRA has pointed out, will remove the requirement for some firms to submit accounts reports. This may reduce administrative burden for the firms affected but no analysis has been provided on how this will impact clients and whether it will encourage practitioners to use this money for other purposes.

25. The temptation to do this would be particularly high at peak times such as when tax, VAT and rent were due and there may be an increased risk of third parties not receiving payments. Being paid (potentially in full) in advance may also discourage prompt compliance with instructions. There will be a temptation to generate new business so that more advance payments can be taken rather than completing the work in hand. There would also be a disincentive to raise VAT invoices as firms would already hold the money, and a consequence of this could be the crystallisation of a VAT liability.

[4] If, during the relevant accounting period, they had an average client account balance of £10,000 or less and a maximum client account balance at any point in the period of £250,000 or less.

26. There could also be significant risks to the client: for example, under the current definition of client money, if a firm becomes insolvent fees paid on account can be returned to the client as they are ring-fenced in the client account and protected by Section 85 of the Solicitors Act 1974, which requires that the bank/building society cannot take money held in a client account to discharge any liability of the firm to the bank/building society. It is unclear what the status of fees and disbursements would be under the proposed definition in the case of insolvency.

27. There may be practical difficulties for reporting accountants in understanding where money has gone. This is likely to increase the complexity and cost of obtaining client account reports. The SRA proposes to ameliorate these issues by requiring that firms maintain sufficient accounting records, including client transactions through a firm's office account, and by complying with standards relating to billing and providing costs information. But it is likely that this will entail further obligations, a need for training for firms and for reporting accountants, and a learning curve, all with associated costs.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

28. Solicitors are already able to offer clients the ability to pay by credit card and, as in other sectors, there is usually a cost to clients that choose to pay by this method. Where clients and solicitors agree to the use of credit cards to pay for legal services, this is an appropriate payment method; however, the Society does not agree with the assertion that this is an adequate replacement for the client protections that will be lost.

29. The use of credit cards is not a complete solution to the change in client protection that would result from these proposals. Credit card finance is not available to all clients (or may not in many cases be available at sufficiently high levels to cater for legal fees) and not enough is known about the likely impact of the proposals in socio-economic terms. The SRA acknowledge that those who do not have credit cards would have to rely on LeO or the Compensation Fund for protection. This could lead to a disparity in levels of protection according to people's ability to acquire a credit card. The current position where all are protected equally, regardless of economic status, will have been lost for the benefit to solicitors of having a little less regulation

30. The consultation paper states that the SRA will look at the impact on the Compensation Fund when it comes to review PII and compensation arrangements later in the year. Greater recourse to the Compensation Fund, as is expected would likely result from these proposals, runs the risk of an increase in premiums that, in the first instance, will fall upon firms so the reduction in the regulatory burden may come at a cost. More information is needed to assess the relative benefits overall and this should be provided now so that the impact on the Compensation Fund can be factored into consideration of the proposals outlined in this consultation.

31. Paragraphs 32 and 36 of the Impact Assessment confirm that clients will be covered by the Compensation Fund. However, the SRA has identified contributions to the Compensation Fund as a cost associated with the operation of a client account. It would be helpful if it could be confirmed that solicitors who do not operate a client account will still be expected to contribute to the Compensation Fund.

32. It is accepted in the consultation that the protections that would be available to clients if its proposals were implemented would not be equivalent to the protection that currently exists under section 75 of the Consumer Credit Act 1974 which is as follows:

    75 Liability of creditor for breaches by supplier

    (1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor.

33. The agreements would be debtor-supplier-creditor agreements under the Consumer Credit Act 1974 and therefore regulated 'borrower lender supplier agreements' within

the meaning of the FMSA (Regulated Activities) Order 2001, (regulation of which agreements relate to the lender). For section 75 to apply, the supplier solicitor would have to have an arrangement with the creditor so that the client could use credit to be provided by the creditor. Section 75 does not apply if there is no connection between the supplier and the creditor. This may mean that if the client borrowed money on his or her credit card by way of a cash advance, there would not be the necessary link between creditor and supplier and there would be no liability on the part of the creditor under section 75.

34. The protection that would be available to the client only extends to transactions financed by the agreement, which give rise to a claim against the supplier in respect of misrepresentation or breach of contract. Nothing else would give rise to the right to claim under this provision. The client would therefore have to be sure that he or she is in a position to prove either misrepresentation or breach of contract before making a claim.

35. Section 75 only applies insofar 'as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000' (s75(3)(b)). This means that there is a financial limit on the value of the work paid for by credit card, in respect of which the client could make a claim. What is not so clear is whether that limit means that where the work is paid for in individual tranches, the maximum value of the claim would be £30,000 or whether each individual tranche counts as an 'item' with a separate limit of £30,000 (or no less than £100). And what if there is one payment but in respect of different retainers? Such questions could give rise to contention unless there is a clear understanding as to what is and is not covered and how the minimum and maximum levels are apportioned between items (if at all). This would have to be clearly explained to the client in advance. In addition, the client may need to go through a more complicated process in order to make a claim against the lender, depending on what sort of processes the lender makes available, which may be another disadvantage of the proposals.

Question 4
Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Question 5
Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account? In particular do you have any views on the new draft Rule 4.2 (see Annex 1.1)?

36. Questions 4 and 5 have been answered together. The Society does not support the proposed change in definition of client money. It would be helpful if the SRA could provide more information on what it believes to be the risks and advantages of changing the rules regarding 'mixed payments'. The Society believes that there may be arguments for and against firms being able to hold non-client money in client accounts if the new definition were adopted but it is not clear what harm would be addressed by this change.

37. If the definition of client money is changed, allowing non-client money in the client account would allow more flexibility for firms to continue with their existing arrangements, if desired. It may also benefit firms that operate with an overdraft, who would be at risk of violating Rule 4.2 of the proposed Code of Conduct. Rule 4.2 would require that:

    "You safeguard money and assets entrusted to you by clients and others."

38. If this is the case, there needs to be an impact assessment carried out with respect to the equality and diversity and whether there would be a disproportionate impact on small firms.

39. The change also has the potential to be negative from a client protection perspective. There are strict rules in place to keep office and client money separate for a reason. For example, the current arrangements make it easier to spot when solicitors are using office money to obscure a shortfall and the change may encourage firms to provide a banking facility for clients, which is not permitted, rightly.

40. The Law Society supports the proposal that mixed monies can be paid into the client account - but not the office account - as long as the monies are separated and allocated to the correct account within a specified time. However, we propose that the word 'promptly' should be replaced with a firm deadline. P24 of the SRA's consultation paper and paragraph 8 of the Impact Assessment explain that the word 'promptly' has been deliberately used as this will depend on the circumstances of the matter. However, the drafting as it stands would not allow a reporting accountant to come easily to a view. If the SRA does decide to continue with this drafting, adequate guidance should be provided.

Question 6
Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

41. No. As the Society does not agree with the proposed new definition of client money, we do not support this proposal.

Question 7
Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

42. Yes. TPMAs should be allowed as an alternative to holding money in a client account but it should not of course be made mandatory. A permissive change, as currently being proposed by the SRA, is likely to be attractive to a small number of practitioners and the Law Society does not object to this in principle.

43. In paragraph 49, it is suggested that allowing TPMAs as an alternative may create, "benefits of increased choice and access for those consumers that are currently excluded from the legal services market". No evidence has been provided to demonstrate the validity of this statement and how TPMAs would increase access to justice. Indeed, the costs of existing TPMA schemes are currently high and these would, in all likelihood, be passed on to the client.[5]

[5] For example, BARCO charges 2 per cent of any fees - https://www.barstandardsboard.org.uk/regulatory-requirements/regulatory-update-2016/bsb-regulatory-update-june-2016/bsb-welcomes-lsb%E2%80%99s-recommendation-to-the-lord-chancellor-to-enable-us-to-regulate-abss/evolve-family-law-a-bsb-authorised-entity-case-study/

Question 8
If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

44. The Society supports the SRA's proposal to allow solicitors to use third party managed accounts (TPMAs). However, we have some concerns that have not been assessed in the initial impact assessment.

45. In particular, the Society would like clarification and more information on the likely impact of the proposal on the Solicitors Compensation Fund given the briefing paper submitted to the Government by the LSB and the legal services regulators in June 2015[6].

46. The report stated that:

    "There is a risk of decreased contributions to compensation funds, particularly if there is widespread change to the ways in which client money is handled. Compensation funds are generally dealing with past problems (sometimes years old) so there is a risk of a mismatch between income and pay outs. Funds may have the ability to do a 'special call' for additional fee raising in these circumstances but that may be from a smaller pool so individual contributions would be higher. Regulators should consider this issue in taking any proposals in this area forward. It is also important to note that the practising certificate fee is also used to fund a number of things that would be unaffected by changes to regulation. Further, cost savings for practitioners do not necessarily directly relate to savings for consumers."

47. The consultation has not commented on these arguments. The Solicitors Compensation Fund is an important protection in the event of fraud or other criminal activity where PII does not apply.

48. Client protection arrangements for those using TPMAs are likely to be much more complex than those for those using traditional client accounts because TPMAs are regulated by the FCA and fall within the jurisdiction of the Financial Ombudsman Service whereas comparable complaints in relation to client accounts about solicitors under the existing arrangements are the responsibility of the Legal Ombudsman. Allowing the use of TPMAs may lead to increased consumer confusion in relation to redress schemes and uneven client protections. The Society would welcome more clarity on this and, in revising the initial impact assessment, the SRA should assess the wider equality and diversity implications for businesses, in particular small firms, and clients.

6 http://www.legalservicesboard.org.uk/what_we_do/pdf/20150720_Proposals_For_Alternatives_To_The_Handling_Of_Client_Money.pdf

Question 9
Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

49. The use of TPMAs could cause disruption in some areas such as the conveyancing market, which is reliant on the ability to move client money, or cancel the movement of client money, quickly and at short notice.

Question 10
Do you have any views on whether we need to retain the requirement to have a published interest policy?

50. Yes, the requirement should be retained. It is right that clients understand any interest to which they would be entitled.

Question 11
Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

51. See answer to question 1.

Question 12 - Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

52. Paragraph 62 states that the SRA intends to review the materials produced as part of the phase 2 changes to the reporting accountant requirements. We have been impressed by the guidance that has been developed by the ICAEW[7] and recommend that the SRA develops similar guidance.

[7] http://www.icaew.com/-/media/corporate/files/technical/technical-releases/audit/aaf-1615.ashx?la=en

Question 13
Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

53. There are significant gaps and omissions in the initial impact assessment. Some of these have already been mentioned in this submission, in particular in revising the initial impact assessment, there should be an assessment of the wider equality and diversity implications for businesses, in particular small firms, and clients.

54. In addition, it would be helpful to have an assessment of wider impacts, including:

- the impact on external Counsel, expert witnesses and others for whose fees the solicitor is liable?
- the impact on a solicitor's relationships with his or her bank and the bank's perception of the state of the solicitor's main account?
- the impact on professional indemnity insurance premiums?

55. The Law Society has concerns relating to consumer protection; particularly around the change in definition of 'client money'. Paragraph 14 of the impact assessment states that the SRA does not "consider that our proposals reduce or dilute in any way the obligation on firms, their managers or employees to keep money safe". The obligations on firms may remain but it would in principle be easier for firms, particularly those in financial difficulty, to "dip into" client money and the client protections that are available to clients will not be consistent.

56. In explaining the proposal to change the definition of client money, the consultation states that "we consider the proposed approach presents a better balance between regulatory burden and consumer protection. It is difficult to understand how this conclusion can be reached when it appears that very little work has been done to forecast the number of firms that would no longer need to operate a client account and what the financial benefit would be for those firms. Paragraph 16 sets out some of the costs associated with holding client accounts but it would appear that there has been no attempt to quantify the financial benefits for solicitors associated with client accounts nor what the average saving would be. This is important; if the change would benefit relatively few solicitors, the case for going ahead with the change may not justify the potentially negative impact on client protections.

57. As a further example of the shortcomings of the initial impact assessment paragraph 25 states that disbursements for which the client is liable, such as Land Registry fees, "can be significant and [that] removing them from the definition of client money (and associated consumer protections) presents a significant risk to the consumer". The SRA references data from the Compensation Fund which shows that more than £3 million was paid out to clients in relation to this type of disbursement over the last two years. It would be helpful if the SRA could indicate the amount paid out in relation to disbursements where the solicitor was liable to provide a complete understanding of the overall picture.

58. Paragraph 35 of the Initial Impact Assessment states that the SRA has taken enforcement action in a number of cases where firms have been in breach of the current rules by deliberately holding payments for unpaid professional disbursements in office

accounts. These cases tended to involve firms in financial difficulties that had not used the money to pay for relevant disbursements. Some of these cases have been brought before the Solicitors Disciplinary Tribunal. It is unclear how such cases currently come to the SRA's attention, and the SRA should consider how such cases would be expected to come to its attention under the proposed new Rules.

59. Paragraph 29 of the Initial Impact Assessment states that there are some transactions where Section 75 of the Consumer Rights Act may not apply; for example, where the payment has been made online through a third party. We recommend that the SRA provides more information on this kind of transaction and what the likely detriment would be to clients.

60. The Society notes that some work has been done by the SRA, looking at consumer protection, provided in Annex 1.4 of the consultation paper. Although interesting - as it allows the reader to explore how the proposed rules would work in practice, through four scenarios, - the analysis does not attempt to quantify client detriment through the loss of consumer protections.

61. The consultation states that gaps in client protection may, in part, be filled by the provisions under the Consumer Credit Act; however, there is a high proportion of the population who do not own credit cards, it would have been useful to better understand the impact on different groups, particularly on different socio-economic groups of the proposals before commenting.

62. It is good that the SRA has included a section in its impact assessment on the impact of the changes on firms' systems. However, there has been no attempt to try and quantify what the impact would be and it appears from paragraph 23 that the SRA has not yet engaged with software companies to understand the implications in terms of cost and inconvenience, for example where accounts software would have to be updated.

Question 14 - Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

63. No, the Society does not have any additional information, data or evidence to provide. However, the SRA should undertake research, if it does not already have the data, in order to forecast any savings or expense to the profession. As already discussed, this should include additional costs through updating computer software. It should look at how these costs will impact groups with protected characteristics and whether some of the changes would result in increased administrative burden. The SRA should also undertake research to develop an understanding of how the changes are likely to affect clients, particularly vulnerable clients.

University of Sheffield

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Yes, on the face of it the draft Rules are simpler. Further case studies and guidance are required for those training and new to the profession to understand fully how the new Rules will apply in practice.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

The draft definition of client money certainly appears to make it much simpler for firms to comply with the Rules in practice. However, the proposed Rules rely heavily upon the efficiency of firms' accounting proceedures to realise when money which has been overpaid by the client on account of costs ceases to be able to be held in the office account and must therefore be moved in to the client account and repaid to the client as per Case study 1 of Annex 1.5. Not all smaller firms may have the procedures in place to be able to readily identify this as quickly as the SRA maybe intends.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

I do not feel able to comment usefully on the use of credit cards to pay for legal services. However, I do note that under the proposed new Rules, the SRA envisage that the consumer protection that flows from using a credit card to be one of the key ways in which consumers are safeguarded against the risks identified in Annex 1.4. If the results of this consultation show that the use of credit cards are not as widespread as the SRA envisage, then additional safeguarding against the potential risks identified is required. I am not sure that the use of credit cards will be as widespread amongst corporate clients and therefore corporate clients may have less means of redress.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

I appreciate that the definition in proposed Rule 2.1 is intended to be much easier to administer in practice. And I understand the need to make the rules safeguarding client money proportional. The SRA are clearly aware of some of the risks with this approach as set out in Annex 1.4 and helpfully set out the intended route consumers should follow in order to seek redress for any misuse. However, my initial observation is that a client may be waiting a long time for the return of his/her money if forced to rely on the means of redress identified.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

As above, I can see that this helps the SRA achieve proportionality and will be suitable for the vast majority of cases where client money is not misused. However, the problem will occur in the small minority of cases where the risks have been identified in Annexe 1.4.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

I do not feel able to usefully comment here.

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

I appreciate the advantage which the SRA envisages for small firms and for new entrants as identified in point 39 of the Initial Impact Assessment. However, as identified by the SRA, this will only work well if the SRA are satisfied about the effectiveness of the TPMA's regulation and my own view is that further analysis of this needs to be carried out.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

See my comment above.

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

As an academic, I do not have a view as to how this is likely to work in practice.

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

I think the lack of a published interest policy creates an opportunity for even compliant firms to use the proposed new Rules to their advantage and use client money to earn them more interest than they account to the client for. Whilst commercially astute clients may be more savvy to this and request that money be placed on deposit and ensure they are paid all the interest earned, less commercially astute clients may be more prone to this form of exploitation.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

No.

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

The brevity of the proposed Rules are certainly easier to understand and therefore one would hope, easier to apply and administer. A comprehensive suite of case studies and guidance would enable students and those newly qualified to have confidence in their application of the Rules. It would certainly help with the teaching of this subject to students.

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

Yes, I agree with the maters identified. As an academic, I do not feel usefully able to comment on any other forseeable risks.

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

No.

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to consultation@sra.org.uk, by **21 September 2016**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

Solicitors Regulation Authority
Regulation and Education - SRA Accounts Rules 2017"
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TW/KC/C

20 September 2016

Dear Sirs

LOOKING TO THE FUTURE – SRA ACCOUNTS RULES REVIEW

I write in response to the above SRA Consultation dated June 2016, which outlines various proposed changes to the Accounts Rules and their overall application.

Whilst addressing the proposals outlined in your consultation document I believe it is key to look at the proposed changes, applying your overall aim as outlined in the introduction to the consultation as follows **"we aim to remove any unnecessary restrictions, prescription and detail while, at the same time, maintaining appropriate consumer protections".** I believe this is a positive approach to adopt when reviewing the Accounts Rules but clearly there is difficulty in striking a balance between removing unnecessary regulation and at the same time having sufficient structure to enable protections to exist for managers and employees of law firms, new entrants to the market, and ultimately the consumers of legal services.

Regulation should be proportionate and should also be targeted to mitigate the risk to client money at all times and therefore there should be a need for some rules to be prescriptive, and indeed restrictive, to ensure that all firms handle client money in the same way. There should be clear consistency with regards to the application of the Accounts Rules by law firms and their employees, accounting staff at those firms as they move between jobs, and indeed accountancy firms who will be reviewing the systems in place as part of their role as reporting accountants for the firms concerned.

I have outlined below my specific responses to the questions raised as part of the consultation.

1. The proposed changes to the Accounts Rules are extremely comprehensive as is evidenced by the reduction in the number to just 13 rules. Clearly the reduction in the number of rules themselves will make them easier to review albeit there may be certain points that will be more subjective due to the removal of detail within the current rules, and therefore further guidance may be required within the final version. For example, as part of Rules 4 and 5 which refer to withdrawals from client accounts, we would anticipate there would be further guidance from who is a suitable person to authorise withdrawals. Such is the specific nature of the rules themselves the SRA should ensure this guidance is included within the rules rather than be separately included as part of the Handbook or Code of Conduct.

The SRA should note there is a potential risk in relying on solicitors and firms to read and therefore be bound by the wider duties set out in the Code of Conduct, rather than including the detail within the body of the Accounts Rules. Whilst obviously all employees should be aware of their responsibilities under the Accounts Rules, in practice many firm's compliance with the Accounts Rules will primarily be seen as the role of the accounts team including the COFA and not the direct responsibility of fee earners.

Whilst I do not agree with this view, the SRA should ensure that both the Accounts Rules and the Code of Conduct/Handbook can stand alone as separate documents. Whilst this may lead to certain duplication it will lead to less time referring to both documents when looking at specific areas of concern.

In summary, I would suggest that the new rules are certainly clearer, subject to the need for them to be supported by sufficient detailed guidance around different Accounts Rules to ensure there are no areas left open for interpretation.

2. In principle I do agree to an amendment in the definition of client money in the context of streamlining existing Rule 12, but I would strongly suggest that the main definitions are retained as they stand, including unpaid professional disbursements as referred to under existing Rule 12.2 (c).

Scenario 1 of Annex 1.4 where certain disbursements would be treated as office money is a very good example of why I would be reluctant to change the definition of certain types of client money. Even the most financially sound and well run law firm may experience some financial issues from time to time, but if a firm does have cash flow issues your example of money being received and then subsequently being used to support the overdraft is a significant risk. I think it is difficult for the SRA to ensure compliance in some of these firms, particularly where the firm in question may no longer be required to have a third party client money review as a result of the adoption by the SRA of a minimum client money threshold.

I also have concerns regarding the phrase in point 17 of your consultation document "how a firm manages its money should be for the firm to consider having regard to its other obligations in our Accounts Rules, any legal obligations and its assessment of its own financial stability". I do not believe it is for the firm to consider, as parameters for the protection of client money should be uniform throughout all the firms holding client monies. In the context of earmarking and the old 14 day rule I agree that the firm should not necessarily by restricted in the time period by which they need to transfer the funds, although clearly it is in their interest to transfer the money from client to office as quickly as possible. I see no other reason though why the firm's own financial stability should have a direct impact on the definition of client money itself.

In summary therefore I would be keen that your current draft rule 2.1 is amended to include more of the current wording with Rule 12, perhaps replacing the word "excluding" under 2.1 (a) to "including payments for your fees and payments to third parties to which you are liable". This then mitigates the risk that monies received from a client are not used improperly.

3. The issue of how credit cards are used to pay not just for legal services but for any types of purchases of goods or services is an interesting one. I recently attended a session held by a bank on cyber-crime where the view held by the presenters was that individuals and businesses should be processing certain payments by way of credit card rather than bank payments in order to utilise the protections which currently exist with the Financial Conduct Authority.

As a firm of accountants we do accept credit card payments from our clients and this is primarily around giving our clients greater flexibility in settling our fees rather than insisting on settlement solely by way of bank payment.

I think the principle of paying for items by way of credit card rather than utilising bank funds is probably governed by the own individual's financial preferences and their attitude to debt and the use of credit. I would still envisage that, unless there is a huge drive by banks and credit organisations for individuals to pay by credit card, the majority of payments will still be made by bank transfer or debit card but again this may be a practice that changes over time.

4. As referred to in my answer to question 2 I see no massive need to move away from the prescriptive nature of the existing rule 12 as I think this provides significant degree of protection for clients when transferring their own funds to specific law firms.

5. I believe that if all monies are transferred or received into a client account this provides a good level of protection for the client of the law firm. There can be difficulty in determining how money should be treated but you can still have a level of degree of flexibility by placing money into the client account but perhaps not applying prescriptive timescales to transfer funds, with the exception of paying disbursements which need to be paid in a timely fashion to ensure the completion of progress of individual client matters. In that respect there may be some additional wording required for disbursements which is more in line with the existing rule 17.1.

Again my main concern would be if monies are permitted to be paid into an office account in the first instance, without an specific wording or safeguards around how those funds are to be used, it will be difficult to ensure those monies are used for the correct purpose particularly in a firm which is operating in constant use of an overdraft facility. In practice the application of the current Rule 18.2 (a) is difficult in the main for firms, but it would seem that all funds, with the exception of a specific request from the firm to a client for payment of a bill, should be placed in a client account rather than an office account.

6. As suggested in the Consultation document it would seem sensible to discuss the position with the LAA before any changes are made to the Accounts Rules relating to these receipts. The SRA should consider however whether some protection should be retained within the Accounts Rules to ensure that any monies received for disbursements are paid or transferred within 14 days, or indeed a shorter time period, to ensure the progress on specific client matters can be actioned in a timely manner.

7. In principle I think the concept of allowing a third party managed account as an alternative to holding money in a client account is an interesting idea. The key, as referred to in your consultation document, is the list of desirable features required from a TPMA including transparency and independence.

I have 2 main areas of concern regarding TPMA's. Firstly there should be uniformity by all providers of TPMA's in terms of how these providers apply this service to law firms and their clients. Whilst I appreciate that the SRA are suggesting restricting TPMA's to those operated by payment service providers which are regulated by the FCA, the SRA may wish to give more guidance on how these will actually work in practice. For example, presumably at the initial interview with a client separate terms of engagement will need to be provided by the TPMA provider, and there would need to be clear guidelines within the firm's own client care or engagement letter that no monies are to be received into the client account and therefore the firm has no liability in respect of those monies.

My second point is centred on the issue of cost, as I am not convinced that a TPMA provider will lead to a cost saving for firms. If the SRA is looking to reduce the cost burden for smaller firms who do not hold too much client money, in reality the instruction of a robust compliant TPMA provider maybe a more expensive option than utilising exiting capacity within the firm's in-house accounts person or team.

8. I believe there is a potential risk surrounding accessibility of TPMA accounts in respect of the speed of processing transactions, particularly if you are dealing with an external provider rather than a fellow solicitor. An extreme worse-case scenario could be where a law firm, or indeed the client, is unable to access the funds for any reason which would therefore delay the process on a particular matter.

As referred to under 7 above, I would also suggest the cost of the service is a potential risk to firms, in particular smaller firms which may be dealing with the challenge of new entrants to the market. The adoption of TPMA's may lead to a greater cost burden which cannot then be passed onto the client and as such the firm would need to bear that cost.

9. For the application of TPMA's to be successful there will clearly need to be some guidelines surrounding processing of transactions particularly in relation to conveyancing where timing is key to the transaction. To only permit the use of TPMA accounts for specific areas of law I think again is a tricky issue as whilst it may be easier to apply on matters where timing is not fundamental to conclusion, e.g. probate and indeed some family cases, it would seem sensible when at a time when the SRA is trying to simplify the rules, to have a policy whereby if a firm is to adopt TPMA's, the firm uses it for all areas of law they are providing to their clients rather than just specific service areas.

10. The question regarding retaining the requirement to have an interest policy is slightly puzzling in view of the fact that the adoption of the policy is a fairly recent event.

In order to maintain transparency with clients, and to avoid any confusion as to when interest is due and payable, it would seem prudent to have a policy in place at each firm. Assuming the SRA does not want to move away from the previously stated desire to reach a fair outcome by implementing a blanket accounts rule covering the payment of interest (as adopted in earlier years), then I think it should retain the existing approach.

11. Other than the comments raised above I have no other specific points to make other than to reiterate that there needs to be some further guidance notes around specific Accounts Rules. Again whilst I appreciate the SRA are looking to make things less prescriptive and not "one size fits all" we are referring to the protection of client money and therefore there does need to be an element of prescribed practice.

I would also mention the fact that there appears to be an opportunity as part of this revision of the Accounts Rules to perhaps include a section around financial stability. As flagged in the consultation document, financial stability does have an impact on keeping client money safe particularly in those firms that are perhaps struggling financially. In terms of how this may be adopted in practice, the AR1 could include an additional section regarding accounting information e.g. whether the firm has operated an overdraft in the year, whether the firm has breached that overdraft limit or debt covenants, and whether there are any overdrawn members or partners current accounts.

12. As is evidenced in the guidance to the Accounts Rules issued following Phase 2 of the review by the SRA I believe that the more case studies and guidance the SRA can provide is of use to both law firms themselves, COFAs within those firms, and indeed the reporting accountants when trying to establish what does constitute material breach of the rules which is reportable on the new AR1 form.

13. The scenarios identified in Annex 1.4 are useful in flagging up particular scenarios, and I would broadly agree with the consumer impacts included in that section. Clearly prevention is better than cure however, so ideally the rules should be sufficiently stringent that the instances where "redress/regulatory action" are required are kept to a minimum.

14. In our capacity as reporting accountants for a number of law firms I again reiterate I believe that the SRA's approach to making certain areas of the accounts rules less prescriptive is the correct one, but it has to be done whilst meeting the aim of protecting client monies.

As the SRA will be aware, a huge majority of law firms today have gone to great lengths to ensure that client money is adequately protected and historic breaches have been due to technical breaches rather than instances where client money has been "at a risk". The changes implemented by the SRA following Phase 2 of the Accounts Rules review does help reporting accountants judge these technical breaches more fairly although I do still have concerns regarding the consistency of approach adopted by different reporting accountants.
This point is relevant in the fact that having already reduced the level of independent review of Accounts Rules compliance as part of Phase 2, I would be concerned about how the SRA is going to learn of the small minority that do not keep client money safe, either in adoption of their own working practices, or as a by-product of the financial challenges they may face, and the implications that may lead to with potential improper money flow between client and office accounts.

Whilst I appreciate the benefit in opening up the legal services market to new entrants encourages competition and choice for consumers, we are still talking about the provision of a specialist service area and therefore it should not be an easy process of entry. There should be a rigorous process and systems required for compliance and therefore the SRA needs to ensure that in trying to open the market up to new providers it does not distance itself from its existing body of regulated firms, and allow a lowering of the generally high standard of compliance with the Accounts Rules that many firms do currently adopt.

If you have any queries with regards to this response, or would prefer a response in a different format please contact me. I have also attached the relevant completed "about you" form as requested.

Yours sincerely

T. White

Tommy White
Partner
For and on behalf of Wilkins Kennedy LLP

Response on behalf of the Tunbridge Wells, Tonbridge and District Law Society to the SRA's Consultation: Looking to the Future: SRA Accounts Rules review

1. **Do you consider that the draft accounts rules (annex 1.1) are clearer and simpler to understand and easier to comply with?**

   On the face of it, these rules are simpler and easier to follow. The problem is that less prescriptive rules are usually more difficult to administer in practice because they create uncertainties as to whether a firm is compliant. The SRA proposes to provide an online toolkit comprising guidance and case studies, but we have no confidence, on the basis of other SRA toolkits, that this will give sufficient guidance to regulated firms.

2. **Do you agree with our proposals for changing the definition of client money? In particular, do you have any comments on the draft definition of client money as set out in the draft rule 2.1 (see annex 1.1)?**

   The SRA's proposal is that money paid by the client in relation to the solicitors' fees and disbursements (especially for example Counsel's fees) be treated as firm's money and not client's money. Consequently, it can be paid into office account. It is no doubt true that this change will enable some regulated firms not to have client accounts. On balance, however, we do not agree with this change, which would leave the distinction between client money and office money too vague. In addition, if a firm became insolvent, currently money paid on account could be returned to the client but it is unclear what the status of that money would be if it was attributable to fees and disbursements. This would not accord with the requirement to keep client money safe. There would also be practical difficulties for reporting accountants in understanding where money had gone, increasing the complexity of client account reports. The proposals also do not contain any safeguards against improper access to the money.

3. **Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, would you use a credit card to pay for legal services? If not, why not?**

   Many of our firms do enable clients to pay for legal services by credit card and we believe that this is a positive thing, enabling consumers to pay for legal services in the same (convenient) way in which they pay for other expensive shopping. However, some smaller firms report that they no longer accept credit cards. Some cited the amount of compliance required by Worldpay which they felt was disproportionate to the small number of clients who pay by credit card. The majority apparently pay by BACs. The SRA seems to think that the protection afforded to consumers by credit card companies is adequate compensation for the loss of protections which consumers would suffer when instructing unregulated entities to carry out legal work for them. This is a completely unacceptable excuse for denying consumers protection from unregulated entities.

4. **Do you consider it appropriate that any client money (as defined in draft rule 2.1) should be held in a client account?**

   Yes, subject to our answer above to question 2 that we do not agree with the proposed change in the definition of client money. We support the view that the SRA should continue to apply the current principle that client money should be held

in client account, subject to the rules on mixed payments, under which office money must be transferred out of client account within 14 days of receipt.

5. **Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account? In particular do you have any views on the new draft rule 4.2 (see annex 1.1)?**

   See answer to above: we agree that mixed monies can be paid into client account as long as funds are then allocated promptly. We do not, however, agree that mixed monies can be paid into business accounts. Firms would have to have safeguards to ensure that such money in a business account was safe, which would create needless complication. Payment into a business account could also trigger liability for VAT.

6. **Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific accounts rules related to payments from Legal Aid Agency (LAA)?**

   No. We do not agree with the proposed new definition of client money and so cannot support this proposal.

7. **Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?**

   This is something on which the SRA has consulted before and we reiterate our previous answer that in principle we agree that third party managed accounts would be helpful for some (small) firms. It is unlikely that many firms would want to use third party managed accounts but we have no objection to the introduction of TPMAs, bearing in mind that it could be attractive for very small firms, but would not be useful to most firms.

8. **If not can you identify any specific risks or impacts of allowing TPMAs that might inform our impact system?**

   TPMAs could have implications for client protections out of the Compensation Fund if the SRA were to decide that these firms did not need to contribute. It is also not clear whether professional indemnity insurance providers would offer improved terms for those using TPMAs. Finally, it is unlikely that the use of TPMAs would eliminate determined theft.

9. **Do you consider it appropriate for TPMAs to use transactional monies – particularly in relation to conveyancing? Or should the use of TPMAs be restricted to certain areas of law? If so, why?**

   We do not have any objection to use of TPMAs across all areas, subject to the points we have made in answer 8 above. We are, however, concerned that the use of TPMAs in areas such as conveyancing, which rely on the ability to move money quickly, could disrupt legal processes.

10. **Do you have any views on whether we need to retain the requirement to have a published interest policy?**

    The current requirement should be retained because clients need to understand any interest to which they are entitled.

11. Do you have any comments on the draft accounts rules either as a whole or in relation to specific accounts rules (see annexes 1.1, 1.2 and 1.3)?

See answer to question 1.

12. Are there other areas related to the accounts rules that should be included in the toolkit for firms through guidance or case studies? If yes, please provide further details.

The SRA needs to develop proper guidance.

13. Do you agree with our assessment of the consumer impacts in annex 1.4? Do you have any information to inform our understanding of these risks further?

We believe that the SRA's impact assessment is inadequate. There should be a wider assessment on equality and diversity implications in particular for small firms and, most importantly, for clients. It is hard to understand how the SRA thinks that its approach offers a better balance between regulatory burden and consumer protection when it hasn't done any work on predicting the number of firms which would no longer need to operate a client account.

14. Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

The SRA should undertake research, if it does not already have the necessary information, in order to finalise its impact assessment.

20 September 2016

Venner Shipley LLP

Dear Sirs,

Please see below our response to the Accounts Rules Review Consultation on behalf of Venner Shipley

Legal Limited and Venner Shipley LLP.

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to

understand and easier to comply with?

Answer 1

Currently the rules are much lengthier and complicated than they should be in order to reach a high

level of compliance. The Draft Rules are proposing to make changes to the wording of the current rules;

thus making the rules more accessible. From the perspective of a new firm, the current wording inhibits

compliance and requires a great deal of time to truly understand the rules and comprehend what is

required in order to prevent breaches. The length of the new rules also facilitates accessibility and a

more effective understanding of the rules both for professionals and the general public. The proposed

changes therefore assist with compliance which allows firms to effectively keep client money safe. The

resources currently used to investigate immaterial breaches, caused by misunderstanding of the rules,

can be better allocated towards systems which actively protect client money from material breaches of

the rules which pose a real risk to client money.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular

do you have any comments on the draft definition of client money as set out in the draft Rule

2.1?

Answer 2

From the perspective of a newly SRA approved firm, we feel that the current definition of client money is

unnecessarily complicated. The proposed change will definitely aid with compliance of the rules as

there will be a clear distinction between what is and isn't client money. This will lead to fewer misinterpretations of the rules and should ultimately result in fewer breaches. Newer firms will also find entry into the world of the Solicitors Accounts Rules much smoother and should result in a higher level of compliance.

Should you require any further information, please do not hesitate to contact me.

Kind regards,

Miss Brogan Halcrow
Venner Shipley LLP
200 Aldersgate
London EC1A 4HD

Wards Solicitors

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

This form is designed to be completed electronically—in MS Word. Please save it locally before and after completing it.

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

No strong views but why is there a need to tinker with something that is not an issue? The risk here as ever is that by "simplifying" the wording of rules, the effect is to make them more vague and less reliable as a source of guidance.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

I do disagree with them as the assumption here is that by a simple rule change the legal position will be changed - but I don't think it is and that will make the proposed new rules unworkable in practice. They are also unwise from a client protection angle.

1 By saying that money from a client is no longer "client money" does not alter the ownership of that money at law. Say a client pays £5000 on account of costs and disbursements to a firm of solicitors who retain the money under the new rules in Office account. The client is declared bankrupt, the firm bills the work and assumes it has been paid in full. I believe a trustee in bankruptcy would say this amounted to a preferential payment fo a creditor and demand the £5000 be paid to the Trustee for distribution to the full range of creditors pro rata. It is hard to see what the benefit of a rule change would be.

2 If the rule change is intended to improve firms' cashflow then it is dangerous and will lower the esteem of the profession and the protection afforded the consumer - presumably the opposite of what a regulator whould be trying to achieve. There is a real danger here that firms that are in financial difficulty will seek to accunulate funds to keep their own creditors at bay - eg their banks - and even to offer unprofitable deals on their charges if money is paid in advance in the hope of staving off insolvency.

3 Esssentially the proposed rule change will not reflect the true legal position of the money held by the lawyer so is pointless and confusing. Money paid on account remains client money whatever account it is held in. It does not miraculously turn into a firm's money until billed and collected in accordance with the contract between client and firm.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

My firm accepts credit card payments as this makes it simple for the clients to pay online and remotely.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Isn't that the effect of the rule? I still disagree that money paid on account of fees should be excluded from Client Account.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Seems sensible.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Probably.

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

In theory but there are risks that need to be covered……. what happens if the TPMA goes insolvent, steals the money, is not effective? Clients will suffer and the firm could be powerless.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

See above.

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

This is a can of worms. Some years back the Land Registry was looking into similar schemes but the main difficulty encountered was the lack of control by the solicitor for altering payment amounts and releasing money at the last minute. There are banks so why need TPMAs? What would the insurance position be if funds were delayed? this is a can of worms that needs very careful consideration over time. It is not as simple as it looks.

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

This is fairly irrelevant while interest rates are so low but maybe that is the time to get the rules clear.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

As above.

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

No.

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

See replies above. I believe consumers could well suffer as stated.

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

No.

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to consultation@sra.org.uk, by **21 September 2016**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

Solicitors Regulation Authority
Regulation and Education - SRA Accounts Rules 2017"
The Cube
199 Wharfside Street
Birmingham
B1 1RN

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

This form is designed to be completed electronically—in MS Word. Please save it locally before and after completing it.

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

We agree that the draft Accounts Rules are much clearer and easier to understand, but we feel there are issues which could arise in certain areas, mainly around allowing monies received for costs and disbursements being held in the business account in advance of the invoice being issued or disbursement(s) being paid out.

Many accounting software systems report on credits in office account, since these type of credits are often rare; only allowed in certain circumstances and should be investigated. We use the report to ensure any credits in office account are held there legitimately and to ensure that no client money is held in office account in error. The credits in office account report would become unusable since there will be a large number of credits in office account, so client monies could easily be masked and incorrectly held in office account.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

No, we feel the practicalities of holding money paid in advance for fees or unpaid disbursements in the business account will be very difficult to manage properly. This also adds extra financial stability risks, with monies being paid in advance for fees or disbursements this would increase the cash balance before the invoice or disbursement/expenditure is paid out, which could be used to cover a firms running costs and not show a true reflection of the position of the business.

Where monies are received in advance of the invoice being raised a VAT liability could be incurred for those matters which have not yet completed. Keeping track of the unallocate funds in the business account would be complicated as credits in the business account would become very common.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

We accept credit cards for monies on account of costs; our fees and disbursements. We would not accept payment for monies we wouldn't normally pay from office account, such as stamp duty, deposits, balance of completion monies etc.

As a consumer I would use a credit card to pay for legal services but I am just as likely to use a debit card, depending on the amount being paid.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

No, the current definition is easier to comply with, since you would be removing the requirement to hold money on account of costs or disbursements in client account. Currently it is easier to identify credits in office account which are held there legitimately. Whilst you may then argue it has the reverse effect, with difficulty identifying office money when it is held in client account. But system reports identify matters where there are outstanding office balances and money held in client account.

We feel holding money on account of costs, unpaid disbursements etc. is much better to be held in client account and then transfer those monies to office account when the funds become office money, or within 14 days of it becoming office money. This ensures credits in office account are kept to a minimum and those credits can easily be identified and action taken where required.

We also feel there are additional safeguards for consumers with money being held in client account being protected should the firm fold, this protection would be lost if the money on account of costs and disbursements is held in advance in the business account. Should this happen, the safeguards appear diluted by placing the reliance on the consumer themselves to obtain redress via LEO etc.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Yes, where 'promptly' has defined time frames of when the funds should be transferred to client/office account, as an example by the end of the second working day.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

We feel the only way this would work would be to tell LAA that they have overpaid us, our experience has shown where we have returned overpayments they haven't been credited to the appropriate account and it takes a lot of effort and time to get the account corrected. We have had much more success when we inform them of an overpayment, they later recoup the payment. Guidance would need to be given as to whether overpayments are to be held in client or office account.

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

We would not use such a facility and therefore have no comment.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

No comment.

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

No comment.

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

It is useful to publish the guidelines on which you calculate interest, whilst clients may not readily read this section, you can refer them to it should they have any questions relating to interest.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

With the requirement under rule 9.1(b) and 10.1(b) to bring in Joint accounts and Client's own accounts into the monthly reconciliations, we would need to record the transactions which take place on these bank accounts into the books of account. This new requirement will be very time consuming since we deal with numerous Client's own accounts and have a small number of Joint accounts. We will need to gain daily access to these bank accounts to enusre transactions are recorded and reconciled in a timely manner. Clients may not be keen to allow non-fee earning (finance) employees having access to their bank accounts. These requirements seem to go over and above the current requirements and doesn't seem to fit with the rationale to reduce unnecessary regulatory burdens and costs. With these accounts being included in the reconciliations the client money balance may easily exceed the limits under rule 12.2(b) meaning more firms require an accountants report.

Just to reiterate our concerns of holding money in the business account in advance of the invoice being raised or disbursements being paid out would be complicated; time consuming and long winded, ensuring all of the credits in the business account are there legitimately.

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

What is office money.

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

The options for redress would be slower, much less consumer/client friendly and more complicated. We do not feel that this will help maintain public/consumer confidence in solicitors or the profession.

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

No.

Thank you for completing the **Consultation questionnaire form**.

Please save a copy of the completed form.

Please return it, along with your completed **About you form**, as an email attachment to consultation@sra.org.uk, by **21 September 2016**.

Alternatively, print the completed form and submit it by post, along with a printed copy of your **About you form**, to

Solicitors Regulation Authority
Regulation and Education - SRA Accounts Rules 2017"
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199 Wharfside Street
Birmingham
B1 1RN

Consultation: Looking to the future - Accounts Rules

Response ID:34 Data

2. Your identity

Surname

Vesey

Forename(s)

Thomas

Your SRA ID number (if applicable)

521985

Name of the firm or organisation where you work

Winckworth Sherwood LLP

We may publish a list of respondents and a report on responses. Partial attributed responses may be published. Please advise us if you do not wish us to attribute your response or for your name or the name of your firm or organisation to appear on any published list of respondents.

Attribute my/our response and publish my/our name.

Please identify the capacity in which you are submitting a response. I am submitting a response…

on behalf of my firm.
Please enter your firm's name:: Winckworth Sherwood LLP

3.

1. Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Yes

4.

2. Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

In principle, we agree with the definition. The only issue is the point where funds received "on account" of solicitors fees and third party services where the solicitor is the contracting party should be treated as solicitors funds.
The illustration treats these as business funds on receipt, but we consider this should only occur on rendering an invoice or an account of costs, which would be consistent with Rule 4.3

5.

3. Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

As a firm, we accept payment of legal services by credit card. This has not presented any particular problem for us.

6.

4. Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Yes. See earlier comment about money received on account of costs.
It would be useful to have some guidance on the point when money should be transferred to settle costs rendered. Some lawyers seek client approval of the invoice before applying funds.

7.

5. Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Agreed, provided money on account is client money until an account is rendered

8.

6. Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

No comment

9.

7. Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

We would only support the use of a TPMA where the solicitor was not responsible. We consider it unreasonable for the solicitor to be responsible for entities over which he has no control.

We consider that the use of a TPMA should be a matter between the client and TPMA and would only involve the solicitor to the extent permitted to give instructions on behalf of the client

10.

8. If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

It seems to us that the recognition of contractual relationships should inform responsibility and accountability. If a TPMA is to have a place, then it would need to be robust enough and directly accountable for the business it undertakes. It should not be incumbent on professional advisers to underwrite them, any more than they are expected to underwrite an approved bank or building society. In most cases, the legal services are no different from the services provided by any other professional adviser and are not "officer of the Court" services. In this regard, open market operating conditions should apply, as they do for other professions.

11.

9. Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

As a firm that maintains client accounts, we see no need for the use of TPMAs. They would only seem relevant from a service provision perspective, where a solicitor did not maintain client accounts. In all other respects, it introduces an additional layer of complexity and risk. However, if they were to have a place, then logically it should be for any client funds, though a solicitor ought to be free to decline to act for a client, if they wanted to use a TPMA when the solicitor could also manage such funds through a client account

12.

10. Do you have any views on whether we need to retain the requirement to have a published interest policy?

It seems inappropriate to focus on interest, which is very much incidental to the provision of professional services and where the settlement of fees can vary considerably for commercial reasons and may need to take into account any potential interest in settling business terms. A commercial business looks at margins, which takes into account all costs and income in settling prices and quoting for work. Interest is a small part in that and should not be looked at as an isolated income stream for a solicitor or a client. We consider that the requirement should be dropped

13.

11. Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

We think they represent a major improvement and subject to our detailed comments, commend you for this.

While recognising the importance of protecting client money, legal services with some specific exceptions are professional services in the same way that other professions provide services, often in competition.

It is important that solicitors should be able to compete on an even playing field against other professions.

14.

12. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

The use of words such as "promptly" can be subjective. Guidance on these areas would be helpful to ensure consistency and benchmarks for good practice

15.

13. Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

No

16.

14. Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

Presumably, you have access to the PI insurance industry and will have had the benefit of their feedback.

Presumably you will have consulted with other professional bodies such as accountants and surveyors for their experience.

ID 1

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

The queston is are these changes open to abuse and what safeguards are there to ensure compliance?

They are simpler and clearer.

Are they open to abuse? yes

Are there safeguards? No you have missed the most obvious which since the 1930's when the first ever rules came in. Solicitors are porfessional legal people HOWEVER they rely on support staff. They do not do back recs etc. The rules should clearly state that a suitably qualified accounts person is employed. ILFM would be the best protection as they could ensure accounts staff are up to date with continuing professional development. The minimum would be a person who at least every 2 years takes an appoved SRA rules course.

Don't forget a solicitor will if busy sign anything put infront of them even if it is the monthy bank reconcilliation which they do not understand.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

NO.

Client money must include all monies received from a client or third party. Redefine expenses and disbursement as all monies liable to to paid for and on behalf of a client. It is only the word disbursement that causes confusion and should embrase all monies paid out relating to a client matter.

If you permit the exclusion of payments to third parties from client monies some solicitors will ask their accounts person if they have one to use this money for the office or themselves and so leaving the firm short of funds to pay third parties. It has happened in the past and you are encouraging bad practice.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

No

This firm does not currently see a requirement for credit cards, but that may change over time.

You have not mentioned debit cards or AMEX cards,

To date there are no clear rules relating to accepting any type of card and that needs clarification. (1) should all cards be paid into client account? (2) are funds treaded as cleared on payment, or when payment appears on a back statement, or when card company send its monthly statement. Bearing in mind that funds can be recalled within a set time span.

Cleints may not be protected if they usse a debit card and it could be that they used the wrong card not realising.

Taking AMEX cards causes yet another problem as they take a commission from the gross payment taken, but it is hard to work out what amount that will be.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

It is important that any professional firm keeps it's own monies separate from that of it's clients. Therefore you MUST include funds held for payments to third parties as we have a duty of care to our clients and to look after their interests. Any monies held for and on behalf of a client is and should be client money, until such time as it becomes costs or earmarked for costs.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Again it has been and always will be in the clients interest to pay money received from a client into client account. Once deposited in client account the accounting staff have time to transfer where appropriate monies belonging to the firm itself. That makes life simple and easy.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Firms that have a high proportion of Legal Aid work in my experience tend to be ones which run higher overdradts while they await payment of work done. Cashiers are under intense presure from solicitors/partners to transfer to Office account every penny. Having a rule is the only weapon with which to use to ensure the firms accounts are kept in order.

Please do not drop this rule. Think of the ancillery staff who you seem to ignore.

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

Do you want to make more work for us! NO surely the old adage if it ain't broke don’t fix it applies. Our systems work we are trusted with clients money why would we want a third party to hold it who we can not be sure will protect it.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

Can you trust a body authorised by the FSA? a body that permitted the banking crisis which we are still recovering from. Clients money is just that and we hold it in trust for them a third party is just not safe.

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

Absolutly not there is no guarantee the funds are safe. Conveyancers will be spending too long chasing a TPMA checking funds have been paid out on time and correctly. Internally held money is dealt with timely and there is direct contact between fee earner cashier and bank.

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

Solicitors need to be open and transparant and show that are not making hidden profits over and above what cleints see as high fees. A clear interest policy helps with this.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

Covered above

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

No

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

Nothing to add.

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

No.

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Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

This form is designed to be completed electronically—in MS Word. Please save it locally before and after completing it.

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Yes

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

No.

The propose new rules may make it difficult for firms to identify cleient money held erroneously in the office account, because office ledger credit balances will become the norm rather than an exception. May also effect VAT accounting?

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

Yes we do accept credit card payments.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Yes, but not with the exception of fees etc, i think they should stay as client funds until a bill is issued.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

No, i would personally prefer to keep as is at the moment, paying into client, but keep the removal of the 14 day rule.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Yes

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

No, would prefer to keep client a/c.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

No - not in favour of TPMA's

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

No

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

No

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

No

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

Yes

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

No

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ID 3

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

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Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

The draft Accounts Rules are shorter but not clearer or simpler to understand. They are too vague, ambigious and subjective. Rules should be prescriptive and clear (black and white), making them subjective (grey) just muddies the waters meaning it is unclear what is acceptable and what isn't. How can you enforce a rule or law effectively if if isn't clear, hence why rules should always be prescriptive.

They might be easier to comply with but this isn't necessarily an improvement or what the industry and public needs. De-regulation or self regulation doesn't work, e.g. the banking industry, as firms or people within firms push things to the limit and beyond to improve profitability or bonuses. People, especially those who are less compliant or less honest, take advantage as far as they can, and trying to close the door once the horse has bolted is acting once the damage has been done.

I appreciate there are protections in place for consumers but the principle is to safeguard money in the first place rather than be able to recover it via an Ombudsman or a Guarantee Scheme. Now you have reduced, and are planning to reduce further, the need for client accounts and accountant reports which provide front end protection for clients' monies.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

I disagree with the change to the definition of client money. The money doesn't belong to the business until the work has been completed and an appropriate notification of costs provided to the client. It therefore still belongs to the client and should be client money. Putting monies of this type into a firm/business account is putting money that belongs to the client at unnecssary risk and is contrary to the principle of safeguarding client money, as the risks are significantly increased by holding it in an account of the firm. The changes are not being made to safeguard monies belonging to the client but to facilitate other changes (like reducing compliance burdens or fitting in with MDPs and other bodies rules). Perhaps they should be changing their rules to match the safeguards the SRA has rather than reducing yours to fit with the ICAEW. If you want to simplify the approach, it would be safer to make monies received for fixed fees, client monies, rather than making advances firm monies.

What happens when a client overpays in error, should the monies be held in the firm account or transferred to client account pending return? According to Case Study 1, it would appear that it should be placed in client account, hence the rationale that client accounts might not be necessary, hence saving the costs of maintaining the accounts and comply with Accounts Rules, seems irrelevant as someone is bound to overpay at some point. The industry already has an issue with Residual Client Balances, this would be even more concerning and complex to correct if some monies like advances and overpayments were also being held in the firm's account.

There will be an additional and complex burden on firms to monitor and ensure that advances which are not used (in part or fully) are transferred to client account or returned to the client.

If a client pays in advance then the client should be due any interest on these monies, how can this be calculated and be workable if funds are held in a firm/business account? Although interest rates are low at the moment this will not always be the case and the amount of interest will become more significant.

In addition, it will cause accounting issues for firms as they will need to distinguish between monies in the firm account that are advances and so can not be treated as revenue for accounting, VAT purposes.

Reducing the need for a client account will also mean less protection via less auditing and less guarantee fund monies, whilst increasing the risk that these protections will be required.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

The firm I work for doesn't accept credit card payments at the present time and as far as I am aware it doesn't intend to, although it is a business law firm.

As a consumer, I would pay for legal sevices by credit card, if available, especially if it added to the protection of my monies. People without credit cards or with small limits could become excluded or at least disadvantaged if there is a reliance on protection from using credit cards.

I have no personal experience, but from watching consumer tv programmes, credit card companies are not always keen to pay out claims without considerable time and effort. Also if consumers continue to increasingly use and rely on this protection then the cost of using credit cards will have to increase at some point to cover this cost to credit card providers.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

I believe it is simpler and clearer to have separation between client monies and firm monies but I am less averse to having firm money in client account (as a surplus to cover shortfalls/errors for example, like in Scotland) than your suggested change to the definition of client monies, therefore allowing what is now considered client monies to be placed in a firm/business account.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

I believe it is safer for mixed monies to be paid into a client account rather than a firm/business account. I don't see what benefit there is, as a transfer will be need either way and you are just adding to the risk that client monies are held in a firm/business account.

If you do change the rules, there should be a clear time limit on the transfer to client account rather than use of ambigious words like promptly which are open to interpretation and abuse.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

As the firm I work for basically doesn't have LAA receipts I do not have experience of these and so prefer not to comment.

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

I agree with allowing TPMAs provided they are licensed and have at least the same safeguards, in protecting client monies, rules and regulatory supervision. It doesn't partucularly matter who handles the money provided it is safe, has public confidence, and meets the necessary service levels and timescales.

I don't agree fully with your approach though as I don't believe your proposals contain the necessary safeguards. I also disagree with the changes to the definition of client monies.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

All TPMAs should have compulsory and watertight safeguarding requirements not just voluntary ones. The Financial Ombudsman Service is not fit for purpose and should not be relied upon for protection.

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

Provided there are sufficient safeguards and regulation I consider it approriate to use TPMAs for transactional monies.

As the firm I work for doesn't do conveyancing I do not have experience and therefore a strong opinion on this and so prefer not to comment on that point in particular.

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

To provide clarity to the public on when they should be entitled to interest on their monies I believe there should be requirements to have a clear and prescriptive interest policy. Interest should be paid when holding money which belongs to the client, and so includes advance payments and so these need to be held in a client account, meaning the change to the definition of client monies is impractiable and unworkable.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

It seems you are amending the rules to fit with other criteria rather to enhance or maintain their main purpose in safeguarding client monies by keeping them separate to firm/business monies. They are being watered down to their detriment.

They are too vague, ambigious and subjective. Prescription makes them clear so people and firms know where they stand and whether they are compliant or not. This doesn't necessarily stifle how businesses go about complying with the rules.

The removal of the need for accountant reports and auditing is opening up the possibility of subterfuge or for oversights to go unspotted. How are you going to identify issues, sooner rather than later, if these independent safeguards have been removed? At a time when other regulators are realising the error of their ways and returning to stronger and tighter regulation to improve the quality of processes and controls, the SRA appear to be moving forward with a more relaxed, laissez faire approach with subjective, unquantified terms and leaving judgement in the hands of the firms.

I think that the change to the definition of client money is a backward step and should not go ahead as proposed.

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

Overseas Account Rules

Expectations and responsibilities of a COFA

Existing old Residual Client Balances

Guidelines for unknown or unallocatable receipts/Suspense Accounts

Where overpayment of bills should be held

What monies interest should be paid on

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

As pointed out the examples are hopefully very rare but if you remove safeguards, like accountant reports, and allow monies like advances which belong to the client to be held and used by the firm/business they are likely to become less rare. Although there are redress mechanisms these can be time consuming and hard work, and they are not equivalent to reducing or stopping the issue before it has occurred. The loss of funds and time delay before receiving redress may cause the client financial problems or trading issues if they are unable to pursue their case, leading to injustice.

The examples highlight the increased risk that holding monies that actually belong to the client, rather than the business, in a firm/business account. The alleged additional protections from the Accounts Rules do not provide effective mitigation of these additional risks, nor do the redress mechanisms equate with strong regulation and clear segregation of client monies.

Public perception will not be that everything is fine because redress mechanisms are in place, but more a concern that these issues can occur in the first place. Redress is the final backstop when things go wrong but having it is not a reason to reduce the initial safeguards which are in place to limit the need for them to be used.

Will there be guarantees that any client monies lost will be compensated, whether it be through a guarantee fund, ombudsman, insurance claim or concumer credit act?

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

No

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Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

Whilist undoubtedly the condensed rules are clearer and easier to understand, some of the changes make them harder to comply with, will make operational control in a firm's accounting team more difficult and do not offer greater protection to the client, specifically:

We have very serious concerns about the proposal to redefine money received on account of costs, and allowing/ requiring these to be paid into office account prior to the performance of the legal services or delivery of a bill, as in Case Study 1. It will be a challenge for legal accounting systems which are designed only to accept funds into office account matched with a bill, and presents challenges to manage the point at which funds may become clients money in the event of surplus. There is a very real possibility of firms utilising office money inappropriately or in advance, and may result in firms not being able to return funds to the client account when due. We do not feel this is an improvement for the firm and certainly offers less protection of clients money than the current rules.

Additionally, there is some ambiguity between Case Study 1 and Rule 4.3 with the Case Study seeming to allow holding funds in office account based on an estimation of future fees, where Rule 4.3 (a) suggests exact values.

Case studies which put the rules into context, are a welcome addition and we would encourage the SRA to publish additional studies in the future, as implementation of the rules and situations develop, however these must not add further ambiguity or apparent inconsistency with the Rules themselves.

There is still some ambiguity around the use of the word 'promptly' in various rules e.g. Rule 2.2 paying client money into a bank promptly must surely mean "within 24 hours", but Rule 2.4 returning funds to client promptly must mean a longer period of time.

Additionally, we would also ask for clarification of your phrase 'nature of the firm' in Case Study 2- in particular why you consider this would make a difference to the application of the rules, as it is our belief that the rules apply equally whatever the size of firm, areas of the law in which it operates or other 'nature of the firm'.

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

The new rule appears much clearer and more succinct, and we agree in particular with the removal of 12.2(c) where money in respect of billed unpaid professional disbursements no longer needs to be transferred back to client account when payment is pending.

However, as referred to in Q1 we have extreme concerns about the change of money received on account of costs being defined as 'firms' money and held in office account. Not only would this appear to put clients money at the disposal of the firm to cover business expenses prior to it being due, but may leave funds due to the client at a given point, unavailable due to a firm's funding arrangements. We would urge the SRA to reconsider this proposal and maintain payments on account of costs within the definition of client money to avoid heightened negative impact on clients and resulting adverse public perception of the profession in the event of firm failures.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

As a large firm of solicitors we do accept credit cards in payment of our legal services, both over the telephone and online. We consider the cost of such services as a cost of doing business in the modern age, however we do try to avoid high cost providers such as American Express

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

Yes only client money should be held in client account and we welcome the removal of Rule 17, the 14 day rule, as we have never understood how this protects the client.

However, we would refer again to our concerns expressed in Q1 where it requires what we consider to be client money to be held in office account (payment on account of costs) and the potential control and identification challenges that this would lead to. We would urge you to reconsider this definition of payment on account to be clients money until such time as a bill or notification of fees is delivered.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Yes, funds held in either should be subject to the same timeframe (unlike the current differential 2 day and 14 day rules). However we would refer to our previous comments about the lack of definition of the word 'promptly' which is open to differing interpretation both between different firms, and between firms and their reporting accountants, and thus we would welcome more clarity and guidance.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Yes, it is pleasing to have consistency irrespective of the source of funds. We also welcome the removal of the need to report to the LAA following third party payments before we are able to take our costs

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

As a firm we do not have any view on this as we cannot forsee how these might be of use to us, although see answers to Q8 & 9.

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

Notwithstanding our comments in Q7, we share the concerns of the SRA in section 52 relating to the speed and costs making them unsuitable for transactional payments, which may impact our ability to service our clients should other firms or remitters choose to use TPMAs. We do not consider that there would be any benefit to our business, and hence would prefer these not to be brought within allowable practise.

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

Please see our response in Q7 and 8

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

We do not feel strongly about the need or otherwise for having a published policy on this point: the rules are clear that a fair sum of interest should be paid, and on balance it is probably helpful for clients to provide the transparanecy of a published policy.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

On balance most of the rules seem to be sensible and offer good control over client's money. The exception to this is our concern around payments on account being held in office account, which will undoubtedly put clients money more at risk than under the current rules. We would also welcome more defined guidance about 'promptly'.

We are looking forward to reviewing the further areas of guidance as propsed in Annex 5.1 when these are published, as for example, we note the rules no longer contain details of the limits and circumstances in which residual funds may be paid away to charity, with Rule 5.1(c) part 2 suggesting the SRA will be prescribing such 'circumstances' in due course.

We are surprised that the current Rule 1 'Overarching objective and underlying principles' has been removed completely, as nowhere in the proposed new rules does it state that effectively the underlying objective of the SRA Accounts Rules is to "protect clients funds that solicitors are holding as a professional and that your reputation and that of the firm is on the line; they exist to offer the public protection against inproper and unauthorised use of their funds." We would suggest adding back in some context or overarching objectives along these lines.

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

Whilst we would welcome the additional proposed areas of guidance and case studies as shown in Annex 1.5, we are mindful that the SRA's objective has been to streamline the rules to make them simpler… and we would caution against publishing a signifiacnt volume of annexes, guidelines and cases studies which risk making the body of guidance more volumous and complicated than at present. There is also a risk that as such guidance grows, inconsistency and ambuiguity might be introduced so we would urge caution in this area.

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

No, absolutely not. Each of the redresses are after the fact- and as previously referred to, simply classing payments on account as client funds would avoid most of the scenarios. The new rules as drafted would give firms additional funds, available to them to prop up the business and we consider this a very significant risk to the public perception of the profession. It would only take one or two large firms to get into difficulties leaving many thousands of clients out of pocket, and for this reason we strongly urge you to reconsider. Under the current rules, circumstances requiring such redress will only ocurr only as the result of fraud or mis-management, but this propsed change could cause loss to clients where it had not been the intention of the firm who are simply following the new rules.

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

We welcome the simplication of the rules, but would urge the SRA to reconsider redefining payments on account as office money and maintain current Rule 12.2(e) within the future definition of client money: 'payment on account of costs generally should be defined as client money and held in client's account until such time as the work is done and a bill is properly delivered'.

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ID 5

Consultation: Looking to the future - SRA Accounts Rules Review

Consultation questionnaire form

Question 1

Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

The current rules do need updating as there are sections that are complicated and unnecessary, for example there are instances when a practice can be in breach of the rules and there isn't actually any risk to clients monies. An example of this is rule 17.1©,

When looking at the documentation, the rules have been condensed significantly and they are a lot less prescriptive, but it is important to ascertain that they would work in practice and continue to protect client's money.

Annex 1.5 indicates that there are proposed areas of guidance, it would be helpful to see these areas of guidance to enable to answer this question fully. This is because there are areas that need further explanation, especially in respect of fees, VAT, disbursements, suspense accounts and residual balances. The guidance may help to crystallise these areas.

An example would be, the removal of rules 20.1(j) & 20.2, which are now dealt with by rule 5, under 5.1© you can only withdraw client money from a client account 'on the SRA's prior written authorisation or in the circumstances prescribed by the SRA from time to time', This suggests that SRA authorisation is required for all amounts or that if the monies are held under the new rules in office account and are not able to be returned to the client, they will be absorbed into the practice accounts?

Question 2

Do you agree with our proposals for a change in the definition of client money? In particular do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

Proposal: Change of definition of client money - to allow money paid for all fees and disbursements for which the solicitor is liaible (for example counsel fees) to be treated as the firm's money. Money held for payments for which the client to liable, such as stamp duty land tax will continue to be treated as client money and therefore required to be held in client account.

Rule 2.1 "Client money' is money held or received by you:- relating to legal services delivered by you to a client, excluding payments for your fees and payments to third parties for which you are liable;

on behalf of a third party in relation to legal services delivered by you (such as money held as agent, stakeholder or held to the sender;s order);

as a trustee or as the holder of a specified office or appointment, such as a donee of a power of attorney, Court of Protection depute or trrustee of an occupational pension scheme.

The definition within the proposal and rule 2.1 would appear to differ and clarification is required as to which disbursements the solicitor is liable for and the client is liable for. The initial impact assessment point 19, states that firm is liable for all experts instructed on behalf of the client. If these are no longer considered part of the clients money, does this mean when the disbursements are billed at the end of the matter they are now considered to be part of the service and therefore attract VAT in the same way that travel etc does?

There would need to be a clear definition of the disbursements the client is liable for and the disbursements the practice is liable for, practices could fall foul of the rule if they do not understand how to differentiate between the disbursements.

The objective of the proposal was the simplify the rules whilst maintaining appropriate consumer protections, when looking at the Proposal, rule 2.1, the case studies and the consumer protection analysis the change to Rule 2.1 does not appear to protect consumer monies, it would appear to put monies more at risk. The experts fees would held in office account and therefore support the office account.

It is important to hold clients monies in a separate account to the practice's monies to ensure the clients monies are protected. Under the current rules if the practice becomes insolvent fees on account paid by the client are held in client account and therefore ring-fenced, so if the work has not been carried out they can be returned to the client. If these fees were held in office account would they still have this protection? The new rules do not appear to clarify this.

Therefore we do not agree with the proposal to change the definition of clients money, it appears to offer less protection to clients.

Question 3

Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

Many practices already accept payment by credit card; they pass the expense of using the credit card on to the client, which increases the costs of legal services to the client. One of the objectives in the Legal Services Act 2007 is to 'improve access to justice'; increasing the costs of legal services goes against this objective.

There is an argument that allowing the increased use of credit cards will improve access to justice because consumers would be able to use their credit card to pay their costs, but this could cause an increased amount of debt to the client. However, in practice the socioeconomic groups of consumer that require the most protection are also the group that might not have access to or the net worth to be issued with a credit card.

The Consumer Protection Analysis suggests one of the ways to protect client's monies is the use of credit cards because the client would be claim back monies from the credit card provider, this would cause the client a lot of inconvenience. There are also a number of clients who do not have credit cards, because they are unable to get credit or they do not believe in credit, redress under the Consumer Credit Act would not be available to them.

Question 4

Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in a client account?

The current rules include strict rules that separate client's monies from the practices monies, these rules were put in place to protect clients monies and solicitor's accounts software has been developed to give clarity to these rules and clearly show where there are shortfalls.

Less clarity on what is clients money and office money, which will lead to more confusion and potentially abuse.

The definition of clients monies should extend or allow the flexibility to include monies that the client pays the practice on account of disbursements that they will incur on behalf of the client. This is to protect the clients monies and 3rd parties ensuring the client does not have to pay the disbursement twice.

At present the client monies are ring-fenced and cannot be used by the bank or the administrator to clear the debt of the practice. The proposed change of definition of client's money would take away this protection.

Question 5

Do you agree with our proposal that mixed monies can be paid into client or business account as ling as the funds are then allocated promptly to the correct account ? In particular do you have any the new draft Rule 4.2 (see Annex 1.1)?

Yes, this is how it's dealt with under the current rules and we do not understand the relevance of the question.

Question 6

Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

Needs to be looked at with the whole proposal.

Question 7

Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

No, the practice is required to keep the same records as clients account, as the monies are the same administration as a client account, why take them out of the client account.

Do they have to reconcile the banks for the monies held with TPMAs?

Risk to client funds all in one pot what if the bank or building society crashes. Who vets or approves the fund holder?

What safeguards will be in place and who’s responsibility will this be ?

Question 8

If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

Who would be responsible for the costs of administering the TPMA? If this is a cost that could be passed on to the client, then it will again increase the cost to the client obtaining legal services.

Would the Professional indemnity insurance increase as a result of using these accounts? There would be an increased risk and less control.

Do they have to reconcile the banks for the monies held with TPMAs?

Risk to client funds all in one pot what if the bank or building society crashes. Who vets or approves the fund holder?

What safeguards will be in place and who's responsibility will this be?

Question 9

Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

The funds on conveyancing matters need to be available upon request, how quickly would the monies be moved from the TPMA? There would be vast amounts of monies held on a TPMA and very little control over these monies, this could cause a problem on conveyancing transactions and it would not be appropriate to hold conveyancing funds on this type of account.

Question 10

Do you have any views on whether we need to retain the requirement to have a published interest policy?

The rules regardng interest is open to interpretation and as one of the objectives of these rules changes it to reduce the amounts of monies held in clients account, how often would a client be entitled to interest?

There would need to be a clear policy as to how interest is dealt with so that it is clear to the consumer from the offset.

Question 11

Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

The draft Account Rules are only half the story and on their own don't appear too dramatic, but once you read the proposal, Consumer Protection analysis and case studies they become more frightening and seem to dilute the protection currently given to the consumer and clients monies. The suggestions for redress are not satisfactory, and would cause the client inconvenience and stress. The best policy is not redress, but protection and the new rules do not seem to give this. In summary, the dilution of the prescriptive rules will cause confusion, misinterpretation and potentially abuse with the client suffering as a result.

It will be interesting to see the proposed areas of guidance, to see what guidance will be given with these new rules, as there seems to be guidance relating to Residual balances due to client, which doesn't seem to be covered in the new rules. Guidance is required on the use of suspense accounts, a clear definition of disbursements the client is liable for and disbursements the solicitor is liable for, so they can be no confusion.

The overall package is going against the principals within OFR in respect of a good business model, the practice would be able to use client's monies to prop up their overdraft and pay expenses and this cannot be considered a good business plan. There are a minority of solicitors who would see this as a licence to use client's monies and not think about the consequences to the client's and 3rd party suppliers.

If monies for fees and disbursements that the solicitor must incur are paid into office account, when will the VAT become payable? Many smaller practices work on a cash-VAT basis, would they need to account for the VAT before the invoice is rendered?

In relation to specific rules:

2.1 - When looking at the rule in conjunction with the proposal definition and case study 1, when do 'fees' become fees is it at the time the client pays the monies on account or when the bill of costs is issued?

2.2(a) refers to rule 2.1(c) there is no 2.1 (c) does it mean the section in 2.1 beginning 'as a trustee or as the holder'

Rule 4.3 where you are holding client money and some or all of that money will be used to pay you costs:

(a) you must first give a bill of costs, or other written notification, to your client or the paying party before you transfer any client money to make the payment.

This would seem to contradict the proposal and rule 2.1, would there be a breach of the rules if the practice held monies in client's account, which will eventually pay costs? Or does this just refer to mixed payments where the monies have been paid into clients account?

Question 12

Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies? If yes, pleas provide further details.

Disbursements - Who is liable for specific disbursements the client or the practice?

2.1 - When do fees becomes fees for VAT and tax purposes.

A solicitor passes away, do the monies including the monies paid by the client on account of disbursements become part of the estate. Would the 3rd pary supplier need to apply to the estate for payment?

Question 13

Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

Yes, but there will be further risks.

There will be an impact of 3rd party suppliers, for example counsel. The solicitor will be liable for their fees, what re-dress will they have if the solicitor does not pay?

The change of the definition of 'Client Money' seems to give licence to practices to use client monies to pay office expenses, before their honouring their obligations to the client.

The impact to some clients could be devastating, take for an example a father who is not entitled to legal aid and with the help of his family raises enough money to fight for custody of his children, if the practice does not carry out the work and his money is not ring-fenced with the protection of the clients account, by the time he has followed the suggested procedure for redress and the work has been carried out the relationship with his children could be irreparable.

Question 14

Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

If you go ahead with the proposed changes there is a considerable impact on software venders which will take time for such vendors to change and implement their systems, together with the risk of bugs in the early stages causing further confusion and potentially non-compliance. The scale and cost of the changes should not be under estimated.

There needs to be full and committed engagement through, for example, LSSA.

There is an argument that if the same level software development resource was used to help minimise cyber crime or some other aspect of compliance then that would represent a far more cost effective use of resources and provide equal or better protection for consumers.