

Regulation Report

Accounts Rules changes ahead

In a welcome move, the Law Society is one step ahead of the SRA in publishing a discussion paper on options for change to the SRA Accounts Rules. The SRA consultation paper is not due until spring 2016. The Society's objective is to understand the views of its members and then develop a policy in readiness for the SRA consultation.

The Society has formulated six options for consideration. Only four of the six are included here.

Option A - retain the existing rules. This proposal has the benefit of familiarity as staff are already trained in observance of the existing rules. It is acknowledged, however, that some practitioners find the rules extensive and complex.

Option C - simplify and shorten the existing Accounts Rules. 24 draft rules are set out on 4 pages in the discussion paper. This is in comparison to the existing Accounts Rules which run to 52 Rules and 4 Appendices over 33 pages. The Society's draft is succinct and has much to commend it but there would be less clarity for practitioners in relation to what is practically required to ensure compliance.

Option D - simplify and shorten the Accounts Rules as in Option C and remove requirement for a separate client account. This radical proposal would enable client money to be held in office account. The difficulty of identifying client funds in a mixed fund and the simplicity of borrowing client money to prop up an ailing firm cannot be underestimated.

Option E - adopt a de minimis approach. Firms that only use client accounts sparingly would not be subject to certain rules. This option would be consistent with the SRA's decision to exempt firms with an average client balance of £10,000 or less from the obligation to obtain accountant's reports.

The primary objective of the Accounts Rules is the protection of client money. In Weston v Law Society (1998) Times 15 July, Lord Bingham emphasised: *"The solicitors' accounts rules exist to afford the public maximum protection against the improper and unauthorised use of*

their money and to assure them of that protection. Solicitors are accordingly under a heavy obligation, quite distinct from their duty to act honestly, to ensure observance of the rules."

Ensuring the safety of client money places a heavy burden on principals in a practice. Rule 6 of the existing Rules (and replicated in the Society's redraft) imposes strict liability upon principals to ensure compliance by themselves and by everyone employed in the firm. A senior partner is therefore strictly liable for the mistakes of the most junior member of the Finance Team. By contrast, strict liability would not be imposed for the errors of an employee undertaking legal work.

So, against this background of strict liability for breaches of the Accounts Rules, is it advisable to reduce the rules to the bare minimum? Is it appropriate to drive the Accounts Rules towards principles-based and less prescriptive regulation similar to the existing SRA Handbook?

Accounting is not an art - it is more of a science. Those employed in law firm finance need clear and well defined rules. We cannot impose an outcomes focussed approach each time a junior accounts clerk needs to transfer client money to office account. It is impossible to supervise and places an intolerable disciplinary risk upon the principals in the firm.

Keeping client money safe by the operation of long established and authoritative Accounts Rules permits the profession to assure its clients that their hard earned funds are safe in the hands of a solicitor. It is a selling point for regulated legal services. It is a benefit to the profession. Improvements could be made to the Accounts Rules but a complete makeover is inadvisable. Even worse, de-regulation would lead to great uncertainty for the profession and risks to client funds. The profession needs to ensure that the justification for the Accounts Rules is not forgotten in the SRA's headlong rush *"to reduce unnecessary regulation and allow more flexibility for firms"*.



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