THE NEW ACCOUNTS RULES – OPPORTUNITIES & CHANGES?

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The SRA's objective for the new Accounts Rules effective on 25 November 2019 was to introduce a shorter version of the Rules with a simpler definition of client money. The profession was also instructed that the Rules would provide more flexibility, trusting us to act in our clients' best interests as well as reducing prescription and arbitrary timescales. It seems appropriate, five months in, for us to review whether these objectives have been achieved.

Let us start with the SRA's aim of producing a shorter version of the Rules. It is true that there are only 13 Rules now as opposed to 52 Rules in the 2011 Rules. However, many of the Rules now appear elsewhere in other documents. Take as an example, residual client balances. The conditions for distributing balances under £500 to charity were set out in Rule 20.2 within the 2011 Rules – this old rule is now contained in a three-page SRA Mandatory Statement. In addition, there are six SRA guidance notes (so far) on Accounts Rules topics much of which was in the 2011 Rules. There is also a Warning Notice and Case Studies x 11 on using client account as a banking facility. The plethora of documents that need to be referred to in connection with the implementation of the new Rules makes the claim that "shorter is best" a somewhat unconvincing one.

Turning now to the aim of greater "flexibility" which is taken to refer to the ability to hold client money outside a client account. Leaving aside third-party managed accounts (Rule 11), the more innovative option (Rule 2.2) involves holding client money in the firm's office or business account (as we are encouraged to call it now). There is no requirement presently for firms to notify the SRA that they are operating under Rule 2.2.

In order to qualify for this new procedure, the only client money that a firm holds must be restricted to advance payments for fees and unpaid disbursements such as counsel and expert fees. The other key condition is that the firm must ensure that the client is properly advised and knows that the money is not ringfenced and may be used as part of the firm's money in their business account.

The SRA Guidance Note states that the key risk is that if the firm becomes insolvent then the money would be incorporated into the insolvent estate. In addition, the SRA recommends that the client is advised that if the firm becomes insolvent before the work is completed then the client would be treated like any other creditor and would have to find the money from elsewhere to pay another firm to complete the work. It is an astonishing conversation to have with a client to advise them to place their funds at your disposal and warn them that all will be lost if the firm goes under financially. There is no advantage to the client whatsoever. The financial advantage lies entirely with the firm. It is a classic "own interest conflict". How the SRA can permit this arrangement which cannot ever be described as being in the public interest defies understanding.

Let us also examine the claim for less prescription and the removal of arbitrary timescales. In the 2011 Rules there were a few specified time limits. Under the new Rules firms are required to take certain steps "promptly" and to prescribe their own time limits within internal office procedures. My soundings reveal that most firms fearful of challenge by the SRA have merely adopted the same time limits as provided by the 2011 Rules.

The opportunities presented by the new Rules could therefore be described as illusory as opposed to real. The changes however are real and there are some practical day to day adjustments to bear in mind.

First, the reconciliations must be signed off by a COFA or a manager (Rule 8.3). This is a sensible requirement and gives the management a chance to head off any problems at any early stage. COFAs or managers should make sure that they understand the mechanics of reconciliations and that they can effectively monitor the correction of any unreconciled balances. Also note that client's own accounts (Rule 10.1(b) now need to be included in the reconciliation.

On the disbursements front, there is a significant change (Rule 4.3) in that you must provide a bill of costs or written notification of costs before transferring funds from client to office account to pay disbursements. Rule 4.3 does not refer to "disbursements" but to "costs" which are defined in the SRA Glossay as "your fees and disbursements". Rule 4.3 has been interpreted to mean that you cannot transfer funds to cover disbursements until those disbursements have already been paid out from office account. You are therefore reimbursing office account for monies already expended. You should also note that there is no longer a distinction between professional and non-professional disbursements.

And finally, COFAs now need to have a much greater understanding of the Accounts Rules and how the finances of the firm are managed. You should ensure that you understand how your accounting software works especially in a small firm so you could operate it if your bookkeeper is away for a prolonged period. There was a recent case in the SDT – SRA v Harmail Gill SDT 11914-2019 – where Mr Gill as COFA admitted in an SRA interview that he was not aware "of the intimate details of dealing with a client account". The Tribunal accepted the SRA allegation that Mr Gill had acted with "manifest incompetence". Don't be like Mr Gill – make sure that you have a real grip on your firm's finances.

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