



SOLICITORS ACCOUNTS RULES: DON'T GET CAUGHT OUT!

On 6 October 2011, there will be some amendments to the Solicitors Accounts Rules 1998 (SARs) which will affect practitioners who act as Reporting Accountants for solicitor clients. It is important that those of you who are affected ensure that any work programmes you use incorporate these changes which are proposed to take effect from October 2011. The Rules themselves are very complex in some areas and practitioners must ensure that they fully understand the changes on the horizon.

This brief article will consider the main changes in the rules as follows:

- The overarching objective
- Interest
- Electronic signatures
- Authorised signatures
- Overseas firms
- Compliance Officer for Finance Administration (COFA)
- Damages under Conditional Fee Arrangements
- Passbook-operated designated client accounts
- The Guidance Notes

The overarching objective and underlying principles

Rule 1 has been updated to place more emphasis on the importance of proper governance and ensuring client money is kept safe. The Rules also states that the law firm must comply with all the principles laid out in the Handbook.

Interest

Currently there are very detailed and prescriptive Rules in Rules 24 to 27 which govern the payment of interest. These detailed and prescriptive Rules are set to be replaced by a requirement for the payment of a 'fair and reasonable' amount of interest when it is fair and reasonable to do so.

Clearly for smaller firms this requirement may become more burdensome and firms must have a written policy on interest which must be drawn to the client's attention at the outset of the transaction.

It is worth mentioning that the proposals state that there are no de-minims amounts and the table of material amounts have been removed from the Rules as a result. To help firms, there are details in the Guidance Notes on matters which firms must consider when considering their policy on interest payments.

Electronic signatures

Rules 22 and 23 are being updated due to the increasing use of electronic means of storing and sending information, the Rules have been updated to enable firms to retain electronic copies of bank statements and electronic signatures for withdrawals from client accounts. However, firms must ensure that there are suitable safeguards in place in this respect. This amendment is not a replacement of the existing requirements and firms can still obtain and retain paper statements and continue using manual signatures should they wish.

A key point to note is that the Rule prohibits the use of Direct Debits because each withdrawal from the client account must have specific authority.

Authorised signatures

The prescribed list of authorised signatories for withdrawals from the client account which were set out in Rule 23 have been replaced by the requirement for the law firm to have appropriate systems and controls in place governing withdrawals from client accounts. It is also the decision of the firm to decide who will be an appropriate person(s) to sign such an authority. However, a pivotal point in the guidance is that the person(s) who have authority to approve withdrawals from the client account must have regular involvement in the firm to such an extent that they are familiar with current client matters and must have a clear understanding of the Rules.

Overseas firms

The Rules have been changed to include a new Section G (as opposed to being produced separately as part of the Code of Conduct). This applies to all firms which practise from an office outside of England and Wales.

Compliance Officer for Finance Administration (COFA)

Rule 6 requires that principals assume responsibility for ensuring compliance with the Rules. This requirement is being extended to include a COFA who must be appointed and who will be responsible for reporting breaches of the Rules to the Solicitors Regulation Authority (SRA) and who must be a lawyer. It is unclear as to whether reportable breaches mean 'serious' breaches or 'serious AND trivial breaches', though a common-sense approach would suggest the SRA would prefer not have a deluge of trivial breaches being reported; however the SRA would do well to clarify what they define 'serious' to be.

It should also be prudent for the COFA to maintain a central register of breaches in order that they can demonstrate to the SRA that they are complying with their obligations in this area.

Damages under conditional fee arrangements

There are new Rules (15(e) and 19(e)) relating to the receipt of monies for damages and costs under the Law Society's Conditional Fee Arrangement which are paid into the client account and it is a requirement that the 'cost' element must be transferred to the office account within 14 days of receipt.

Passbook-operated designated client accounts

Rule 32 currently requires the Solicitor to perform 14-weekly reconciliations on all passbook-operated designated client accounts. However, the re-write of the Rules will require the Solicitor to perform reconciliations on these accounts at least every five weeks as is currently the case for all other accounts.

Guidance notes

Rule 2 was changed in the last update (March 2009) which made it clear that the Guidance Notes were mandatory. It has been changed again to essentially reverse this requirement and now states that the Guidance Notes no longer form part of the rules. This change was proposed because a number of the Guidance Notes have now been elevated into the Rules themselves.

Conclusion

This article has covered some of the 'key' changes to the Rules planned for implementation in October 2011 and there are other changes which practitioners need to take on board. Solicitors Accounts Rules are very complex and a 'high risk' area for accountancy firms. Firms who currently act for solicitors in the capacity of Reporting Accountants must ensure they are familiar with the changes to enable their work to be carried out in compliance with the Rules.



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