

# **GUIDANCE TO SOLICITORS' ACCOUNTS REGULATIONS 2014**

(This Guidance does not form part of the Regulations and is for assistance only).

## **1. Part B – Client money, controlled trust money and operation of a client account**

### Regulation 13 – Use of a client account

This Regulation substantially reflects Regulation 4 of the Solicitors' Accounts Regulations 1998, other than at Regulation 13.2.5, which provides that in no circumstances money which does not relate to a current or ongoing matter or transaction may be held in or transacted through any client account.

This provision is intended to prevent solicitors providing what might be regarded as banking facilities to clients or others. The Regulation clarifies and affirms the Society's previous interpretation of the Regulations. It is also intended to minimise the risk of solicitors becoming involved in money laundering.

To comply with Regulation 13.2.1, a solicitor must not hold money relating to any transaction involving himself solely and personally in the client account. However, in a matter in which a solicitor with their spouse or civil partner or any other third party are involved jointly, monies should be transacted through the client account if the other party is a client of the firm. Likewise, all loan monies received in circumstances where the lending institution is also a client, must be transacted through the client account, irrespective of whether the solicitor is the borrower either solely or with another.

Where completion monies are to be paid from both the office and client accounts, it is permissible to make a single payment from the client account provided the balance monies are simultaneously transferred from the office to client account.

### Regulation 15.4

The Society believes that where individual or aggregate amounts not exceeding £100 are held for any client or third party for one or several matters, and reasonable and proportionate attempts have been made to trace those clients or to pay the money to

them, monies may be removed from the client account, 5 years after the last matter completes and without the Society's approval. Where the amount or amounts held are in excess of £100, they may not be removed from the client account without the Society's written approval.

The solicitor will, in all circumstances, be assumed to provide an indemnity in relation to any monies removed pursuant to the Regulation and this Guidance.

## **2. Part C – Interest**

### Regulations 21-23

When money is held in a separate designated account for a client or person funding all or part of the solicitor's fees, the solicitor must account for all interest earned on the account.

Where money is held in general client accounts, a sum in lieu of interest must be paid to the client (or to any person funding the solicitor's fees on behalf of the client) save in the following circumstances: -

- (a) When the amount of interest earned, or capable of being earned, is less than £20.00 gross, taking into account Bank rates for the time being reasonably obtainable by the solicitor in the context of his practice and, in particular, on his current client account, the Society does not consider a solicitor is required to account for interest. This position will be subject to ongoing review, to take account of market and/or Banking conditions.
- (b) money held for the Legal Services Commission;
- (c) on an advance from the solicitor to fund a payment on behalf of the client in excess of funds held for that client; or
- (d) where there is a specific written agreement to contract out of the provisions.

Regulation 21 does not apply to:

- (a) Solicitors who are liquidators, trustees in bankruptcy, or trustees of occupational pension funds. Solicitors so acting must comply with all relevant statutory rules and regulations. Subject thereto these interest rules will apply to all money held in client accounts;
- (b) Joint accounts. If a solicitor holds money jointly with a client, interest earned on the account will be for the benefit of the client unless otherwise agreed in writing. If the money is held jointly with another solicitor, the allocation of interest depends upon the agreement reached.

Contracting out

Where there is contracting out of the interest provisions by written client agreement, solicitors must act fairly towards clients and provide sufficient information to enable clients to give informed consent, on a case by case basis.

**3. Part D – Accounting systems and records**

Regulation 24 – Guidelines for accounting procedures and systems

It is not the Society's policy to promote any particular accounts package or system. It is the duty of each solicitor to whom the Regulations apply, to ensure that any system or package used in his practice, is fit for the purpose of effecting full and satisfactory compliance with the Regulations.

Should it become apparent, that a solicitor is not compliant with the Regulations, the Society may make an assessment of a system and require the solicitor to show that it is "fit for purpose".

## Regulation 26 – Accounting records for client accounts, etc.

### Regulation 26.1 – 26.1.2

To comply properly with this Regulation, solicitors should maintain separate ledgers to record contemporaneous property sales and purchases, with receipt of mortgage funding being recorded on the purchase account. Where multiple instructions are received on behalf of any one client or group of clients, separate ledger cards should be maintained for each transaction or matter. For the purposes of the regulations a contemporaneous sale and purchase are regarded as separate transactions.

Where monies are received en bloc from the Legal Services Commission in respect of Green Form payments, these should be recorded to identify the individual clients concerned and the monies received in respect of them, but individual ledger cards for each client need not be opened.

### Regulation 26.2

The Society, as a supervisor, pursuant to the Proceeds of Crime Act 2002 and the Anti-Money Laundering Regulations 2007, reserves the right to raise enquiries in relation to any transactions, in particular the receipt of client funds. The Society must always be able to satisfy itself that client monies have not been handled through the office account and that all client transactions have been made through the client account. Handling of unidentified or unidentifiable funds through the office account will give rise to enquiries to allow the Society to satisfy itself that all is in order.

This will arise (but not exclusively) where a solicitor has non-practice dealings conducted through the office account, and distorts the office account to such an extent that it cannot be regarded as providing a true position of all matters pertaining to the practice. If, however, non-practice dealings are through a separate ledger (or the solicitor's capital account) then the true position of all matters pertaining to the practice will, in all likelihood, be clearly identifiable.

#### Regulation 26.4 – Quarterly reconciliations

The text of this Regulation is self-explanatory. However, the Society regards it as best practice, for reconciliations to be carried out monthly, rather than the minimum quarterly period demanded by the Regulations. If practices show persistent failure to rectify discrepancies, the Society may require the firm in question to undertake monthly reconciliations.

### **4. Part E – Monitoring and investigation by the Society and disclosure to the Society**

#### Regulation 28 – Production of records

On the authority of Parry Jones-v-Law Society (England & Wales) (1968) (CH195) it has been held that the purpose of privilege is to protect a client in his dealings with a solicitor, not to protect the solicitor in his dealings with his regulatory authority.

Solicitors are not, therefore, entitled to refuse on grounds of either confidentiality or privilege, any documentation required by the Society's investigating Accountant. Any refusal may be regarded by the Society as potential grounds for the operation of its statutory powers.

### **5. Part F – Accountants' reports**

#### Regulation 29

Confirms the requirement of solicitors to disclose to the Society apparent breaches of the Regulations by other solicitors.

#### Regulation 30 – Delivery of Accountants' reports

The time limit for the delivery of Accountants' reports has been reduced from six months to four months from the solicitor's financial year end.

#### Regulation 31.4 – Change of reporting date and Regulation 30.5 – Final reports

Any report delivered, prior to a change in reporting date, or any report delivered after a solicitor ceased to practice, must clearly show the destination of all client funds held by the solicitor at the change of reporting date or cessation of practice.

#### Regulation 32.2 – Accountants' Professional Indemnity Insurance

Reporting Accountants should hold Professional Indemnity Insurance, for the minimum level of £500K each and every claim or £1m in the aggregate.