Guidance

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Status

This guidance is to help you understand your obligations and how to comply with them. We may have regard to it when exercising our regulatory functions.

Who is this guidance for?

This guidance is for all SRA-authorised firms and individuals that receive money and assets from clients and third parties and use that money to pay fees and disbursements.

Reporting accountants will also want to consider this guidance when assessing whether a firm has put a client's money at risk.

Purpose of this guidance

This guidance is to help you understand what we expect when you are:

- receiving money for your costs
- transferring money for your costs from your firm's client account
- reimbursing your firm for money spent on behalf of the client

and how obligations set out in the SRA Accounts Rules [https://update.sra.org.uk/solicitors/standards-regulations/accounts-rules/] (the Accounts Rules) must be read in light of your wider obligations set out in the SRA principles and codes of conduct.

The SRA's Standards and Regulations

Consumer confidence in the legal services market is underpinned by an expectation that all money and assets that has been entrusted to a law firm or an individual we regulate will be properly safeguarded.

This obligation is reflected in paragraph 5.2 of the Code of Conduct for Firms [https://update.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/] and equivalent provisions in paragraph 4.2 of the Code of Conduct for solicitors, RELs and RFLs [https://update.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/] .

You must also act in accordance with our principles. These and our codes of conduct are underpinned by our Enforcement Strategy [https://update.sra.org.uk/sra/strategy/sub-strategies/sra-enforcement-strategy] , which explains in more detail our approach to taking regulatory action in the public interest. The following principles are most relevant to this guidance:

Principle 2: You act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons.

Principle 4: You act with honesty.

Principle 5: You act with integrity.

Principle 7: You must act in the best interests of each client.

You are expected to be open and transparent in your dealings with the client or third party who has entrusted you with their money.

We expect firms to make sure that clients receive the best possible information about how their money will be used or is being used during the course of a matter. The codes of conduct makes it clear that you must give clients information in a way they can understand so that they can make informed decisions about the services they need, how their matter will be handled and the options available to them (paragraph 8.6 of the Code of Conduct for solicitors, RELs and RFLs and paragraph 7.1 of the Code of Conduct for Firms).

Paragraph 2.1 of the Code of Conduct for Firms sets out that you should have effective governance structures, arrangements, systems and controls in place that ensure compliance with all of the SRA's regulatory arrangements. We therefore expect you to have in place systems and procedures which help achieve the objective of safeguarding money and assets entrusted to you. These obligations apply regardless of the size and makeup of your firm. The effective controls and procedures a firm has in place should act as an assurance for consumers and give them confidence that money that they have entrusted to you will be kept safe.

In many firms those responsible for compliance with the Accounts Rules might sit in a finance team that focuses solely on compliance with the Accounts Rules. All those in a firm that are responsible for dealing with money and assets entrusted to a firm must understand their wider

obligations as set out in the Principles and the codes of conduct as well as ensuring compliance with the Accounts Rules.

General: receiving money from clients

Firms can receive money in advance from clients and third parties for a range of reasons.

For example:

- for their legal fees, based on an estimate of their likely costs or as a fixed fee
- for unpaid disbursements, such as Counsel's or expert's fees, or
- in relation to the transaction on which the firm is acting for a client, such as money for the deposit on a house purchase to enable contracts to be exchanged.

All of these types of money are client money (as defined in the Accounts Rules) and need to be held in a client account (subject to some exceptions - see rule 2.2 and 2.3 of the Accounts Rules). The money must be kept separate from the firm's own money which will be held in its own business account (rule 4.1).

In the majority of transactions, firms send a bill of their costs to the client after completion of the matter on which they are instructed or as an interim bill, if the matter is likely to be a lengthy one. When payment in settlement of that bill is received, the firm can properly pay that money into the firm's business account. As our codes make clear and prior to the delivery of any such bill, we expect the firm to have informed its client about how their matter will be priced and, both at the time of engagement and when appropriate as their matter progresses, the likely overall cost of the matter. The bill should not come as a surprise to the client.

In some cases, however, firms may request payment of their costs in advance of work being done. It is acknowledged that cash flow issues are a common challenge which many firms have to deal with on a daily basis. Requesting or billing for costs in advance is permissible under our Accounts Rules, provided the firm is always acting in accordance with our Standards and Regulations and in particular safeguarding money that it has been entrusted with.

We set out below the factors that you should bear in mind when requesting payment for costs in advance and dealing with such payments subsequently.

Billing in advance for costs

A firm might wish to consider sending a bill to a client for their anticipated fees and disbursements – i.e. not limited to incurred costs –

with a view to paying the money received in payment of that bill into the firm's business account (see rule 2.1 (d) of the Accounts Rules).

Our Accounts Rules provide a degree of flexibility on this issue to enable firms to consider the most effective way to deal with their client's matter and how to run their business. Such flexibility, however, has to be operated in the context of the wider obligations set out our Standards and Regulations and as set out above.

There are clear risks to your client if you bill for, and then pay into your firm's business account, money for legal work that you have not yet done or for disbursements that have not yet been incurred.

These risks include, for example, if:

- The client decides to terminate their retainer with you and asks you to repay the money they have paid you. Can you pay it back immediately?
- The matter on which you are instructed does not proceed, for example the other side pulls out of a transaction. Can you pay back the money you have received immediately?
- Your firm suddenly has to close due to incapacity or the death of the sole practitioner. Will those dealing with that closure be able to immediately repay the client?
- Your firm becomes subject to an insolvency event - and the client's money is absorbed into the insolvent's estate as it is not held in a ringfenced client account. How will the client be able to progress their matter or pay any disbursements due if they have already paid in advance for these and the insolvency practitioner refuse to repay the client's money because it is held in the firm's business account?

You have an ongoing duty to safeguard money and assets that have been entrusted to you and not prefer your own interests, for example in maintaining cashflow, over those of your clients. The obligation to safeguard money entrusted to you is not limited to only that money which is held in a client account.

You will need to think very carefully about the reasons why you are billing for these sums in advance and the risks to your client in your paying these monies into your firm's business account. It is important to remember that the sending of a bill in these circumstances does not mean that this money is no longer a client's money and it does not need to be safeguarded because it does not sit in a client account.

In all cases, you will therefore need to think carefully about whether your broader obligations properly allow you to bill for such payments and receive money into your business account.

We would not expect firms to bill for advance disbursements that the client will remain liable to pay for such as Stamp Duty Land Tax, and to

receive such money into the firm's business account. In our view, this would be improper and a breach of our Standards and Regulations. Until the disbursement is paid the client remains liable for it, and this may be for a significant sum. Therefore, any risk to your firm's business account could result in the transaction failing or the client having to pay twice. Billing to receive money in these circumstances is likely to fail to meet obligations to act in the best interests of your client, safeguard their money or possibly act with integrity.

In all cases where you may be considering billing for such advance payments, you will therefore need to think carefully about whether your broader obligations properly allow you to do this.

If you do consider it is proper, you will need to make sure that your client is fully informed of the risks around their money being received into your firm's business account. How you explain the risks to clients may depend on the nature of your client and any vulnerability they may have.

Knowing these risks, your client might only be prepared to pay a bill sent for work that has been done and disbursements for which you are liable and have been incurred by you.

You will also need to consider the VAT implications of having money in your business account if you have not yet rendered any services to your client.

Your Reporting Accountant is also likely to qualify its report if their view is such that money belonging to your client is, has been or may be, placed at risk.

Transferring money for your costs

It is usual for firms to ask for money on account of their costs from a client, based on an estimate of those costs but where no bill has been delivered. This money has to be paid promptly into a client account as set out in rule 2.3 of the Accounts Rules.

Rule 4.3(a) sets out that when a firm is holding client money and the firm wants to use that money to pay the firm's costs then the firm:

…must give a bill of costs [https://update.sra.org.uk/solicitors/standards-regulations/glossary/] , or other written notification of the costs [https://update.sra.org.uk/solicitors/standards-regulations/glossary/] incurred, to the client [https://update.sra.org.uk/solicitors/standards-regulations/glossary/] or the paying party…

If you want to move money for your costs into your firm's business account, you will need to comply with rule 4.3(a). This is intended to provide a safeguard to the client or paying party.

We would expect you to make sure that the bill sets out only those fees and disbursements that have been incurred. Where the bill does include anticipated disbursements which have not yet been incurred, you will not be considered to be in breach of rule 4.3 by leaving the money associated with those billed anticipated disbursements in the client bank account until such time as they are paid.

As discussed above, there are risks to your client if you bill for legal work that you have not yet done or for disbursements that have not yet been incurred and as a result, you take the client's money into your firm's business account. You will need to bear in mind the risks and factors mentioned above.

Your Reporting Accountant may qualify their report if they think these risks are serious or not justified by the circumstances of the case.

Reimbursements for money spent on behalf of the client

Some firms have asked us whether they need to deliver a bill or written notification of costs incurred if they are looking to move money from the client account to reimburse themselves for disbursements which have already been paid on behalf of the client. For example, where the firm has paid for Land Registry search or court fee using their own money (often by a direct debit from the firm's business account).

Rule 5.1(a) of the Accounts Rules allows money for paid disbursements to be transferred from the firm's client account to the business account as the money is being used for the purpose for which it is being held.

We would expect you to explain to your client how and when payments might be made on their behalf from your business account and that you will then be seeking a reimbursement from the client account in accordance with Rule 5. You could do this in your client care letter, terms of engagement or in other communication with your client.

Providing your client understands how their money will be used and has confirmed their instructions, we see no risks to the client in your reimbursing your firm for payments you have already made.

This is different to the scenario where disbursements have not yet been incurred or have not been paid by your firm.

Related documents

See our guidance on Planning for and completing an accountant's report [https://update.sra.org.uk/solicitors/guidance/ethics-guidance/planning-for-and-completing-an-accountant-s-report/] .

Further help

Solicitors Regulation Authority

If you require any further assistance, please contact the Professional Ethics helpline [https://update.sra.org.uk/home/contact-us/] .