The New SRA Accounts Rules – What's the deal?

Briefing note

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Overview of the new rules

The new rules

The new Rules, which are now available on the SRA's website and are expected to come into force sometime between June and July 2019. The new Rules are different in that they are considerably shorter with all the prescriptive requirements, such as 'same or next working day' or 'within 14 days', removed. We present below the key changes in the new Rules you need to be aware of and the following page discusses how some of the changes will impact your organisation.

Link to the SRA Accounts Rules 2018:

Adobe Acrobat Document

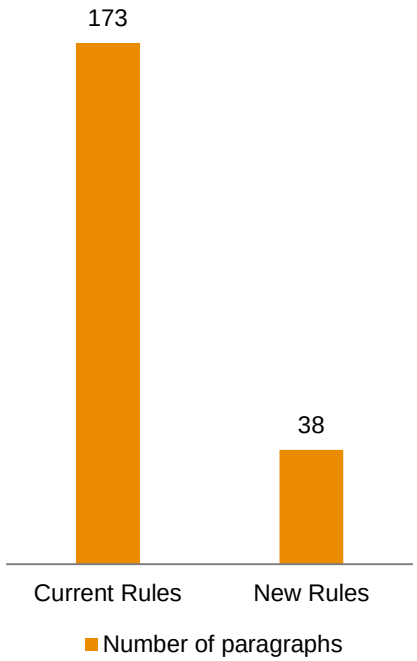
Number of paragraphs – The number of individual paragraphs is significantly reduced under the new Rules, from 173 to 38, and this excludes the 30 paragraphs included in Appendix 3 of the current Rules: SRA Guidelines – Accounting Procedures and Systems.

Further, the majority of the new Rules have been simplified and are, thus, more concise.

Removal of prescription – All prescriptive elements of the current rules have been removed. This raises a number of questions for firms, including:

- How long do I have to bank client money received by cheque?
- How quickly do I need to transfer funds that become earmarked?
- How much time do I have to make postings to client and office ledgers?
- How long do I have to split mixed receipts between client and office account?

Number of paragraphs in the current and new Rules



Guidance – The current Rules include a number of guidance notes and Appendix 3: SRA Guidelines – Accounting Procedures and Systems. The SRA did initially promise to deliver on-line toolkits to help firms understand how the new Rules would work in practice. However, we understand this has been scaled back significantly. We are now waiting on the SRA to see exactly what, if any, additional guidance will look like.

Definition of client money – The new Rules allow firms to hold what was traditionally client money, in the form of fees and unpaid disbursements not yet billed, in the office account. This is only applicable where this is the only type of client money received by a firm. We expect most firms will not be able to take advantage of this provision.

Issuing written notification of costs – The current rules allow for a client to office transfer for reimbursement of disbursements incurred by the law firm without having to first issue a bill. The new Rules will require a written notification of such costs before such a transfer can be processed.

Classification of disbursements – The 2011 Rules define professional and non-professional disbursements and this results in receipts of such being treated differently when they remain unpaid. No such prescription exists in the new Rules and, therefore, all unpaid disbursements are considered to be client money and should be retained in client account until the date of payment of the disbursement.

Third party managed accounts – The new Rules allow firms to outsource the management of client money. In reality, we believe it will only be the very small law firms that take advantage of this provision.

Agreed fees – The concept of agreed fees has been removed. Currently, money received for agreed fees can be placed in office account even if no bill has been issued and work is only partially complete. Going forward money received in respect of agreed fees will be treated like all other funds – i.e. to be placed in a client account if costs have not yet been incurred and the bill has not yet been issued.

Impact of the new rules

We have set out below the key considerations that law firms need to make in applying the new Rules.

Client money control policies and procedures – For many law firms, client money control policies and procedures are documented, but are not in one place. Firms should take the opportunity to consolidate policies and procedures into one document covering all aspects of the client money control environment. The obvious areas are receipts, payments, client to office transfers, etc. But areas such as bank reconciliations, residual balances, suspense accounts and office credits should not be omitted.

The policies and procedures document should be shared with all relevant parties, including fee earners. Law firms should also take this opportunity to ensure both finance and fee earners are adequately trained in compliance with the Rules and any updated policies and procedures.

The policies and procedures document should be agreed with the law firms' auditors in advance of implementation. This avoids issues arising during the SRA Rules engagement.

Prescription in policies and procedures – Although the prescription has been removed in the new Rules, the SRA expect firms to hold to prescription in the current Rules. Most firms have systems supporting this position, so there seems no good reason to move away from it. If firms wish to deviate from the current prescription, they should **only** do so if they have good reason and this is clearly documented. Two possible examples are as follows:

- The law firm is a high volume business and is consistently unable to post all transactions either the same or next working day and, therefore, may wish to extend that prescription to, for example, up to five working days.
- The law firm may have offices in international locations and depend on finance teams not based in the UK. Therefore, due to difference in time zones, they may wish to add one or two days to their posting requirements and to ensure money is placed into the correct account (client or office).

Residual clients balances

Residual client balances has been a key area of focus for the SRA in recent years and we expect this to continue for the foreseeable future.

Will the new Rules impact what firms are currently doing? If policies and procedures meet the current requirements, we would not expect any changes. Aged residuals still need to be chased and repaid as soon as possible and current processes should include repaying residuals immediately at the close of a matter.

The current requirement in Rule 14.4 (i.e. if a residual balance is retained for good reason, a written notification must be issued to the client informing them of this and every twelve months thereafter) has been removed from the new Rules.

We believe this will help law firms focus on returning residual funds. The only real reason to retain client funds at the end of the matter is for the purpose of using them on another legal transaction. But this excludes holding residuals for potential future assignments; in this case, the funds are residual and should be returned promptly.

It is possible the SRA will provide further guidance on this hot topic area, as other key aspects are also excluded from the new Rules, such as (i) guidance on what is needed before a payment to charity; and (ii) does the £500 limit for when SRA approval is required prior to payment to charity still apply?

Duty to review and report breaches

In addition to changes in the Rules, the new Handbook now states that the COFA must report all 'serious' breaches to the SRA. The word 'serious' is not defined, whereas in the current Handbook all 'material' breaches are reportable and this word is clearly defined.

We believe COFAs should continue to report breaches that indicate a systematic issue or those that put client money at risk, consistent with current guidance.

The new Handbook also omits the requirement for the COFA to review breaches identified by the firm on a regular basis. The current review process that COFAs operate should not stop and the review of breaches, we believe, should take place at least monthly.

For further information on any of the matters included in this briefing note, please contact a member of our specialist SRA Accounts Rules team:

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