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## Red Tape Initiative - Residual Client Balances

### Purpose

- 1 The Law Society recommended that the amount that may be withdrawn from residual client balances and donated to charity without SRA approval should be increased in their response to the SRA's Red Tape Initiative.
- 2 The purpose of this paper is to provide the SRA Board with an analysis of the responses received to the Residual Client Balances consultation and to recommend a change of the amount of residual client balances firms can transfer without SRA approval. Following the consultation it is recommended to increase this amount from £50 to £500.
- 3 The SRA Board is asked to make proposed amendments to the SRA Account Rules 2011 (SAR) to permit this increase, to be implemented in October 2014 with the next release of the SRA Handbook.

### Recommendations

- 4 The SRA Board is asked to:
  - a) Approve the SRA's response to the consultation (Annex 1)
  - b) Make the SRA amendments to Regulatory Arrangements (Red Tape initiative - residual client balances) Rules (2014) subject to the approval of the Legal Services Board (Annex 3).
  - c) Note the guidance on the withdrawal of residual balances (Annex 8).

**If you have any questions about this paper please contact: Crispin Passmore, Executive Director, [crispin.passmore@sra.org.uk](mailto:crispin.passmore@sra.org.uk); 0121 329 6687**

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## Red Tape Initiative - Residual Client Balances

### Introduction

- 5 The 'Red Tape Initiative: Residual client balances' consultation was issued on 31 March 2014. The current limit for practitioners to withdraw residual client balances without SRA approval if the client cannot be traced is £50. Any sum above that amount requires an application to the SRA. This position has now existed for a long time and the impact of inflation means that the limit is out of date.
- 6 The proposal consulted on was to increase the amount to £500 to reduce regulatory burdens on those we regulate as well as to reduce the SRA costs of administering the system.

### Summary of Consultation Responses

- 7 There were 97 respondents to the consultation, including from: members of the public, legal professionals, local law societies, law firms, solicitors in private practice, employed solicitors, law society committees, representative groups and respondents in other capacities. Detailed analysis is attached in Annex 1. An overwhelming majority of the consultation respondents favoured the SRA proposal of increasing the level at which practitioners can make withdrawals of client balances without SRA approval (subject to certain conditions being satisfied) from £50 to £500.
- 8 A small number of the consultation respondents disagreed with the SRA proposal. The majority of these respondents agreed with the level being increased, but felt that £500 was too high a level and suggested alternative figures.
- 9 The Law Society agreed with increasing the level at which practitioners can self-certify withdrawals of client balances from £50 to £500.
- 10 However, they suggested that the SRA should place additional safeguards on the residual client balances amounts of between £250 and £500 in order to protect clients, such as requiring firms to wait for a specified period of time before donating residual client balances.
- 11 Increasing the limit to £500 will allow practitioners to deal with the majority of residual client balances without the bureaucracy of making an application to the

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SRA. A recent sampling exercise has indicated that over two-thirds of current applications for approval are below this level. We believe that there are already sufficient safeguards in place within the Accounts Rules for balances under £500. The firm is required to ensure that appropriate steps are taken to deal with withdrawing such residual client balances in accordance with the Accounts Rules, including taking steps to reunite the funds with the rightful owner where possible. We have also consulted on guidance on withdrawing residual client balances under £500 that will assist practitioners in complying with their duties. Residual client balance amounts over £500 will remain under the SRA's scrutiny.

- 12 The Law Society has suggested the following additional amendments to the SRA Account Rules:
  - Rule 20 should be amended to provide for residual client balances being brought together into an aggregate fund prior to payment being made to a charity.
  - Rule 29.25 should be amended to allow aggregate residual client accounts to be deemed a justifiable use of a suspense client ledger account.
- 13 Although we are not recommending that these suggested changes are made now, we will consider them when reviewing the SRA Account Rules later this year. The full response from the Law Society is attached as Annex 2.
- 14 Respondents, including The Law Society, generally agreed that the draft guidance relating to withdrawal of residual client balances provides clarity in relation to the requirements.
- 15 The Law Society suggested that the guidance might benefit from reference to the requirement in rule 14 (3) of the SAR to return client money promptly, a recommendation which has been accepted.
- 16 A copy of all the responses is available on request.

### **Impact assessment**

- 17 These changes are reasonably self-contained. The main impact is on law firms that no longer need to make an application to the SRA. Our estimate is that these changes will remove the need to apply to the SRA in around 750 cases

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per annum. This is a marginal cost saving for a firm in each case, although this is difficult to quantify. However, in our view there is little to be gained by placing an arbitrary monetary value on this. Similarly, there are impacts as set out below for the SRA. These are dealt with below. In our consultation document we concluded that there were no equality impacts and we do not see any reason to change this analysis. No further impact assessment is deemed necessary given the simplicity of these changes.

### **Resources Implications**

- 18 The proposed amendments to the SRA Account Rules 2011 (SAR) will free up resources for the SRA as set out in the consultation document, as there will be fewer applications to process. The Ethics Team, which currently handles these cases, is seeing changes in its work flows beyond these proposals that will impact on future resource requirements. Changes to KPIs are also being considered in order to bring them into line with other helplines and to ensure an appropriately high standard of customer service. These combined changes will affect future resource requirements. This is currently being managed through control of vacancies that arise but further analysis is likely to be undertaken to ensure that the operational savings are delivered as workflows change.

### **Business / operational impact and risks**

- 19 The SRA will no longer have oversight for approximately 5,000 individual client balances withdrawals a year. This will free up resources.

### **Consumer impact**

- 20 There is concern that there may be a negative impact on consumers as the rule change will mean that the SRA will no longer check that the practitioner has attempted to trace the client to return residual client balances under £500. However, we believe that the consumer impact is minimal due to the existing requirements on firms to comply with the SRA Account Rules (and for COFAs to take reasonable steps to ensure compliance with them). If a firm fails to take reasonable steps to trace the client and they have obtained no indemnity from the charity, then the firm would be liable to repay the money should the client subsequently re-appear. (In such a case, if the firm no longer existed and there was no successor practice, then a claim could be made by the client on hardship grounds to the Compensation Fund).

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**Equality and diversity considerations**

- 21 We do not consider that there are any equality and diversity impacts from this policy change.

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## Supporting information

### Links to the Strategic Plan and / or Business Plan

- 22 The proposals directly link to Strategic Objective number 3: ‘Develop the SRA regulatory arrangements and tools to better meet the regulatory objectives and the principles of better regulation and to mitigate emerging risks and anticipate changes in the external environment.’

### How the issues support the principles of better regulation

- 23 The consultation supports the following principles of better regulation:

#### Proportionate

- 24 The proposed rule change supports SRA's commitment to proportionate regulation as the SRA will only be authorising the withdrawal of balances of £500 or more, while practitioners will be able to deal with balances of below £500 in accordance with the Accounts Rules without SRA approval. This will significantly reduce the bureaucracy required.

#### Targeted

- 25 The SRA's regulation will only be targeted at larger sums where a greater degree of client protection may be required.

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**Date** 25 June 2014

### Annexes

**Annex 1** Summary of responses and draft response to the consultation  
**Annex 2** TLS response  
**Annex 3** Draft SRA Amendment to the Regulatory Arrangements Rules  
**Annex 4** Changes to the SRA Accounts Rules 2011  
**Annex 5** Changes to the SRA Handbook Glossary 2012  
**Annex 6** Changes to the SRA Practising Regulations 2011  
**Annex 7** Changes to the Suitability Test 2011  
**Annex 8** Changes to SRA guidance on the withdrawal of residual client balances

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## Annex 1

### **Report on the Red Tape Initiative-Residual Client Balances Consultation** **Qualitative analysis of responses**

- 1 The consultation sought views on proposals to amend the SRA Account Rules 2011 (SAR) to allow practitioners to withdraw residual client balances up to £500 without having to apply to SRA for authorisation. The consultation also sought respondents views on whether the proposed guidance clarifies requirements and if the SRA should place restrictions on the charities to which residual client balances should be donated.

#### **Consultation Responses**

- 2 The Red Tape Initiative-Residual Client Balances consultation began on the 31 March and ended on the 26 May. There were 97 respondents to the consultation from a variety of stakeholders, including: public, legal professionals, local law societies, law firms, solicitors in private practice, employed solicitors, law society committees or boards and other capacities.

#### **Question 1 Do you agree with increasing the level at which practitioners can self-certify withdrawals of client balances from £50 to £500?**

- 3 There was universal support across all types of respondents for the proposal to increase the level at which practitioners can self certify withdrawals of client balances from £50 to £500. The great majority of respondents favoured the SRA increasing the self certification level to £500. A number of respondents commented that they are happy that the proposal will:
  - reduce the administrative burden on the SRA and practitioners
  - encourage firms to donate residual client balances to charities
- 4 A small number of the consultation respondents disagreed with the SRA proposal to increase the level at which practitioners can self-certify withdrawals of client balances to £500. The majority of these respondents agreed with the self certification level being increased, but felt that £500 was too high a level and suggested alternative figures. These respondents suggested the following self-certification levels of up to £150, £250 and £300.
- 5 This group of respondents felt that a figure of £500 should still require SRA authorisation for withdrawal in order to confirm appropriate checks have been made by the firm to track down the client. The reasons given for this were that £500 would be considered a significant sum of money to the client.

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- 6 The Law Society agreed with increasing the level at which practitioners can self-certify withdrawals of client balances from £50 to £500. The Law Society commented that they "believe that the current £50 de minimis amount imposes significant burdens on firms and that a proportionate increase would ease this burden without endangering client money."
- 7 In responding to the SRA's Red Tape Initiative, the Law Society recommended at that time that the level at which practitioners can self-certify withdrawals of residual client balances should be raised to £250. In their response to this consultation, the Law Society suggested that the SRA may want to consider additional safeguards for residual client balances between £250 and £500, such as requiring the firm to wait for a set period of time before donating residual client balances. The Law Society is concerned that sums between £250 and £500 are significant amounts of residual client balances for some firms.
- 8 The Law Society also recommended the following:
  - Rule 20 should be amended to provide for residual client balances being brought together into an aggregate fund prior to payment being made to a charity. In reference to this, a new requirement could be introduced to inform SRA when an aggregated sum is exceeded in a specified period.
  - Rule 29.25 should be amended to allow aggregate residual client accounts to be deemed a justifiable use of a suspense client ledger account.
  - The SRA should review the requirements for residual client balances over £500 as they are very onerous.

### **SRA Response**

- 9 We are pleased with the support for this proposal as it is a deregulatory measure that will benefit both practitioners and the SRA. Having considered the responses, we believe that £500 is the right cut off point.
- 10 The managers of a firm will have the responsibility to comply with the SRA Accounts Rules. It is also the COFA's responsibility to take reasonable steps to ensure compliance with them. Therefore, firms will be required to ensure that appropriate steps are taken to deal with withdrawing residual client balances, including taking sufficient steps to trace the client to return the funds. If they fail to do so, they could be liable if the client subsequently appears and claims the money. In order to support firms and the COFA, the SRA has provided guidance for withdrawing residual client balances. In those circumstances, we do not consider it necessary at this time to implement further safeguards for balances between £250 and £500.

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- 11 The SRA will consider the Law Society's other suggestions (including the suggestion to simplify the approval process) when we begin our review of the SRA Account Rules later this year. As part of that review, we will want to ensure that there are appropriate provisions in place to deter firms from holding onto large aggregate balances of client money for very long periods without either returning them to the client or, where appropriate, donating them.

**Question 2 Do you consider that the draft guidance relating to withdrawal of residual client balances clarifies requirements?**

- 12 The overwhelming majority of consultation respondents agreed that the draft guidance relating to withdrawal of residual client balances clarifies the requirements.
- 13 Respondents commented that the guidance should advise firms of the advantages of selecting a charity with viable indemnity, as firms remain accountable to clients for money withdrawn under Rule 20.1 (j.). The Solicitors Benevolent Association (SBA) propose that the following is added to the guidance section on Residual Balances of £500 or less: "pay the funds to a charity, observing that practitioners remain liable to their clients for sums so disposed and that it is thus in the public interest, as well as their own, that the charity concerned offers a viable indemnity for the money".
- 14 Respondents also commented on the need for the guidance to advise firms that they need to check that there are no conflicts of interests with the charity that they are donating residual client balances to. They also suggested that better clarification be provided for requirements for dealing with client money, such as tick-lists and real life examples.
- 15 The Law Society agreed that the draft guidance relating to the withdrawal of residual client balances clarifies requirements. The only suggestion that they made is that the advice might benefit from reference to rule 14 (3) of the SAR to return client money promptly.

**SRA Response**

- 16 We are pleased that there is a strong indication that the draft guidance relating to withdrawal of residual client balances clarifies requirements. We plan to publish the guidance in October 2014 and will ensure that it is monitored and updated when appropriate.
- 17 We have made the Law Society suggested change to the guidance by making reference to rule 14 (3) of the SAR to return client money promptly.
- 18 We have also made the following changes to the guidance based on consultation respondents views:

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- We have included a reference to the need for firms to obtain an indemnity from charities to avoid the risk of liability if the client reappears.
- We have included a reference to the requirements in rules 29.16, 29.17(a) and 29.22 for firms to maintain and retain records of the steps taken in satisfying the conditions under 20.2 (This includes details of the charity that residual client balances are donated to, any relevant documentation which would include receipts, and any indemnity provided).

**Question 3** Do you consider that the SRA should restrict the charities that residual client balances can be transferred to?

- 19 Some of the consultation respondents agreed that the SRA should restrict the types of charity that residual client balances can be donated to. The following charity types were suggested: charities with a viable indemnity, charities of a substantial size, charities of long standing, charities with a substantial turnover, and charities with the ability to store donated residual client balances for a long period of time.
- 20 Other suggestions included that the money should be required to be donated to the Solicitors Benevolent Association, access to justice charities, charities registered in England & Wales with the Charities Commission, or Non-Governmental Organisations and "deserving" charities such as The Teenage Cancer Trust, homeless charities or specialist children's charities. It was also suggested that the SRA could choose and publicise a charity that residual client balances had to be donated to on an annual basis. Some respondents commented that legal charities would be the most appropriate recipients of residual client balances as this would be directly related to the source of why the money was originally paid.
- 21 A majority of consultation respondents, including the Law Society, disagreed with the SRA placing restrictions on the types of charities that residual client balances can be donated to. There was concern expressed about the SRA requiring residual client balances to be donated to charities registered in England and Wales with the Charity Commission as this would exclude many worthwhile charities. The Charity Commission does not require charities with an annual turnover of under £5000 to be registered, nor charities associated with churches, the armed forces, universities and museums. Also, it was noted by one respondent that the Charity Commission are investigating some registered charities for links to terrorism.

### **SRA Response**

- 22 We consider that imposing a restriction on the type of charity that the money could be donated to would be over prescriptive for a regulator and could exclude some worthwhile causes. However, we will ensure that the SRA Handbook Glossary definition of *charity* is changed to refer to section 1 of the Charities Act 2011. This means that the definition of *charity* which residual

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client balances are required to be donated to is up-to-date with current legislation.

### **Consultation Respondents**

#### Member of the Public

1 requested to be kept confidential

#### As another legal professional

3 requested to be kept confidential

Lisa Dixon, Certified Account and Legal Finance Specialist

Robin Knowles CBE, QC, Chairman of the Civil Justice Council Working Group on Access to Justice for Litigants in Person

#### In another capacity

5 requested to be kept confidential

Reginald Flower

Adrian Stone

Neil Startup

Christopher Butterworth

Mr T F W Martin, CEO of SBA The Solicitors' Charity

Trustee of the Eastern Legal Support Trust

CILEx Pro Bono Trust

Access to Justice Foundation

South West Legal Support Trust

Reaching Justice Wales

Chartered Institute of Legal Executives (CILEx)

#### Law Society Board or Committee

Lawyers with Disabilities Division

Law Society

Junior Lawyers Division Law Society

#### Local Law Society

The City of Westminster & Holborn Law Society (CWHLS)

Birmingham Law Society

Leicestershire Law Society

City of London Law Society

Newcastle upon Tyne Law Society

#### Representative Group

1 requested to be kept confidential

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Solicitors Sole Practitioners Group  
Law Centres Network  
ILFM West Midlands branch  
Executive Council of the Institute of Legal Finance and Management (ILFM)

Firms

15 requested to be kept confidential

Redferns Solicitors  
Woodfines LLP  
Shentons  
Thomas Eggar LLP  
HallmarkHulme LLP  
Morrison Solicitors LLP  
GHP LEGAL  
Rix & Kay Solicitors LLP  
A L Hughes & Co  
Yarwood Stimpson  
DJM Law Limited  
Rashid & Co. Solicitors  
William Sturges LLP  
Quality solicitors Punch Robson  
Hyland Fitzwater Limited  
Cripps Harries Hall LLP  
Speechly Bircham  
Tilly Bailey & Irvine LLP  
Macmillan Cancer Support  
Irwin Mitchell LLP  
Minster Law Limited  
Grant Thornton UK LLP  
London Legal Support Trust  
Irwin Mitchell LLP

Solicitor in private practice

7 requested to be kept confidential

Sarah Mumford  
Stephen Drake  
Babara Richardson  
Paul Bird  
Scott Burdett  
Harvey Cohen  
Rosalind Dunning  
Lydia Srebernjak  
Otilie Sefton

Employed Solicitor

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2 requested to be kept confidential  
John Cooke  
Anna Louise Pearson  
Peter Maynard  
Rebecca Austin  
Edward Austin

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## Annex 2

### **SRA Red Tape Initiative: Residual Client Balances Response from the Law Society of England and Wales May 2014**

- 1 This response has been prepared by the Law Society, the representative body for more than 166,000 solicitors in England and Wales. The Law Society welcomes the opportunity provided by the SRA to comment on this initiative to remove unnecessary regulatory processes. In drafting this response we have consulted with the Law Societies committees and the Regulatory Affairs Board.

#### **Response to the SRA's questions**

##### **Question 1**

#### **Do you agree with the proposal to increase the level at which practitioners can self-certify withdrawals of client balances from £50 to £500?**

- 2 The Law Society agrees and supports the proposal in the SRA's Consultation Paper on Residual Client Balance to increase the level at which practitioners can self-certify withdrawals of client balances. We believe that the current £50 de minimis amount imposes significant burdens on firms and that a proportionate increase would ease this burden without endangering client money. This proposal to address unnecessary and bureaucratic regulatory processes for the profession clearly needs to be balanced against adequate requirements around record keeping, as provided for in Rule 20.2 (d) and (e) of the SRA Account Rules 2011 (SAR).
- 3 We believe that the level at which practitioners can self-certify withdrawals of client balances should be increased and, in principle, we support the increase to £500. Last year, the Law Society, in responding to the SRA's Red Tape Initiative, recommended that the de minimis amount should be raised to £250. There are risks in raising the level to £500. For some clients, residual balances in the £250 - £500 bracket represent significant amounts of money justifying the client's whereabouts being comprehensively investigated. We therefore believe that, for amounts between £250 and £500, the SRA might want to consider additional safeguards such as, requiring firms to wait for a specified period of time before donating a residual client balance in the £250 - £500 bracket.
- 4 The Law Society proposes that two associated amendments should be made to the SAR to further assist individuals and practices to reduce the burden of regulation on them associated with administering residual client balances. It is suggested that Rule 20 should be amended to provide for residual client balances being brought together into an aggregated fund, prior to payment

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being made to a charity. This would recognise the fact that a significant proportion of the residual balance ledgers contain relatively small balances, which are unwieldy to manage if not aggregated. To provide adequate protection, a new requirement to notify the SRA could be introduced where an aggregated sum is exceeded in a specified period. This would enable the SRA to follow up where the notification gave cause for concern.

- 5 Coupled with this, we would suggest an amendment to the rule which relates to use of suspense client ledger accounts (Rule 29.25). The rule states that suspense client ledger accounts may be used only when their use can be justified; for instance, for temporary use on receipt of an unidentified payment, if time is needed to establish the nature of the payment or the identity of the client. We propose that aggregate residual client accounts should be deemed a justifiable use of a suspense client ledger account. This would act in support of our proposal that residual client balances should be capable of being aggregated and facilitate the payment of one combined payment to a charity. Rule 29.25 should be amended accordingly.
- 6 Finally, we would add that the requirements for dealing with amounts higher than £500 are very onerous for firms indeed. At a time of increased takeovers and, indeed, when firms unable to obtain PII are having to close down in a very short period of time, this can create significant problems. We believe that the SRA may wish to review these requirements also.

**If you do not agree with the proposal, please offer any alternative suggestions for reducing the regulatory burden on firms in managing residual balances.**

#### **Question 2**

**Do you consider that the draft guidance relating to withdrawal of residual client balances clarifies requirements?**

- 7 Yes. The advice might benefit from a reference to need to the Rule 14(3) of the SAR to return client money to clients promptly.

**If not, please explain why.**

- 8 N/A

#### **Question 3**

**Do you consider that the SRA should restrict the charities to which residual balances should be transferred? If yes, what criteria for selecting such charities should be put in place?**

- 9 The Law Society does not consider that the SRA should restrict the charities to which residual balances should be transferred.

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### Annex 3

SRA Amendment to Regulatory Arrangements (Red Tape initiative - residual client balances) Rules [2014]

#### Preamble

- 1 Rules dated [date of approval by the Legal Services Board] made by the Solicitors Regulation Authority Board under sections 28 31, 32, 79 and 80 of the Solicitors Act 1974, sections 9 and 9A of the Administration of Justice Act 1985, section 89 of and Part 1 of Schedule 14 to the Courts and Legal Services Act 1990 and section 83 of, and Schedule 11 to, the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007.

#### Rule 1

- 2 The SRA Account Rules 2011 shall be amended as follows:
  - (a) In Rule 20.2 replace "£50" with "£500"
  - (b) In the Guidance notes to Rule 20, amend note (vi) (a) by replacing "£50" with "£500"

#### Rule 2

- 3 The SRA Handbook Glossary 2012 shall be amended as follows:

Amend the definition of "Charity" by replacing "section 96(1) of the Charities Act 1993" with "section 1 of the Charities Act 2011."

#### Rule 3

- 4 The SRA Practising Regulations 2011 shall be amended as follows:

In Regulation 3.1(r) replace  
"The applicant has been removed from the office of charity trustee or trustee for a charity by an order within the terms of section 72(1)(d) of the Charities Act 1993"  
with  
(a) "The applicant is disqualified from being a charity trustee or trustee for a charity under section 178(1)(D) or (E) of the Charities Act 2011"

#### Rule 4

- 5 The SRA Suitability Test 2011 shall be amended as follows:

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In Requirement 10.1 (a) replace "you have been removed from the office of trustee for a charity by an order imposed by the Charities Act 1993" with  
"The applicant is disqualified from being a charity trustee or trustee for a charity under section 178(1)(D) or (E) of the Charities Act 2011"

**Rule 5**

6 These amendments shall come into force on 31 October 2014.

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## Annex 4

### Changes to the SRA Accounts Rules 2011

#### Rule 20: Withdrawals from a client account

- 1 20.1 *Client money* may only be withdrawn from a *client account* when it is:
- (a) properly required for a payment to or on behalf of the *client* (or other person on whose behalf the money is being held);
  - (b) properly required for a payment in the execution of a particular *trust*, including the purchase of an investment (other than money) in accordance with the *trustee's* powers;
  - (c) properly required for payment of a *disbursement* on behalf of the *client* or *trust*;
  - (d) properly required in full or partial reimbursement of money spent by *you* on behalf of the *client* or *trust*;
  - (e) transferred to another *client account*;
  - (f) withdrawn on the *client's* instructions, provided the instructions are for the *client's* convenience and are given in writing, or are given by other means and confirmed by *you* to the *client* in writing;
  - (g) transferred to an account other than a *client account* (such as an account outside England and Wales), or retained in cash, by a *trustee* in the proper performance of his or her duties;
  - (h) a refund to *you* of an advance no longer required to fund a payment on behalf of a *client* or *trust* (see rule 14.2(b));
  - (i) money which has been paid into the account in breach of the rules (for example, money paid into the wrong *separate designated client account*) - see rule 20.5 below;

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- (j) money not covered by (a) to (i) above, where *you* comply with the conditions set out in rule 20.2; or
- (k) money not covered by (a) to (i) above, withdrawn from the account on the written authorisation of the *SRA*. The *SRA* may require you to pay the money to a charity and may impose a condition that *you* pay the money to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received

- 2 20.2 A withdrawal of *client money* under rule 20.1(j) above may be made only where the amount held does not exceed £500 in relation to any one individual client or trust matter and you:
- (a) establish the identity of the owner of the money, or make reasonable attempts to do so;
  - (b) make adequate attempts to ascertain the proper destination of the money, and to return it to the rightful owner, unless the reasonable costs of doing so are likely to be excessive in relation to the amount held;

### Guidance notes

- 3 (i) Withdrawals in favour of firm, and for payment of disbursements
- (a) Disbursements to be paid direct from a client account, or already paid out of your own money, can be withdrawn under rule 20.1(c) or (d) in advance of preparing a bill of costs. Money to be withdrawn from a client account for the payment of costs (fees and disbursements) under rule 17.2 and 17.3 becomes office money and is dealt with under rule 20.3(b).
  - (b) Money is "spent" under rule 20.1(d) at the time when you despatch cheque, unless the cheque is to be held to your order. Money is also regarded as "spent" by the use of a credit account, so that, for example, search fees, taxi fares and courier charges incurred in this way may be transferred to your office account.
  - (c) See rule 21.4 for the way in which a withdrawal from a client account in your favour must be effected.
- 4 (ii) Cheques payable to banks, building societies, etc.
- (a) In order to protect client money against misappropriation when cheques are made payable to banks, building societies or other large institutions, it is strongly recommended that you add the name and number of the account after the payee's name.

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5 (iii) Drawing against uncleared cheques

- (a) You should use discretion in drawing against a cheque received from or on behalf of a client before it has been cleared. If the cheque is not met, other clients' money will have been used to make the payment in breach of the rules (see rule 7 (duty to remedy breaches)). You may be able to avoid a breach of the rules by instructing the bank or building society to charge all unpaid credits to your office or personal account.

6 (iv) Non-receipt of electronic payments

- (a) If you withdraw money from a general client account on the strength of information that an electronic payment is on its way, but the electronic payment does not arrive, you will have used other clients' money in breach of the rules. See also rule 7 (duty to remedy breaches).

7 (v) Withdrawals on instructions

- (a) One of the reasons why a client might authorise a withdrawal under rule 20.1 (f) might be to have the money transferred to a type of account other than a client account. If so, the requirements of rule 15 must be complied with.

8 (vi) Withdrawals where the rightful owner cannot be traced, on the SRA's authorisation and without SRA authorisation

- (a) Applications for authorisation under rule 20.1(k) should be made to the Professional Ethics Guidance Team, who can advise on the criteria which must normally be met for authorisation to be given. You may under rule 20.1 (j) pay to a charity sums of £500 or less per client or trust matter without the SRA's authorisation, provided the safeguards set out in rule 20.2 are followed. You may, however, if you prefer, apply to the SRA for prior authorisation in all cases.
- (b) You will need to apply to the SRA, whatever the amount involved, if the money to be withdrawn is not to be paid to a charity. This situation might arise, for example, if you have been unable to deliver a bill of costs because the client has become untraceable and so cannot make a transfer from client account to office account in accordance with rule 17.2-17.3.
- (c) After a practice has been wound up, surplus balances are sometimes discovered in an old client account. This money remains subject to rule 20 and rule 21. An application can be made to the SRA under rule 20.1(k).

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## Annex 5

### Changes to the SRA Handbook Glossary 2012

- 1 Charity has the meaning given in section 1 of the Charities Act 2011.

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## Annex 6 Changes to the SRA Practising Regulations 2011

### Regulation 3: Application following certain events

- 1 3.1 Regulation 3 applies to an initial application for a practising certificate, an application for replacement of a practising certificate, an initial application for registration in the *register of European lawyers* and an application for renewal of registration in the *register of European lawyers*, in any of the following circumstances, subject to the exceptions set out in 3.3 below, relating for example to a previously declared event.
- 2 (a) The applicant has been:
  - (i) reprimanded, made the subject of disciplinary sanction or made the subject of an order under section 43 of the *SA*, ordered to pay costs or made the subject of a recommendation to the *Society* or the *SRA* to consider imposing a condition, by the *Tribunal*, or struck off or suspended by the *court*;
  - (ii) made the subject of an order under section 43 of the *SA* by the *Society* or the *SRA* or rebuked or fined under section 44D of that Act by the *SRA*;
  - (iii) made the subject of an intervention by the *Society*, the *SRA* or by any other *approved regulator*, or been:
    - (A) a manager, interest holder or compliance officer, of a recognised body;
    - (B) a compliance officer of a sole practitioner firm;
    - (C) a manager, owner or compliance officer of a licensed body;
    - (D) a manager or interest holder of an authorised non SRA firm which is not licensed under Part 5 of the *LSA*; or
    - (E) a manager, material interest holder, HOLP or HOFA of an authorised non-SRA firm licensed under Part 5 of the *LSA*; which has been the subject of an intervention by the *Society*, the *SRA* or by any other approved regulator;
  - (iv) made the subject of a disciplinary sanction by, or refused registration with or authorisation by, another approved regulator, professional or regulatory tribunal, or regulatory authority, whether in England and Wales or elsewhere;
  - (v) disqualified from acting as a HOLP or a HOFA or from being a manager of, or being employed by, a licensed body or an authorised non-SRA firm;
  - (vi) refused authorisation as a *recognised sole practitioner* or approval as a *compliance officer* of such a *firm* or had such authorisation revoked under regulation 10.2(b)(i), (iii), (iv) or (vi);
  - (vii) refused approval to be a *manager*, *owner* or *compliance officer* of an *authorised body* or had such approval withdrawn;

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- (viii) refused approval to be a *manager, material interest holder, HOLP or HOFA* of an *authorised non-SRA firm* or had such approval withdrawn;
- (ix) a *manager, owner or compliance officer* of an *authorised body* the authorisation of which has been suspended or revoked by the *SRA* under Rule of the *SRA Authorisation Rules*, except under 22.1(a)(vii);
- (x) a *manager, material interest holder, HOLP or HOFA* of an *authorised non-SRA firm* the authorisation of which has been suspended or revoked by another *approved regulator*, or
- (xi) made subject to a *revocation* of his or her practising certificate or registration under regulation 10.2(a)(i) or (v) or of his or her authorisation as a *recognised sole practitioner* under regulation 10.2(b)(i), (iv) or (vi).
- 3 (b) The *SRA* (or previously the *Society*) has requested an explanation from the a applicant in respect of a matter relating to the applicant's conduct and has notified the applicant in writing that it does not regard the applicant's response, or lack of response, as satisfactory.
- 4 (c) The applicant has failed to deliver within the period allowed an accountant's report required rules made under section 34 of the *SA*.
- 5 (d) The applicant's practising certificate or registration has been suspended and the suspension:
- (i) has come to an end;
  - (ii) was continuing when the applicant's last practising certificate or previous registration expired or was revoked; or
  - (iii) is continuing.
- 6 (e) The applicant has been suspended from *practice* (or suspended from the register, if the applicant is a European *lawyer*), and the suspension has come to an end.
- 7 (f) The applicant's last practising certificate or previous registration expired or was revoked whilst subject to a condition.
- 8 (g) The applicant's practising certificate or registration is currently subject to a condition.
- 9 (h) The applicant's right to practise as a *lawyer* of another jurisdiction or as a *lawyer of England and Wales* (other than as a *solicitor*) is subject to a condition or restriction.
- 10 (i) The applicant has been restored to the roll or register, having previously been struck off.
- 11 (j) The applicant is an undischarged bankrupt.

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- 12 (k) The applicant:
- (i) has been adjudged bankrupt and discharged;
  - (ii) has entered into an individual voluntary arrangement or a partnership voluntary arrangement under the Insolvency Act 1986;
  - (iii) has at any time during the last 36 months of trading of a *recognised body*, a *licensed body* or an *authorised non-SRA firm* which has entered into a voluntary arrangement under the Insolvency Act 1986, been a *manager* of that *recognised body*, *licensed body* or *authorised non-SRA firm*;
  - (iv) has at any time during the last 36 months of trading of a *company* or of an *LLP* which has been the subject of a winding up order, an administration order or administrative receivership; or has entered into a voluntary arrangement under the Insolvency Act 1986; or has been voluntarily wound up in circumstances of insolvency, been a *director* of that company or a *member* of that LLP.
- (l) The applicant lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers under sections 15 to 20 or section 48 of that Act are exercisable in relation to the applicant.
- 13 (m) The applicant has been committed to prison in civil or criminal proceedings and:
- (i) has been released; or
  - (ii) has not been released.
- 14 (n) The applicant has been made subject to a judgment which involves the payment of money, other than one:
- (i) which is limited to the payment of costs; or
  - (ii) in respect of which the applicant is entitled to indemnity or relief from another person as to the whole sum; or
  - (iii) which the applicant has paid, and supplied evidence of payment to the SRA (or previously to the *Society*).
- 15 (o) The applicant is currently charged with an indictable offence.
- 16 (p) The applicant has been convicted of an indictable offence or any offence under the SA, the Financial Services and Markets Act 2000, the Immigration and Asylum Act 1999 or the Compensation Act 2006.
- 17 (q) The applicant has been disqualified from being a *company director*.
- 18 (r) The applicant is disqualified from being a charity trustee or trustee for a charity under section 178(1)(D) or (E) of the Charities Act 2011.

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- 19 (s) The applicant has been the subject in another jurisdiction of any circumstance equivalent to those listed in (j) to (r).

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## Annex 7 Changes to the SRA Suitability Test 2011

### 10: Additional requirements

- 1 10.1 Unless there are exceptional circumstances we may refuse your application if:
  - a. you are disqualified from being a charity trustee or trustee for a charity under section 178(1)(D) or (E) of the Charities Act 2011;
  - b. you have been removed and/or disqualified as a company director;
  - c. any body corporate of which you are/were a manager or owner has been the subject of a winding up order, an administrative order or an administrative receivership, or has otherwise been wound up or put into administration in circumstances of insolvency;
  - d. you have a previous conviction which is now spent for a criminal offence relating to bankruptcy, IVAs or other circumstances of insolvency;
  - e. you are a corporate person/entity subject to a relevant insolvency event defined in rule 1.2 of the SRA Authorisation Rules;
  - f. you are a corporate person/entity and other matters that call your fitness and propriety into question are disclosed or come to light;
  - g. you have committed an offence under the Companies Act 2006; and/or
  - h. we have evidence reflecting on the honesty and integrity of a person you are related to, affiliated with, or act together with where we have reason to believe that the person may have an influence over the way in which you will exercise your authorised role.

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## Annex 8

### **Guidance on the withdrawal of residual client balances**

- 1 First published on [XX October 2014]

#### **Purpose of this guidance**

- 2 This guidance is relevant to all practitioners who hold client money; Compliance Officers for Finance and Administration (COFAs) for firms that deal with client money and to accountants preparing applications on behalf of such firms. It is intended to assist when dealing with residual client balances (i.e. money due to clients where the client has become untraceable or where it has otherwise not been possible to return the money to the client) and designed to provide a framework that practitioners may find useful when dealing with such balances.

#### **Relevant rules and law**

- 3 Practitioners will often hold money on behalf of clients and although all client money will usually be used in the process of carrying out the retainer this is not always the case. In these circumstances, the SRA Accounts Rules 2011 (The Account Rules) require practitioners to return client money (including refunds received after the client has been accounted to) promptly, as soon as there is no longer a proper reason to retain that money (Rule 14.3).
- 4 Imposing such an obligation goes to the heart of practitioners' duties and reflects a number of SRA Principles, namely that you must:
  4. act in the best interests of each client;
  5. provide a proper standard of service to your clients; and
  10. protect client money and assets.
- 5 However, there are circumstances where it may not be possible for a practitioner to return client money. This may be because the client has changed their contact details without notifying the practitioner, which further underlines the importance of returning client money as swiftly as possible.

#### **Residual balances of £500 or less**

- 6 Rule 20.1(j) allows withdrawal of residual client balances from the client account where the amount withdrawn does not exceed £500 in relation to any one individual client or trust matter and practitioners meet the criteria specified in Rule 20.2. The criteria, which are set out in more detail below, are that practitioners:
  - establish the identity of the owner of the money, or make reasonable attempts to do so;

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- make adequate attempts to ascertain the proper destination of the money, and to return it to the rightful owner, unless the reasonable costs of doing so are likely to be excessive in relation to the amount held;
  - pay the funds to a charity.
  - record the steps taken in accordance with the requirements above and retain those records, together with all relevant documentation (including receipts from the charity), in accordance with Rule 29.16 and 29.17(a); and
  - keep a central register in accordance with Rule 29.22.
- 7 Rule 20.1 (j) does not require that the recipient charity provide an indemnity. However practitioners should bear in mind that they remain liable for any later claims the client could make if the recipient charity doesn't have an indemnity.

#### **Residual balances above £500**

- 8 Rule 20.1(k) allows practitioners to withdraw residual client balances above £500 from the client account on the written authorisation of the Solicitors Regulation Authority.
- 9 The SRA may impose a condition that the money is paid to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received. In determining whether to grant authorisation, the SRA will assess the adequacy of the steps taken to identify the owner and return the funds.
- 10 It is important to highlight that practitioners will need to apply to the SRA, irrespective of the amount involved, if the money to be withdrawn from the client account is not to be paid to a charity but, for example, into the office account. This situation might arise, for example, if it has not been possible for the practitioner to deliver a bill of costs because the client has become untraceable, meaning that the practitioner cannot make a transfer from client account to office account in accordance with Rules 17.2 and 17.3.
- 11 Furthermore, in relation to the administration of an estate or trust, it will normally be the executors, administrators or trustees, or the Court, that have authority to deal with unpaid money. Practitioners should therefore satisfy themselves as to any legal requirements in relation to the money.

#### **Establish the identity of the owner of the money, or make reasonable attempts to do so**

- 12 What is reasonable will vary, depending on the situation. Factors affecting what will be considered reasonable include, but are not limited to:

the age of the residual balance;

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the amount held;  
the client details available in respect of a balance and  
the costs associated with a particular tracing method.

- 13 Larger, more recent balances, where more details are held about the client will require more intensive tracing efforts than smaller, older balances where few details are held about the client. However, the absence of client details may highlight deficiencies in your accounting practices.
- 14 The steps below provide a potential basic framework for practitioners to employ when attempting to return residual client balances. However, it is worth highlighting that practitioners may identify other processes which allow them to take reasonable steps to trace clients.
  1. **Client file**
- 15 The client file is checked and all available contact details are used to try and contact the client or relevant third parties.
  2. **Companies House**
- 16 If the balance belongs to a company, a Companies House search is used to identify a current address if the company is still trading. Any monies due to a dissolved company may be bona vacantia and payable to the Treasury Solicitor under the provisions of the Companies Act. Practitioners should clarify the situation with the Treasury Solicitor's Department before making an application to the SRA under Rule 20.1(k).
  3. **Internet search**
- 17 If 1. is unsuccessful, an internet search is undertaken.
  4. **Directory enquiries**
- 18 Along with 3., a directory enquiries search is undertaken.
  5. **Electoral Register**
- 19 If a previous address is available for the client, an Electoral Register search is undertaken in the appropriate area.
  6. **DWP letter forwarding service**
- 20 The Department for Work & Pensions (DWP) provides a tracing and letter forwarding service that can be used to forward beneficial information to clients where complete details are not held by the sender. The service costs less than £5 and has proved successful for many firms.
- 21 This service can be utilised where you have an address or previous address of the client.
- 22 Details of the DWP letter forwarding service are available [here](#).

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### 7. Newspaper advertisement/tracing agent

- 23 The costs associated with placing an advert in a newspaper (or other similar publication) or instructing a tracing agent will depend on various factors, but we understand that such costs can start from tens of pounds. We would expect practitioners to have explored the cost implications of using these services if 1-6 above have proved unsuccessful.
- 24 If these costs are unreasonable when compared with the balance in question, balances under £500 can be transferred to charity. If these costs are not unreasonable when compared with the balance in question, and it is appropriate given the circumstances, such services should be utilised. For example, if the information held by the firm in relation to the source of the residual balance is such that it would not be possible to identify the client if such tracing efforts were undertaken, it would, in all likelihood, be inappropriate to use such services.

**Record the steps and retain those records, together with all relevant documentation (including receipts from the charity), in accordance with rule 29.16 and 29.17(a) and keep a central register in accordance with rule 29.22**

- 25 Taken together, these Rules require practitioners to:
- Record and retain records and documentation of the steps taken to try to identify the owner of the residual client balance and to return the funds to them
  - record the payment and identity of the charity to whom payments are made (retaining records and documents including receipts from the recipient charity);
  - keep a central register which details the
    - name of the client or other person or trust on whose behalf the money is held (if known),
    - residual balance amount,
    - name of the recipient charity,
    - date of payment.
- 26 Practitioners must retain these for at least six years from the date of the last entry.
- 27 Practitioners should not destroy files without clients consent and are advised not to archive files where a client balance remains, until such time as that balance is cleared.
- 28 When involved with mergers/acquisitions, acquiring firms should not accept liability for existing client balances without taking receipt of the relevant files.

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### **Out-of-pocket expenses**

- 29 Where practitioners make an application to the SRA for authority to withdraw client money from a client account and incur out-of-pocket expenses, these can be taken into account by a decision maker, if the attempts to trace the client have not been successful.
- 30 However, the SRA does not have any legal authority to authorise such expenditure. If you manage to trace the client, you would need to agree deduction of the expenses from the money held. If you are not able to trace the client and the authority is granted, it would commonly be subject to a condition that funds are paid to a charity. However, where out-of-pocket expenses have been incurred, the condition would normally require only the amount over and above the out-of-pocket expenses to be paid to charity. This would not alter any liability that a solicitor would have to a client.
- 31 Please note that if you make an application for authorisation to withdraw a residual client balance, the outcome will be available to other SRA business units. If the application is granted details of the authorisation will also be publicly available if an enquiry is received by the SRA.

### **Further considerations**

#### **Regulatory action**

- 32 Whilst we are committed to engaging with firms and practitioners, we will take appropriate regulatory action against those that fail to address the issues and risks associated with residual client balances where this is detrimental to the interests of clients.

#### **Further help**

- 33 If you require further assistance in relation to your accounting requirements, contact the Ethics Helpline (0870 606 2577) or email [professional.ethics@sra.co.uk](mailto:professional.ethics@sra.co.uk).