

Consultation: Annexes 1.1 - 1.5

Looking to the Future: SRA Accounts Rules Review

June 2016

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Annex 1.1 - Draft Accounts Rules

Draft SRA Accounts Rules [2017]

Introduction

These rules set out our requirements for when firms authorised by us receive or deal with money belonging to clients, including trust money or money held on behalf of third parties. The rules apply to all firms we regulate, including all those who manage or work within such firms.

Firms will need to have systems and controls in place to ensure compliance with these rules and the nature of those systems must be appropriate to the nature and volumes of client transactions dealt with and the amount of client money held or received.

PART 1: GENERAL

Rule 1: Application section

- 1.1 These rules apply to *firms*, their *managers* and *employees* and references to “you” in these rules should be read accordingly.
- 1.2 The *firm’s managers* and *COFA* are jointly and severally responsible for compliance by the *firm*, its *managers* and *employees* with the rules.
- 1.3 In relation to a *MDP*, the rules apply only in respect of your *regulated activities* and do not apply to “*out of scope money*”.

PART 2: CLIENT MONEY AND CLIENT ACCOUNT

Rule 2: Client money

- 2.1 “*Client money*” is money held or received by you:-
 - relating to legal services delivered by you to a *client*, excluding payments for your fees and payments to third parties for which you are liable;
 - on behalf of a third party in relation to legal services delivered by you (such as money held as agent, stakeholder or held to the sender’s order);
 - as a trustee or as the holder of a specified office or appointment, such as a donee of a power of attorney, *Court of Protection deputy* or trustee of an occupational pension scheme.
- 2.2 You ensure that *client money* is paid promptly into a *client account* unless:-

- (a) in relation to money falling within 2.1(c), to do so would conflict with your obligations under rules or regulations relating to your specified office or appointment; or
 - (b) you agree in the individual circumstances an alternative arrangement in writing with your **client**, or the third party for whom the money is held.
- 2.3 You ensure that **client money** is available on demand unless you agree an alternative arrangement in writing with your **client**, or the third party for whom the money is held.
- 2.4 You ensure that **client money** is returned promptly to the **client**, or the third party for whom the money is held, as soon as there is no longer any proper reason to retain those funds.

Rule 3: Client account

- 3.1 You only hold a **client account** at a branch (or the head office) of a **bank** or a **building society** located in England and Wales.
- 3.2 You ensure that the name of any **client account** includes:-
 - (a) the name of the **firm**; and
 - (b) the word “client” to distinguish it from any other type of account operated by the **firm**.
- 3.3 You must not use a client account to provide banking facilities to clients or third parties. Payments into, and transfers or withdrawals from a **client account** must be in respect of instructions relating to the delivery by you of legal services or as a result of your acting as a trustee or as the holder of a specified office or appointment.

Rule 4: Client money must be kept separate

- 4.1 You keep **client money** separate from money belonging to your **firm**.
- 4.2 You ensure that you allocate promptly any funds from **mixed payments** you receive to the correct client or business account.
- 4.3 Where you are holding **client money** and some or all of that money will be used to pay your **costs**:-
 - (a) you must first give a bill of **costs**, or other written notification, to your **client** or the paying party before you transfer any **client money** to make the payment;

- (b) any such payment must be for the specific sum identified in the bill of **costs** or other written notification, and covered by the amount held for the particular **client** or trust.

Rule 5: Withdrawals from client account

- 5.1 You only withdraw **client money** from a **client account**:-
 - (a) for the purpose for which it is being held; or
 - (b) following receipt of instructions from the client, or the third party for whom the money is held; or
 - (c) on the **SRA**'s prior written authorisation or in the circumstances prescribed by the **SRA** from time to time.
- 5.2 You appropriately authorise and supervise all withdrawals or payments made from **client account**.
- 5.3 You can only withdraw **client money** from **client account** if sufficient funds are held on behalf of that specific **client** or trust to make the payment.

Rule 6: Duty to correct breaches upon discovery

- 6.1 You correct any breaches of the rules promptly upon discovery. Any money improperly withheld or withdrawn from a **client account** must be immediately paid into the account or replaced as appropriate.

Rule 7: Pay interest where appropriate

- 7.1 You account to **clients** or third parties for a fair sum of **interest** on any **client money** held by you on their behalf.
- 7.2 You may by a written agreement come to a different arrangement with your **client** or the third party for whom the money is held as to the payment of interest but you must provide sufficient information to enable them to give informed consent.

Rule 8: Client accounting systems and controls

- 8.1 You keep and maintain accurate, contemporaneous and chronological records to:-
 - (a) provide details of all money received and paid from all client accounts and show a running balance of all money held in those accounts;
 - (b) record in client ledgers identified by the client name and an appropriate description of the matter to which they relate, all receipts and payments and bills of costs including transactions through your **firm**'s business accounts;

- (c) provide a client account cashbook showing a running total of all client funds.
- 8.2 You obtain, at least every five weeks, statements from **banks**, **building societies** and other financial institutions for all client and business accounts held or operated by you.
- 8.3 You complete at least every five weeks, for all **client accounts** held or operated by you, a reconciliation of the bank statement balance to the cash book balance and to the client ledger total, which must be signed off by the **COFA** or a **manager** of the **firm**.
- 8.4 You keep readily accessible a central record of all bills or other written notifications of **costs** given by you.

PART 3 – DEALINGS WITH OTHER MONEY BELONGING TO CLIENTS OR THIRD PARTIES

Rule 9: Operation of Joint accounts

- 9.1 If, when acting in a **client's** matter, you hold or receive money jointly with the **client** or a third party, part 2 of these rules do not apply save for:
 - (a) rule 8.2- statements from banks, building societies and other financial institutions;
 - (b) rule 8.3 – reconciliations;
 - (c) rule 8.4 - bills and notifications of costs.

Rule 10: Operation of a client's own account

- 10.1 If, in the course of practice, you operate a **client's** own account as signatory, part 2 of these rules do not apply save for:
 - (a) rule 8.2- statements from banks, building societies and other financial institutions;
 - (b) rule 8.3 – reconciliations;
 - (c) rule 8.4 - bills and notifications of costs.

Rule 11: Third Party Managed Accounts

- 11.1 You may enter into arrangements with your **client** to use a **third party managed account** for the purpose of receiving payments from or on behalf of, or making payments to or on behalf of, your **client** in respect of legal services delivered by you to your **client**, only if:
 - (a) use of the account does not result in you receiving or holding your **client's** money;
 - (b) you satisfy yourself that the arrangements are appropriate for the legal services that you are delivering for your **client**;

- (c) you satisfy yourself that the arrangements ensure that your **client's** money is safe; and
 - (d) you take reasonable steps to ensure, before accepting instructions, that your **client** is informed of and understands:
 - (i) the terms of the contractual arrangements relating to the use of the **third party managed account**, and in particular how any fees for use of the **third party managed account** will be paid and who will bear them; and
 - (ii) the **client's** right to terminate the agreement and dispute payment requests made by you.
- 11.2 You obtain regular statements from the provider of the **third party managed account** and ensure that these accurately reflect all transactions on the account.

Rule 12: Obtaining and delivery of accountants' reports

- 12.1 If you have, at any time during an **accounting period**, held or received **client money** or operated a joint account or a **client's** own account as signatory, you must:-
- (a) obtain an accountant's report for that **accounting period** within six months of the end of the period; and
 - (b) deliver it to the SRA within six months of the end of the **accounting period** if the accountant's report is qualified as result of a failure to comply with these rules, such that the safety of money belonging to **clients** or third parties is, or has been, or is likely to be placed, at risk.
- 12.2 You are not required to obtain an accountant's report if:-
- (a) all of the **client money** held or received during an **accounting period** is money received from the Legal Aid Agency; or
 - (b) in the **accounting period**, the statement or passbook balance of client money you have held or received does not exceed:
 - (i) an average of £10,000; and
 - (iii) a maximum of £250,000,or the equivalent in foreign currency.
- 12.3 In Rule 12.2 above a "statement or passbook balance" is the total balance obtained at least once every five weeks, from a **bank, building society** or other institution of all **client accounts**, and joint accounts and clients' own accounts under rules 9 and 10 above, when carrying out reconciliations in accordance with Rule 8.3 above.

- 12.4 The **SRA** may require you to obtain or deliver an accountant's report on reasonable notice if the **SRA** has reason to believe that it is in the public interest to do so.
- 12.5 If you stop holding or receiving **client money** (or operating any joint account or **client's** own account as signatory), rule 12.2 does not apply and you must obtain and deliver a final accountant's report to the **SRA**, whether qualified or unqualified, within 6 months of the date you stopped holding or receiving the money.
- 12.6 You ensure that any report obtained under this rule is prepared and signed by an accountant who is a member of one of the **chartered accountancy bodies** and who is, or works for, a registered auditor.
- 12.7 The **SRA** may disqualify an accountant from preparing a report for the purposes of this rule if:
- the accountant has been found guilty by their professional body of professional misconduct or its equivalent; or
 - the **SRA** is satisfied that the accountant has failed to exercise due care and skill in the preparation of a report under these rules.
- 12.8 The **SRA** may specify from time to time matters that you must ensure are incorporated into the terms on which an accountant is engaged.
- 12.9 You must provide to an accountant preparing a report under these rules:-
- (a) details of all accounts kept or operated by you in connection with your practice at any **bank, building society** or other financial institution at any time during the **accounting period** to which the report relates; and
 - (b) all other information and documentation that the accountant requires to enable completion of their report.
- 12.10 The accountant must complete and sign their report in the form prescribed from time to time by the **SRA**.

Rule 13: Storage and retention of accounting records

- 13.1 You must store all **accounting records** securely, and retain these for at least six years.

Supplemental notes

E.g. Powers, commencement /transitionals

Authority: made by the Solicitors Regulation Authority Board under sections 32, 33A, 34, 37, 79 and 80 of the Solicitors Act 1974, section 9 of the Administration of Justice

Act 1985, section 83(5)(h) of, and paragraph 20 of Schedule 11 to, the Legal Services Act 2007 with the approval of the Legal Services Board;

date: xxxx ;

replacing: the SRA Accounts Rules 2011.

Annex 1.2 - Draft SRA Account Rules glossary

Glossary - in order of appearance in current Draft Rules	Definition
Firm	<p><i>means:</i></p> <p><i>(i) save as provided in paragraphs (ii) and (iii) below, an authorised body or a body or person which should be authorised by the SRA as a recognised body or whose practice should be authorised as a recognised sole practice (but which could not be authorised by another approved regulator);</i></p>
Manager	<p><i>means:</i></p> <p><i>(i) the sole principal in a recognised sole practice</i></p> <p><i>(ii) a member of an LLP;</i></p> <p><i>(iii) a director of a company;</i></p> <p><i>(iv) a partner in a partnership; or</i></p> <p><i>(v) in relation to any other body, a member of its governing body.</i></p>
Employee	<p><i>means an individual who is:</i></p> <p><i>(i) engaged under a contract of service by a firm or its wholly owned service company;</i></p> <p><i>(ii) engaged under a contract for services, made between a firm or organisation and:</i></p> <p><i>(A) that individual;</i></p> <p><i>(B) an employment agency; or</i></p> <p><i>(C) a company which is not held out to the public as providing legal services and is wholly owned and directed by that individual; or</i></p> <p><i>(iii) a solicitor, REL or RFL engaged under a contract of service or a contract for services by an authorised non-SRA firm;</i></p> <p><i>(iv) a solicitor, REL or RFL engaged under a contract of service or a contract for services by a person, business or organisation, under which the firm, authorised non-SRA firm, person, business, or organisation has exclusive control over the individual's time for all or part of the individual's working week;</i></p>

	or in relation to which the firm or organisation has designated the individual as a fee earner in accordance with arrangements between the firm or organisation and the Lord Chancellor (or any body established by the Lord Chancellor to provide or facilitate the provision of services) pursuant to the provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012
COFA	means a compliance officer for finance and administration and in relation to a licensable body, is a reference to its HOFA .
MDP	means a licensed body which is a multi-disciplinary practice providing a range of different services, only some of which are regulated by the SRA.
Regulated activities	means: (i) subject to sub-paragraph (ii) below: (A) any reserved legal activity; (B) any non-reserved legal activity except, in relation to an MDP, any such activity that is excluded on the terms of the licence; (C) any other activity in respect of which a licensed body is regulated pursuant to Part 5 of the LSA; and
Out of scope money	means money held or received by an MDP in relation to activities that are not regulated activities.
Client money	has the meaning given in Rule 2.1 of the SRA Accounts Rules [2017]
Court of Protection deputy	for the purposes of the SRA Accounts Rules includes a deputy who was appointed by the Court of Protection as a receiver under the Mental Health Act 1983 before the commencement date of the Mental Capacity Act 2005
Client account	means an account of the firm for the purpose of holding client money in accordance with these rules
Client	Means the person for whom you act and, where the context permits, includes prospective and former clients
Bank	has the meaning given in section 87(1) of the Solicitors Act 1974.
Building society	means a building society within the meaning of the Building Societies Act 1986.

Mixed payments	Means a payment that includes both <i>client money</i> and non-client money
Costs	means your fees and disbursements
SRA	means the Solicitors Regulation Authority, and reference to the SRA as an approved regulator or licensing authority means the SRA carrying out regulatory functions assigned to the Society as an approved regulator or licensing authority.
Interest	includes a sum in lieu of interest.
Third party managed account	means an account held at a bank or building society in the name of a third party which is an authorised payment institution, a small payment institution that has chosen to implement safeguarding arrangement in accordance with Regulation 19 (13) of the Payment Services Regulation 2009 or an EEA authorised payment institution (as each defined in Regulation 2 of the Payment Services Regulations 2009) regulated by the Financial Conduct Authority, in which monies are owned beneficially by the third party, and which is operated upon terms agreed between the third party, you and your client as an escrow payment service
Chartered accountancy bodies	means the Institute of Chartered Accountants in England and Wales; or the Institute of Chartered Accountants of Scotland; the Association of Chartered Certified Accountants and the Institute of Chartered Accountants in Ireland; or the Association of Authorised Public Accountants
Accounting records	means all reconciliations, bank and building society statements (paper or electronic), original passbooks, signed letters of engagement with reporting accountants, the accountants' reports (whether qualified or not), any client's written instructions to hold client money other than in accordance with these rules, records and documents, including electronic records, relating to the third party managed accounts and any other records or documents necessary to show compliance with these rules

Annex 1.3 - Destination table

<i>Current provision</i>	<i>Retained (and simplified)</i>	<i>Removed</i>	<i>Merged</i>	<i>Added (new)</i>	<i>Destination in proposed draft rules (note new Rule 11 on TMPA)</i>
Rule 1 - the overarching objective and underlying principles		X			n/a
Rule 2 - interpretation		X			n/a
Rule 3 - geographical scope		X	X		n/a
Rule 4 - persons governed by the rules			X parts of rules 4 and 6 merged		Rule 1
Rule 5 – persons exempt from the rules		X			n/a
Rule 6 – Principal's responsibility for compliance	X				Rule 1
Rule 7 - Duty to remedy breaches	X				Rule 6

Rule 8 – Liquidators, trustees in bankruptcy, Court of protection deputies and trustees of occupational pension schemes			X		One element in Rule 2.2(a)
Rule 9 – Joint accounts	X				Rule 9
Rule 10 – operation of a client's own account	X				Rule 10
Rule 11 - firm's rights not affected		X			n/a
Rule 12 – categories of money			X		Rule 2.1
Rule 13 - client accounts	X				Rule 3
Rule 14 – use of client account			X parts of rules 14 and 15 merged		Rule 2.2,2.3,2.4 Rule 3.3
Rule 15 – client money withheld from client account on client's instructions			X parts of rules 14 and 15 merged		Rule 2.2

Rule 16 - other client money withheld from client account	X				
Rule 17- receipt and transfer of costs			X parts of rules 17 and 18 merged		Rule 4.2, 4.3
rule 18 – receipt of mixed payments			X parts of rules 17 and 18 merged		Rule 4.2
rule 19 – treatment of payments to legal aid practitioner s		x			n/a
rule 20 – withdrawals from client account			X parts of rules 20 and 21 merged		Rule 5
rule 21 – method of and authority for withdrawals from client account			X parts of rules 20 and 21 merged		Rule 5
rule 22 – when interest must be paid			X parts of rules 22,23,24 and 25 merged		
rule 23 – amount of			X parts of rules		

interest			22,23,24 and 25 merged		
rule 24 - interest on stakeholder money			X parts of rules 22,23,24 and 25 merged		
rule 25 - contracting out			X parts of rules 22,23,24 and 25 merged		
rule 26 – guidelines for accounting procedures and systems		X			n/a
Rule 27 – restrictions on transfers between clients		X			n/a
Rule 28 – executor , trustee or nominee companies		X			n/a
Rule 29 – accounting records for client accounts etc	X				Rule 8
Rule 30 – accounting records for clients' own accounts			X parts of rules 30 and 31 merged		Rule 13
Rule 31- production of documents, information and			X parts of rules 30 and 31 merged		Rule 13

explanations					
Rule 32 – Obtaining and delivery of accountant's reports	X				Rule 12.1, 12.2, 12.3, 12.4
Rule 33- Accounting periods			X		New glossary definition Rule 12.5, 12.6
Rule 34- Qualification for making a report	x				Rule 12.7
Rule 35 – Reporting accountant's rights and duties – letter of engagement	x				Rule 12.9
Rule 36- Change of accountant		x			n/a
Rule 37- Provision of bank accounts etc			X	Parts of rule 37 and 39 merged	Rule 12.10
Rule 38- Work to be undertaken			X	Parts of rule 38 and 40 merged	Rule 12.1 (b), 12.11
Rule 39 - Failure to provide			X	Parts of rule 37 and 39	

documentat ion			merged		
Rule 40- Form of accountant s' report			X Parts of rule 38 and 40 merged		Rule 12.11
Rule 41- Firms with two or more places of business		x			n/a
Rule 42 – Waivers		X			New waivers guidance applies
Rule 43 – Purpose of rules applying to RELS in Exempt European Practices (EELs)		X			n/a
Rule 44 – Application and Interpretati on (EELs)		X			n/a
Rule 45 – Client money (EELs)		X			n/a
Rule 46 – Accountant' s reports (EELs)		X			n/a
Rule 47 – production of documents, information and explanation		X			n/a

s (EELs)					
Rule 48 – Waivers (EELs)		X			n/a

Annex 1.4 - Consumer Protection analysis

Our proposals will make the Accounts Rules shorter, simpler and therefore easier to understand and comply with. The changes will also allow more flexibility for firms, while introducing a much clearer focus on the protection of client money.

However, there are of course some risks in the new approach which need exploring, particularly in terms of how the proposals for a change in definition may impact on the level of consumer protection. The table below addresses the potential impacts by looking at different scenarios which pose a risk to clients.

It should be noted that these are extreme examples and in our view are likely be very rare. In most cases the Principles and Codes of Conduct, together with the additional protections provided through the Accounts Rules, will provide effective mitigation in relation to risks to client money.

We therefore consider that on balance the risk of consumer detriment is more than mitigated by the potential redress mechanisms available, albeit that these take considerable time and determination for clients to pursue.

We welcome view from respondents on our assessment of these risks and the potential impacts.

Scenario and risk	Impact	Redress/Regulatory Action
A firm asks a client for payment on account of money to be used to pay for a medical expert and pays the money straight into the office account (as would be allowed under the Accounts Rules with a change of definition). This will allow the firm to use that money (mixed with all other money belonging to the firm) to pay staff salaries. However the firm is at the limit of its overdraft and as a result the expert is not paid for several months.	<ul style="list-style-type: none"> • Delay in that client's matter which may lead to that person not receiving damages as soon as he might. • The expert refuses to take on legal work in the future with broader detriment to access to good quality evidence • Risk that client has to pay again 	<ul style="list-style-type: none"> • Our Accounts Rules will require firms to have systems in place to ensure that this cannot happen through oversight • Report to us and potential investigation for breach of our Accounts Rules as the firm is not safeguarding money belonging to clients or acting in the best duty of the client (standards in the Codes of Conduct) • Redress mechanism via LeO for financial loss and distress and inconvenience (up to £50k) • If payment made by credit card and delay in service derives from delay in payment, section 75 of Consumer Credit Act may apply if amount is between £100 and £30,000
A firm does not offer fixed fees for general litigation work and asks instead for	<ul style="list-style-type: none"> • The client is left out of pocket and without the work being done – leading to delay and 	<ul style="list-style-type: none"> • Redress mechanism via LeO for financial loss and distress and inconvenience (up to £50k)

<p>payment on account of costs. A client pays over £2000. The firm then fails to do the work.</p>	<p>inconvenience</p> <ul style="list-style-type: none"> • The experts and other third parties are not paid and will have to be paid again by the client if the work is to be done by another firm • Potential intervention by SRA if dishonesty suspicion arises 	<ul style="list-style-type: none"> • If payment made by credit card and is between £100 and £30,000 s75 of Consumer Credit Act applies • Report to us and potential investigation for breach of our Accounts Rules, e.g. as the firm is not performing all instructions received from the client (standards in the Codes of Conduct) • Potential recovery of funds depending on application of statutory trust if the SRA intervenes and the funds are still available • Negligence claim • Claim on compensation fund (current position) as not doing work that has been paid for is seen as failure to account
<p>A sole practitioner takes payments on account of costs and for payments to third parties for which the firm is liable for, such as Counsels fees from a range of clients. The total amount of the money so held in the firm's business account is in excess of £125,000 The sole practitioner subsequently become bankrupt and ceases working</p>	<ul style="list-style-type: none"> • Several clients are left out of pocket and without the legal advice being received as they thought • The experts and other third parties are not paid and will have to be paid again by the client if the work is to be done for the client • Client potentially becomes an unsecured creditor 	<ul style="list-style-type: none"> • Claim on Compensation Fund post closure for all amounts lost by clients (current position) • Negligence claim/ claim on PII • Redress mechanism via LeO for financial loss and distress and inconvenience (up to £50k) • If payment made by credit card and is between £100 and £30,000 s75 of Consumer Credit Act applies – could be part payment or instalments • Claim against bankrupt estate • Report to us and potential investigation for breach of our Accounts Rules as the firm is not safeguarding money belonging to clients or acting in the best duty of the client (standards in the Codes of Conduct). Solicitor would also have practicing certificate suspended due to bankruptcy
<p>We intervene (close</p>	<ul style="list-style-type: none"> • Clients suffer 	<ul style="list-style-type: none"> • Claim on Compensation Fund

<p>down) a 2 partner firm due to suspected dishonesty. Both partners have been transferring significant amounts client money (as now defined) – mainly probate funds and personal injury damages - from client account to pay for fictitious disbursements or for unjustifiable sums on account of costs. They have then used these amounts to pay for personal expenses that have no relation to the clients concerned</p>	<p>losses</p> <ul style="list-style-type: none"> • Firm does not do work • Inconvenience to client • Client becomes an unsecured creditor • Client loses money 	<p>post intervention for all amounts lost (current position)</p> <ul style="list-style-type: none"> • Redress mechanism via LeO for financial loss and distress and inconvenience (up to £50k), payment by insurer in case of intervention • If payment made by credit card and is between £100 and £30,000 Section 75 of Consumer Credit Act applies • Statutory trust will apply for those where money is left at the point of intervention • Enforcement action after inspection due to dishonesty and failure to safeguard money and assets entrusted by the client
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Annex 1.5 - Indicative list of guidance areas and example case studies

Proposed areas of guidance - SRA Accounts Rules

- 1 Acting as a trustee and client money
- 2 What is client money
- 3 Name of client account
- 4 Withdrawals to make payments to Charity
- 5 Who can make withdrawals from client account?
- 6 Residual balances due to a client
- 7 Requirements to pay interest
- 8 Accounting records and systems
- 9 Accountant's Reports
- 10 Record keeping around operation of joint accounts
- 11 Operation of a client's own account
- 12 Treatment of legal aid money/monies received relating to formal appointments (insolvency)
- 13 Use of Third Party Managed Accounts
- 14 Client account as a banking facility
- 15 Waiver provisions
- 16 Out of scope monies in an MDP

Case study 1 - payment on account of costs

A client instructs Firm X in respect of his divorce. The firm informs the client that their likely fees in total are likely to be in the region of £2000 but may increase if further work is needed in respect of ancillary matters.

Firm X gives the client a full breakdown of the likely costs and expenses in dealing with the matter (in accordance with Standards 8.6 and 8.7 of the SRA Code of Conduct for Solicitors/Standard 7.1(b) of the SRA Code of Conduct for Firms). Firm X also advises the client about the protections that are available to him and confirm the same in the client care pack (in accordance with Standard 8.9 of the SRA Code of Conduct for Solicitors). The client makes a cash payment on account to the firm of £2,000.

Firm X pay the sum (£2,000) into their business account in accordance with the SRA Accounts Rules 2017. Firm X have an obligation to ensure that they safeguard money entrusted to them by the client (Standard 5.2 of the SRA Code of Conduct for Firms).

The client's matter runs smoothly and he and his wife are able to agree on many issues. On completion of the matter, Firm X deliver a bill to client confirming that the firm's total costs, including all expenses, come to £1,200 plus VAT, a total of £1,440.

The surplus £560 becomes client money as it is money held by Firm X relating to legal services they have delivered to the client but is not payment for the firm's fees or due to a third party. The firm ask the client for his bank details so that a BACS payment of the amount he is due to be refunded can be made.

In accordance with Rule 4.1 and 4.2, Firm X transfer the £560 from its business account into client account. The client then makes contact with Firm X and provides his bank details so that the £560 can be returned. Firm X, in accordance with Rule 2.4, promptly make the payment to the client.

Case study 2 - making prompt payments

Firm Y acts for a minor in suing a third party driver for significant injuries she suffered in a road traffic accident. The accident left the child's parents unscathed but she will need long term care and rehabilitation.

The driver's insurer admits liability and the firm agrees both a substantial award of damages (of £350,000) as well as payment of their legal costs in full. Despite a request that the insurer makes two payments, the insurers in fact make a single bank transfer for the entire amount into the firm's office account. After two weeks of chasing, the firm realise the mistake and, in accordance with Rule 6.1, immediately transfers the damages portion of the settlement to the client account. The client's parents are informed of what happened and ask for the damages to be sent to their daughter's account to fund payments they urgently need to make on her behalf.

Rule 2.4 requires firms to ensure that client money is returned promptly to the client as soon as there is no longer any proper reason to retain those funds. 'Promptly' is not a defined term and will depend on all the circumstances of the matter, the nature of the firm and the instructions received - underpinned by the obligation in the SRA Code of Conduct for Solicitors and Firms to ensure that money and assets are safeguarded and the SRA Principles including that they act in the client's best interests.

The lead solicitor, after speaking to his supervisor (who is also the firm's COFA), authorises an immediate return (on the same day instructions are received) of the client's money. Firm Y took into account the client's circumstances, the delay already encountered and the parents' need to have the monies as soon as possible to pay for the child's care. In addition they also consider their obligation under Rule 7 of the SRA Accounts Rules and pay to the client a fair amount of interest for the client money they had held.