Client money in legal services - safeguarding consumers and providing redress:

The model of solicitors holding client money

November 2024

About this consultation

We are consulting on proposals and ideas aimed at safeguarding client money and providing redress through our Compensation Fund when money is lost.

We are now consulting on proposals and ideas in three areas:

- Part 1: The model of solicitors holding client money – should we be looking at ways to reduce the client money held by solicitors?
- Part 2: Protecting the client money that solicitors do hold – what controls, checks and balances are appropriate?
- Part 3: Delivering and paying for a sustainable Compensation Fund – how should payments from the profession be calculated and payments from the Fund to reimburse consumers be allocated?

The following background is repeated in all three consultations:

Background

Most consumers will only use a solicitor at a few points in their lives to help navigate big life events. This includes events which involve significant financial transactions, such as buying property, receiving money from an inheritance or personal injury settlement. It is important that people can trust solicitors with their money and their affairs. This means having the right regulatory protections and safeguards in place while ensuring that the sector overall offers a broad range of services to meet consumers' needs.

We also need to keep the regulatory regime under review and predict and respond to developments in the sector. Recently, both the number and size of firms that we have had to intervene into to protect the public has risen sharply, with increasing detriment to clients from client money having gone missing or being unavailable when it was needed to complete a transaction. A substantial proportion of regulatory breaches which we investigate concern issues around the handling of client money. So, we launched our Consumer Protection Review in February 2024 to examine whether we need to make changes.

There are some changes that we have already been able to make. These include issuing warning notices on mergers and acquisitions and on money missing from the client account; tightening up checks when reviewing firms' financial information and bank statements; reviewing processes for putting conditions on firm authorisations; and starting to put in place a new proactive investigations team.

This consultation exercise sets out our proposals and ideas for further changes we think are needed. These have been informed by the engagement and research that we have already undertaken.

Consumers are at the heart of this review. Therefore, we conducted in-depth research with consumers to help shape our understanding and positions. We also engaged with a full range of stakeholders through different events and exercises, and we have commissioned research on specific topics relating to consumer protection.

At the outset of our review, we made clear that no options were off the table. This allowed for open discussion and the exchange of ideas. We set out three key areas to prompt discussion and our engagement indicates that these were the right areas of focus.

We are now consulting on proposals and ideas in three areas:

- Part 1: The model of solicitors holding client money – should we be looking at ways to reduce the client money held by solicitors?
- Part 2: Protecting the client money that solicitors do hold – what controls, checks and balances are appropriate?
- Part 3: Delivering and paying for a sustainable Compensation Fund – how should payments from the profession be calculated and payments from the Fund to reimburse consumers be allocated?

We have also responded to feedback that 'consumer protection review' was an unhelpfully broad title. We have adopted a title for this consultation exercise which we think better reflects the scope – client money in legal services: safeguarding consumers and providing redress.

The consultation papers include some firm proposals that we hope could be delivered relatively quickly. There are also more formulative ideas that require further development, which will be informed by feedback from this consultation. And in some areas, notably changes to the model of solicitors holding client money, we would need to work with partners to enable suitable alternatives.

This consultation will run until 21 February 2025.

Insights so far

As set out above, the proposals and ideas that we are consulting on have been informed by what we have heard from stakeholders so far as well as the external research and internal work that that we have done. Our engagement activity (see Annex A for more details), including roundtables with a full range of stakeholders, has given us some insights and ideas.

We have also drawn on five pieces of external research, covering:

- Consumer insights – expectations and preferences
- Future market developments – risks to client money

- Different approaches to managing client money
- Compensation schemes in other regulatory bodies and jurisdictions
- Online polling of consumer views

And we have considered our own proactive inspection work, data analysis and learnings from the recent failures that we have seen. The section below provides a high-level overview of what we have learnt.

Holding client money

We have heard mixed views about whether risks to consumers and firms could be significantly reduced if holding client money was not an assumed role of a law firm. There were also mixed views about whether the benefits outweigh potential disadvantages.

Some people, including the Legal Services Consumer Panel, supported the idea of alternatives to solicitors directly holding client money to reduce risk. Individual consumers and the public started out as sceptical about the potential benefits of alternatives, but the alternatives became more popular as people's knowledge about what they were increased.

Within the profession, some firms said that they were already looking to move away from holding client money to reduce risk and insurance costs. Others said that they were not opposed in principle but did not think that there were good, affordable alternatives available. But others were opposed – with questions over whether alternatives were more secure, concerns about limiting the service they offered to clients and whether involving a third party would add cost and delay.

We asked questions about firms being able to keep some of the interest that was made on the client money that they held. Consumers felt that as it is their money, they should receive any interest. As a minimum, the interest rates should reflect what they would have received in their own savings account. We heard that some firms used part of the interest to subsidise their operating costs and / or keep their fees down, or to improve their profitability. Some firms told us that they would not be able to remain in business without the money raised from interest on client accounts.

Through our inspection and investigations work, we have seen examples of firms who are not returning client money promptly at the end of a case, leading to high residual balances. We have heard from some compliance experts that this is not always treated as a priority by firms and their employees.

Our research highlighted examples of alternative arrangements for handling client money from different sectors and jurisdictions. It found that while there were no easily applicable models that could be lifted wholesale and applied to the legal sector

in England and Wales, there were features that could help reduce risks to client money which should be explored further.

Protecting client money

Unsurprisingly, finding ways to reduce risks was seen as important by consumers and the profession. We heard lots of different ideas about controls and protections that we might improve. Among solicitors and compliance experts, there was a widespread view that the reporting accountants' external audit function for risks to client money could be strengthened. This was both with regard to making sure that firms complied with existing requirements and improving the consistency of how effective the audits are at identifying risks or problems. Our intervention and thematic review activity has shown a significant minority of firms not complying with requirements.

Another area where we commonly received ideas for improvement was around checks and balances within firms. For example, there was concern expressed about potential conflicts when managing partners were also holding key compliance roles. We received several suggestions about how we might strengthen the effectiveness of compliance roles, both in terms of structure and how the roles are carried out in practice. However, there was also some caution about the potential impacts of any changes on sole practices and small firms.

Similarly, we heard some stakeholders calling for more monitoring and checks on firms that significantly change their profile, particularly through the acquisition of other firms. Some pointed to potential areas of concern. Issues highlighted included smaller firms buying bigger firms. And where a firm buys another firm of a very different sort and takes on different areas of law, including areas where there are traditionally large amounts of client money held. Some pointed to tighter controls in operation in other sectors. However, some stakeholders warned against introducing checks that might unnecessarily slow down or dampen normal market behaviour, saying the benefits from a dynamic market are more common than risks.

Our research into emerging market developments highlighted a changing sector. We must continuously improve our data and capability to understand developments, and properly identify, assess and act on risks. For example, the research highlights increasing merger and acquisition activity. While this may be positive, an expanding firm that then fails - for example because of poor management or fraud - could result insignificant harm to more consumers. Our own proactive visits found no concerns with the accumulator model or acquisitions per se but identified that potential risks may arise from issues such as lack of capacity and expertise to successfully integrate people, systems and processes.

Compensation Fund

There was strong support for the compensation fund across the breadth of stakeholders that we spoke to. There was very little enthusiasm for reducing the existing eligibility and scope. Consumers favoured universal coverage, irrespective of wealth. Currently, individuals, small businesses and small charities can call upon the fund, as a last resort, if they have lost money because of the dishonesty or unethical actions of a solicitor.

In terms of contributions, it was largely accepted among solicitors that the whole profession benefited from the fund as it helped uphold its reputation. Some suggested that we should explore variable contributions based on factors such as risk, impact, size or turnover. Our data shows that although most of our interventions are into small firms, when we do intervene into large firms, the value of compensation fund claims is higher than the totality of those relating to small firms.

The research looking at other jurisdictions highlighted that there is lawyer theft and misappropriation in all jurisdictions where they have unfettered access to client money. Most cases are small and relate to mismanagement but there are examples of claims resulting from large-scale criminality. The majority of compensation schemes are funded by individual lawyer contributions. The research highlights one example of the level of contribution being weighted towards those that hold more client money. Our Compensation Fund is made up of annual contributions from all solicitors (except those employed by the Crown Prosecution Service) and firms that hold client money. Contributions are set on a flat fee basis. Contributions are currently split 50/50 between individual solicitors and firms.

Next steps

The consultation will be open until 21 February 2025. We will also be carrying out a series of engagement events.

It is important that we hear from you about the likely effectiveness of the propositions, the impacts that they might have and, if we proceed with them, how they might be developed to maximise the potential benefits while avoiding unintended consequences.

Who we have heard from already

Since launching the consumer protection review in February, we have gathered wide-ranging feedback and views from our stakeholders:

- Over 200 stakeholders attended 14 roundtable events or discussions with us. These included the legal profession, the finance and tech sectors, compliance professionals and three consumer representative group events.
- 31 members of the public participated in four focus groups.

- A diverse group of 39 consumers collectively spent 350 hours giving us their in-depth views on consumer protections through a process of ‘deliberative research’.
- We also gained insights from online polling conducted with 2,000 members of the public.
- We received written responses to our consumer protection review discussion paper from over 20 stakeholders.
- We also commissioned research into how other jurisdictions and regulators manage client money and compensation funds, and future risks in the legal sector. The commissioned research has been published in full alongside this consultation.

Consultation part one: The model of solicitors holding client money

This is one of three separate but related consultation pages which together form the next stage of our review into Client money in legal services: safeguarding consumers and providing redress.

Introduction

SRA regulated law firms are entrusted to safeguard significant amounts of money on behalf of their clients. Firms report whether they hold client money and provide information on the amounts they hold through our annual Practising Certificate Renewal Exercise. The most recent data (as of 1 November 2023) shows that around 7,000 firms (around 75% of all the firms we regulate) declared that they held client money in the twelve months to August 2023:

- Around 4,500 firms held an average amount of less than £100,000
- Around 3,500 firms held more than £1m at some point during the year with around 80 holding more than £100m at some point during the year
- a small number of firms each held more than £1bn at some point during the year.

The money held often relates to major life events such as purchasing a home, inheriting money, or receiving a settlement following a serious personal injury. That solicitors and law firms handle this money as part of a legal transaction is embedded into law firm culture, parts of the legal system and the way in which most legal transactions are carried out. We want to make sure that consumers are appropriately protected when using a regulated legal service and can trust that their money will be safely held and managed in their best interests.

In this part of the consultation, we explore the current rules which enable firms to hold client money. We consider how we may wish to change our rules about, how long client monies can be held after a matter has concluded, when firms are allowed to take money from the client account, and how much client money can be held in

advance of the legal work being done. We also discuss whether we should remove the ability of firms to retain, or otherwise benefit from, any of the interest earned on client accounts. We set out proposals and ideas on these issues. And we also want to explore an ambition for the longer term to move away from the model of firms holding client money at all.

Alongside this consultation, we are also consulting on how our rules and regulatory arrangements could better protect the client money that firms hold and on our compensation fund arrangements. You may wish to read these consultation pages before responding to the consultation questions we ask here.

Mechanisms for holding client money

Firms that hold client money will operate two types of account:

- **a client account**
  client money is received and held in this account until it is needed to either pay for the costs of the transaction (for example to pay the deposit on a house purchase, or the bill of the law firm), or transferred to the client (for example, an inheritance). A firm may choose to hold all client monies in a single account, or separate designated accounts for each individual client.

- **an office account**
  this is money that belongs to the firm and can be used to pay for overheads and expenses such as wages and other business needs. Money can usually only be transferred from client to office account to settle a bill and only after the client has received written notification.

Money held in a designated client account benefits from significant protection, both through banking legislation and through our powers of intervention. Where a law firm becomes insolvent, any money in their office account is taken control of by the administrator as part of the firm's assets. However, funds in the client account will continue to belong to the firm's clients. Where we intervene into a firm (close the firm down), we will take control of the firm's client account(s) and seek to return monies to the client to whom they belong.

It's not inevitable that firms should hold client money. We explicitly allow the firms we regulate to use Third Party Managed Accounts (TPMA) to hold client money. However, only a few firms choose to use a TPMA. External research we commissioned also shows examples of alternative models.

The Financial Conduct Authority (FCA) is the primary regulator of alternative payment solutions, including relevant TPMA providers, and its regulation includes strict regulatory security requirements. Alternative solutions can have features which we think may increase protections around client money. For example:

- authorisation is required from both the client and the firm before a transaction can be processed.
- real time oversight of transactions, meaning both the client and the firm can ‘track’ the money
- early notification of anomalies through automatic reports and warning systems.

Through our online polls of over 2,000 consumers, 79% told us that they were comfortable or very comfortable with a regulated solicitor holding their money. This is similar to findings in the Legal Services Consumer Panel Tracker Survey 2024 which found that 77% of consumers who had used solicitors in the last two years trusted them to keep their money safe. An identical proportion of consumers trusted banks to keep their money safe.

We recognise that there may be some benefits to consumers of solicitors holding client money in designated client accounts. However, there are inherent risks in doing so and in recent years, we have seen those risks materialise in cases where large amounts of client money have been lost or misappropriated, causing detriment to consumers, as well as increased costs to the legal sector. At the end of this document, we explore an ambition that in the future, firms may not hold client money.

If we do decide that we will not allow firms to hold client money in the future, we recognise that this will take several years to achieve. Not least because we have heard that there are not yet sufficient alternatives available. We will also need to work collaboratively to test whether, and how, alternatives may develop that work effectively and provide the required capacity and level of consumer protection. Regardless of the longer-term position, we think there is more we should do now to address the risks associated with firms holding client money.

We think that there are currently incentives on firms to hold client money which do not align with the best interests of clients. We have heard from some firms that they rely on income that they generate from retaining a proportion or all of the interest earned on client accounts. We have significant concerns about firms making money in this way, including because this may incentivise handling client money in ways that generate the most income for the firm rather than their client.

There may also be opportunities for firms to hold more client money than is really necessary, both in terms of collecting fees in advance and returning funds when they are no longer needed. Finally, we need to ensure that our rules which govern when money can be taken from a client account protect the best interests of consumers.

Areas of consideration

As set out in the consultation overview [Client money in legal services: safeguarding consumers and providing redress – Overview], we are at different stages of policy development for different areas of the review. We intend to use this consultation to build on our current understanding and assess the potential impacts of changes we may wish to make. We recognise that some of these changes may have substantial impact on the way in which legal services are provided in England and Wales and will therefore require more time to be developed and implemented. We welcome your input on the areas in which we have made firm proposals, and the areas in which we have asked exploratory questions to inform our thinking. This consultation (part 1) discusses the following issues:

- **Residual balances**
  We discuss our view that the reconciliation of client balances should be a priority for firms and consider the benefits of prescribing timeframes in which any outstanding funds must be returned to the client at the end of a case.

- **Interest on client accounts**
  We consider whether it is ever right for firms to retain any of the interest earned on money held for clients and seek to better understand how firms are doing this and the impact of removing the ability to do so.

- **Moving money from client account to office account**
  We consider when it might be appropriate for firms to move money from their client account to their office account, and when, if at all, firms should be allowed to enter into alternative arrangements with their clients.

- **Advanced Fees**
  We discuss whether we should be more prescriptive about the circumstances in which requesting an advance fee may be appropriate and/or the amount of money firms can request in advance.

- **Alternatives to holding client money**
  We discuss the current model of firms holding client money, including the potential risks and benefits of the current arrangements, and possible alternatives. We seek to better understand how removing the ability of firms to hold client money may have an impact on consumers and legal services

How to respond

Online questionnaire

Our online consultation questionnaire is a convenient, flexible way to respond. You can save a partial response online and complete it later. You can download a copy of your response before you submit it.

Start your online response now.

Reasonable adjustment requests and questions

We offer reasonable adjustments. Read our policy to find out more.

Contact us if you need to respond to this consultation using a different format or if you have any questions about the consultation.

Publishing responses

We will publish and attribute your response unless you request otherwise.

Proposals and Ideas for Consultation

Residual Balances

Within this section we discuss areas of potential change. We explore our current rules and our concerns as to how they provide incentives for firms to act in ways which put their own interests ahead of the interests of their clients.

Sometimes at the conclusion of a matter, a firm has excess funds belonging to the client or a third party (for example, a beneficiary) in their client account. We want to ensure that these funds are returned to the person to whom they belong as quickly as possible. And we want to minimise residual balances held where it has become difficult for the firm to identify or trace the owner of the excess funds.

Current Position

Rule 2.5 of the SRA Accounts Rules requires money belonging to clients and third parties to be returned ‘promptly’ as soon as there is not a proper reason to retain it, for example at the end of a case. We do not define ‘promptly’ in our rules, as we expect firms to use their professional judgment within the context of their firm and the clients concerned.

We do expect all firms to see reconciliation and the prompt return of client money as a priority, as this is in the public interest as well as the client’s best interest. Residual balances should therefore be rare. If a firm acts quickly at the end of a case, it is less likely that the owner of the funds will become untraceable.

Where a firm does identify a residual balance, they are obliged to take all reasonable steps to locate the owner of the funds and return the money to them. Where they are unable to locate the owner, they must donate the residual funds to charity. Where the amount of the residual balance is above £500, firms must make an application to us, which sets out the steps they have taken to trace the owner of the funds. We have set out our requirements in relation to residual balances here.

Risks and challenges

We have heard that many firms are not proactive in reconciling client accounts and returning outstanding money at the end of the case, or in taking appropriate steps to trace the owner of outstanding funds (e.g. where contact information has changed).

Reconciling client accounts, identifying to whom money belongs and returning any excess funds should be a key priority for firms. It is important that clients and third parties are not out of pocket. It is also important for the reputation of the profession and for legal services to operate in the public interest. When it is not prioritised, we have seen issues arise such as clients and third parties losing out on their own money as they become untraceable or firm closure is drawn out because residual balances cannot be resolved.

We are concerned that there may be incentives for firms not to prioritise reconciling their client accounts and returning excess funds promptly. For example, reconciliation is non-fee-paying work and firms may be able to accrue interest on the balance held in the client account (this is discussed more in the next section). Anecdotally, we have heard of firms holding onto funds even after they have concluded they cannot trace the client, instead of donating it to charity. Evidence from interventions supports this as historic residual balances are a feature of almost all interventions.

We are also concerned that some firms are not doing enough to maintain their ongoing records of clients' contact details and this is contributing to residual balances arising. Rule 8 of our accounts rules requires firms to ensure they 'keep and maintain accurate, contemporaneous and chronological records', yet through our financial investigation work, we know that this does not always happen.

Where a firm is breaching our rules and putting client money at risk by not promptly returning it at the end of the case, leading to unnecessary residual balances, its annual accountant's report should be qualified. However, we are not confident that this control is always operating effectively. We consider the role of reporting accounts and accountants' reports within part 3 of this consultation – protecting client money.

Developing solutions

We are consulting on whether replacing the term ‘promptly’ and prescribing a specific timetable, either as an absolute requirement or the default position with exceptions in certain circumstances, would better protect client money.

Rule 8.3 of the SRA Accounts Rules requires firms to reconcile their client accounts at least every five weeks. This provides an opportunity to identify an outstanding balance on a concluded case. We therefore want to explore whether it would be reasonable and effective to prescribe that any excess funds must be returned to the rightful owner within 12 weeks of the conclusion of a matter.

This would provide firms with at least two reconciliation cycles to identify excess funds and return them where the firm has up to date contact details for the owner. Where the firm does not have the necessary details to return the money, we could prescribe a further period of time, perhaps a further 12 weeks, for firms to make all reasonable attempts to trace the owner of the funds and where this is not possible, either donate the money to charity or apply to us to do so where the funds are in excess of £500.

We may also wish to set additional requirements on firms to ensure that they keep contact details up to date, maximising the chances of tracing clients or beneficiaries after a matter has concluded.

We would emphasise to reporting accountants the importance of compliance with these requirements when deciding whether or not to qualify their reports. We may also consider further monitoring, such as spot checks on firms.

Questions

1. **We want to ensure we fully understand the issues firms encounter in returning excess funds to clients or third parties – please outline:**

    - **the circumstances in which residual balances may arise on a particular matter**
    - **the steps that firms can take to make sure their client contact details remain up-to-date and any challenges with doing this**
    - **mechanisms that firms use to trace clients/third parties and any challenges with this.**

2. **Do you agree that we should replace the term ‘promptly’ in rule 2.5 of the Accounts Rules and introduce more prescriptive requirements around returning funds to clients and third parties?**

3. **Would a 12-week timeframe, from the conclusion of a case, provide sufficient time in which to identify an excess balance on a client account and return the funds to the client or third party where the firm holds their up-to date contact details?**

   If not, please give your reasons and include any specific examples of relevant issues.

4. **Should it not be possible to return excess funds to the client or third party within 12 weeks of the conclusion of a matter, is a further 12 weeks a reasonable timeframe to make all reasonable attempts to trace the relevant client/third party and where this is unsuccessful, donate the residual balance to charity or apply to us for approval to do so?**

   If not, what additional timeframe would be required? Please give your reasons and include any specific examples of relevant issues.

Interest on client account

We have set out our thoughts on whether we should tighten our rules on residual balances above. Even if we tighten these rules, we think the current position that allows firms to retain interest from clients' money, is difficult to justify, and may incentivise behaviours that are against the interests of clients. We want to ensure that any incentives to hold more client money than necessary are removed.

Current position

Rule 7.1 of the SRA Accounts Rules requires firms to pay their clients a 'fair' sum of any interest earned on client money. However, our rules neither quantify nor define what 'fair' means in practice, and from our engagement, we are aware that there are many different approaches taken by firms. Client monies are often held in a pooled client account operated by the firm and which benefits from a greater rate of interest than would be achievable if the money of each individual client was held separately.

Risks and challenges

We have heard that some firms consider it to be fair if they pay their clients interest at the rate they would have received if their money had been held in a separate account and the firm then keeps any excess interest. Anecdotally, other firms have told us that they have an agreement with their bank not to receive interest on client accounts in return for free business banking. Members of the public taking part in deliberative research initially felt that a "fair sum" meant receiving all of the interest that their money earned, but were happy to receive as much interest as they would

have earned in their own account if the firm used the interest they retained to reduce fees in some way.

In a recent financial benchmarking survey, The Law Society estimated that firms could have made as much as £27m (total net income) in interest on client money in 2022/2023.

Retaining interest earned on client accounts may incentivise firms to hold more client money, or to hold it for longer, than necessary. We have heard that some small firms rely on interest from client funds to remain viable or retain staff, especially in particularly price competitive areas such as conveyancing.

Other firms have told us that by retaining some of the interest earned on client money, they can keep costs down, improving affordability and therefore access to legal services – we have not independently substantiated this assertion. We have also seen examples of larger firms reporting increased profits because of client money interest, driven by increases to interest rates.

Rule 7.2 of the Accounts Rules enables firms to enter into a different arrangement with their clients regarding the payment of interest. We have seen examples of firms attempting to use their standard terms of engagement to tell clients they will not receive interest on monies held on their behalf and saying the signing of this is evidence of an agreement. We think that consumers may not always be aware of their rights or the firms' obligations to account for a fair sum of interest, nor the implications of entering into alternative arrangements.

We are concerned that, particularly with large sums of money, the potential financial benefit may be driving behaviours that are not in the interest of clients. And we do not think it is appropriate for firms to continue to profit from holding money on behalf of clients.

We consider that it is likely to be in the client's best interest to receive all the interest from their money, and for firms to reflect their true operating costs through the fees that they charge. This is fairer to individual clients, more transparent and arguably would better promote effective competition.

Developing solutions

We are consulting on whether we should amend our rules to prevent firms retaining any interest earned on money held on their behalf, subject to an appropriate de minimis to take account of the fact that sometimes the interest due to an individual client would be so small that it would be unreasonably burdensome to pay that interest to the client.

To help develop our thinking, we would like to better understand how firms deal with interest on client accounts in practice, including those firms that choose not to accrue

any interest. We would also like to understand any unintended consequences that may be caused by tightening our rules.

We have considered the option of allowing firms to retain some flexibility over the payment of interest, whilst setting clear transparency requirements to ensure their clients are fully informed. However, through research we know that consumers already do not take in all the information provided to them in the client care letter and other documentation provided by the firm. We would therefore not be confident that consumers would be effectively informed and would be actively consenting. It would also not address all the concerns we have identified.

We are yet to hear compelling evidence of how firms retaining any interest is in the consumer's interest. Other professional regulators (domestically and internationally) employ a range of approaches to interest on client money. These range from prohibiting firms from earning any interest on client money, through to mandating that firms maximise interest earned on their client account for the benefit of their client. In Canada, France and Australia, interest earned on client money is used to the benefit of consumers, including the provision of free legal services and legal education. We could consider whether some or all of the interest accrued on money held in client accounts by solicitors should be used in a similar way. This would address the issues we have set out above caused by firms benefiting financially from holding client money. However, it would mean that clients would not receive all the interest accrued on their money.

Questions

5. **We would like to understand current practices around interest on the client account. Please tell us about your experience of the arrangements for interest on clients' money, including:**

    - **The extent to which client accounts generate interest, and – if so – how interest is apportioned between the firm and the client?**
    - **Any arrangements firms have to receive less or no interest on client accounts and what, if anything, the firm receives in return?**
    - **Whether and how firms make their clients aware (either directly or via terms and conditions) that their money could earn interest?**
    - **Whether clients are aware that firms may retain some of the interest earned on their money?**

6. **What are your views on the suggestion that we amend our rules to prevent firms retaining any of the interest earned on client money (subject to a de minimis)?**

7. **Are there circumstances where firms retaining some of the interest earned would be of benefit to the client?**

8. **What do you think would be the impacts of removing the ability for firms to earn interest on money held in client accounts? How could any short-term and/or long-term challenges be overcome?**

Moving money from client account to office account

Overview

We have explained earlier in this document that money held in a designated client account benefits from a high degree of protection. We therefore want to make sure that money held on behalf of clients to pay for their legal fees is not transferred into the firm's office account until it is appropriate to do so. Our starting point is that this will be when the firm has completed the work to which the money relates and sent to the client a written notification of those costs. We would like to explore whether there should be any exceptions to this.

Current Position

The current wording of Rule 2.1(d) of our Accounts Rules does not prevent firms from sending a bill to a client in advance of work being done (or for a future disbursement not yet incurred) and then transferring money from their client account for their anticipated fees. This would result in the client's money losing the protection that it would otherwise have had if held in a client account.

Some law firms and reporting accountants raised concerns about this and told us it was unclear when it would be appropriate for a firm to move client money into the firm's office account for anticipated costs. We issued guidance in September 2020 outlining our expectations, including that firms must act in the best interests of their clients. However, our guidance acknowledges that seeking payment of fees in advance of work being done can help firms facing cashflow challenges.

In December 2022, we consulted on changes to Rule 2.1(d) to make it clear that, in order to transfer funds from a client account into the firm's business account, it is not sufficient simply to send the client a bill or other written notification of costs - the bill or written notification must be for costs that have already been incurred. Most respondents were supportive of the proposal and agreed that the amendments provide clarity. However, three respondents, including the Law Society, raised concerns that the amendment would prevent firms invoicing for work that has not yet been completed in circumstances that are currently permitted. They said this might deter firms from offering fixed fees where legal work may take a considerable time to complete.

In response, we explained that our proposed amendments would not impact on rule 2.3(c) of the SRA Accounts Rules, which enables firms to agree alternative arrangements with clients about where client money will be held and how that money will be used. This might include agreeing for fees or monies for disbursements to be paid in advance regardless of whether the work is completed and that the money will be held in the firm's office account. We paused on implementing the amendments in light of our wider review which is the subject of this consultation.

Our concern

We are now concerned that maintaining rule 2.3(c) in its current form provides firms with too much flexibility to put their own interest ahead of that of their client. There are clear risks to clients where they enter into alternative arrangements. For example, if the client decides to terminate their retainer, the firm may not have money readily available to repay the money which the client paid to the firm. If the firm becomes insolvent, the client's money would not be in a ringfenced client account. If the firm has to close suddenly due to the incapacity of a sole practitioner, those dealing with the closure may not be able to immediately repay the client.

We are conscious of the need not to deter firms from offering fixed fees where the legal work is expected to last for a considerable period of time. However, we would like to explore if there are circumstances in which firms may be able to adapt their charging model, for example, by offering fixed fees with clear points agreed at which firms are able to transfer part of the fixed fee into their office account. This may be once a particular stage has been completed. We would also like to understand whether there are any other circumstances in which it is in the best interests of clients to agree that client money can be moved into the firm's office account before the completion of the work to which the money relates.

In our December 2022 consultation, we also proposed changes to our Accounts Rules to make it clear that where a firm has incurred expenses on behalf of a client, for example, paid a Land Registry search fee from their own money, they do not need to deliver a bill or other written notification of costs, before they reimburse themselves from money held in a client account. To achieve this, we proposed amendments to rule 4.3, 4.3(a) and 4.3(c) of the Accounts Rules and the addition of a rule 4.4. We explained that we already provide guidance to solicitors on how to manage this scenario and our proposed amendments reflected this guidance.

There was strong support for the amendment, although the Legal Services Consumer Panel raised concerns that, in a prolonged matter, a written notification of costs is important to ensure clients are kept informed of how their money is being used. An accountancy firm felt the proposal would create confusion and undo good practices and behaviours that lead to greater cost transparency.

Having carefully considered the feedback we received regarding keeping clients informed about how their money is being used, we concluded that other requirements in the SRA Code for Solicitors, Registered European Lawyers (RELs) and Registered Foreign Lawyers (RFLs) and the SRA Accounts Rules are sufficient to ensure that firms keep clients informed about how their money is being used, particularly in protracted matters.

Proposed changes

We now intend to move forward with the changes we proposed in December 2022 to rules 2.1(d), 4.3, 4.3(a) and 4.3(c) of the Accounts Rules and add a new rule 4.4. The proposed changes can be viewed at Annex A. This version reflects some drafting changes from our original consultation to reflect feedback we received from consultation respondents.

We are also considering whether we should remove the ability for firms to enter into alternative arrangements with their clients. We want to explore the circumstances in which firms enter into such agreements, whether this is in the best interests of clients, and whether there are any alternatives which would better protect client money.

We know that occasionally a court has ordered that a compensation award be paid into a firm's office account as the firm concerned did not have a client account. This is different to the issues discussed above as it concerns money which is being paid to the firm on behalf of the client, rather than monies which the client has paid to the firm for legal fees and disbursements. However, in view of our overall aim to limit the amount of client money that firms hold, we want to explore whether this situation could be avoided by the firm operating a TPMA or another alternative arrangement.

Questions

9. **Are there any circumstances in which it is in the client's best interests to transfer client money from the client account to the office account before the work to which it relates has been completed? If so, please describe these circumstances.**

10. **Do you agree with our proposal to progress the amendment to rule 2.1(d) of the SRA Accounts Rules? Please explain your answer.**

11. **Do you agree with our proposal to progress the amendments to rules 4.3, 4.3(a) and 4.3(c) of the SRA Accounts Rules, and the addition of rule 4.4? Please explain your answer.**

12. **What are your views on the option to remove the ability for firms to enter into alternative arrangements about where client money will be held and**

how it will be used under rule 2.3(c)? Please explain your answer.

Advance fees

It is common for solicitors to request that clients pay a certain amount of money in advance of legal work beginning. We want to make sure that the amounts paid by clients in advance and then held in firms' client accounts are no greater than is needed to run the case. We would like to explore how a firm determines how much money to request in advance from clients and whether we should set limits on this.

Current position

Our rules allow firms to take money for fees and disbursements in advance of work beginning. We do not set any limits on this, although firms are required to act in the best interests of their clients. Firms will request advance fees to avoid the need to regularly return to the client to receive real-time payments as costs are incurred. This can be more convenient for the client as well as the firm.

Risks and challenges

Anecdotally, we have heard that some firms are taking higher levels of advanced fees more often than they used to. This may be, for example:

- to avoid the burden of and challenges with seeking more money from the client, should it be needed during the case or upon reconciliation at the end
- to help with their cashflow (if the firm enters into an agreement with the client that the money can be moved into their office account before the work is completed); or
- because of the interest that they receive on this money.

Although we are clear that firms should not request that, in order to access a legal service, clients pay more money than they anticipate is going to be needed to deliver that service, a more complex consideration is how much of the reasonably anticipated cost firms should be able to request in advance of work being done. Client money should not be used as a facility to help firms run their business and holding client money for costs that may be incurred a long way into the future seems unnecessary. Taking more than is likely needed to run a case can lead to residual balances, an issue discussed earlier in this consultation.

Developing solutions

We therefore want to explore whether we should be more prescriptive about how much money firms can request in advance of work being done and/or the point(s) at which money can be requested. For example, it may be reasonable for firms to request fees in advance that cover all the anticipated costs and disbursements for the legal service where a matter is expected to last for a relatively short time.

However, where a matter is expected to last much longer, it may only be reasonable to request fees to cover the anticipated costs and disbursements which will be incurred at a particular stage, or to last for a defined period of time.

In developing our approach, we need to avoid unintended impacts. We therefore want to better understand current practices and when firms need to request fees in advance of work being done. And what the implications would be for the firm and their clients if, instead, firms were more restricted in when and how they could collect fees and cost before they became due. We also want to collect information to help us explore what an appropriate amount for a client to pay in advance, if anything, might be in different circumstances.

It may be there are different considerations in different areas of practice and so we would also like to understand whether there are any areas of practice or services in which taking fees in advance is considered more essential than in other areas.

Questions

13. **What approaches do firms take when calculating the amount of money they request from clients in advance? In your response, please outline:**

    - **Any areas of practice where you consider that it is important to take advance fees**
    - **How a reasonable amount to request in advance can be calculated**
    - **Any alternatives to requesting advance fees**

14. **When and how do you think we should, or should not, be more prescriptive about how much client money firms can request in advance of work being completed? In the areas where you think we should be more prescriptive, please outline what you think the implications would be for both clients and firms.**

Alternatives to holding client money

Even with significant controls in place, the practice of firms holding client money is inherently risky, with opportunities for money to be lost due to a number of reasons such as:

- poor systems and processes within a firm
- unethical behaviour by those responsible for safeguarding the money
- reliance on software without adequate protection to reduce the risk of cybercrime.

A large part of our consumer protection review has focused on the first two, but the third is also significant. Holding client money potentially makes firms more vulnerable to cyber-attacks. In 2023, The National Cyber Security Centre noted that “the legal

sector remained attractive to cyber criminals due to the large amounts of money and sensitive data handled". While no system can safeguard against all risks, there may be alternative arrangements which are less risky than solicitors holding client money.

In recent years we have seen risks to client money materialise more often and to a larger degree, causing detriment to consumers, as well as increased costs to the legal sector. We think there may be advantages for consumers and benefits to the sector in moving away from the system that allows firms to hold client money. We therefore need to consider whether we should change our rules to prohibit firms from holding client money.

Current position

The vast majority of law firms hold money on behalf of their clients in designated client accounts operated by the firm. SRA regulated firms are explicitly allowed to use TPMA Accounts, including Escrow accounts, with providers regulated by the Financial Conduct Authority. However, currently only a few firms choose to do so.

Through our engagement, some firms questioned the protections that would be in place and the redress available for consumers if money held in a TPMA was lost whilst others shared concerns about the costs, safety and speed of TPMAs. This feeling was strongest among those undertaking high volume conveyancing work, with some expressing concern that they would be unable to complete as many conveyancing transactions if they were required to use a TPMA.

In contrast, some firms who do use TPMAs provided positive feedback, especially around the speed of transactions. Given the small number of firms using TPMAs, it is possible that at least some of the concerns being raised by firms are the result of a low level of knowledge of how they work in practice and what the true costs are.

Our thinking so far

We acknowledge that, at present, given the low demand, the market for alternative methods available to firms to hold client money is limited. A TPMA, including an Escrow account, is currently the most feasible alternative for most firms and the number of TPMA providers is limited. We want to consider the extent to which the number and type of TPMA providers may increase in the future and what other alternatives may look like. A key consideration will be how to ensure there are appropriate and accessible alternative payment solutions.

An alternative payment solution will need to have essential features, including protection against consumer loss from negligence and theft, protection if the provider fails, transactional speed, affordable costs, transparency, and robust cyber security protections, along with arrangements to minimise impacts of any disruption from system failures.

We will also need to consider the role of the SRA compensation fund if there were to be a fundamental change in approach in the model of solicitors holding client money. If solicitors did not hold client money, there would be less need for the type of Compensation Fund that we have now. However, we recognise that no system is fail safe, and although most claims to the Compensation Fund relate to the loss of client money, its scope extends to other circumstances where a consumer loses out due to the dishonesty or unethical behaviour of a solicitor. So, we think that a compensation fund in some form may still be required to provide protection in the event of consumer loss.

In developing our thinking, we will engage with partners including the FCA, payment institutions, insurers, representatives from the finance sector, legal regulators, consumer representatives and representatives from different parts of the profession. There are several examples of other professions requiring different arrangements. These are set out in a separate research report published here. For example, within the UK, the Bar Standards Board does not allow Barristers or firms to hold client money and instead requires the use of alternative methods such as Escrow and TPMAs.

We will also look at alternatives that operate elsewhere. In France, solicitors do not have access to client money as it is held in a centralised system known as CARPA. The use of CARPA is mandatory and the system handles around €10m in transactions daily. Legal professionals who handle client money have an obligation to deposit funds into CARPA and not doing so is a disciplinary matter. Certain specialised lawyers or firms may be granted special permission to manage client funds independently, but this has to be authorised by their regulator. However, we understand that there can be issues with the speed of transactions through CARPA. CARPA has been designed to generate interest which is used to fund free legal services. For this to be effective, funds have to be invested for a number of days or weeks.

Initiatives such as the Bank of England synchronisation project, which is looking at a third-party moving money directly from one lender to another in conveyancing transactions rather than going via a solicitor, could also provide suitable alternatives to address the risks from holding client money. The current scope of this project means that it may not be able to be applied to legal transactions outside of conveyancing. However, we intend to engage with the Bank of England as it continues to develop the project to assess how it could be utilised within the legal market.

We have also heard that some firms, particularly larger firms, are developing strategies to minimise the amount of client money they hold in order to minimise their risk and the associated PII premiums. We will also look at lessons that we can learn from these practices as we consider our options.

In our deliberative consumer research, TPMAs (the only alternative discussed with consumers) became relatively popular among participants as their knowledge of what they were increased. Many of the consumers taking part in the research felt their money would be more secure, compared with money being held by a solicitor, and most were happy to pay a little more for legal services (if necessary) if their money would be better protected. They felt strongly that the SRA should approve any TPMA providers used by solicitors.

However, some consumers felt that solicitors should continue to hold their money. These consumers felt that TPMAs might be less transparent than a firm, especially if they had no direct relationship with the organisation holding their money. Some were also concerned about extra costs and delays, having heard these concerns raised by solicitors. Some consumer groups felt that TPMAs would add complexity for consumers.

Questions

15. **What are your views of the long-term option of changing the model of firms holding client money? Please outline what you think the impact would be if firms were to hold no or substantially less client money?**

16. **In your experience, are there areas of law or services in which it is essential for a firm to hold client money? What would happen if solicitors were not able to hold client money in these areas?**

17. **Do you have experience of any alternative method(s) of holding client money (such as a TPMA or other methods)? If you have experience of any alternative method, what has that experience been? What was the impact on clients and the firm?**

18. **If you have knowledge or experience of alternative approaches to holding client money, would you be open to further discussion with us as part of future development in this area? If yes, please confirm that you are happy for us to use the details you have provided to contact you, or please provide alternative contact details.**

19. **In the context of this consultation, do you agree with our assessment of equality, diversity and inclusion considerations in our impact assessment? If not, what else do you think we should consider?**

Equality impact assessment

We have produced a draft initial equality impact assessment Consumer Protection Review consultation, covering all three parts of the Client money in legal services: safeguarding consumers and providing redress consultation.

Our consultation questions in full

Q1. We want to ensure we fully understand the issues firms encounter in returning excess funds to clients or third parties – please outline:

- **the circumstances in which residual balances may arise on a particular matter**
- **the steps that firms can take to make sure their client contact details remain up-to-date and any challenges with doing this**
- **mechanisms that firms use to trace clients/third parties and any challenges with this.**

Q2. Do you agree that we should replace the term 'promptly' in rule 2.5 of the Accounts Rules and introduce more prescriptive requirements around returning funds to clients and third parties?

Q3. Would a 12-week timeframe, from the conclusion of a case, provide sufficient time in which to identify an excess balance on a client account and return the funds to the client or third party where the firm holds their up-to date contact details?

If not, please give your reasons and include any specific examples of relevant issues.

Q4. Should it not be possible to return excess funds to the client or third party within 12 weeks of the conclusion of a matter, is a further 12 weeks a reasonable timeframe to make all reasonable attempts to trace the relevant client/third party and where this is unsuccessful, donate the residual balance to charity or apply to us for approval to do so?

Q5. We would like to understand current practices around interest on the client account. Please tell us about your experience of the arrangements for interest on clients' money, including:

- **The extent to which client accounts generate interest, and – if so – how interest is apportioned between the firm and the client?**
- **Any arrangements firms have to receive less or no interest on client accounts and what, if anything, the firm receives in return?**

- **Whether and how firms make their clients aware (either directly or via terms and conditions) that their money could earn interest?**
- **Whether clients are aware that firms may retain some of the interest earned on their money?**

Q6. What are your views on the suggestion that we amend our rules to prevent firms retaining any of the interest earned on client money (subject to a de minimis)?

Q7. Are there circumstances where firms retaining some of the interest earned would be of benefit to the client?

Q8. What do you think would be the impacts of removing the ability for firms to earn interest on money held in client accounts? How could any short-term and/or long-term challenges be overcome?

Q9. Are there any circumstances in which it is in the client's best interests to transfer client money from the client account to the office account before the work to which it relates has been completed? If so, please describe these circumstances.

Q10. Do you agree with our proposal to progress the amendment to rule 2.1(d) of the SRA Accounts Rules? Please explain your answer.

Q11. Do you agree with our proposal to progress the amendments to rules 4.3, 4.3(a) and 4.3(c) of the SRA Accounts Rules, and the addition of rule 4.4? Please explain your answer.

Q12. What are your views on the option to remove the ability for firms to enter into alternative arrangements about where client money will be held and how it will be used under rule 2.3(c)? Please explain your answer.

Q13. What approaches do firms take when calculating the amount of money they request from clients in advance? In your response, please outline:

- **Any areas of practice where you consider that it is important to take advance fees**
- **How a reasonable amount to request in advance can be calculated**
- **Any alternatives to requesting advance fees**

Q14. When and how do you think we should, or should not, be more prescriptive about how much client money firms can request in advance of work being completed? In the areas where you think we should be more prescriptive, please outline what you think the implications would be for both clients and firms.

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Q19. In the context of this consultation, do you agree with our assessment of equality, diversity and inclusion considerations in our impact assessment? If not, what else do you think we should consider?

Annex: Amendments to the SRA Standards and Regulations

Amendments to the SRA Accounts Rules

Part 2: Client money and client accounts

Client money

2.1 "*Client money*" is money held or received by you:

a. relating to *regulated services* delivered by you to a *client*;

b. on behalf of a third party in relation to *regulated services* delivered by you (such as money held as agent, stakeholder or held to the sender's order);

c. as a trustee or as the holder of a specified office or appointment, such as donee of a power of attorney, Court of Protection deputy or trustee of an occupational pension scheme;

d. in respect of your *fees* and any unpaid *disbursements* if held or received prior to the delivery of a bill, ~~for the same~~ or other written notification, for the same once these have been incurred.

Client money must be kept separate

4.1 You keep *client money* separate from money belonging to the *authorised body*.

4.2 You ensure that you allocate promptly any funds from *mixed payments* you receive to the correct *client account* or business account.

4.3 Subject to rule 4.4, where you are holding *client money* and some or all of that money will be used to pay your *costs*:

a. you must give the client or the paying party, ~~a bill of *costs*~~, or other written notification, of the *costs* ~~incurred, to the *client* or the paying party~~;

b. this must be done before you transfer any *client money* from a *client account* to make the payment; and

c. any such payment must be for no more than the specific sum identified in the bill ~~of *costs*,~~ or other written notification of the *costs* incurred, and covered by the amount held for the particular *client* or third party.

4.4 Rules 4.3 does not apply where you withdraw client money from a client account in full or partial reimbursement of money spent by you on behalf of the client, or the third party for whom the money is held.