Guidance

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Status

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

Who is this guidance for?

These questions and answers are for SRA-authorised firms that receive and hold client money in the form of fees and disbursements and want to rely on the exemption not to operate a client account.

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Q1. What does client money include?

Client money is money of any currency that is received and held as cash, cheque, draft or electronic transfer by a firm when they are providing legal services.

Examples of the types of client money include:

- Client damages received by a firm in a personal injury matter
- Mortgage money received from a lender (third party) on behalf of the client
- Money held to pay nursing home fees for a client where a solicitor has been appointed as Court of Protection deputy
- Money for the firm's fees, and any unpaid expert fees, that have been received before a bill has been sent to the client for those fees.

We define client money in rule 2.1 of the SRA Accounts Rules.

Q2. Can I hold and receive any client money if I do not operate a client account?

Yes, if:

- the only client money received by you is advance payments for fees and unpaid disbursements. The money must relate to your fees or expenses incurred by you on behalf of your client and for which you are liable, for example, counsel or expert fees (this would not include, for example, disbursements for which your client is liable (such as stamp duty land tax), and
- you have made sure that your client has been properly advised and is given sufficient information about where their money will be held. You should explain to your client that their money will not be held on account for them or specifically ring fenced, as the money may be held and used as part of the firm's own money in their business account. This is so that they can make an informed decision about whether they wish for their money to be held outside of a client account or consider other alternatives.

This exemption is set out in Rule 2.2 of the Accounts Rules.

Q3. What sort of risks do I need to think about and discuss with my clients if I rely on the Rule 2.2 exemption?

A key risk that you should consider and make sure potential clients have properly understood is, for example, what happens in the event of your firm becoming insolvent as the money would not be ringfenced and could be incorporated into the insolvent estate.

If you are subject to an insolvency event before the client's work has been completed, the client will be treated like any other creditor. This impact could be greater for clients who might not have easy access to additional funds to pay another firm for work to be completed.

Q4. What if my client does not agree for the money to be held outside a client account?

You should consider whether:

- it is necessary for you to operate a client account, or
- the money can be held in a third-party managed account, or
- you can make other arrangements so that the money does not have to be held by you (e.g. the client paying disbursements to third parties directly and only requesting payment for your services once a bill has been issued).

You may need to consider whether you are to continue to act for the client if no alternative arrangements (as set out above) can be agreed upon.

Q5. Because I do not operate a client account, can the client make a payment directly to the third party, for example to counsel?

Yes.

If the client has agreed to make payment to a third party directly, you should make sure the client is clear about this and knows how, when and to who they should make any payments. You should keep a record of the communication with your client and a note of when the payment has been made.

Q6. At the end of my retainer with the client, what do I need to do if I am left with a balance of client money?

There may be circumstances where this arises, for example,

If advance payments from a client exceed the final fees that you set out in your bill to the client when the work is completed. Though you do not operate a client account you still need to comply with Rule 2.5 of the Accounts Rules and make sure that client money is returned promptly as soon as there is no longer any proper reason to hold the money.

Q7. Can I rely on the exemption in Rule 2.2 of the Accounts Rules and arrange for my client to use a third-party managed account (TPMA)?

Yes – providing it is appropriate in the circumstances.

For example, you may need a facility for holding client money (such as damages awarded in a litigation case) on a temporary basis and you do not want to open a client account. A TPMA can provide an alternative for receiving the damages and making any payments.

Read further information about TPMAs
[https://qltt.sra.org.uk/solicitors/guidance/third-party-managed-accounts/] .

Q8. Do I need to obtain an accountant's report if I do not operate a client account?

No.

The requirements to obtain and deliver an accountant's report do not apply if you are holding client money in accordance with Rule 2.2.

Q9. Are there any other parts of the Accounts Rules or the SRA Handbook that I need to think about even though I am relying on the exemption in Rule 2.2?

Yes. You should:

- make sure that you have, for example, given your client a bill or other written notification of costs Rule 4.3(a)
- keep accurate records showing receipts and payments of client money in real time. The purpose of a client ledger is to record any client money wherever it is held and can be used even if the firm does not have a client account Rule 8.1(a), and
- bear in mind your duty to act in the best interests of each client and to safeguard money on behalf of clients and other third parties.

Q10. If there is an event which results in the client's money going missing or my firm being unable to account for it, can the client make a claim on the SRA's Compensation Fund?

Providing the client is eligible to claim and can evidence that money was paid to the firm for work not completed, then a claim can be made.

Read more information about how we make decisions and how we deal with claims [https://qltt.sra.org.uk/consumers/compensation-fund/resources/] .

Q11. What do I need to do if things change and I cannot rely on the Rule 2.2 exemption?

If for any reason you cannot rely on the exemption,

for instance you start to receive other types of client money, the Accounts Rules will apply in their entirety and you must place any client money held or received by you into a client account or consider alternative arrangements as set out in response to Question 4.

Q.12 I do not wish to receive client money in transactions from my client. What are my obligations, and can I do this?

The decision to operate a client account is yours and so is the decision to receive and hold client money in that account.

In respect of money required to be held for the purposes of delivering regulated services you should carefully consider the needs of your client (SRA Code of Conduct for Solicitors, RELs and RFLs: 8.6 [https://qltt.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/#rule-8-6]), the nature of the retainer and your duty to act in the client's best interests.

There may, be circumstances where you are required to receive money and hold it for a specific purpose, for example, where the court has directed you to hold the sale proceedings in a matrimonial conveyance if

you are acting for one or both parties. You may also have given the other side solicitor's an undertaking confirming that you will receive, hold and send money onwards to facilitate the completion of a matter.

As well as making suitable provisions for your client, you must also consider the position of the other parties and their solicitors.

The other side's solicitor is not under an obligation to accept monies directly from someone other than you and they should not be pressured to do so. If you do not provide them with sufficient time for alternative arrangements to be made if they do not agree, leaving them in a position where their client's interests may be put at risk as a result, then this could also be seen as an attempt by you to take unfair advantage.

Further, it may be challenging for them to mitigate the anti-money laundering and sanctions risks and be satisfied with their own compliance obligations. If they do agree to accept monies from someone other than you, you will need to provide them with sufficient time for the necessary legal and regulatory checks to be carried out. If they are not satisfied with the results of regulatory checks that they have carried out, then you would need to consider the options available to you whilst making sure that you continue to act in your client's best interests.

If having given the matter consideration, you have decided that you do not want to receive and hold money for your client, then to act in the client's best interest and to avoid delays to the matter, you should at the earliest opportunity:

- Advise your client that you will not hold or receive money in your client account. You should clearly explain the reasons for your decision and the impact that this has on them and their matter.
- Discuss the alternative options available to your client so that arrangements can be made in good time, for example, using a third party managed account (TPMA) (see our guidance on TPMAs [https://qltt.sra.org.uk/solicitors/guidance/third-party-managed-accounts/]) or using third-party payment agents.
- Inform the other side's solicitor in the matter that you will not be receiving and holding the transactional monies so that they can update their client and consider their next steps especially where they are relying on an undertaking from you to send on money to enable completion of the matter.

A decision to not receive and hold client money, does not absolve you of your duties to comply with relevant anti-money laundering regulations, which includes understanding the source of funds/source of wealth used in the transaction [https://qltt.sra.org.uk/solicitors/guidance/topic/money-laundering/] .

For more information about operating a client account, and our Warning Notice and case studies [https://qltt.sra.org.uk/solicitors/guidance/improper-client-account-banking-facility/] around the risks of your client account being used

as a banking facility [https://qltt.sra.org.uk/solicitors/guidance/improper-client-account-banking-facility/] .

Further help

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