



**THE INSTITUTE  
OF CERTIFIED  
BOOKKEEPERS**

# Working With Solicitors' Accounts

## Does It All Add Up?

A presentation for the  
Institute of Certified Bookkeepers  
By John Mercer  
of the SRA's  
Forensic Investigation Department

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# What Will We Cover?

- Size of Profession/Cost of being a Solicitor and Structures
- Key Changes from Legal Services Act
- Role of Forensic Investigation (FI) in the SRA (briefly)
- Solicitors' Accounts Rules – An Overview
- Some Danger Areas Leading To Investigations
- Common Issues Found by FI

# Size of Profession

## From 2008 Trends Report of TLS

- 139,666 solicitors on the roll, of which;
- 83,329 (74.1%) held practising certificates to work in private practice
- 10,267 solicitors' firms in England and Wales of which 27.8% located in London
- Sole practices accounted for 44.2% of firms but only 8% of all private practitioners

# Cost of Being a Practising Solicitor



- On the Roll fee £20
- 2009/10 standard PC fee £1,180
- Compensation Fund Contribution  
2009/10 Range £0 to £390
- Professional Indemnity Insurance £?  
2008 Total Premium £226m  
Simple average = £22,000 per firm (but misleading)

# Structures

Currently trading can be through:

- Sole Practice (Recognised Sole Practitioner);
- Recognised Professional Body, being either
  - Partnership
  - Limited liability partnership (LLP) – a corporate body with members
  - Company - directors

# Legal Services Act

- Opening up Legal Services market
- Allowed for LDPs from 31 March 2009  
Non solicitor lawyers can be owners and/or  
Up to 25% non lawyer managers
- SRA now enabled to regulate recognised sole practitioners and recognised partnerships as entities as well as regulating the individual managers
- ABSs to be allowed from mid 2011  
(MDPs) – lawyers and non lawyers sharing business + external ownership

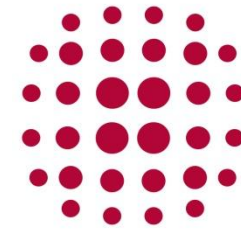
# Forensic Investigation

## - What we do



- We deal on site with Highest Risk Assessed Work, e.g. mortgage fraud
- We investigate under the Solicitors' Code of Conduct 2007 and under the Solicitors' Accounts Rules 1998
- Work is informed by Intelligence
- Fact Finding
- Open Minded

# Forensic Investigation - Scale of Operations



Solicitors  
Regulation  
Authority

- FI comes under Inspection and Investigation Directorate
- Investigating Staff compliment is 58 including Managers and Head of Forensic Investigation – from a variety of professional and investigative backgrounds
- Completed 422 Investigations in 2008
- Can require delivery of original files
- Traditionally around 50-60% of Forensic Investigations end with reports – the rest are closed on site

# Forensic Investigation - Our Powers (1)



- Rule 34 Solicitors' Accounts Rules – Production of Records
  - Any solicitor must produce to any person appointed by the SRA any records, files, papers, and any other documents and information
  - The SRA's appointee is entitled to seek verification from the solicitor's staff as well as from banks, building societies and other financial institutions used by the solicitor. The solicitor must provide written permission for the information to be given

# Forensic Investigation - Our Powers (2)



- Rule 20.08 of the Solicitors' Code of Conduct 2007
  - Must produce for inspection by the appointee of the Solicitors Regulation Authority all documents held or held under their control and all information and explanations requested:
    - (a) in connection with the practice; or
    - (b) in connection with any trust of which they are, or formerly were, a trustee;

# Solicitors' Accounts Rules

## - Why have them?



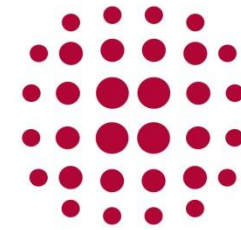
- Most firms hold substantial sums of money on behalf of their clients
- The SAR's control how solicitors handle this money to keep it safe by keeping it separate from the solicitor's own money and preventing accounting muddle by requiring the use of proper accounting records
- Most importantly they say what must be paid into a client account and when money may be withdrawn from a client account

# Solicitors' Accounts Rules



- Current Rules came into force on 22 July 1998 and had to be adopted by no later than 1 May 2000
- 50 Rules altogether
- Notes are mandatory
- They were last amended on 31 March 2009 to reflect the provisions of the Legal services Act re LDPs – prior to that on 14 July 2008 to introduce specific obligations for the prompt return of surplus client funds

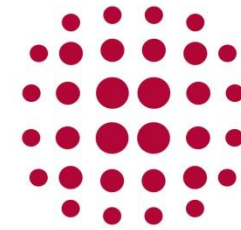
# The Solicitors' Accounts Rules – Rule 1 Key Principles



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Regulation  
Authority

- Observe Code of Conduct – i.e. act with integrity, in clients' best interests and in a way which does not diminish public trust in the profession
- Clients' money to be kept separate from money belonging to the solicitor
- Clients' money to be held in client bank accounts
- Use each client's money for that client's matters
- Keep proper accounting records to show the balances held for each client
- Account for interest on clients' money (more about interest later)
- Co-operate with the SRA when checking compliance
- Deliver annual Accountant's Reports to the SRA
- [Rule 6] Responsibility for compliance rests with all principals
- [Rule 7] Breaches must be remedied promptly

# The Solicitors' Accounts Rules – Rules 6 and 7



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- Rule 6 – Principals' responsibility for compliance
- Rule 7 – Duty to remedy breaches

# The Solicitors' Accounts Rules – Other Major Rules



- Rule 13 – Categories of Money
  - Client Money  
Money held or received for a *client* or as *trustee*, and all other money which is not *office money*
  - Office Money  
Money which belongs to the *solicitor* or the practice
- Note (xii) – A solicitor cannot be his or her own client for the purpose of the Rules

# The Solicitors' Accounts Rules – Other Major Rules



- Rule 14 – Client Accounts
  - A solicitor who holds or receives *client money* must have a client bank account
  - A client bank account is an account of a practice kept at a bank or building society in England or Wales for the purposes of holding clients' money
  - Must be correctly named and include the full word 'client' in the title
  - Client account should be in the name of the solicitor or his/her practice if a sole practitioner. For partnerships, recognised bodies and limited liability partnerships the account should be in the name of the firm or company

# The Solicitors' Accounts Rules – Other Major Rules



- Rule 14 – Client Accounts (cont'd)
  - A client account must be a bank or building society account at a branch or head office in England and Wales
  - Two types of account –
    - 1) A designated client account
    - 2) A general client account
  - Can have any number of accounts
  - Money held in a client account must be immediately available
  - Compliance gives protection of s85 Solicitors Act 1974

# The Solicitors' Accounts Rules – Other Major Rules



- Rule 15 – Use of a client Account
  - Client money must be paid in without delay (i.e. day received or next working day), and held, in a client account
  - Only client money may be paid into or held in a client account
  - Client money must be returned promptly to the client as soon as there is no proper reason to retain those funds
  - It is not a proper part of a solicitor's business to operate a banking facility for third parties

BUT

  - Rule 16 – Client Money can be withheld on client's instructions
    - Instructions must be given and confirmed in writing

# The Solicitors' Accounts Rules – Other Major Rules



- Rule 22 – Withdrawals from a client account
  - Money may only be withdrawn when
    - Properly required
    - Transferred to another client account
    - Withdrawn on client's written instructions
    - Refunding a solicitor's advance
    - On the written authority of the SRA
    - There are sufficient funds held for that client
    - There are sufficient funds in the account – i.e. a client bank account must not be overdrawn

# The Solicitors' Accounts Rules – Other Major Rules



- Rule 23 - Method of and Authority for Withdrawals
  - Withdrawal must be on specific signed authority of at least one of: solicitor with PC, REL, FILEX, Licensed Conveyancer manager or RFL manager, other manager
  - ABSs?
  - Specific authority not required to transfer funds from one client account to another at the same bank
  - Withdrawal to solicitor or firm cannot be in cash, but can be to the solicitor's personal account

# The Solicitors' Accounts Rules – Other Major Rules



- Rule 24 – When interest must be paid
  - Designated account – all interest to client
  - General client account – solicitor must account for a fair sum in lieu of interest depending on amount and time held. The sum in lieu of interest need not necessarily reflect the highest rate of interest obtainable but it is not acceptable to look only at the lowest rate of interest obtainable.
  - Solicitor can keep any difference between actual interest earned on general client account and amount calculated as sum in lieu of interest
  - Interest on general client account is office money and should be credited to the office account (Rule 13)

# The Solicitors' Accounts Rules – Other Major Rules



- Rule 32 – Accounting Records
  - A solicitor must, at all times, keep accounting records properly written up to show his/her dealings with clients' money and office money relating to any client matter
  - Dealings with clients' money must be recorded in a cash account (cashbook) and in a separate client ledger account for each client
  - A record must be kept of transfers from one client ledger to another
  - The balance on each client ledger must be shown or be readily ascertainable
  - Must reconcile at least every 5 weeks monies held in general client bank account and designated accounts to the cashbook and total of client ledger balances, and at least every 14 weeks where held by solicitor-trustee in passbook account

# The Solicitors' Accounts Rules – Other Major Rules



- Rule 32 – Accounting Records (Cont'd)
  - Must retain for at least 6 years from date of last entry all statements and passbooks for general client account, designated client account, office account, joint account, or for accounts held as liquidators, trustees in bankruptcy, Court of Protection deputies / receivers
  - Must retain for at least 2 years all original paid cheques, or digital images of front and back of all original paid cheques, unless there is a written agreement with the bank that it will retain the original paid cheques or digital images for 2 years AND will produce verified copies to the solicitor, reporting accountant or SRA

# The Solicitors' Accounts Rules – Other Major Rules



- Rule 32 – Accounting Records (Cont'd)
  - A central record or a file of copies of all bills or other written notifications of costs must be kept.

# The Solicitors' Accounts Rules – Other Major Rules



- Rule 35 – Any solicitor who has held or received client money must deliver an accountant's report to the SRA:
  - once a year
  - within 6 months of end of accounting period
  - as an independent check on compliance with the accounts rules
- Rule 37 – an Accountant's report must be prepared and signed by an appropriately qualified accountant

# The Solicitors' Accounts Rules – Other Major Rules



- Rule 38 – New Statutory Whistleblowing responsibility for Reporting Accountants:
  - a) Fraud or dishonesty
  - b) Unfit to Hold Client Money

# The Solicitors' Accounts Rules – Other Major Rules



- Rule 49 – The SRA can grant a waiver in respect of the need for a solicitor to deliver an Accountant's Report where a solicitor holds only a very small amount of clients' money

# The Solicitors' Accounts Rules – No Rules



- NO SPECIFIC RULES dealing with
  - Money Laundering although solicitors are
    - subject to Money Laundering Regulations 2007
    - advised to follow SRA Warning Cards and Law Society Practice Notes
  - Mortgage Fraud although solicitors
    - have a duty to comply with Council of Mortgage Lenders Handbook if acting for lender
    - are advised to follow SRA Warning Cards and Law Society Practice Notes
- And Rule 1 of the Code of Conduct applies at all times

# Danger Areas

## 1) Not Knowing the Accounts Rules

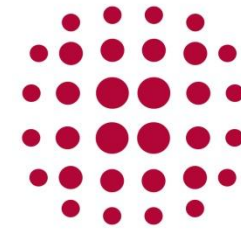


To Know the SARs and keep up to date –  
Can be Accessed online at

[www.sra.org.uk/solicitors/code-of-conduct/accounts-rules.page](http://www.sra.org.uk/solicitors/code-of-conduct/accounts-rules.page)

# Danger Areas –

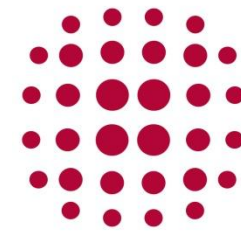
## 2) Accountants' Reports (1)



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- Each year the SRA receives approximately 10,000 Accountants' Reports
- Around 3,500 of the Accountants' Reports received by the SRA are qualified
- Each qualified report is reviewed by an experienced investigator in Forensic Investigation who will decide what further action, if any, is required
- A qualified Accountants' Report rarely leads to an investigation
- Failure or delay in submitting an Accountant's Report frequently leads to an investigation!!!

## Accountants' Reports (2) – How the Reporting Accountant can help reduce the risk of a firm being investigated



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- They should provide as much relevant information as possible when submitting a qualified Accountants' Report
- Ensure that the Accountants' Report is submitted in good time
- A number of reports are submitted every year incorrectly detailing supposed breaches of the SAR's!!!

## Danger Areas – 3) Misleading Clients

- When solicitors charge for “disbursements” they can recover only what has been paid out by them for the client
- They should not add a mark up and still describe the figure as a disbursement
- Commonly TT fees and search fees have been marked up and called disbursements – this is a “secret profit” and it is wrong
- Also postages, telephone and sundry
- Fraud Act 2006 criminalises taking of “secret profits”

# Danger Areas –

## 4) ‘Sweeping Up’ Remaining Balances

- The proper stewardship of clients’ money is a fundamental duty of a solicitor
- Only monies that are properly due to the practice can be transferred

## Danger Areas – 5) Not being prepared to Question Clients

- Being aware of responsibilities under the Money Laundering Regulations
- Complying with responsibilities to Mortgage Lenders – CML Handbook
- Considering need to report suspicious transactions to SOCA

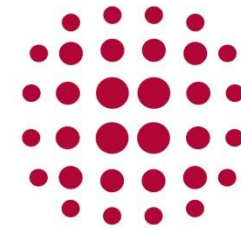
# Danger Areas –

## 6) Mixing up the Cheque Books!

- Making:
  - Business payments from client account, e.g. wages, VAT, direct debits
  - Personal payments from client account e.g. school fees, football subscriptions
  - Round sum transfers from client to office account

# Danger Areas –

## 7) Not Managing their Business Properly



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Authority

- Ensuring sufficient working capital
  - Cash at bank or
  - Sufficient Overdraft Facility
- Rule 5 – Solicitors’ Code of Conduct - Business Management in England and Wales
  - Deals with supervision and management of firm
  - Maintenance of competence
  - Internal business arrangements for proper delivery of services to clients
  - Solicitor must provide, inter alia, for financial control of budgets, expenditure and cashflow
- Managing collection of debts due to them

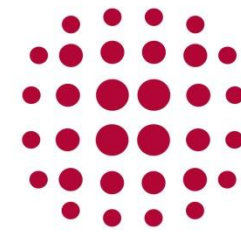
# Danger Areas –

## 8) Not Keeping Clients Informed

- Being aware of requirements of Rule 2 of the Solicitors' Code of Conduct
  - 2.02 Client Care
  - 2.03 Information about Costs – the outset and as the matter progresses

# Danger Areas -

## 9) Being Aware of What Constitutes Clients' Money



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- Money received for the payment of unpaid professional disbursements is clients' Money
- Money received for the payment of Stamp Duty, Land Registry fees, telegraphic transfer fees and court fees is clients' Money
- Money received as a payment on account of costs generally is clients' Money
- Money received in respect of commission is clients' Money unless it is less than £20 or the solicitor has the client's prior authority to retain it

# Danger Areas –

## 10) Not providing a banking service to their clients

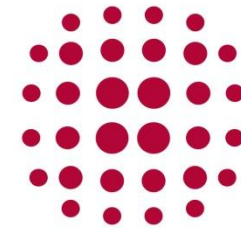
- In the case of Wood and Burdett (case number 8669/2002 filed on 13 January 2004), the Solicitors' Disciplinary Tribunal said that it is not a proper part of a solicitor's everyday business or practice to operate a banking facility for third parties, whether they are clients of the firm or not. Solicitors should not, therefore, provide banking facilities through a client account. Further, solicitors are likely to lose the exemption under the Financial Services and Markets Act 2000 if a deposit is taken in circumstances which do not form part of a solicitor's practice. It should also be borne in mind that there are criminal sanctions against assisting money launderers.

# Danger Areas – 11) Not Checking Reconciliations

- Should expect to see regular reconciliations
- Just because they may have a book keeper or accountant involved – it doesn't automatically mean everything is "alright".
- Taking steps to resolve errors or other problems promptly

# Danger Areas –

## 12) Not checking incoming and outgoing post



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Regulation  
Authority

- Recommend all post received should be opened or checked directly after opening by a Principal
- Recommend at least periodic checking of outgoing post

# Common Issues Found

- Unfamiliar with the Accounts Rules
- Books of Account out of date or non-existent!
- Over reliance on Accountants/book keeper
- Secret Profits
- Mortgage Fraud/Ignoring status of Lender Clients
- Accidental Overpayments/Errors on Completion Statements
- Banks wrongly debiting Client Bank Account
- Over billing/billing too soon
- Sweeping off old balances
- Inter-client transfers without authority

# Common Issues Found - Continued



- Poor Business Management (Rule 5) – underestimating amount of administration time/resource needed
- Failure to Supervise Staff
- Poor Quality Narrative on Client Ledger Accounts
- Failure to complete Office side of Client Ledger Accounts
- Leaving Accountants' Reports too late/using unqualified Accountants
- Unallocated transfers from client to office bank account
- Over Billing
- Over reliance on Computer Systems
- Drawing against uncleared funds

## Any Questions?

(Professional Ethics helpline – 0870 606 2577)



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