Grant Thornton

Solicitors Regulation Authority
Regulation and Education - SRA Accounts Rules 2017
The Cube
199 Wharfside Street
Birmingham
B1 1RN

Grant Thornton UK LLP
Grant Thornton House
Melton Street
London NW1 2EP.

T +44 (0)20 7383 5100
F +44 (0)20 7383 4715
DX 2100 EUSTON
grantthornton.co.uk

21 September 2016

Dear Sirs

SRA Accounts Rules 2017: Response to the consultation issued June 2016 entitled "Looking to the Future: SRA Accounts Rules Review"

We set out our responses to the various questions included in the above consultation document as follows:

Question 1: Do you consider the draft Accounts Rules are clearer and simpler to understand and easier to comply with?

In our view they are clearer and as a result, we would envisage them being easier for users to understand. We therefore view the revised form to be a significant positive.

In respect of the wording of the question – 'and easier to comply with', whilst we believe this aspect of the question may arise from the sense that, to this point, the rules were almost impossible to fully comply with and the (reasonable) sentiment that this meant that the rules needed recalibration, we feel that it would be of concern if the SRA saw it as being important that they make regulation 'easier to comply with'. It is our view that the consumer would wish to see the regulator ensure that the regulation is proportionate and requires appropriate standards of conduct from its members rather than consider the ease with which a firm could comply. We recommend that the SRA consider the wording used in this area in future statements so that the consumer, and the market generally, has confidence that the intentions in this regard are as they may expect.

Question 2: Do you agree with our proposals for a change in the definition of client money? In particular, do you have any comments on the draft definition of client money as set out in the draft Rule 2.1?

The proposal of *"If the payment relates to legal services being provided by the firm to the client (for example fees paid by the client in advance) or services rendered on behalf of the client for which the firm is liable (for example costs relating to the client's matter which might include medical expert fees, counsel fees, or indirect costs such a courier fees) - it does not have to go into client account."*
in paragraph 16 of the consultation is something that we found surprising in the context of the (understandable) recent concern in the market, highlighted frequently by the SRA, that firms may be holding monies provided by clients for settlement of third party disbursements in office account for an excessive period of time in order to improve the law firm's working capital / balance sheet position.

We would have concerns that firms under financial pressure may take client money receipts intended to settle third party disbursements and hold them for an inappropriately long period of time before paying them over to that third party.

From a consumer perspective, it would not seem satisfactory that they may pay monies to the law firm for settlement of these third party amounts only to later discover that those monies had been held in office account, and therefore benefitted the law firm, for a period of time. If the definition is to be changed such that such monies are not considered 'client monies' then we consider that firms should still be required to settle any third party disbursements to which the monies relate within an appropriately short period of time – ideally a few days as there would not appear to be any reason why the law firm would need to hold them for longer.

Another concern arising from this change would be the potential for this to increase the likelihood that if a firm went into administration, there would be significant monies in office account that were 'earmarked' for settlement of third party disbursements. As the majority of these third party disbursements would be of a nature such that the consumer would require the services they related to to progress their case, if the law firm became insolvent and couldn't settle that amount, the consumer of the services would be required to pay once more for them.

The comment within paragraph 17 of the consultation of
"How a firm manages its money should be for the firm to consider having regard to its other obligations in our Accounts Rules, any legal obligations and its assessment of its own financial stability."
is one which we can understand from the perspective of putting the onus on the individual firms to take responsibility for greater 'self-regulation' but the risk to the consumer would appear to be potentially significant. It is our experience that when firms enter periods of significant financial strain their judgment around what constitutes appropriate distinction between 'its money' and client money can deteriorate.

It would be of little consolidation to a consumer who has to pay a second time for third party input to their case to hear that the regulator is 'disappointed that the law firm didn't manage this money appropriately' and knowing that their exposure was greater due to this change in the rules would, we imagine, be of significant concern to that consumer.

The comments in paragraph 23 of
"The level of protection currently applied to payment of fees in advance under the current Accounts Rules is significant. It ensures that this money is kept separate from the firm's money and in the event of the firm's insolvency is capable of being returned back to the client if the work has not been done (by the appointed insolvency practitioner or through use of our intervention powers). However, it also adds costs through the requirement to maintain a separate client account just for these payments and comply with our Accounts Rules."
appear to seek to balance the potential for a consumer to not be able to recover their money in the case of insolvency of the law firm again the apparent additional cost of law firms having to enter advance payments onto their client account ledgers.

It would be useful to understand the extent to which the SRA considers the requirement to put advance payments into client account increase the regulatory cost of a law firm already operating a series of client account ledgers and bank accounts and with a team whose role it is to do this. Our view, which we have tested with a range of law firms and found they share it, would be that the incremental cost of having to place advance payments in client account is negligible. We therefore do not see this as a very strong argument for significantly weakening

the protection afforded to the consumer in relation to their money paid in advance of work being performed.

A number of law firms have also expressed the view to us that having an office account that, at any moment in time, includes the firm's money, plus an amount of money that is passing through the firm to settle committed third party costs will make it more challenging for them to clearly see the amount of uncommitted funds the firm has. Ascertaining their own 'real' balance is something crucial to firms and this makes that less easy to do. In practice we imagine that many firms would continue to place these monies in client accounts so as to maintain that distinction between the funds. We would also imagine that the bankers to the sector would find this proposed change of concern in that they would be receiving management information from their clients showing increased office account balances, inflated by these former client monies that are now no longer distinguished and masking the actual value of 'uncommitted' funds the firm has.

Paragraph 24 appears to be saying that the SRA expects that this will lead to requests for advance payments to become more frequent. From a consumer perspective therefore this would seem disadvantageous – it certainly isn't clear how this assists the regulator's objective of protecting the consumer. It also then highlights that if a firm were to become insolvent, it is likely that they would have more of these monies in their office account and therefore the loss to the consumer would likely be greater. To then suggest, as paragraph 25 seems to, that the issue, captured at a high level in the below table, is finely balanced – essentially isn't something we would see similarly.

Potential downside for consumer	**Potential downside for law firm**
Increased likelihood that they will be asked to pay for services in advance of them being delivered	Incremental cost of administering advance payments through client account
Increased likelihood of them losing a greater amount of money in the case of an insolvency	

The further reason given for considering this to be potentially appropriate – that wider developments in consumer protection may offset this doesn't, in our view, address the exposure to the extent that the current need for this advance to remain in client account affords.

Question 3: Do you have any views on the use of credit cards to pay for legal services?

We understand that in some circumstances, perhaps most notably for services to individual consumers where the value of the legal service is relatively small, the ability to use a credit card to pay for services may be valued. That said, many consumers of legal services may not wish to use their credit card for such transactions and for those with low income who urgently need legal support, they may not have credit cards at their disposal that would allow such payments to be made. They would be left having to fund their requirements through their cash payments and left very exposed due to the absence of the 'client account' protection currently afforded to them. There is a possibility that such consumers may also find themselves using their credit card to pay for legal services in situations where they cannot then afford to settle that credit card balance. Whilst we fully support any effort to make legal services available to consumers of all income levels and backgrounds, it would be a shame if individuals found themselves increasing their personal debt levels beyond that which they can afford. It is also possible to envisage a situation where some of the more vulnerable individual

consumers could be pressured by 'sales pitches' from providers of legal services for say claims or other personal contentious matters. In those situations, it seems more likely that someone would be talked into providing their credit card details than effecting a bank transfer.

If the intention is to lower costs, we also wonder if the fees payable by the law firm on credit card transactions would be more or less than the incremental costs of managing these advance payments through client account. We suspect it may well be a greater cost than currently.

There are three points we would like to make in reference to paragraph 26 – being:

It is commented that:
"For example, if a firm becomes insolvent and a firm was intervened into we would return money collected from the firm's client account (via our Statutory Trust powers). "

1. Instances of intervention by the SRA are relatively rare and it is certainly not all of the insolvencies where this occurs. In cases where the SRA did not intervene – this potential route to redress the loss would not be available. We note also the SRA's (appropriate) repeated recent statements that intervention is something they would seek to avoid where at all possible. It therefore feels this suggestion of potential protection via this route is likely to be of limited practical value to the consumer.
2. It would also appear unlikely that the SRA's compensation fund would be able to stand behind all the potential claims should the instances of insolvency be anything other than trivial.
3. In the case of higher amounts of compensation being required by consumers it is ultimately the law firms who will pick up the increased cost – a risk of a real cost to the law firms that seems greater than the potential saving that may ever arise from this change.

In paragraph 30 it sets out:

"We recognise that our proposals for the definition of client money represent a potential reduction in consumer protection if clients continue to pay for costs in advance and do not pay for these by credit card. In the event that work is not completed, clients would have access to redress through the Legal Ombudsman (LeO) but this takes time and effort to pursue. There are also risks to the client if payments to third parties are not paid by the firm – for instance it might mean that client matter is not progressed as it should. However, for the reasons set out we consider the proposed approach offers a better balance between consumer protection and regulatory burden. "
It is our view that if you were to table this paragraph to a cross section of consumers of legal services and ask them if they shared the view that "for the reasons set out we consider the proposed approach offers a better balance between consumer protection and regulatory burden.", those consumers would not share this view.

Our conversations with individual law firms, and the sentiment heard by our firm when we attended a SFMG session where the consultation was discussed by Chris Handford, Director of Regulatory Policy with a selection of law firms present at the discussion indicates that the law firms themselves do not see this as a 'better balance', with concerns expressed that this could lessen the consumer's confidence in the sector and the protection provided to their money when engaging with solicitors.

It is our view that the SRA should be seeking to ensure that the consumer remains appropriately protected and whilst unnecessary regulatory burden/cost should be eradicated, it should not be an objective to lessen the cost of conducting the business of legal services if it also significantly alters the consumer's rights.

Question 4: Do you consider it appropriate that only client money (as defined in draft Rule 2.1) should be held in client account?

Paragraph 37:
As a general principle, we are content that if a client specifically requests something to be treated in a certain (legally permissible) way then that should be allowed. Our understanding is that is the case under the current rules.

We have a concern that paragraph 37 seems to be replacing a prior need for advance monies to be paid into client account with permission for the client to request that to still be the case. We think it would be unlikely that many consumers are aware of the SRA Accounts Rules and therefore not sure that many would understand this new subtlety (if the definition of client monies were redefined as proposed in this consultation) so wouldn't be aware of the implications of them not requesting an advance payment be held as client monies. This would therefore lessen the likelihood of them requesting such. Our supposition is that if they were aware of the lesser protection offered if it weren't, nearly all of them would.

Question 5: Do you agree with our proposal that mixed monies can be paid into client or business account as long as the funds are then allocated promptly to the correct account? In particular, do you have any (view on?) the new draft Rule 4.2?

We support this proposed change, so long as guidance is provided in relation to 'promptly' and it is such that this is within a few days and no longer. Otherwise, we envisage that firms in financial difficulty would seek to stretch the definition of 'promptly' so as to support the firm's financial position. The drafting of proposed new rule 4.2 appears appropriate, subject again to the above comment re the word 'promptly'.

Question 6: Having regard to our proposed definition of client money, do you agree that we can safely dispense with the specific Accounts Rules relating to payments from the Legal Aid Agency (LAA)?

We do not have a strong view on this question other than to reiterate our concern over the proposed change to the definition of client money.

Question 7: Do you agree with our approach to allowing TPMAs as an alternative to holding money in client account?

In principle we do not see why this area shouldn't be explored further, so long as the protection afforded to the consumer isn't lessened. Our understanding is that there is currently only one supplier of such services to law firms and therefore, if these proposals encourage other providers to develop a service for law firms, this is a positive. Such new entrants would be likely to increase the quality and lessen the cost of delivery to law firms and that in turn will benefit the consumer. We also consider that, if TPMAs are permitted, this may accelerate the progress a new entrant to the market could make – allowing them to utilise an efficient and cost effective TPMA to support their business model rather than them holding back due to a lack of skillset for handling these transactions within the business or the cost of establishing such a system being prohibitively expensive for their model. That can only benefit the consumer of legal services.

Question 8: If not, can you identify any specific risks or impacts of allowing TPMA that might inform our impact assessment?

We are unclear what regulatory monitoring would apply to any such TPMAs and would be keen to understand this further. It is of paramount importance that any such TPMAs are regulated to the extent that the consumer's money remains protected.

Question 9: Do you consider it appropriate for TPMAs to be used for transactional monies – particularly in relation to conveyancing? Or should the use of TPMA be restricted to certain areas of law? If so, why?

If the TPMA has appropriate controls in place in relation to the protection of client monies, and the protection afforded to the consumer is not lessened, then we do not have any concerns about this being explored further.

The consultation paper does highlight the fact that the use of TPMAs is not something that the SRA has yet fully explored and therefore we encourage the understanding of the potential impact of use of TPMAs to be increased prior to any decisions being made.

Question 10: Do you have any views on whether we need to retain the requirement to have a published interest policy?

We do not have a concern in relation to this so long as the code of conduct covers it. Our view is that the key requires in this area are:

- a clear statement by the provider of legal services to their client as to what the interest policy is; and
- that that policy is then applied.

Question 11: Do you have any comments on the draft Accounts Rules, either as a whole or in relation to specific Accounts Rules?

As commented in our response to question 1, in our view they are clearer and as a result, we would envisage them being easier for users to understand. We therefore view the revised form to be a significant positive. With the exception of the points made earlier in relation to the definition of client money, the rules as drafted read well and we consider that they provide a clear framework for the provider of legal services to follow.

We specifically note two changes to the Rules that we consider to be positive. Firstly, the inclusion of Court of Protection accounts within the scope of the Rules we consider to be a step that will increase the protection offered to vulnerable consumers of legal services. Secondly we consider that the removal of the distinction between regular and professional disbursements aligns the Rules with the modern business world.

Question 12: Are there other areas relating to the Accounts Rules that should be included in the toolkit for firms through guidance or case studies?

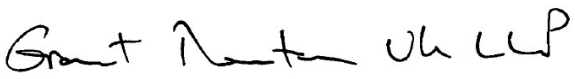
In our view the material published by the SRA in 2015 at the time of the revision to the scope of the reporting accountant's work were incredibly useful in providing context as to what the SRA wished their regulated entities to be focused on. We therefore support any guidance and examples that would set out how the SRA would be likely to expect certain situations / transactions to be treated. We would be happy to provide input to the process of developing this guidance, sharing our experience of common questions / scenarios.

Question 13: Do you agree with our assessment of consumer impacts in Annex 1.4?

Our reading is that the impact assessment appears weighted toward considering the positives for providers of legal services and seems to consider the consumer protection aspects somewhat superficially. We would welcome a review of the impact analysis with greater balance and where possible, we recommend that the SRA seek input from the consumers of legal services. We suspect that if that risk assessment was shared with consumers of legal services, they would not consider it to be as balanced as the SRA might wish.

Should you wish to discuss any of the points raised in this response, please contact Peter Gamson, Head of Professional Practices on 020 7728 2861 or peter.j.gamson@uk.gt.com.

Yours faithfully



Grant Thornton UK LLP