

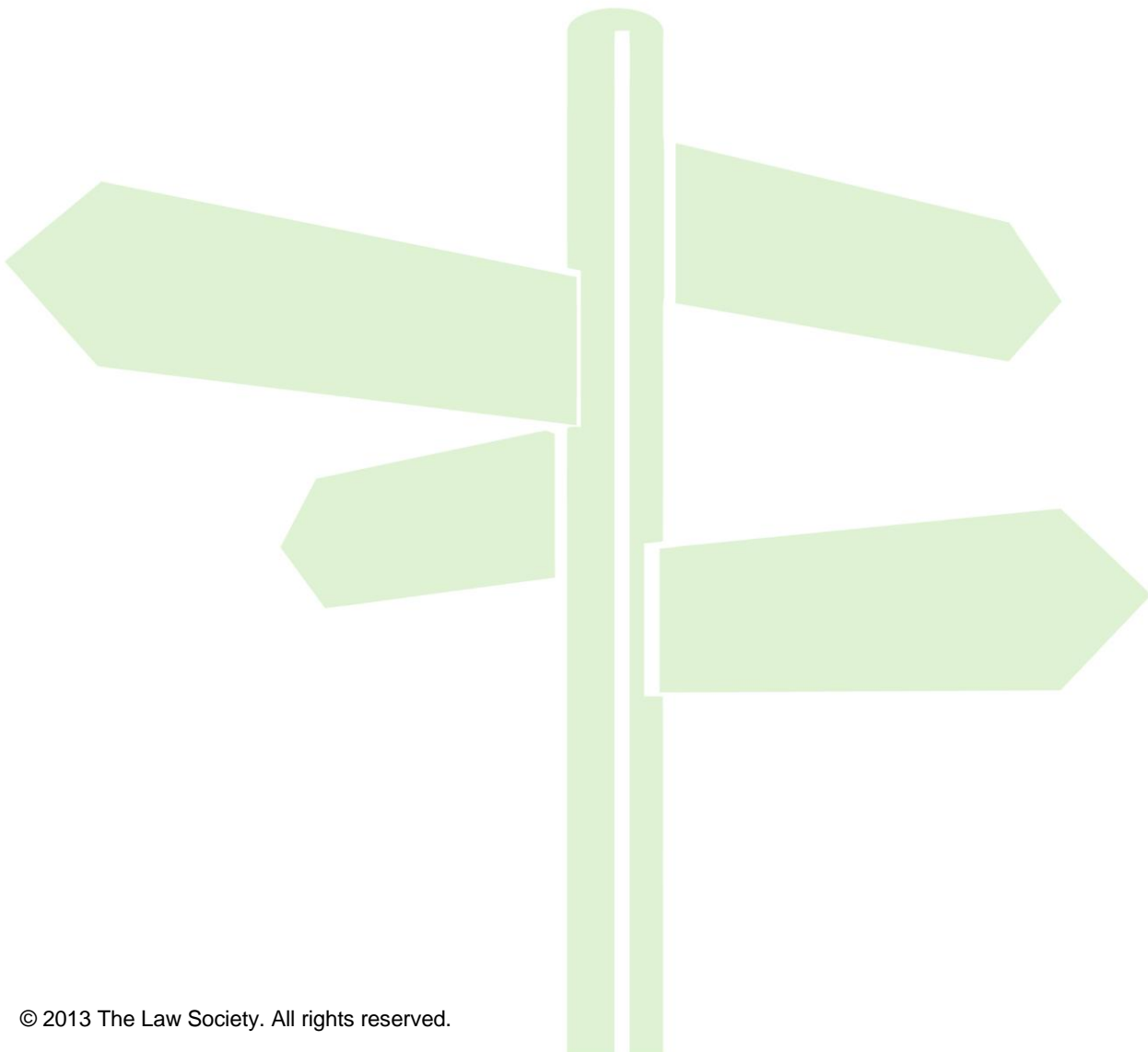


The Law Society

Looking to the Future: Accounts Rules review

Junior Lawyers Division response to SRA consultation

September 2016



LOOKING TO THE FUTURE: ACCOUNTS RULES REVIEW

Junior Lawyers Division Respons - Response

About the Junior Lawyers Division

The Junior Lawyers Division (JLD) is a division of the Law Society of England and Wales. The division, which has a committee with an independent voice, was established in 2008 to support:

- Legal Practice Course students
- Legal Practice Course graduates
- Trainee solicitors
- Solicitor up to five years qualified

The JLD is one of the largest communities within the Law Society with approximately 70,000 members. Membership of the JLD is free and automatic for those within its membership group.

The JLD provides members with an opportunity to:

- Network and connect with other junior lawyers
- Discuss issues of concern
- Benefit from training, advice and career guidance
- Ensure their views are heard
- Contribute to JLD campaigns, lobbying activities and consultation responses

For further information about the JLD visit the JLD website – www.lawsociety.org.uk/juniorlawyers

Consultation response

In June 2016 the Solicitors Regulation Authority published proposals to review the SRA Accounts Rules 2011 ('the Accounts Rules'), which govern the handling of client money by those the SRA regulate. This was part of the SRA's ongoing regulatory reform programme.

The SRA state that the core purpose of the Accounts Rules is to ensure that money belonging to clients is kept safe. Their objective is to rationalise and simplify the rules. In addition they aim to remove any unnecessary restrictions, prescription and detail while, at the same time, maintaining appropriate consumer protections.

Set out below are the JLD's responses to the questions asked in the consultation.

Question 1: Do you consider that the draft Accounts Rules (Annex 1.1) are clearer and simpler to understand and easier to comply with?

With fewer rules, the draft Accounts Rules do indeed seem simpler. However, whether they are easier to comply with remains to be seen, and will depend on the quality of the guidance to be produced.

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?

No, the JLD is concerned about the proposal that all money due to third parties from the solicitor is to be treated as the firm's money, which we consider gives less protection to clients. In an insolvency situation, it needs to be abundantly clear what money is client money, so that those clients can have any money due to them returned quickly, rather than being mixed up in a pool to be distributed to creditors.

Question 3: Do you have any views on the use of credit cards to pay for legal services? If you are a firm, do you accept credit card payments? If not, why not? If you are a consumer, do you use a credit card to pay for legal services? If not, why not?

Yes, the JLD considers that the use of credit cards, which is commonplace in other aspects of spending can be a practical way for clients to manage the payment of fees and disbursements, and could offer more protection for some consumers as well as increasing access to justice. Sometimes, individuals can be requested to pay amounts which, to that person, are extremely large sums not immediately available, and so a credit card payment is more practical. We ask the SRA to look into the levels and application of such protection in more detail but in principle, are in favour of increased use of credit card payments.

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

Yes. In addition, Please see our response to question 2.

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 the new draft Rule 4.2 (see Annex 1.1)?

This could become confusing with consumers/ third parties paying monies into both accounts. Further, the word 'promptly' is unclear. Whilst it is agreed that the current time period of 14 days is restrictive and results in a number of breaches of the accounts rules, a set time frame is supported.

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)?

The JLD does not support the proposed change to the definition of client money (see above). However the JLD supports the simplification of accounting for monies received from the LAA as it takes a significant amount of time and is of relatively low risk. The JLD queries how this would affect monies received from a third party which the LAA has funded and particularly how this would be recouped by the LAA.

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

The JLD is generally agreeable to the option to use TPMAs, however we wonder how the TPMAs will be managed and the use of TPMAs by solicitors be regulated (if at all), other than a requirement to only use TPMAs which are subject to FCA regulation. More information about this proposal is required.

Paragraph 42 of the consultation refers to 'desirable features' of a TPMAs. Will these be compulsory? Will there be any restriction or regulation specific to the use of TPMAs in this context?

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

Overall, the JLD considers that more work needs to be done in considering the risk and impact of the use of TPMAs.

Paragraph 50(b) outlines when a firm may be able to use a TPMAs. One of the conditions is that firms must be able to 'demonstrate suitable arrangements'. More information needs to be provided to firms about how to demonstrate this, for example, a set of criteria would be useful.

TPMAs are regulated by the FCA. How will this be monitored?

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 TPMAs be restricted to certain areas of law? If so, why?

The JLD supports the use of TPMAs so long as there is no detriment to the client/third parties in terms of consumer protection. We wonder whether TPMAs would add an additional layer of administrative burden, rather than making things simpler.

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

The JLD is of the view that this is still necessary.

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

Overall the JLD welcomes simplicity. However, the JLD is concerned (due to the reasons outlined above) that some of the proposals reduce consumer/ third party protection.

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? If yes, pleas provide further details.

As we explain in our response above, a simplification of the wording of the Accounts Rules must work alongside clear guidance. We think that case studies would assist greatly.

Question 13: Do you agree with our assessment of the consumer impacts in Annex 1.4? Do you have any information to inform our understanding of these risks further?

As we explain above, we broadly agree with the work done so far, but consider that more investigation into the risks as a result of applying the new rules needs to be undertaken before their implementation.

Question 14: Is there any information, data or evidence that you can provide or direct us towards that will assist us in finalising our impact assessment?

The JLD would request that the SRA engage further with firms who have day-to-day knowledge of the positive and negative impacts of the current account rules, and would welcome the announcement of further research into the administrative and economic nuances of applying the current rules.

**Junior Lawyers Division
September 2016**