# Warning notice

## *Improper use of a client account as a banking facility*

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### *Status*

While this guidance does not form part of the SRA Handbook, we may have regard to it when exercising our regulatory functions.

### *Who is this guidance relevant to?*

This guidance is relevant to all practitioners who have any involvement in holding or using money received for clients or others.

For a number of years, we have warned that solicitors must not provide banking facilities to clients or others. This warning notice is a reminder of some of the key issues and risks of which you should be aware. We have also set out some case studies to help you comply with your obligations.

### *Our rules and principles*

*Rule 14.5 of the SRA Accounts Rules 2011 provides that:*
"You must not provide banking facilities through a client account. Payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities."

The rule's guidance note states that:

"Rule 14.5 reflects decisions of the Solicitors Disciplinary Tribunal 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. It should be noted that any exemption under the Financial Services and Markets Act 2000 is likely to be lost if a deposit is taken in circumstances which do not form part of your practice. It should also be borne in mind that there are criminal sanctions against assisting money launderers."

Concerns about the improper use of client account have been clearly and more broadly stated in case law. You should make sure that you are fully aware of the relevant case law including the Fuglers[1], Patel[2], and Zambia[3] cases.

### *The Principles*

A breach of rule 14.5 is a serious matter in itself.

If you allow your firm's client account to be used improperly this may also result in a breach of the SRA Principles including:

- **Principle 1**: upholding the rule of law and the proper administration of justice;
- **Principle 3**: not allowing your independence to be compromised;
- **Principle 6**: behaving in a way that maintains the trust the public places in you and the provision of legal services; and
- **Principle 8**: running your business or carrying out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles.

### *Our concerns*

You or your firm should not be used to provide banking facilities to clients or third parties. You must also actively consider whether there are any risk factors suggesting that the transaction on which you are acting, even if it appears to be the normal work of a solicitor, is not genuine or is suspicious.

Some of the key issues you should be aware of include the following.

### *Providing banking facilities through a client account is objectionable in itself*

The prohibition in rule 14.5 is simple and clear: "You must not provide banking facilities through a client account." The second sentence in the rule recognises that holding and moving money for clients may not be a breach where doing so is related to proper instructions regarding a transaction on which you are acting or in connection with the professional services you are providing.

The courts have confirmed that operating a banking facility for clients divorced from any legal or other professional work is in itself objectionable. You are not regulated as a bank to provide such facilities. If you do provide banking facilities for clients, you are trading on the trust and reputation from your status as a solicitor in doing so[4].

You must therefore only receive funds into your client account where there is a proper connection between receipt of the funds and the legal services you are providing. It is not sufficient that there is simply an underlying transaction if you are not providing legal advice on the matter, or if the handling of money has no proper connection to that advice.

### *There must be a proper connection between the underlying legal transaction or advice and the payments you are asked to make or receive*

The rule is not intended to prevent usual practice in traditional work undertaken by solicitors such as conveyancing, company acquisitions, the administration of estates or dealing with formal trusts. So, it does not affect your ability to make usual and proper payments from client account when they are related to the transaction (such as the payment of estate agents' fees in a conveyancing transaction).

Whether there is such a proper connection will depend on the facts of each case. The fact that you have a retainer with a client is insufficient to allow you to process funds freely through client account. You need to think carefully about whether there is any justification for money to pass through your client account when it could be simply paid directly between the clients.

Historically, some solicitors have held funds for clients to enable them to pay the client's routine outgoings. This has been mainly for the clients' convenience such as where they are long term private clients or based abroad. In view of technological change, such as the ease of internet and telephone banking, we consider that allowing client account to be used in this way is no longer justifiable and a breach of rule 14.5. Clients can now operate their bank accounts from their own homes or indeed from anywhere in the world. Allowing clients simply to hold money in a client account gives rise to significant risks and may evade sophisticated controls and risk analyses that banks apply to money held for their customers.

Factors you should bear in mind when considering such issues include:

- Throughout the retainer, you should question why you are being asked to receive funds and for what purpose. The further the details of the transaction are from the norm or from the usual services a solicitor provides, the higher the risk that you may breach rule 14.5.
- You should always ask why you are being asked to make a payment or why the client cannot make or receive the payment directly themselves. The client's convenience is not a legitimate reason, nor is not having access to a bank account in the UK. Risk factors could involve the payment of substantial sums to others, including family members, or to corporate entities, particularly overseas, if there is no reason why the client could not receive the money into their own account and transfer it from there.

- You have a separate obligation to return client money to the client promptly, as soon as there is no longer any proper reason for you to retain those funds (rule 14.3 of the SRA Accounts Rules). If you retain funds in client account after completion of a transaction, there is risk (depending on how long you hold the money) of breaching both rule 14.3 and 14.5.

### *Risk of insolvency*

You should be aware that a client may ask you to hold or deal with money in client account to avoid their obligations under insolvency legislation. Banks commonly withdraw facilities when told that there has been a winding up petition.

If a law firm allows its client account to be used in an insolvency situation to receive and process money, the client will improperly obtain a banking service which would otherwise be unavailable to it. There are also risks that in making payments to order. You may improperly favour one creditor over another.

Finally, section 127 of the Insolvency Act 1986 may apply to require creditors to reimburse payments from the client account in a subsequent liquidation. A solicitor who knowingly makes or facilitates such payments may be subject to a personal liability, in addition to the liability of the payee to reimburse the amount transferred.

### *Rule 14.5 and the risk of money laundering*

Allowing a client account to be used as a banking facility carries with it the additional risk that you may assist money laundering. Our rules specifically require you to comply with all relevant anti-money laundering legislation including the Money Laundering, Terrorist Financing and Transfer of Funds (information on the payer) Regulations 2017 (MLRs).

You should also be familiar with our warning notices on:

- Money laundering and terrorist financing
- Investment schemes (including conveyancing)
- Investment schemes and client account

You must remain alert to any unusual or suspicious factors such as concern about the source of funds or what you are asked to do with them. Your obligation to comply with rule 14.5 offers an important 'first line of defence' against clients or others who seek to use your client account to launder money. It also helps you to secure professional independence from your client in compliance with Principle 3.

We have also seen firms making multiple transfers of money between the ledgers of different clients or companies without evidence of the purpose or legal basis for the transfers (such as Board resolutions or contracts). Transfers in such circumstances will be a breach of rule 14.5, particularly if they are simply carried out on request. It is an important principle of anti-money laundering regulation that transactions are properly recorded and can be reconstructed[5]. Such conduct would be of significant concern to us as it makes the tracking of money difficult and may be aggravated by the number and the value of such transfers.

Although, allowing client account to be used as a banking facility can facilitate money laundering, rule 14.5 exists independently of the anti-money laundering legislation and a breach of rule 14.5 does not require there to be evidence of laundering. If there is such evidence, we would expect a prosecution under the Proceeds of Crime Act 2002[6]. It is no defence to, or mitigation, of a breach of rule 14.5 that there was no evidence of actual laundering. Indeed, such arguments indicate a lack of insight into the reasons for rule 14.5 and the risks it addresses. For example:

- Rule 14.5 and the MLRs are to a large extent preventative provisions, intended to make it more difficult for people to use regulated businesses for improper purposes but also to deter law firms from helping such people.
- Any impropriety may be distant from the movement of money through a client account. In a classic laundering

process, the movement through a client account may be the third or fourth stage of laundering the proceeds of a distant crime. But every stage contributes to the effectiveness of the laundering process.

- There are many potential forms of impropriety as well as money laundering. The Fuglers[7] case is one example in an insolvency context but there are many others such as hiding assets improperly in commercial or matrimonial disputes. You should also be aware of the risks in allowing your client account to be used to add credibility to questionable investment schemes.
- Movement of money through client account is attractive to those with an improper purpose:
  - Attempts by law enforcement or opposing litigants to obtain information may be blocked by a claim to privilege, even though the claim to privilege may be unsustainable on proper analysis with access to the documents.
  - It largely circumvents the sophisticated risk systems used by banks.
  - Solicitors, particularly in smaller firms, with a close relationship to an important client may be vulnerable to pressure to avoid making suspicious activity reports.

### *Enforcement action*

You should be prepared to justify to us any decision that you make that it was appropriate for you to hold or move client money. Failure to have proper regard to this warning notice is likely to lead to disciplinary action.

### *Further guidance*

For guidance on conduct issues, contact the Professional Ethics Guidance Team.

Notes

1. Fuglers LLP v SRA [2014] EWHC 179 (Admin).
2. Premji Naram Patel v Solicitors' Regulation Authority [2012] EWHC 3373 (Admin).
3. Attorney General of Zambia v Meer Care & Desai [2008] EWCA Civ 1007.
4. Cranston J at [34] SRA v Patel [2012] EWHC 3373 (Admin), Fuglers & Ors v SRA [2014] EWHC 179 (Admin) (QB).
5. See, for example, regulation 40(2)(b) of the Money Laundering, Terrorist Financing and Transfer of Funds (information on the payer) Regulations 2017.
6. See for example R v Khan (Shadab) [2010] EWCA Crim 2841 (four years' imprisonment).
7. Fuglers LLP v SRA [2014] EWHC 179 (Admin).

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