

Red Tape Initiative-Residual Client Balances

Analysis of responses

1. The consultation sought views on proposals to amend the SRA Account Rules 2011 (SAR) to allow practitioners to withdraw residual client balances up to £500 without having to apply to SRA for authorisation. The consultation also sought respondent's views on whether the proposed guidance clarifies requirements and if the SRA should place restrictions on the charities to which residual client balances should be donated.

Consultation Responses

2. The Red Tape Initiative-Residual Client Balances consultation began on the 31 March and ended on the 26 May. There were 96 respondents to the consultation from a variety of stakeholders including public, legal professionals, local law societies, law firms, solicitors in private practice, employed solicitors, law society committee or board and other capacities.

Question 1

Do you agree with increasing the level at which practitioners can self-certify withdrawals of client balances from £50 to £500?

3. There was universal support across all types of respondents for the proposal to increase the level at which practitioners can self certify withdrawals of client balances from £50 to £500. In total, 89% of respondents favoured the SRA increasing the self certification level to £500. A number of respondents commented that they are happy that the proposal will:
 - a) reduce the administrative burden on the SRA and practitioners
 - b) encourage firms to donate residual client balances to charities.
4. 8% of the consultation respondents disagreed with the SRA increasing the level at which practitioners can self-certify withdrawals of client balances. The majority of these respondents agreed with the self certification level being increased, but felt that £500 was too high a level and suggested alternative figures. These respondents suggested the following self-certification levels of up to £150, £250 and £300.
5. This group of respondents felt that a figure of £500 should require SRA authorisation to withdraw and confirm appropriate checks have been made by the firm to track down the client. The reasons given for this were that £500 would be considered a significant sum of money to the client.

6. The Law Society agreed with increasing the level at which practitioners can self-certify withdrawals of client balances from £50 to £500. The Law Society commented that they "believe that the current £50 de minimis amount imposes significant burdens on firms and that a proportionate increase would ease this burden without endangering client money."

In responding to the SRA's Red Tape Initiative the Law Society recommended that the level at which practitioners can self-certify withdrawals of residual client balances should be raised to £250. The Law Society suggested that the SRA may want to consider additional safeguards for residual client balances between £250 and £500, such as requiring the firm to wait for a set period of time, before donating residual client balances. The Law Society is concerned that between £250 and £500 are significant amounts of residual client balances for some firms.

The Law Society also recommended the following:

- Rule 20 should be amended to provide for residual client balances being brought together into an aggregate fund prior to payment being made to a charity. In reference to this a new requirement could be introduced to inform SRA when an aggregated sum is exceeded in a specified period
- Rule 29.25 should be amended to allow aggregate residual client accounts to be deemed a justifiable use of a suspense client ledger account.
- The SRA should review the requirements for residual client balances over £500 as they are very onerous.

SRA Response

7. We are pleased with the support for this proposal as it is a deregulatory measure that will benefit both practitioners and the SRA. From the volume analysis developed for the consultation, we believe that £500 is the right cut off point.
8. It is the COFA's responsibility to take reasonable steps to ensure compliance with the SRA Accounts Rules. Therefore, the COFA will be required to ensure that appropriate steps are taken to deal with withdrawing residual client balances including taking sufficient steps to trace the client to return the funds. In order to support firms and the COFA the SRA have proposed guidance for withdrawing residual client balances. Therefore we don't plan to implement further safeguards for balances between £250 and £500.

The SRA will consider the Law Society's other suggestions when reviewing the SRA Account Rules.

Question 2

Do you consider that the draft guidance relating to withdrawal of residual client balances clarifies requirements?

9. 84% of consultation respondents agreed that the draft guidance relating to withdrawal of residual client balances clarifies the requirements, while 9% of consultation respondents felt that the draft guidance did not clarify requirements.
10. Respondents commented that the guidance should advise firms of the advantages of selecting a charity with viable indemnity, as firms remain accountable to clients for money withdrawn under Rule 20.1 (j.) In order to protect firms and clients, The Solicitors Benevolent Association (SBA) propose that the following is added to the guidance section on Residual Balances of £500 or less: "pay the funds to a charity, observing that practitioners remain liable to their clients for sums so disposed and that it is thus in the public interest, as well as their own, that the charity concerned offers a viable indemnity for the money".
11. Respondents also commented on the need for the guidance to advise firms that they need to check that there are no conflicts of interests with the charity that they are donating residual client balances to. They also suggested that better clarification be provided for requirements for dealing with client money, such as tick lists and real life examples.
12. The Law Society agreed that the draft guidance relating to the withdrawal of residual client balances clarifies requirements. The only suggestion that they made is that the advice might benefit from reference to rule 14 (3) of the SAR to return client money promptly.

SRA Response

13. We are pleased that there is a strong indication that the draft guidance relating to withdrawal of residual client balances clarifies requirements. We plan to publish the guidance in October 2014 and will ensure that it is monitored and updated when appropriate.
14. The SRA have made the Law Society suggested change to the guidance by making reference to rule 14 (3) of the SAR to return client money promptly.
15. The SRA has made the following changes to the guidance based on consultation respondents views:
 - We have added a reference to that fact that in relation to withdrawals of residual client balances over £500, the SRA may impose a condition that the money is paid to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received.
 - We have included a reference to the requirements in rules 29.16, 29.17(a) and 29.22 to maintain and retain records of the steps taken in satisfying the conditions under 20.2; (This includes details of the charity that residual client balances are donated to, any relevant documentation which would include receipts and any indemnity provided).

Question 3

Do you consider that the SRA should restrict the charities that residual client balances can be transferred to?

16. 38% of the consultation respondents agreed that the SRA should restrict the charities that residual client balances can be donated to. The following charity types were suggested: charities with a viable indemnity, charities of a substantial size, charities of long standing, charities with a substantial turnover, and charities with the ability to store donated residual client balances for a long period of time.
17. Some of respondents who agreed with this proposal also suggested that the SRA should restrict the charity types that residual client balances are donated to, such as the Solicitors Benevolent Association, access to justice charities, charities registered in England & Wales with the Charities Commission, or Non-Governmental Organisations and "deserving" charities such as The Teenage Cancer Trust, homeless charities or specialist Children's charities. It was also suggested that the SRA could choose and publicise a charity that residual client balances had to be donated to on an annual basis. Some consultation respondents commented that legal charities were the best ones for residual client balances to be donated to, as it is directly related to the source of why the money was originally paid.
18. 60% of consultation respondents, including the Law Society, disagreed with the SRA placing restrictions on the types of charities that residual client balances can be donated to. There was concern expressed about the SRA requiring residual client balances to be donated to charities registered in England and Wales with the Charity Commission as this would exclude many worthwhile charities. The Charity Commission does not require charities with an annual turnover of under £5000 or charities associated with churches, the armed forces, universities and museums to be registered. Also, it was noted that the Charity Commission are investigating some registered charities for links to terrorism.

SRA Response

19. We are pleased to have received stakeholder feedback on the proposal to restrict the charities that residual client balances can be donated to. We do not believe that this is the right moment to introduce this restriction as it requires further impact analysis. We are however proposing that the SRA Handbook Glossary definition of *charity* is changed to refer to section 1 of the Charities Act 2011. This means that the definition of *charity* which residual client balances are required to be donated to is up-to-date with current legislation.

Consultation Respondents

Member of the Public

1 Anonymous

As another legal professional

3 Anonymous

Lisa Dixon, Certified Account and Legal Finance Specialist

Robin Knowles CBE, QC, Chairman of the Civil Justice Council Working Group on Access to Justice for Litigants in Person

In another capacity

5 Anonymous

Reginald Flower

Adrian Stone

Neil Startup

Christopher Butterworth

Mr T F W Martin, CEO of SBA The Solicitors' Charity

Trustee of the Eastern Legal Support Trust

CILEx Pro Bono Trust

Access to Justice Foundation South West Legal Support Trust

Reaching Justice Wales

Chartered Institute of Legal Executives (CILEx)

Law Society Board or Committee

Lawyers with Disabilities Division

Law Society

Junior Lawyers Division Law Society

Local Law Society

The City of Westminster & Holborn Law Society (CWHLS)

Birmingham Law Society

Leicestershire Law Society

City of London Law Society

Newcastle upon Tyne Law Society

Representative Group

Solicitors Sole Practitioners Group

Law Centres Network

ILFM West Midlands branch

Executive Council of the Institute of Legal Finance and Management (ILFM)

1 Anonymous

Firms

15 Anonymous

Redferns Solicitors

Woodfines LLP

Shentons

Thomas Eggar LLP

HallmarkHulme LLP

Morrison Solicitors LLP

GHP LEGAL

Rix & Kay Solicitors LLP

A L Hughes & Co

Yarwood Stimpson

DJM Law Limited

Rashid & Co. Solicitors

William Sturges LLP

Quality solicitors Punch Robson

Hyland Fitzwater Limited

Cripps Harries Hall LLP

Speechly Bircham

Tilly Bailey & Irvine LLP

Macmillan Cancer Support

Irwin Mitchell LLP

Minster Law Limited

Grant Thornton UK LLP

London Legal Support Trust

Irwin Mitchell LLP

Solicitor in private practice

7 Anonymous

Sarah Mumford

Stephen Drake

Babara Richardson

Paul Bird

Scott Burdett

Harvey Cohen

Rosalind Dunning

Lydia Srebernjak

Otilie Sefton

Employed Solicitor

2 Anonymous

John Cooke

Anna Louise Pearson

Peter Maynard

Rebecca Austin

Edward Austin