

SRA Intervention Powers (Statutory Trust) Rules 2009

The SRA Intervention Powers (Statutory Trust) Rules 2009 were replaced on the 6 October 2011 by the SRA Intervention Powers (Statutory Trust) Rules 2011 as part of the introduction of outcomes-focused regulation.

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Rules dated 9th December 2009 made by the Solicitors Regulation Authority Board under sections 79 and 80 of and paragraph 6B of Schedule 1 to the Solicitors Act 1974, with the concurrence of the Lord Chancellor, governing the treatment of sums vested in the Law Society under paragraphs 6 or 6A of Schedule 1 to the Solicitors Act 1974.

1. Interpretation

1.1

In these rules:

"The Act"

means the Solicitors Act 1974

"Beneficiary"

means a person with a beneficial entitlement to funds held by the Society on Statutory Trust

"Best List"

means a list of potential beneficial entitlements to Statutory Trust Monies which, in cases where it is not possible to create a Reconciled List, is, in the view of the SRA, the most reliable that can be achieved with a reasonable and proportionate level of work taking into account the circumstances of the intervention and the nature of the evidence available

"Claimant"

means a person or body making a claim to Statutory Trust Monies

"Intervention"

means the exercise of the powers specified in section 35 and Schedule 1 of the Act, or section 9 and Schedule 2 paragraphs 32-35 of the Administration of

Justice Act 1985, or section 89 and Schedule 14
paragraph 5 of the Courts and Legal Services Act 1990

"Intervened Practitioner"

means the solicitor, recognised body, registered
European lawyer or registered foreign lawyer whose
practice or practices are the subject of an intervention

"Reconciled Accounts"

means that all elements of the accounting records of
an Intervened Practitioner's practice are consistent
with each other

"Reconciled List"

means a list of beneficial entitlements to Statutory
Trust Monies created from a set of Reconciled
Accounts

"The Society"

means the Law Society

"Statutory Trust"

means the trust created by Schedule 1 of the Act over
monies vesting in the Society following an Intervention

"Statutory Trust Account"

means an account in which Statutory Trust Monies are
held by the Society

"Statutory Trust Monies"

means the monies vested in the Society under the
Statutory Trust.

"The SRA"

means the Solicitors Regulation Authority which
exercises the powers of Intervention on behalf of the
Society.

1.2

Other expressions in these rules have the meaning assigned to them by the
Act.

1.3

The Interpretation Act 1978 applies to these rules as it applies to an Act of Parliament.

2. *Holding Statutory Trust Monies*

2.1

The SRA will place all Statutory Trust Monies in identifiable Statutory Trust Accounts.

2.2

All interest earned on any Statutory Trust Account will be added to that account.

3. *Proportionality*

3.1

Nothing in these rules shall require the SRA to take any action which it considers unreasonable or disproportionate in the context of any Statutory Trust Account.

3.2

The SRA may apply a level to beneficial entitlements within a Statutory Trust Account below which it will not attempt to identify and/or locate potential Beneficiaries where in the opinion of the SRA it would be unreasonable or disproportionate to do so. The level applies to the principal sum identified as relating to a particular Beneficiary, after the application of any pro-rata adjustment which may be made under rule 7.2 [7-2] and ignoring the addition of any interest as set out in rule 8.1 [8-1] .

4. *Identifying Beneficial Entitlements*

4.1

In respect of the Statutory Trust Monies held following an Intervention, the SRA will create a Reconciled List or a Best List from the evidence which it has available, including documents and other evidence provided by or on behalf of Claimants.

4.2

In creating a Reconciled List or a Best List, any sums of money which are identified within a Statutory Trust Account as being payments on account of costs, or which are equivalent to the costs incurred in the matter to which the funds relate, will be treated as due to the client rather than the Intervened Practitioner, unless there is sufficient evidence of a bill or other written notification of costs having been sent to the client.

4.3

The SRA will attempt to contact all persons identified as having a potential beneficial interest in the Statutory Trust Monies inviting them to submit a claim in accordance with rule 5 [r5] .

5. *Claimants to Money*

5.1

Every Claimant must deliver to the SRA a completed and signed claim form. The claim form shall require such information as may be prescribed by the SRA from time to time.

5.2

A Claimant must provide such documentation and other evidence as may be requested by the SRA in order to support the claim including a statement of truth and proof of identity. Failure to provide such documentation or evidence will be taken into account by the SRA when deciding whether to make a payment in respect of a claim.

5.3

The SRA may, in its discretion, waive the requirements of rules 5.1 and/or 5.2.

6. *Verification of Claims*

6.1

Subject to rule 6.2, the SRA will verify the individual potential beneficial entitlements claimed under rule 5 [r5] by examining all available evidence.

6.2

The extent of verification work will be determined by the SRA by considering, but not limited to, the circumstances of the Intervention, the

reliability of the accounts of the Intervened Practitioner and the perceived integrity of the list of beneficial entitlements prepared.

7. Shortfall in Statutory Trust Account

7.1

In cases where a shortfall is revealed between the Statutory Trust Monies held and the beneficial entitlements shown in a Reconciled List or Best List, the SRA may rectify the position, in whole or in part, by the use of other monies taken into its possession following the intervention to which that account relates.

7.2

Where a Shortfall still exists on a Statutory Trust Account after the application of the additional funds set out in rule 7.1, the SRA will decide on the method for distribution of the deficient account.

8. Distribution of Beneficial Entitlements

8.1

Any interest which has accrued on the Statutory Trust Account under rule 2.2 [2-2] will be distributed to Beneficiaries on a pro-rata basis in proportion to the payments made to them or on such other basis as the SRA may decide.

8.2

In a case where the accounting records of the Intervened Practitioner are Reconciled Accounts, payments to Beneficiaries will be made on the basis of the Reconciled List.

8.3

In a case where the accounting records of the Intervened Practitioner are not Reconciled Accounts, payments to Beneficiaries will be made on the basis of the Best List.

9. Residual Balances

9.1

The SRA may use any funds which remain in a Statutory Trust Account following the distribution to Beneficiaries under rule 8 [8] to offset any costs, charges or other expenses which it has incurred in establishing the beneficial entitlements to the Statutory Trust Monies and in distributing the monies accordingly.

9.2

If funds remain in a Statutory Trust Account after payment to Beneficiaries and the deduction of costs, charges and expenses in accordance with rule 9.1, the SRA may transfer such remaining funds into the Solicitors' Compensation Fund whereupon any claim to such funds shall be extinguished.

10. Miscellaneous

10.1

The SRA may make an interim payment to a Beneficiary before the full distribution on a Statutory Trust Account takes place. This will be done only where the SRA is satisfied that the circumstances are such that the payment can be made without prejudicing other claims on the Statutory Trust Account.

10.2

The SRA may issue guidance notes to Claimants to assist in the making of a claim and to explain the steps and processes which the SRA takes in dealing with a Statutory Trust Account.

11. Commencement and Application

11.1

These rules shall come into force on 9th December 2009 .

11.2

These rules shall apply to all Statutory Trust Accounts, whether such accounts were created before or after the commencement date set out in rule 11.1.