

Transferring money to pay costs

One of the most routine and innocuous acts a solicitor can undertake is to transfer payment for his or her fees from client account to office account. Rules 19(2) and 22(3)(b) of the Solicitors Accounts Rules 1998 regulate this most straightforward of acts. Yet numerous solicitors get the process wrong leading to serious consequences in terms of professional conduct.

Rule 22(3)(b)

Office money may only be withdrawn from a client account when it is:

- (b) properly required for payment of the solicitor's costs under rule 19(2) and (3)

Rule 19(2)

A solicitor who properly requires payment of his or her fees from money held for the client or controlled trust in a client account must first give or send a bill of costs, or other written notification of the costs incurred, to the client or the paying party.

Problem scenarios

Difficulties can arise because some solicitors misunderstand the rules. Some typical problem areas include:

- * Small amounts on clients account cannot be left indefinitely without the accountant's report being qualified. Some solicitors seek to justify the billing of those amounts by reference to clients having moved on without trace, the stale nature of such balances and so on. A new rule in force from 16 October 2007 permits payment of such balances to a charity which agrees to indemnify against any legitimate claim subsequently made for the sum received (SAR 22(1)(h) and 22(2)(h)). Written permission must be obtained from the SRA and Professional Ethics can help with advice about the criteria, call 0870 606 2522.
- * Billing, transferring but not sending the bill until some time after the transfer has taken place or at all, there is no 30 day grace period for sending a bill.
- * Billing and transferring small amounts collectively amounting to a large sum in a short period of time will attract the SRA's attention
- * Transferring "round sums" to office account sends a red alert to the SRA. The Forensic Investigation Officers look closely at round sum transfers. The golden rule is to transfer the value of each bill individually. It is more time consuming but a SRA investigation takes up far more time.

The characteristics of each of these situations are:

- ▶ No bill is sent to the client prior to the transfer taking place
- ▶ There is often no justification (i.e. work in progress – WIP) to support the billing

How can these problems be avoided?

Quite obviously a bill must be sent to the client. The rules require only that the bill is sent not that its delivery be proved. Any form of sending is acceptable so: post, DX, email or fax will suffice for this purpose. Alternatively the rule (19(2)) speaks of the sending of “other written notification of the costs incurred” which could amount to an estimate in one’s terms of business or subsequently. However if relying on this bear in mind that a central register of such “written notifications” will be required – SAR 32(8).

Is there any justification for the billing? Investigating officers are often concerned that solicitors may have engaged in “mopping up” small, stale balances and the crucial thing to establish is that there was unbilled WIP at the time the bill was sent.

The biggest danger in these situations is that the officers may form the impression that the approach to the suspect billing was dishonest which, if proved, may lead to being struck off.

A quick way of beginning to rebut suspicions of dishonesty is to repay the money wrongfully transferred. As soon as the problem is drawn to your attention repay the sums in question to clients account. Prompt remedy of the breach will gain much credit. This is also expressly approved under the rules, see SAR rule 7. Promptly correcting means repayment within a maximum of 48 hours of the breach being drawn to your attention.

How does this issue appear on the SRA's radar?

The Forensic Investigation Unit (FIU) of the SRA make unannounced visits or visits with only 7 or 14 days notice to solicitors offices where they will spend days (sometimes visits will be interspersed by months of apparent inactivity) trawling through files and ledgers checking, amongst other things, the level of compliance with the Solicitors Accounts Rules.

Such visits are typically initiated by a letter explaining the date of the intended visit and enclosing a very long schedule of information to be provided by the solicitor.

The first step in managing this process effectively is, of course, to be co-operative but if some things are not immediately available, such as the bank mandate with authorised signatures, explain the document or documents have been requested and will be provided as soon as possible. Provide the Investigating Officer with a copy of your letter requesting the documents in question.

The SRA never explain the reason for their visit because they do not wish solicitors to hide evidence or exacerbate wrongful conduct.

The visit leads to an interview, akin to a Police interview. So bear in mind that if questions are put the answers to which are not immediately available ask for more time, another 14 days is usually agreed. The Officers are invariably helpful and will understand that points of detail from some time ago cannot always be remembered clearly.

If in doubt seek advice before the visit takes place.

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