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By Email Only: consumerprotectionreview@sra.org.uk

Dear Consultation Team

Consultation 1: Client money in legal services – safeguarding consumers and providing redress: The model of solicitors holding client money
Consultation 2: Client money in legal services – safeguarding consumers and providing redress: Protecting the client money that solicitors hold
Consultation 3: Client money in legal services – safeguarding consumers and providing redress: delivering and paying for sustainable compensation fund

Bristol Law Society (BLS) has considered the views of and consulted with members, member firms and stakeholders in relation to the SRA's consultations.

BLS has set out its views and which is representative of our membership of around 10,000 legal professionals in Bristol and Bath but we expect that each of our member firms and some individuals will make their own representations in addition to this response and the SRA should not consider this to be the only response from every legal professional in Bristol or that it is representative of any officers, member or member firms views.

Part 1 – The Model of Solicitors Holding Client Money

Residual Balances

Q1. We want to ensure we fully understand the issues firms encounter in returning excess funds to clients or third parties – please outline:

- the circumstances in which residual balances may arise on a particular matter
- the steps that firms can take to make sure their client contact details remain up-to-date and any challenges with doing this
- the mechanisms that firms use to trace clients/third parties and any challenges with this.

Q2. Do you agree that we should replace the term 'promptly' in rule 2.5 of the Accounts Rules and introduce more prescriptive requirements around returning funds to clients and third parties?

Q3. Would a 12-week timeframe, from the conclusion of a case, provide sufficient time in which to identify an excess balance on a client account and return the funds to the client or third party where the firm holds their up-to date contact details? If not, please give your reasons and include any specific examples of relevant issues.

Q4. Should it not be possible to return excess funds to the client or third party within 12 weeks of the conclusion of a matter, is a further 12 weeks a reasonable timeframe to make all reasonable attempts to trace the relevant client/third party and where this is unsuccessful, donate the residual balance to charity or apply to us for approval to do so?

In relation to questions 1 to 4 of the consultation, BLS is not in a position to provide specific responses to question 1, save noting that the SRA is proposing in the same consultation that solicitors are no longer able to hold client funds, while also proposing prescriptive (using the SRAs own language) rules on returning client funds.

Solicitors routinely are required to hold funds on client account where the transaction has completed. Anecdotally, we know of firms holding client funds from a transaction that completed in excess of 12 months ago due to HM Land Registry not having completed registration.

If the SRA proposes that solicitors should only seek those funds (for HMCTS fees or HMLR fees once they have been invoiced), the SRA will inevitably be creating a further barrier to justice. From anecdotal evidence, firms who have sought fees from clients when the fee is then collected some 12 months later have often had to pay the fee themselves as the client is unresponsive or clients have refused to pay the historic fee.

BLS also notes that the SRA appears to want to impose an arbitrary 12 week deadline for the return of funds, in effect, requiring SRA regulated firms to incur the costs of hiring a tracing agent after two months if contact details are not readily available. We understand this is likely to be a cost of around £100 per trace.

Current SRA rules require that any firm that makes a donation to charity is required to provide an indemnity, or for the charity to provide such an undertaking, which some are able to do (see for example Community Foundations).

Such a draconian and arbitrary amendment to rules would, in some circumstances, require solicitors to incur costs to trace a client (which are not recoverable) and then to indemnify the client for any potential losses if a donation is made. The cost to the profession, and therefore the cost to be passed on to the client will affect access to justice.

The SRA's proposals to amend the rules are not clear or sensible. As proposed they leave a great deal of uncertainty as to when a case is "concluded". If the SRA, as it is prone to do, seeks to enforce where a firm has failed to return funds within a set period where a case has concluded, there are a myriad of examples where firms will be at risk, through no fault of their own (or be required to indemnify to an extent which is unacceptable) for example:

1 A client passing away after funds are received (for example from settlement of a claim or sale of a property);
2 Where a beneficiary has become unable to act (and therefore give instructions) and a deputy or Power of Attorney is being approved by the court of protection.

3 Where funds are held in escrow for a period of twelve months after completion of a sale (property or business or otherwise).

The SRA notes in its consultation that evidence from interventions supports the notion that firms are holding on to client funds even after the firm has concluded it cannot trace the client concerned. The SRA appears to suggest that as the evidence is from firms that have been intervened that (a) the practice must be widespread and (b) if there are any residual funds they can only arise from dishonest behaviour by solicitors concerned.
It is akin to the lottery fallacy, that a statistical coincidental event is so unlikely to have happened with both aspects that it must be linked and caused by one of the factors.

Interest on client account

Q5. We would like to understand current practices around interest on the client account. Please tell us about your experience of the arrangements for interest on clients' money, including:

- The extent to which client accounts generate interest, and – if so – how interest is apportioned between the firm and the client?
  Anecdotally, a number of firms do not have client accounts that generate interest so as to avoid the need to apportion interest.
- Any arrangements firms have to receive less or no interest on client accounts and what, if anything, the firm receives in return?
  The firms we have spoken to do not receive any alternatives in lieu of interest
- Whether and how firms make their clients aware (either directly or via terms and conditions) that their money could earn interest?
  The firms we have spoken to make their clients aware of interest via their terms and conditions
- Whether clients are aware that firms may retain some of the interest earned on their money?

Rule 7 of the rules requires that firms either account to their clients or come to a different arrangement which gives sufficient information for the client to give informed consent. This question appears to suggest that solicitors routinely breach solicitors accounts rules.

Q6. What are your views on the suggestion that we amend our rules to prevent firms retaining any of the interest earned on client money (subject to a de minimis)?
The underlying question presupposes that solicitors routinely put their own interest (financial) above client interests in seeking an advantage from funds that they hold on behalf of their clients. It continues the false narrative from the SRA that the Axiom Ince debacle was only caused because of funds held on client account and not from a catalogue of catastrophic errors and tinkering with Solicitors Rules over 18 years that have created the opportunity for slippage in professional standards

Q7. Are there circumstances where firms retaining some of the interest earned would be of benefit to the client?
Clearly in small to medium firms client interest may cover the cost of a financial assistant to process payments thereby meaning the client has a lesser cost which would otherwise be passed on to the client.

Q8. What do you think would be the impacts of removing the ability for firms to earn interest on money held in client accounts? How could any short-term and/or long-term challenges be overcome?

- Smaller and medium sized firms will struggle financially.
- Firms will likely have to increase their own charges to cover the costs of dealing with an administrative burden of client account for which they receive no reward.
- The increase in charges for legal work will create a further and higher barrier to access to justice.

Transfer of funds from Client Account to Office Account

Q9. Are there any circumstances in which it is in the client's best interests to transfer client money from the client account to the office account before the work to which it relates has been completed? If so, please describe these circumstances.

Q10. Do you agree with our proposal to progress the amendment to rule 2.1(d) of the SRA Accounts Rules? Please explain your answer.

Q11. Do you agree with our proposal to progress the amendments to rules 4.3, 4.3(a) and 4.3(c) of the SRA Accounts Rules, and the addition of rule 4.4? Please explain your answer.

Q12. What are your views on the option to remove the ability for firms to enter into alternative arrangements about where client money will be held and how it will be used under rule 2.3(c)? Please explain your answer.

The rationale for the SRA's proposed removal of account rule 2.3(c) cannot be understood and indeed there doesn't appear to be any. The SRA say that the rule provides too much flexibility for solicitors *to put their own interest ahead of that of their client*. Again the SRA presupposes that every solicitor is not acting in their clients' best interests when matters financial are concerned. With respect, that suggestion is so misguided and offensive that it ought not to be responded to.

The SRA appears to suggest that this need arises from a want to encourage fixed fees to be offered to clients.

We are aware that our member firms regularly offer fixed fees and tranches of work for fixed fees, and of those consulted, we were not made aware of any that would invoice prior to completion of the tranche or fixed element.

We presume that rule 2.3(c) was how Axiom Ince were able to hold their client funds in accounts overseas which led to its demise. If so, the consultation and SRA ought to be honest that the removal is a knee jerk reaction to that failing to appease the LSB.

Q13. What approaches do firms take when calculating the amount of money they request from clients in advance? In your response, please outline:

- Any areas of practice where you consider that it is important to take advance fees
- How a reasonable amount to request in advance can be calculated
- Any alternatives to requesting advance fees

Q14. When and how do you think we should, or should not, be more prescriptive about how much client money firms can request in advance of work being completed? In the areas where you think we should be more prescriptive, please outline what you think the implications would be for both clients and firms.
The SRA cannot be prescriptive of what is a reasonable sum of money to request in advance.

If the SRA were to impose a restriction of say £5,000, solicitors would, understandably, be unwilling to take on a claim for a new client where the court fee for issuing a claim exceeds £5,000.

Fees in advance are regularly taken in cases where fees are likely to be paid out to third parties (contentious matters) and preventing firms from being able to take funds in advance or limiting that amount would prevent access for justice unless the potential client has a pre-existing relationship with the firm in question.

Q15. What are your views of the long-term option of changing the model of firms holding client money? Please outline what you think the impact would be if firms were to hold no or substantially less client money?

Q16. In your experience, are there areas of law or services in which it is essential for a firm to hold client money? What would happen if solicitors were not able to hold client money in these areas?

Q17. Do you have experience of any alternative method(s) of holding client money (such as a TPMA or other methods)? If you have experience of any alternative method, what has that experience been? What was the impact on clients and the firm?

Q18. If you have knowledge or experience of alternative approaches to holding client money, would you be open to further discussion with us as part of future development in this area? If yes, please confirm that you are happy for us to use the details you have provided to contact you, or please provide alternative contact details.

Q19. In the context of this consultation, do you agree with our assessment of equality, diversity and inclusion considerations in our impact assessment? If not, what else do you think we should consider?

TPMAs

Short term impact (in the first six to 12 months) we anticipate that there will be considerable delay to transactions and client complaints, firms will struggle to justify their fees and swathes will struggle financially. In reality, TPMAs are not in a position within six or twelve months to be able to handle 25,000 conveyancing files (which would include at a minimum 8 transactions per file) each Friday.

That figure is for residential only transactions and does not account for weekly commercial property transactions or commercial sales etc which often complete on a Friday. Simply put, TPMAs are not able to scale sufficiently to replace thousands of accounting team members across law firms in the country to be able to deal with transactions which law firms regularly do undertake.

Longer term, the impact will be considerable for clients. TPMAs are, by their own admission, only protected up to £415,000. For example, if errant employees such as the Axiom Ince situation were to happen in a TPMA, if a client had £2m of funds, then the

TPMA and FCA would only protect the first £415.000 of those client funds. Thereafter, the legal profession would still be required to foot the bill for failure of a TPMA.

The SRAs proposals to eliminate holding client money is ill conceived and has not been properly researched (with regard to empirical research into other jurisdictions in which solicitors do not hold client money).

The SRA are proposing considerable step change in regulation which is clearly driven by its own failings in professional regulation in the past 24 months and in particular in respect of Axiom Ince and not through a wider desire to protect consumers. The level of coverage that a regulated FCA TPMA would provide clearly shows that there would not be a benefit to consumers in fact there would be a considerable detriment.

The proposals merely push responsibility for failures of a TPMA out of the reach of the SRA as the SRA, one assumes, now realises it does not have the skills within it or the capability to regulate a complex profession effectively.

Part 2 – Protecting the Client Money that Solicitors Hold
Improving oversight of firms

Q1 Do you think that we should be more prescriptive around the information that we must be notified of outside of our annual practicing certificate renewal exercise? If so, what information should we require and what risks should we target?

Q2. Do you think certain changes should require pre-approval by us and/or after-the-event monitoring and supervision? If so, which changes should this apply to and what risks should we target?

Q3. What impacts might arise from notifying us of changes in advance? Please provide specific examples of where firms provide information about changes to other third parties, e.g. insurers.

This goes to the heart of the very purpose of the SRA; to oversee and monitor the profession through the lens of consumer protection. So, in short, our members feel strongly that, yes, the SRA should be doing more both on an annual basis and at times of merger or acquisition (or indeed cessation) to ensure that consumers' interests are being safeguarded. This is the area of SRA (in)activity that was criticised most extensively by the LSB in the Carson McDowell report, and we and our members agree entirely with the LSB's conclusions in that regard. The SRA did not do enough to protect those whose money was placed with Axiom Ince and we expect will be shown not to have done enough in respect of SSB, Pure Legal, Metamorph etc, and it is clear that more rigour is required.

Instead, the SRA appears to have largely swept aside the criticisms levelled at it by the LSB, and there is a general feeling among our membership and more widely that this consultation is more of an exercise in seeking to divert attention away from those criticisms than it is an attempt to better serve the consumer.

Our view is that the SRA could and should have greater involvement at each of the following points in time:

1. When firms renew practice certificates – our view is that ALL firms should submit an AR1 at this point, and that this should happen every year, without fail. This would enable the SRA to have at least an annual touchpoint with firms so as to confirm

their ongoing viability. There should also be a requirement to demonstrate ongoing competence in their chosen practice areas.

2. When there is a change of significant personnel. This is particularly the case with ABSs, where this structure has been used by aggregator firms to fuel rapid expansion. However, it is also important when firms may be considering a change in strategy or direction, as the SRA ought to be keen to ensure that firms remain competent to offer legal services in the areas they profess to specialise. The SRA could and should require enhanced training regimes for senior personnel (and more widely within the firm) whenever there is concern that firms are expanding too rapidly or into areas that appear new to them.

3. When a firm seeks to merge or acquire another firm(s). The SRA could and should seek full business plans and strategy documentation before approving any kind of M&A activity, so as to be able to satisfy itself that the 'new' firm will be run properly and for the benefit of the consumer. This is the key failing with Axiom Ince, where it seems that a loophole (i.e. no-one from the acquired entities would become members of the LLP) was exploited so as to keep the acquisitions away from the SRA as much as possible. All such loopholes should be closed, and the SRA should be much more proactive and critical when looking at future M&A activity in the legal market. Its processes should be standardised and published, so as to prevent future abuse and restore confidence that the SRA will effectively monitor those who might otherwise seek to abuse the system. That said, it is important that the SRA should carry out its work quickly and efficiently so as not to hold up or prevent legitimate M&A activity, so we recognise that a balance does need to be struck.

4. SRA accountants ought to be required to file a report, not only if there is a reportable discrepancy and accountants should have to confirm that one unannounced visit was undertaken to a firm in that financial year to carry out an audit.

The overall feeling from our membership is that the SRA does not, in its current guise, have the resources expertise experience to be able to deal effectively with the additional responsibilities outlined above. Our view is that the SRA should devote much more time and energy than it does currently towards developing and fulfilling these crucial aspects of its role. To quote from the Law Society's response to this consultation (which we endorse entirely): *"The SRA must look to remedy the issues with its own processes and procedures before considering imposing further unnecessary restrictions on legal businesses, which will only serve to increase cost and delay for clients without any meaningful improvement in client protection."*

Mitigating risks associated with dormant law firms

Q4. To what extent to you agree or disagree with our proposed approach to addressing dormant firms - taking action where a firm has not provided legal services and/or recorded zero turnover for 12 months, unless legitimate circumstances apply?

Q5. Are there other circumstances not presented here where you think a law firm can legitimately record zero turnover for an extended period?

This approach appears to us to be broadly acceptable, but subject to how the SRA defines "legitimate circumstances".

An area of particular concern to our members relates to trust corporations that firms operate under the auspices of SRA regulation (usually a wholly owned subsidiary of the law firm) which provide trustee and deputy services. We understand many of these trust corporations operate as dormant companies and so they would appear to fall within this section of the consultation paper. We note that the consultation paper states "There are further instances where a firm may record zero turnover and otherwise does not provide legal services which we would consider acceptable" and provides a list, but trust corporations do not specifically feature in that list. These corporations are also not "law firms" and it is hard to follow whether this section of the consultation is referring to 'law firms', 'authorised firms' or 'authorised bodies' as the phrases are used inconsistently.

Accountants' reports

Q6. Which of these three options for improving compliance with our requirements for accountants' reports and our ability to monitor this do you prefer and why?

Q7. What are your views on whether we should consider requiring firms to periodically change their reporting accountant to safeguard independence, and if so, how often we should require this?

Q8. Should we retain the existing exemption from obtaining an accountant's report, amend it, or remove it?

Q9. To what extent to do you agree or disagree that any manager that can unilaterally make decisions that impact client money handling should not also be able to hold a COLP or COFA role? Please explain your answer and include any suggestions for ensuring appropriate internal checks and balances.

Q10. Do you think this proposal should apply equally to all law firms, or should certain law firms – such as sole practitioners – be exempt if certain conditions are met? If so, what should these conditions be? Please explain the reasons for your answer.

We favour option 1 regarding accountants reports. We appreciate that asking all firms (which would be our answer to Q8) to submit an annual AR1 will place an additional burden on some smaller firms, but we consider that this is a key aspect of evaluating (and monitoring) firms' financial viability, which is in turn key to maintaining consumer protection.

Provided that safeguards exist to ensure the independence of accountants from the firms they work with, we see no need to require firms to change accountants periodically; this seems to us to place an unnecessary burden on the profession in circumstances where the risk of abuse is, in most cases, entirely non-existent. The largest firms are already subject to greater regulation in this area (where the risk of abuse is greatest), and that seems to us and our members to put the burden in the appropriate place.

The proposal to insist that COLPs/COFAs should not be able to handle client money is unworkable in practice, as many firms simply do not have the personnel to manage such a separation of responsibilities. Whilst the SRA could consider introducing this requirement for firms above a certain size, such a proposal could very easily stifle the growth of firms that are around that threshold. We do not, therefore, support this initiative.

Effectiveness of compliance officers

Q11. To what extent do you consider our proposals to build and launch a package of support for compliance officers, and to strengthen our expectations for law firms to support their compliance officers, are sufficient? Are there issues we should target to enable compliance officers to meet their responsibilities effectively?

We support this initiative. Building a stronger relationship between the SRA and compliance officers can only be a good thing for both the profession and the consumer. Once again, however, we doubt whether the SRA currently has the resources or expertise to liaise meaningfully with firms at this level, so we would encourage further commitment from the SRA to develop this aspect of its role and liaise more closely and positively with firms.

EDI

Q12. In the context of this consultation, do you agree with our assessment of equality, diversity and inclusion considerations in our impact assessment? If not, what else do you think we should consider?

We note the Law Society's response on this question, specifically the impact of the SRA's proposals upon smaller firms, where minority communities are heavily represented. We mirror the Law Society's observations.

Part 3 – Delivering and Paying for a Sustainable Compensation Fund

Q1. Do you agree that changing the apportionment of Compensation Fund contributions to 70% individuals and 30% firms is an appropriate and proportionate approach to setting contribution levels for 2025/26? Please give reasons for your answer.

Q2. Are there any other important apportionment issues you think we have not considered here? If so, please explain what they are?

Q3. What are your views on the possibility of setting differential contribution levels for different firms?

Q4. What are your views on the possible alternative methods of setting differential contributions to the Compensation Fund (based on enhanced requirements, risk categorisation, the amount of client money held, or annual turnover)?

Q5. Are there other alternative approaches to differential contributions you think we should consider?

Q6. To what extent do you agree we should move away from the current arrangements that allow us to impose a cap of £5m for connected claims?

Q7. Would you support any of the other options discussed (a flexible cap for connected claims, removing the cap for connected claims, guaranteeing compensation up to a specified amount)? Please explain why.

Q8. Are there other important considerations you think we have not considered here? If so, please explain what they are.

Q9. What are your views on the idea of amending our Compensation Fund Rules to explicitly exclude specific types of claims? If you think specific types of claim should be excluded, which ones are these?

Q10. Are there any other considerations we should take into account in relation to payments from the Compensation Fund? If so please explain what they are?

Q11. In the context of this consultation, do you agree with our assessment of equality, diversity and inclusion considerations in our impact assessment? If not, what else do you think we should consider?

We have seen no evidence to suggest that there is a pressing need to change the funding methodology for the compensation fund. Whilst the current model is far from perfect, our concern – if the SRA's proposal were to be effected – is that firms might seek to pass on the cost of individual contributions to employees, in circumstances where they currently mostly pay those contributions at firm level. We feel that any change to the current model (in future) ought to recognise this reality, and so perhaps a 'turnover' or 'risk-based' funding differentiation might appeal more than the 'numbers-based' approach proposed here. In discussions we have had with some member firms, there has been a willingness and sense of fairness from larger firms that a risk based approach (i.e. based on average sums held in client account) would be fairer to smaller firms. This is information which is readily available to the SRA to make the relevant calculations.

The one area of change that we would support at the current time is to remove the exemption for firms that do not handle client money. Given that the fund is called upon in a whole range of circumstances only some of which relate to client money issues, it seems unfair to give such firms a full exemption.

Away from how the fund is paid for, the largest concern expressed by our members relates to the setting of the ultimate funding requirement; the rise in the levy experienced last year was felt very keenly by firms, and they are concerned to ensure that this is not an annual experience. They feel that the SRA could and should do more to spread the funding requirement more evenly across the years, so that the fund can more readily absorb spikes in fund activity without having to default immediately to a funding call. The uncertainty around the annual funding requirement has been particularly keenly felt this year, in the light of the Axiom Ince debacle, where the SRA has not only contributed (it is felt) to the sizeable losses claimed but has also disapplied its own rule on the £5m cap, leading firms to feel even greater uncertainty than normal over what their ultimate financial commitment is likely to be.

All firms are keen to retain the compensation fund, as it is seen as something tangible for consumers to rely upon, and something to provide additional reputational confidence for the legal profession. In the absence of evidence to suggest that the funding model needs to change, it is our view that it should remain broadly as it is, with perhaps some more transparency around payments that are made and how the fund's rules are being interpreted/applied (or not as the case may be). Changing the funding model would take a huge amount of time and energy, and our members would much prefer that the SRA invests its limited resources into the issues set out above in section 2.

Yours faithfully

For and on behalf of
Bristol Law Society (The) Limited