Dormant Client Account Balances

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The SRA has proposed in a recent consultation paper that the maximum dormant client account balance which firms can donate to charity without SRA approval should be increased tenfold from £50 to £500.

The present position is that firms can transfer client residual balances below £50 to charity without authorisation from the SRA but for balances over £50, specific authorisation has to be obtained from the SRA *(Rule 20 SRA Accounts Rules 2011)*. Whatever the amount, firms must take sufficient steps to establish the identity of the owner of the money or make adequate attempts to ascertain the proper destination of the money and return it to the rightful owner.

The SRA received 1179 applications from practitioners in 2013 to withdraw balances totalling just over £3.5m. A detailed analysis of individual requests revealed that over two thirds of the applications received were for the withdrawal of balances below £500.

As with most recent SRA consultation papers, there is plenty of argument in favour of the proposal and no contrary arguments so as to provide a balanced consultation. Crispin Passmore, the new SRA director of policy, has stated in support of the proposed change *"On balance the amount of time and associated cost for solicitors and ourselves... do not add any real regulatory value"*

Reducing the administrative burden for firms and for the SRA are laudable aims. However, there is no consideration in the consultation paper as to why the rule was imposed in the first place and the mischief that it was designed to prevent. In other words, the consultation paper is light on the public interest factor.

The current arrangements with the £50 limit have been in place since 2008. In introducing them at that time there was debate as to the appropriate limit and the SRA did say it would re-visit the arrangements which they are now doing. Before then, firms had to apply to the SRA for authorisation before withdrawing any residual client balance however small the amount. In the six years since the £50 limit was introduced, there has been a steady increase in applications to the SRA. In 2008 there were 876 & in 2013 1,179.

There have been a number of SDT cases where firms have issued *"internal"* invoices long after completion of the client work for the same amount including VAT as the dormant client account balance and then transferred the funds from client to office account. Will there be a greater temptation if the maximum sum is increased to £500?

Dormant client balances are client money. There are no proposals for policing this new system in the consultation paper in order to protect the public. The annual accountants report will not identify any abuse. Will the SRA conduct random inspections? Will there be a requirement that details of all dormant balances donated to charity should form part of the annual report to the SRA?

The SRA clearly views COFAs as responsible for ensuring that firms have taken sufficient steps to reunite funds to their rightful owners and proposed guidance for COFAs is annexed to the consultation - but is this enough?

There is an obligation to return funds to the client as soon as there is no longer any proper reason to retain the funds *(Rule 14.3)*. If money is retained after the end of a matter the firm must promptly inform the client in writing of the amount held and the reason for retaining it and must provide a written report every 12 months again as to the amount and the reason for retaining it for so long as the fund is held *(Rule 14.4)*.

The duty upon solicitors to return unwanted client funds to the clients and to promptly inform a client in writing of the amount of any client money retained at the end of a matter place a responsibility upon firms that should not be taken lightly. The fact that the SRA dealt with 1179 applications in 2013 would tend to suggest that firms are not being rigorous enough in complying with these requirements. The SRA does not say, and it would be interesting to know, if any firms were taken to task for failures of this nature as a result of these applications.

Residual client balances are a nuisance – especially since they are often for amounts sufficiently small that any amount of effort in tracing the rightful recipient is out of proportion to the value of the sum held

The simplest solution is to take steps to make sure that they do not arise in the first place – or that the circumstances where they do arise are only those that are outside the control of the firm.

Birmingham Law Society will be submitting a response to the SRA consultation paper by the deadline of 26 May 2014 so please provide any comments to Peter Wiseman peterwiseman@hotmail.co.uk or Jayne Willetts jayne@jaynewilletts.co.uk. ■

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