By Jayne Willetts
Solicitor Advocate
Jayne Willetts & Co -
Specialists in Professional
Regulation

FURTHER FINANCIAL FACTORS FOR COFAS

Continuing the theme of financial factors for COFAs this month we consider the fundamental responsibilities for partners under the Accounts Rules.

The SRA Accounts Rules 2011 took effect on 6 October 2011, with the rest of the SRA Handbook, in place of the former Solicitors Accounts Rules 1998. The 2011 Rules largely follow the 1998 Rules. However, the guidance notes in the 2011 Rules are not mandatory in contrast to the 1998 Rules.

It is also worth mentioning that the Accounts Rules do remain precisely that – rules. The Code of Conduct may have been adapted to outcomes and indicative behaviours, but there is less leeway in this area of the Handbook and the position therefore remains as stated by Lord Chief Justice Bingham in *Weston v Law Society (1998) Times, 15 July* that solicitors are *"under a heavy obligation, quite distinct from their duty to act honestly, to ensure observance of the rules"*.

A key responsibility for COFAs is the strict liability imposed by Rule 6 of the 2011 Rules. All partners - whether equity, salaried or fixed share - are strictly liable for breaches of the Accounts Rules, regardless of personal fault. The actual breach may have been committed by the bookkeeper but nonetheless all partners are liable. Likewise, a breach may have been committed by the sole equity partner without the knowledge of others in the firm, but the two salaried partners in such a practice would nonetheless be liable.

I have lost count of the number of times that I have had to advise a salaried partner that under the Accounts Rules he or she is just as liable as the equity partners. It is an obligation that can be forgotten in the excitement of having your first business cards printed with the title partner on them.

As equally onerous as Rule 6 is Rule 7 which is the duty to remedy breaches promptly on discovery. This includes the prompt replacement of any money improperly withheld or withdrawn from client account. This duty rests on the person causing the breach and also upon all principals in the firm. Rule 7 stipulates that monies have to replaced from the partners' own resources, even if the money has been misappropriated by an employee or another principal. This is the case even if the partners are awaiting the outcome of a claim on insurance or on the SRA Compensation Fund.

Before you pass over this section on the basis that no-one in your practice ever takes money improperly from client account, consider two examples.

First a trusted bookkeeper systematically and cleverly over 15 years steals over £2m from client account by *"teeming & lading"*. This involves recording a debit entry on one client account ledger and then replacing it at a later date by *"borrowing"* from another client ledger.

Secondly, an experienced conveyancer employed by the practice for 20 years is due to retire. There are 250 credit balances on client account due to his clients and arising from miscalculations of completion statements and Land Registry refunds. He cannot be bothered to write to the clients to forward cheques to them as in many cases the balances are so old that he has no forwarding address for the clients. He decides to *"tidy up"* these old balances by raising *"internal"* bills and transferring the balances to office account. Those funds belong to the clients not the practice. This causes a shortage on client account but in a less obvious way than the first example.

In both cases the partners are liable to replace the missing client funds from their own resources promptly pending settlement of any insurance claim. This duty under Rule 7 extends to all partners whether salaried or equity.

It will be the responsibility of COFAs to guard against client account shortages in the first place via compliance plans and the like. If things go wrong the COFA may have to tell partners of the need to remortgage their homes or take out loans to cover a client account shortage until a claim is paid up by insurers.

However, there is no substitute for the partners in their own interests being vigilant and undertaking the occasional spot check such as comparing a file with the ledger. A determined and clever fraudster will find it less difficult to circumvent a spot check than a regular audit. The unexpected is much more likely to unearth a problem. ■

Jayne Willetts is also a director of Colpline Ltd – a law firm compliance helpline service – www.clt.co.uk/colpline