**Amendment Rules - Prohibition on funds in client account unconnected to a transaction – Draft Guidance for discussion**

While this rule is separate from the requirements of the money laundering regulations, solicitors should be aware of the greatly increased risk of money laundering which arises from use of a client account, for purposes beyond their generally accepted purpose.  Solicitor’s client accounts have been rated by the National Risk Assessment 2017 as being at high risk of exploitation by money launderers when they are used for generally accepted purposes.  The risk of money laundering when the client account is used for other purposes would clearly be extremely high.

Situations are likely to arise where a solicitor feels that money laundering requirements can be satisfied (risk assessment, client identification etc) but the engagement will involve the use of the client account extending beyond its intended purpose, to include the provision of services ordinarily provided by a bank.

Solicitors should assess proposed and ongoing engagements after reviewing the examples below to consider on a case by case basis why they are being asked to handle funds and for what purpose.  Solicitors should satisfy themselves that they will not simply be providing a service which would usually be provided by a bank.

Scenarios in which a practice unit may be said to have breached the proposed rule.

         A company has its accounts frozen by its bank due to concerns regarding the legitimacy of the funds in the company’s account. Those concerns are thereafter resolved and the accounts released. But the bank advise the company that they are no longer prepared to act as the company’s bankers, and that they need to bank elsewhere. The company approach a practice unit and ask if the closing balance on their account could be paid to their client account. The practice unit agreed and duly received the funds to their client account. Thereafter, they made payments as instructed by the company - include wages, rent, directors’ loans - direct from the funds in their client account.

In these circumstances the practice unit were not providing advice to the company on any matter. They were not acting as signatories to the company’s accounts. There was no connection to any legal transaction. The reason the practice unit held the money was simply to do what a bank would normally do for a commercial client – ie to pay the routine business of the client.

         A practice unit receives a consistent cash payment from a client on the last Friday of each month without explanation of any kind for a long period. The practice unit never receives any instructions regarding the use of the funds. The funds are placed in the client account and recorded on a ledger in the name of the client and are simply held there. The practice unit do not have any knowledge of the source of the funds or why they have been asked to hold the funds in the client account.

In these circumstances the practice unit did not provide any services to the client beyond lodging the funds in their client account. There was no connection to any legal transaction.

         A client of the practice received a lower interest rate than that afforded to the practice unit’s client account. The partner’s view is that this would be of great benefit to the client to hold money in the practice unit client account and he agrees to accept the funds on that basis.

The practice unit is not acting on any underlying transaction or providing any service other than holding the money. The practice unit is effectively offering an investment service but is not subject to financial services regulation as a bank would be.  This would be a breach of the rule.

* The practice has acted on the set up of a financial vehicle involving international investors.  Having concluded the advisory project the practice unit are asked by the operators of the vehicle to open a client account for the purpose of collecting investment monies from various parties and distributing them according to instructions from the client, usually towards investment funds and projects.

If the practice unit operates the client account for such a purpose they are simply carrying out the payment processing role of a bank and adding no ongoing value or service beyond that which would be provided by a bank.  Therefore in this case the rule would be breached.

* On the conclusion of a corporate property transaction, the proceeds are retained in a practice unit’s client account and the client instructs the practice unit to make business expense payments on its behalf.   
    
  These payments are unrelated to a transaction and the proceeds should have been returned to the client so that they could pay their bills directly.  This would be in breach of the rule.
* A property development company sources multiple investors for a development project.  The company instructs these investors to pay their investment contribution to a solicitors client account.  The solicitor then receives instructions from the development company to pay various fees (project management, architects etc) from the accumulated sum before paying a residual balance back to the development company

The development company should have opened a bank account in its own name and directly processed its receipts and payments to creditors.  This arrangement would breach the rule.

The common theme of the examples above is that the solicitors are providing services which would ordinarily be provided by a bank.  They are allowing their client account to become the routine current account of a non-solicitor business, accepting and indefinitely holding client money for no purpose beyond merely holding that money, offering the client account for use simply because a client cannot itself obtain comparable terms from a bank, and providing straighforward banking services to third parties who could easily hold the account in their own name and process the receipts and payments.

Examples of what is not prevented by the rule are provided below~~.~~:

* Receiving, holding and distributing monies as part of a solicitor’s role in the conveyancing process
* Receiving, holding and distributing monies as part of a solicitor’s role in the executry process
* Receiving, holding and distributing monies as part of a solicitors role in corporate acquisitions, disposals etc
* Receiving, holding and distributing monies while acting as a trustee
* Financial activity while acting as a Power of Attorney
* Holding, receiving and distributing monies from various parties to a deal, with instructions to make payments once conditions specified are judged to have been met.