

Analysis of the handling of client money in England and Wales, Scotland, Ireland, Northern Ireland and South Africa

Question	England and Wales Solicitors	England and Wales Barristers	Scotland	Ireland	Northern Ireland	South Africa
Do lawyers hold trust monies? If so, how?	Yes, solicitors are able to set up client accounts which they are required to run in accordance with the SRA Solicitors Accounts Rules 2011 which prescribes how client money is dealt with.	Barristers are not permitted to receive, hold or control client money (except where acting in the capacity as a manager of an authorised (non-BSB) body), apart from what the client pays for services.	Yes, under Rule B6 of the Law Society of Scotland Practice Rules 2011, solicitors are able to set up client accounts in the name of the practice unit (a sole practitioner, firm of regulated persons, incorporated practice, multi-national practice or licensed provider).	Yes, lawyers handle/hold trust moneys. They are treated as client moneys and kept in controlled or non-controlled trust accounts.	Yes, lawyers are able to set up client accounts which they are required to run in accordance with the Solicitors Accounts Regulations 2014.	Yes, in general trust accounts in the name of the practice i.t.o. s78(1) and 78(2)(a), where interest accrues to the Attorneys Fidelity Fund. Such accounts are mostly current or transmission accounts, preparatory to investment in terms of S 78(2A) in separate trust investment accounts in the name of the client - with interest accruing for the benefit of the individual client.
Do lawyers receive training in the handling of money? If so, what kind of training?	The accounts rules are part of the compulsory legal training prior to qualification. Solicitors are expected to maintain their understanding of the requirements thereafter.	N/A	All those who intend to practise as a solicitor or advocate must complete the Diploma in Legal Practice/PEAT 1. This includes a compulsory module in Professional Practice and Ethics.	Lawyers are required to attend at a module relating to Solicitors Accounts Regulations and handling of client moneys as part of their initial training at Blackhall Place (the Law Society of Ireland).	Upon admission to the Institute of Professional Legal Studies, prospective solicitors must have acquired a 'master' (a solicitor who has been approved by the Law Society of Northern Ireland and been deemed worthy to take on a trainee solicitor). Aside from the time they spend in the 'Institute', prospective solicitors will be required to spend a certain amount of time in a solicitor's office learning from their master. Students in the institute study professional skills and financial management.	Basic training in Attorneys' bookkeeping for the Board exam and for the Practice Management Course, which is obligatory for the purposes of opening one's own practice.
If lawyers don't hold trust monies, who does and how?	N/A	<u>Barristers instructed by a solicitor</u> - Under the Standard Conditions of Contract for the Supply of Legal Services by Barristers to Authorised Persons 2012, solicitors can hold client money on account (within the client account) for payment of barristers fees. Upon receipt of an invoice from the barrister, the fees will be paid over to the barrister. <u>Barristers not instructed by solicitors</u> - are	N/A	N/A	N/A	N/A

		able to use a third party escrow agents (BARCO - 3rd party company operated by the Bar Council) to hold money on their behalf. Barristers will ask their clients to pay funds for fees, disbursements, settlements or other costs associated with legal services into a specific BARCO bank account using a unique reference number. Once the funds are received by BARCO, the parties shall have a contractual right only to be paid or repaid in accordance with the agreement. When funds are required to be released from that account, the barrister liaises with BARCO to organise that transfer which must comply with what has been agreed in the contract.				
Do lawyers/ escrow agents have to report to the regulator about these monies? What do they have to report and when?	Yes, firms have to file an annual report prepared by an independent accountancy firm. The form of the report is prescribed by the SRA and requires certain tests to be performed to monitor compliance. In addition, the firms have an obligation to record and report breaches if and when they arise.	For solicitors holding client money on behalf of a barrister - see England & Wales Solicitors section. Money held by BARCO is treated differently, in that BARCO, as a 3rd party escrow agent, is regulated by the Financial Conduct Authority.	Yes, every six months. The Council shall be entitled to use the information contained in the Certificate to monitor compliance by the practice unit with rule 6, and to assess levels of risk in order to allow the Society effectively to target its regulatory activity. The Council may request a practice unit to provide a Certificate on a more frequent basis than provided for in terms of rule and/or a Certificate containing more or less detailed information, according to its assessment of that practice unit's risk profile. Certificates are the method by which solicitors provide certain assurances to the Society regarding client monies and various related processes.	They do not have to specifically report to the regulator, but they do have to maintain accounting records. As part of Regulation 26, a solicitor is required to deliver a reporting accountant's report to the Society annually. Within this report, trust moneys and how they are held would be dealt with. A solicitor is also obliged to retain his/her accounting records for at least 6 years. The controlling trustee cannot withdraw from a controlled trust account other than in accordance with the regulations. If they wish to make a withdrawal outside of the scope of the regulations, they must make an application to the Law Society. The regulations only	A solicitor who at any time during an accounting period, operated an office or client account, must deliver to the Society an accountant's report for that accounting period within four months of the end of the accounting period. An accountant's report shall be given on behalf of a solicitor by an Accountant and who is qualified to practise in Northern Ireland and who is qualified under S485 of the Companies Act 2006 for appointment as auditor of a company.	Each firm of attorneys has to submit an annual trust account audit certificate to the Regulator, containing the details of trust balances and trust interest earned.

				allow for withdrawals from a controlled trust account of controlled trust moneys properly required for payment in the execution of the trust concerned or moneys which for any reason have been paid into the controlled trust account by mistake or in contravention of the regulations.		
What authority does the regulator have over these monies?	The SRA has a power to carry out an investigation in relation to compliance with the Solicitors Accounts Rules (and its other rules) and can require production of documents and records for that purpose. Where there is a breach and it is in the public interest the SRA can intervene into the firm whereby it takes control of all practice money and practice files.	None.	If at any time there is a reasonable apprehension on the part of the Council: (a) that a regulated person has not complied with, is not complying with or may not comply with rule 6, or (b) that the practice of the regulated person has been, is being or may be being carried on in such a manner as may put at risk the interests of the public or the interests of the profession, the Council may authorise a person to conduct such investigation of the regulated person and his practice as the Council may consider appropriate. A regulated person shall provide a person authorised by the Council under rule 6.18.3 or 6.18.4 reasonable co-operation in the conduct of that person's inspection or investigation (as the case may be) including, without prejudice to the foregoing generality, the production of practice information as such person may reasonably require and, in the case of an investigation, the granting of authorisation (including by way of mandate) to contact clients or third parties for the production by such clients or third parties of	Controlled and non-controlled trust accounts are reviewed as part of any audit carried out on any practice. Audits are carried out roughly once every 5-7 years. If there is a specific complaint made regarding a solicitor/practice, an investigating accountant has the power to carry out an investigation into the account keeping at the practice and this may result in the referral of the solicitor to the Solicitors Disciplinary Tribunal.	Any solicitor must at the time and place determined by the Society produce to any person appointed by the Society any records, papers, client and controlled trust matter files, financial accounts and other documents, and such other information as may be required by the Society to assess compliance with these Regulations. The Society may also use any report or information obtained by its appointee to raise enquiries as to the solicitor's overall professional conduct.	The attorney can be struck off/suspended from practice/fined by the regulator if the trust account rules are breached. If the account is not in order a curator would be appointed.

			documents, records and other information as such person may reasonably require.			
What are the controls/security features?	There are no direct structural controls such as a requirement for the money to be controlled by more than one person. However, the solicitors accounts rules are prescriptive as to the circumstances in which the money can be transferred out of client account. Breach of the Solicitors Accounts Rules can lead to disciplinary action.	For money held by solicitors - See England and Wales Solicitors column. For money held by BARCO - An escrow service is an arrangement made under contractual provisions between transacting parties, whereby an independent trusted third party, in this case BARCO, receives and disburses money for the transacting parties, with the timing of such disbursements dependent on the fulfilment of contractually-agreed conditions by the transacting parties. Barristers will ask their clients to pay funds for fees, disbursements, settlements or other costs associated with legal services into a specific BARCO bank account using a unique reference number. Once the funds are received by BARCO, the parties shall have a contractual right only to be paid or repaid in accordance with the agreement. When funds are required to be released from that account, the barrister liaises with BARCO to organise that transfer which must comply with what has been agreed in the contract.	Every practice unit shall designate one or more of its managers as Cashroom Manager. A Cashroom Manager will be responsible for the supervision of the staff and systems employed by the practice unit to implement the provisions of rule 6 and for securing compliance by the practice unit with the provisions of rule 6. In the case of a sole practitioner, the sole practitioner shall be the Cashroom Manager. A Cashroom Manager shall: (a) use reasonable endeavours to advance and maintain the competence of all officers and employees of the practice unit; (b) adequately supervise or arrange for the adequate supervision of all such officers and employees; and (c) adequately train or arrange for the adequate training of all such officers and employees; in each case so far as the duties of such officers and employees involve compliance with rule 6.	The principal or partners of a firm must ensure compliance with all accounts regulations. Partners have a joint and several responsibility in the matter. Every firm has to report on how they hold their trust moneys once a year. All controlled trust moneys must be paid into a controlled trust account and non-controlled trust moneys into a non-controlled trust account. Accounts must be opened and maintained solely for the purpose of the particular trust concerned. It is a breach of the regulations for a debit balance to arise on any controlled trust ledger account, or for a solicitor to discharge personal or office expenditure from a controlled or non-controlled trust account. It is also a breach of the regulations for a controlling trustee, having received controlled trust moneys to fail, without reasonable cause to pay such moneys to the appropriate controlled trust account and further, it is a breach of the regulations for the controlling trustee, having received controlled trust moneys to fail to record such receipt as part of his/her accounting records.	The Solicitors Accounts Regulations 2014 are prescriptive as to the circumstances in which the money can be transferred out of the client account.	The trust audit certificate, provided by a registered auditor, is the most important control.
What are the vulnerabilities?	<ul style="list-style-type: none"> •holding, and in some cases simply paying, client money in office account, •paying client money into 	For money held by solicitors - See England and Wales Solicitors column. Where money is held by		Unless a complaint is made or there is a reason to alert the Society to a particular firm, audits are held on		Regulatory efficiency; temptation to steal by miscreant attorneys; delays in detection; delays in prosecution.

	<p>the wrong client account, <ul style="list-style-type: none"> •unauthorised withdrawals from client account, •fraudulent withdrawals from client account, •making a secret profit (e.g. marking up disbursements with an “admin” element), •use of client account as a banking facility, •failing to pay interest due to client, •failing to account to client promptly for excess balances on client account at the conclusion of a matter, •failing to keep adequate accounts, •paying money to one client only where the instructions are joint instructions, •paying client money to the wrong third party, •holding client money outside of client account either when not done because it is in the client’s interests or when done as a general or blanket policy, •withdrawal of costs from client account before a valid bill has been delivered to the client, •placing money on account of costs into client account or withdrawing money on account of costs before a valid bill has been delivered. </p>	<p>BARCO, there are fewer vulnerabilities, as the money is only released at the clients consent and in accordance with an agreement. Parties shall have a contractual right only to be paid or repaid in accordance with the agreement. When funds are required to be released from that account, the barrister liaises with BARCO to organise that transfer which must comply with what has been agreed in the contract. All funds received by BARCO remain in a segregated BARCO Client Monies Account for the term of the legal services. This segregated account is maintained separately from all other bank accounts of BARCO and is protected by insurance.</p>		<p>average once every 5-7 years. It is very much up to the firm/partners/principal to ensure trust monies are held and dealt with appropriately and in accordance with the regulations.</p>		
<p>What is the cost?</p>	<p>No direct costs.</p>	<p>For money held by solicitors - See England and Wales Solicitors column. For money held by BARCO - Normally, the cost is incurred by</p>	<p>No direct cost.</p>	<p>There is no extra cost as such for the lawyer. There is no additional element to the practising certificate fee.</p>	<p>No direct cost.</p>	<p>The cost must be viewed in relation to the risk being mitigated. There are 23,000 practicing attorneys in South Africa, and in 2014 the Attorneys Fidelity Fund made contributions towards the</p>

		the Barrister. The exceptions are if a client decides to fund the provision of legal services with a credit or debit card (there will be approximately a 2% surcharge on the value of the funds transferred) or if either party closes the account earlier than agreed. Additionally, all costs incurred in sending or arranging the transfer of the funds remain the responsibility of the client.				cost of trust account audits totalling R43,5 million. That is an average cost of R2000 per attorney.
Who receives the benefit of the interest? How is it used?	<p>The client. A solicitor must account to the client or that person or trust for interest when it is fair and reasonable to do so in all the circumstances.</p> <p>A solicitor is not required to pay interest on money held for the following: the payment of a professional disbursements; if the client has requested a delay in settlement; on money held for the Legal Aid Agency; on an advance from the client under rule 14.2(b) to fund a payment on behalf of the client or trust in excess of funds held for that client or trust; or if there is an agreement to contract out of the provisions of this rule under rule 25.</p> <p>A solicitor must have a written policy on the payment of interest, which seeks to provide a fair outcome. The terms of the policy must be drawn to the attention of the client at the outset of a retainer, unless it is inappropriate to do so in the circumstances.</p>	<p>For money held by solicitors - See England and Wales Solicitors column.</p> <p>For money held by BARCO - All interest earned while the funds are in the BARCO account, following the day after receipt, is passed on to the client. BARCO may amend the interest rate immediately without notice and, if it does, it will notify the client within five business days of any such amendment.</p> <p>Any interest owing shall be calculated at the interest rate from the following business day after receipt. Payment of interest is subject to the funds being in excess of £250 and held over a period of two or more business days. Any interest will be paid to the client when the escrow account closes upon termination of the legal services.</p>	<p>The client. If it is likely that interest is going to be earned (given the amount and length of time being held) the practice unit shall as soon as practicable place such money or, as the case may be, such part thereof, in a separate interest bearing client account in the title of which the client's name is specified and shall account to the client for any interest earned thereon, failing which the practice unit shall pay to the client out of its own money a sum equivalent to the interest which would have accrued for the benefit of the client if the sum it ought to have placed in such an interest bearing client account. Interest shall not require to be earned for a client where the amount of interest which could be earned would be likely to be less than such amount as the Council may from time to time prescribe.</p> <p>Only, money held by a practice unit for or on account of a client:</p> <p>(a) for the purpose of paying stamp duty, recording dues or other outlays on behalf of the client; or</p> <p>(b) for or to account of the practice unit's professional</p>	<p>The provisions on interest on client moneys are contained within the Solicitors Account Regulations 2014. The provisions have been re-drafted for clarity regarding a solicitors obligation to account for interest on client moneys. Where client moneys are held in a dedicated account (that is, an account opened and kept by the solicitor in respect of a specific client), the solicitor discharges that obligation by ensuring that all interest that accrues on such account is lodged to the credit of that account as additional, as the case may be, client moneys, controlled trust moneys, non-controlled trust moneys or insolvency arrangement moneys. Where client moneys are held in a general client account, a solicitor discharges the obligation by accounting for all interest, in excess of 100 euros, that would have been earned on such moneys had they been held as an individual amount to the credit of an interest-bearing dedicated account of the solicitors choosing at the</p>	<p>When a solicitor holds money in a separate designated client account for or on account of a client, the solicitor must account to the appropriate person or body for all interest earned on the account. If a solicitor holds money for a client in an account opened on the instructions of the client under regulation 14.1, the solicitor must account to the client for all interest earned on the account. Solicitors must aim to obtain a reasonable rate of interest on money held in a separate designated client account, and must account for a fair sum in lieu of interest on money held in a general client account (or on money which should have been held in a client account but was not). The sum in lieu of interest for money held in a client account (or on money which should have been held in a client account but was not) must be calculated:-</p> <p>(22.2.1) on the balance or balances held over the whole period.</p> <p>Regulation 22 - Amount of interest</p> <p>25 (22.2.2) at a rate not less than that which would have been earned if the money had</p>	<p>The Fidelity Fund is the beneficiary of interest generated on trust money which is in transit via the trust current account. Once that money reaches a client investment account, the client benefits. The money is used to pay claims submitted by members of the public, arising out of the misappropriation of trust money. The Fund also pays the premium for the profession's PI cover (at the moment, but this will be discontinued in the future, when premiums will be collected from the profession). Additional funding is provided to fund law clinics, legal aid, bursaries etc.</p>

	The interest paid must be a fair and reasonable sum calculated over the whole period for which the money is held.		account where said account has been rendered, shall not be regarded as clients' money.	bank to the practice. Essentially, if the amount of interest is or would have been over 100 euros, the client receives the benefit.	been held in a separately designated client account appropriate to the matter or transaction and taking into account any Guidance issued in accordance with Regulation 21.3. any client, including one of joint clients, or a person funding all or part of a solicitor's fees, may apply to the Society for a certificate as to whether or not interest, or a sum in lieu of interest, should have been paid and, if so, the amount; and (23.2) if the Society certifies that interest, or a sum in lieu of interest, should have been paid, the solicitor must pay the certified sum.	
Does the regulator maintain a fund to compensate clients for the theft of client trust funds by a lawyer?	<p>The SRA holds and maintains a fund called the Solicitors' Compensation Fund ("the Fund") for making grants in respect of compensation claims.</p> <p>Every solicitor, REL, RFL, recognised body and licensed body shall make contributions to the Fund. Any unpaid contributions may be recovered as a debt due to the Law Society.</p> <p>The primary object of the Fund is to replace money which a defaulting practitioner or a defaulting practitioner's employee or manager has misappropriated or otherwise failed to account for. The applicant need not necessarily be or have been the defaulting practitioner's client.</p>	<p>For money held by solicitors - See England and Wales Solicitors column.</p> <p>For money held by BARCO - Clients are entitled to compensation for any unauthorised payments. BARCO maintains insurance in the event that losses are suffered as a result of fraudulent activity or incompetent actions.</p>	<p>A fund called the "The Scottish Solicitors Guarantee Fund" is held by the Scottish Law Society (controlled and managed by the Council). The fund exists to protect clients who have lost money because of the dishonesty of a solicitor or a member of their staff. The fund is paid for entirely by solicitor firms without the use of taxpayer money from the government. The Guarantee Fund is a fund of last resort and in most cases will only compensate those who have exhausted all other options of recovery. Special consideration can be given to fund payments for ongoing transactions with a trading solicitor firm where a Judicial Factor has been appointed. However, this will always depend on the circumstances of the individual case. The award of a grant is discretionary and is decided by the Society's Guarantee Fund</p>	<p>There is a compensation fund operable which all practising solicitors contribute to on an annual basis. A client of a solicitor may claim on the fund if they have lost moneys through the dishonesty of the solicitor which they either gave to the solicitor themselves, was received by the solicitor on their behalf and/or was to be passed on to them or others.</p>	<p>The Society holds a fund known as 'the Compensation Fund' which is maintained and administered in accordance with Schedule 2. Where the Council, on an application for a grant being made to the Society, are satisfied that a person has suffered loss in consequence of dishonesty on the part of a solicitor, or of an employee of a solicitor, in connection with that solicitor's practice or purported practice as a solicitor or in connection with any trust of which that solicitor is or was a trustee then, subject to the provisions of Article 58, the Society may, if the Council think fit, make to that person a grant out of the Compensation Fund for the purpose of making good or mitigating that loss.</p>	<p>The Attorneys Fidelity Fund ("the Fund") is a statutory body established and regulated by the provisions of the Attorneys Act of 1979 ("the Act"). In terms of the Attorneys Act, 1979, the primary purpose of the Attorneys Fidelity Fund is to reimburse members of the public who may suffer monetary loss as a result of the theft of money or property entrusted to an attorney.</p>

	<p>It is also an object of the Fund to provide compensation in respect of the civil liability of a defaulting practitioner or a defaulting practitioner's employee or manager who in accordance with the SRA Indemnity Insurance Rules should have had, but did not have, in place a policy of qualifying insurance against which a claim could be made in respect of such civil liability.</p>		<p>Committee, which is made up of experienced solicitors and people from outwith the legal profession altogether.</p>			
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