



The September Fest 2020

Technical Stream

Solicitors Accounting & Reporting

Presenter:

Colm Owens - OmniPro

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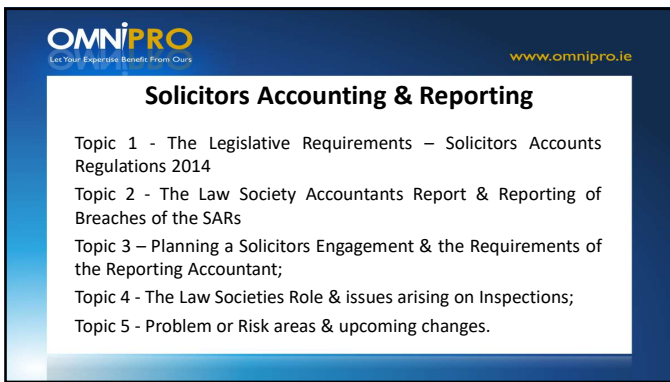
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1



2



3




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The Solicitors Accounts Regulations

- Solicitors Accounts Regulations 2014 Require solicitors to:
 - Pay client money into a client bank account in a licensed bank in the state.
 - Keep office moneys and personal moneys out of the client account
 - Withdrawn moneys properly (i.e. seek authorisation for payment to or on behalf of the client as required).
 - Make it clear to clients that moneys held are or will be applied in satisfaction of fees
 - Account for interest on client moneys to the client accounts (specific client accounts only)

4




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The Solicitors Accounts Regulations

- Solicitors Accounts Regulations 2014 Require solicitors to:
 - Open an office account and pay all fees into the office or client account
 - Furnish a client with a bill of costs that specifies the professional fees
 - Maintain proper books of account at all time in particular client and office ledger
 - Prepare balancing statements at minimum 6 monthly intervals.
 - Undisbursed outlays are client moneys

5




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The Solicitors Accounts Regulations

- Solicitors Accounts Regulations 2014 Require solicitors to:
 - Within 3 months to withdraw money to which solicitor is beneficially entitled
 - Lodge mixed moneys to client account
 - Ensure Insolvency arrangement moneys are in an insolvency arrangement accounts only
 - Lenders cheque or draft can be endorsed over
 - Debit balances for personal office expenditure are prohibited
 - Interest in a general client deposit account is not client moneys

6



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The Solicitors Accounts Regulations

- Solicitors Accounts Regulations 2014 Require solicitors to:
 - Maintain proper books of account and such relevant supporting documents to enable client money to be recorded and appropriately vouched
 - Register of bank accounts
 - Obtain returned paid cheques.
 - Overdrawn (debit) ledger balances prohibited
 - Submit an annual accountants report to the Law Society

7




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Solicitors Accounting & Reporting

Law Society Accountants Report & Reporting of Breaches of the SARs

8



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Law Society Accountants Report & Reporting of Breaches of the SARs

The Law Society Accountants Report Contains:

- Opinion of the reporting accountant as to the Solicitors Compliance with the Regulations
- Balancing statement setting out the following
 - Gross liabilities as shown by ledger account balances in respect of clients, controlled trusts and insolvency arrangements
 - Balance on the control accounts
 - Total moneys held in client accounts, trust accounts and insolvency arrangement accounts
- Matters in which the Regulations have not been complied with
- Form of Acknowledgement signed by the solicitor/ compliance partner.

9



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Law Society Accountants Report & Reporting of Breaches of the SARs

Key breaches to note – Debit balances on client ledger

- It is a breach of the Regulations for a debit balance to arise on any client ledger account, controlled trust ledger account or insolvency arrangement ledger account, unless it is totally offset by a credit balance arising on another client ledger account/controlled trust ledger account/ insolvency arrangement ledger account in respect of the same client within the client ledger/controlled trust/insolvency arrangement respectively;
 - Regulation 7(2)(a) – client ledger accounts;
 - Regulation 18(4)(a) – controlled trust ledger accounts; and
 - Regulation 23(4)(a) – insolvency arrangement ledger accounts.

10



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Law Society Accountants Report & Reporting of Breaches of the SARs

Key breaches to note – discharging personal / office expenses from client account

- It is a breach for solicitors to discharge personal or office expenses from client/controlled trust/non-controlled trust or insolvency arrangement accounts;
 - Regulation 7(2)(b) – client accounts;
 - Regulation 18(4)(b) – controlled trust accounts;
 - Regulation 20(2) – non-controlled trust accounts; and
 - Regulation 23(4)(b) – insolvency arrangement accounts.

11



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Law Society Accountants Report & Reporting of Breaches of the SARs

Key breaches to note – keeping books and records / interest / office ledger etc.

- Failure to maintain books of account and accounting records and other documents as required by various regulations including regulations 13, 19, 20 and 24;
- The failure to appropriately account for interest in accordance with regulation 8;
- A credit balance to arise on the office side of the client ledger account unless that credit balance is totally offset by a debit balance or balances arising on the office side of one or more client ledger accounts in respect of the same client (regulation 11(5));
- The failure to correct, without delay, where a credit balance arises on the office side of the client ledger account which is not so offset.

12

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Law Society Accountants Report & Reporting of Breaches of the SARs

Other potential breaches;

- Receipt of moneys into and Withdrawal of moneys from client/controlled trust/non-controlled trust/insolvency arrangement accounts;
 - Regulations 4 to 9 - client accounts;
 - Regulations 14 to 18 – controlled trust accounts;
 - Regulation 20 – non-controlled trust accounts;
 - Regulations 21 to 23 – insolvency arrangement accounts.
- Requirement not to leave moneys to which the solicitor is beneficially entitled in these accounts any longer than is permitted by the Regulations – three months after the solicitor becomes so entitled.

13

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Law Society Accountants Report & Reporting of Breaches of the SARs

Appendix 2 of the report – breaches;

- Details of any matters, “other than trivial breaches due to minor clerical errors or mistakes in accounts-keeping”, coming to the reporting accountant’s attention in respect of which, in the reporting accountant’s opinion, the solicitor has not complied with one or more relevant provisions of the Regulations must be disclosed in appendix 2 to the Report;
- Trivial breaches of the Regulations due to ‘minor clerical errors or mistakes in accounts keeping’ need not be disclosed;
- There is an exception made, however, in that all breaches required to be disclosed in Appendix 4 to the report – explanation of differences arising, whether trivial or not, must be included therein.

14


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Law Society Accountants Report & Reporting of Breaches of the SARs

Appendix 2 of the report – breaches;

- Although a breach may be immaterial in the context of the accounting records examined, the immateriality does not necessarily render it trivial.
- A breach of the fundamental principles of the Regulations - for example, lodging client’s moneys to office account, withdrawing an amount from client account in excess of the amount held for that particular client - could not be classified as trivial.

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Law Society Accountants Report & Reporting of Breaches of the SARs

Appendix 2 of the report – breaches;

Whether clerical errors or mistakes in book-keeping may be regarded as trivial breaches will depend not only on;

- the individual amounts involved;
- but also on the nature of the breaches.

16



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Law Society Accountants Report & Reporting of Breaches of the SARs

Appendix 2 of the report – breaches;

Therefore, for a breach to be classified as trivial, the reporting accountant must be satisfied that the breach:

- was trivial in amount; and
- was due to a clerical error or a mistake in book-keeping; and
- was not due to an error of principle; and
- was rectified on discovery; and
- did not result in loss to any client.

In determining whether a breach is trivial the reporting accountant also considers the frequency of occurrence.

17




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Solicitors Accounting & Reporting

Planning a Solicitors Engagement & the Requirements of the Reporting Accountant

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Planning a Solicitors Engagement & the Requirements of the Reporting Accountant

What Makes me a Reporting Accountant

1. Be a member in practice in a recognised accountancy Body, CAI, ICAS, ICAEW, CPA, ACCA
2. If not a member of recognised Body that you have adequate professional experience and competence in the auditing of accounts
3. Has never worked with or for the solicitor who you are being engaged by
4. Maintains sufficient and appropriate indemnity insurance to a level required by the Law Society (minimum level must not be less than €500,000)
5. Is approved by the Law Society

19




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Planning a Solicitors Engagement & the Requirements of the Reporting Accountant

- Perform Acceptance and Continuance procedures checks (required by code of Ethics)
- Agree the terms of Engagement and roles and responsibilities of the parties involved

20




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Planning a Solicitors Engagement & the Requirements of the Reporting Accountant

- Plan your engagement (ISRS 4400)
 - Document the knowledge of the entity
 - The Solicitors internal control environment
 - The types of services provided
 - Confirmation of the bank accounts operated
 - The number of partners of the Firm
 - The Nature, Timing and Extent of Procedures for completing a Reporting Accountants' Report (Tests and work you will be performing)
 - Review of the practicing cert and Professional Indemnity Insurance of the Solicitor

21



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Planning a Solicitors Engagement & the Requirements of the Reporting Accountant

Work to be carried out as per SARs;

- Regulation 28 contains the specific procedures the reporting accountant is required by the Regulations to undertake;
- Regulation 28(2) sets out the 13 steps required for examining the solicitor's compliance with the requirements for client accounts;
- Regulation 28(3) deals with the examination of the solicitor's compliance with the requirements for controlled trusts, non-controlled trusts and insolvency arrangements;
- These steps are designed to allow the reporting accountant to express the required opinion regarding the solicitors compliance with the Regulations.
- The work required in reporting under the Regulations is extensive.

22



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Planning a Solicitors Engagement & the Requirements of the Reporting Accountant

- The scope and extent of tests will be determined having regard to;
 - requirements of Regulation 28; and
 - the particular circumstances of the individual solicitors firm;
- The nature of the evidence will be a matter for professional judgment;
- In determining the extent of his or her work the reporting accountant will examine transactions from different aspects, for example, transactions selected from ledger accounts, bank statements and files;

23




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Planning a Solicitors Engagement & the Requirements of the Reporting Accountant

- The work carried out is extensive but does not amount to an audit;
- The International Standards on Auditing (Ireland) issued by the IAASA do not apply to these engagements;
- However; keep in mind guidance in relation to;
 - ISA (Ireland) 580 Written representations;
 - ISA (Ireland) 530 Audit Sampling; and
 - ISA (Ireland) 320 Materiality

24




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Planning a Solicitors Engagement & the Requirements of the Reporting Accountant

- What should a reporting accountant do:
 - Ascertain particulars of each client, office ,trust, insolvency account
 - Review the accounting records for client ledger accounts for each matter
 - Test check postings to client ledger accounts from records of receipts/ payments
 - Compare a sample of lodgements and payments from bank statements with records of receipts and payments
 - Test check the system of recording professional fees and outlays and of making withdrawals in respect of each professional fees outlays client a/c

25




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Planning a Solicitors Engagement & the Requirements of the Reporting Accountant

- What should a reporting accountant do:
 - Confirm transactions relating to client moneys are evidenced by documents
 - Check the extraction of total client ledger balances, bank reconciliations statements , control accounts
 - Check for debit balances during the year
 - Check office ledger accounts, office accounts statements for client moneys
 - Check the balancing statements and office balancing statement in the accounting period under review: 2 months
 - Check postings to the client ledger control

26




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Planning a Solicitors Engagement & the Requirements of the Reporting Accountant

- What should a reporting accountant do:
 - Check discretionary payments to client account, trust money, interest, replacement of fees incorrectly drawn, outlays on account
 - Check solicitor maintaining evidence of outlays disbursed out of office moneys
 - Requisition information explanations as required
 - Listing of trust and insolvency arrangement accounts
 - Check extraction of ledger balances, bank reconciliations and control accounts
 - Test check transactions through client, trust and insolvency arrangement accounts.

27




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Planning a Solicitors Engagement & the Requirements of the Reporting Accountant

- What should a reporting accountant do:
 - No requirement to extend review wider than the accounting records along with the information and explanations from the solicitor or from the solicitors bank or banks
 - No requirement to enquire into documents of title, or SE or other securities
 - No requirement to enquire into solicitors compliance with Personal Insolvency Act
 - However; if evidence of non compliance carry out further examination
 - Solicitors duty to furnish documents

28




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Planning a Solicitors Engagement & the Requirements of the Reporting Accountant

- What should a reporting accountant do:
 - Need not produce entire file if breach of confidentiality to the client
 - If documents not produced qualify the report
 - If 2 or more place of business or solicitor is partner in associated firms then must the same accounting date and same reporting accountant
 - Closing report must cover up to the date solicitor ceased to hold control receive or pay client moneys

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Solicitors Accounting & Reporting

The Law Societies Role & Issues Arising on Inspections

30



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The Law Societies Role

The Law Society Monitor Compliance through the Reporting Accountant furnishing them with the annual accountants report on the solicitor.

As part of the Law Society Inspection and monitoring process, Law Society Inspectors inspect the books of account of solicitors practices for the purpose of investigating whether there has been compliance with;

- the Solicitors Accounts Regulations;
- AML requirements; and
- other misconduct (see below).

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The Law Society's Regulatory Objectives

- Protect the public
- Protect clients' interests in particular clients' moneys
- Protect the reputation of the legal profession
- Minimise claims on compensation fund
- Build & Maintain public confidence in Regulatory Systems for Solicitors
- Ensure solicitors adopt policies and procedures to prevent and detect the commission of money laundering and terrorist financing.

32




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Legislation to regulate Solicitors

- Solicitors Act 1954 to 2015
- Solicitors Accounts Regulations 2014 (Misconduct disclosed by accounting records)
- Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to 2018
- Guidance for Solicitors on their AML obligations
- Solicitors (Money Laundering & Terrorist Financing) Regulations 2016
- 2018 AML Guidance
- Legal Services Regulation Act 2015

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Powers under Solicitors Acts & Legal Services Regulation Act


Dishonesty

- S 19 1960 Act /S 27 1994 Act : Power to take up files
- S 20 1960 Act /S 28 1994 Act : Control of solicitors bank accounts/ assets

Misconduct

- S 58 1994 Act : Suspension of a practicing certificate
- S 59 1994 Act: Imposition of conditions on practicing certificate
- S 60 1954 Act / S31 of the 1994 Act: Intervention death, incapacity
- S 68 1994 Act ; Charges to clients
- S 150 LSRA 2015
- Regulation 35(6) SARS 2014: Costs of the investigation
- Regulation 35 (6) SARS 2014: Referral to Legal practitioners Disciplinary Tribunal

34




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Law Society inspections

- Risk based inspections**
 - Firms who fail to fulfil their statutory obligations to file accountants reports, application for practicing certificates or put in place their professional indemnity insurance, on time
 - Qualified annual accountants reports
 - Complaints/ Enquiries
 - Previous Law Society inspections
 - Judgement debts
 - Media reports
 - Expressions of concern by Solicitors, Gardaí, Banks etc.
- Routine inspections**
 - New firms 3 years and 5 years thereafter

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Issues arising on inspections

- Record keeping-
 - Proper accounting records and sufficient supporting documentation to enable transactions to be adequately vouched.
 - Separate trust accounts maintained
 - Suspense & Temporary client ledger accounts
- Recurring mistakes with client account moneys
- Fees/ Unauthorised withdrawals
- Delays in dealing with client matters
- Viability issues
- Solicitors debt problems
- Loans from, to, for and between clients

36




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Record keeping

- No books of account maintained.
- Books of account written up in arrears/ backdating entries
- Transactions not recorded until transaction clears the bank
- Accounting records not updated for “audit adjustments”
- Inadequate narrative
- Suspense & Temporary client ledger accounts

37




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Record keeping

- No office ledgers
- Office credit balances
- Bills of costs not recorded on the office ledger
- No record of receipt of fees
- 6 monthly balancing exercise not carried out (within 2 months)
- Insufficient relevant supporting documentation on file
- Not obtaining returned paid cheques
- Separate solicitors executors accounts not being maintained

38




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Recurring mistakes with client moneys

- Overpayments to or on behalf of clients
- Errors in payment to or on behalf of clients
- Stamp duty and land registry fees lodged/ held in office account
- Client money lodged to office
- Personal expenditure paid from client account
- Wages and drawings taken from client account

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Fees/ Unauthorised withdrawals

- Money transferred from client to office account without client authority
- Transferring fees before issuing clients with a bill of costs
- Transfers from client to office account not allocated to any client
- Transferring fees from client account to office account when no fees held in client account in respect of that client.
- Money transferred from one ledger account to another

40



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Issues arising on inspections

Viability issues

- Borrowing money from clients with providing client with ILA
- Substantial unpaid tax liabilities
- Inability to service bank debt
- Inability to stay within permitted bank overdraft level
- Reducing fee income and / or increasing overheads
- Attachment orders on office account
- Judgement debts leading to conditions on practicing certificates

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Solicitors Accounting & Reporting

Problem or Risk Areas & Upcoming Changes

42

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The Problem or Risk Areas

- Service area of heightened risk identified in recent law society inspection
 - Probate
 - Estates
 - Litigations cases

43

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The Problem or Risk Areas

- Problems for the accountants
 - Books of account won't always show the deficit
 - False misleading entries in the books of account
 - Transactions deliberately posted to incorrect ledger a/c
 - Undisclosed bank accounts- transactions not recorded
 - Unauthorised withdrawals by cheque payable to banks

44


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The Problem or Risk Areas

- Problems for the accountants
 - Falsified files- complete files
 - Documents placed on or removed from files
 - Large sums stolen from a small number of clients
 - Collusion between the dishonest solicitor bookkeeper and / or third parties

45




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The Problem or Risk Areas

- Accountants areas of weakness in reporting:
 - Reports not submitted on time (accountant or solicitor at fault?)
 - When doing reporting work, accountants check specific transactions and do not look at overall client matter files
 - Ensure no Dr Balances in Client a/c's & no Cr balances in Office a/c's
 - Accountants do not take a step back and look at unusual activity or transactions or slow moving / late transactions in year.
 - Review reconciliations and does the general trend of transaction make sense (i.e. probate, step process in performing the work and transactions that take place, House sale etc)

46




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The Problem or Risk Areas

- Accountants areas of weakness in reporting:
 - Long standing amounts o/s cheques or balances are they genuine and valid
 - Balance on account for reporting months is dormant however this does not mean balance is dormant for year and accordingly accountant does no work at all on account. Where the balance has been dormant for the period review is sufficient
 - Where there is more than 1 partner an increased risk and transactions and client matter files should be selected from all partners

47



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New Regulation Proposals

Solicitors

- Balancing dates at quarterly intervals to be completed within one month.
- Obligation to review client balances for undue or unnecessary delays
- Aged analysis of client ledger balances outstanding more than one year.
- Obligation to furnish statements of account to clients on completion.
- Obligation to return any moneys held to clients when transaction completed.
- Prohibition on borrowing from, lending to, organising loans between, clients

48



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New Regulation Proposals

Reporting Accountants

- File accountants annual reports within 3 months of accounting date.
- Accountants report to include an aged analysis of client ledger balances with explanation of balances outstanding for more than one year.
- Requirement (with suitable legal protections)to report the suspicion of a deficit directly to the Registrar of Solicitors as soon as practicable.
- Notify Society of resignation within 7 days.

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Why OmniPro

Our Why -

To facilitate accountants achieve extraordinary results in their business so they can help their clients achieve extraordinary results in theirs.

50



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Why OmniPro

How We Do That –

- We understand accountants
- We connect with accountants.
- We learn about accountants so we can understand them.
- We work out what accountants want and need
- We find the best solution for accountants in any given situation

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Why OmniPro

What We Do -
We provide accountants with information products, consulting and training in the areas of;

- practice management, business development & marketing;
- company secretarial & taxation;
- audit & financial reporting;
- professional regulation and disciplinary defence.

52

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53
