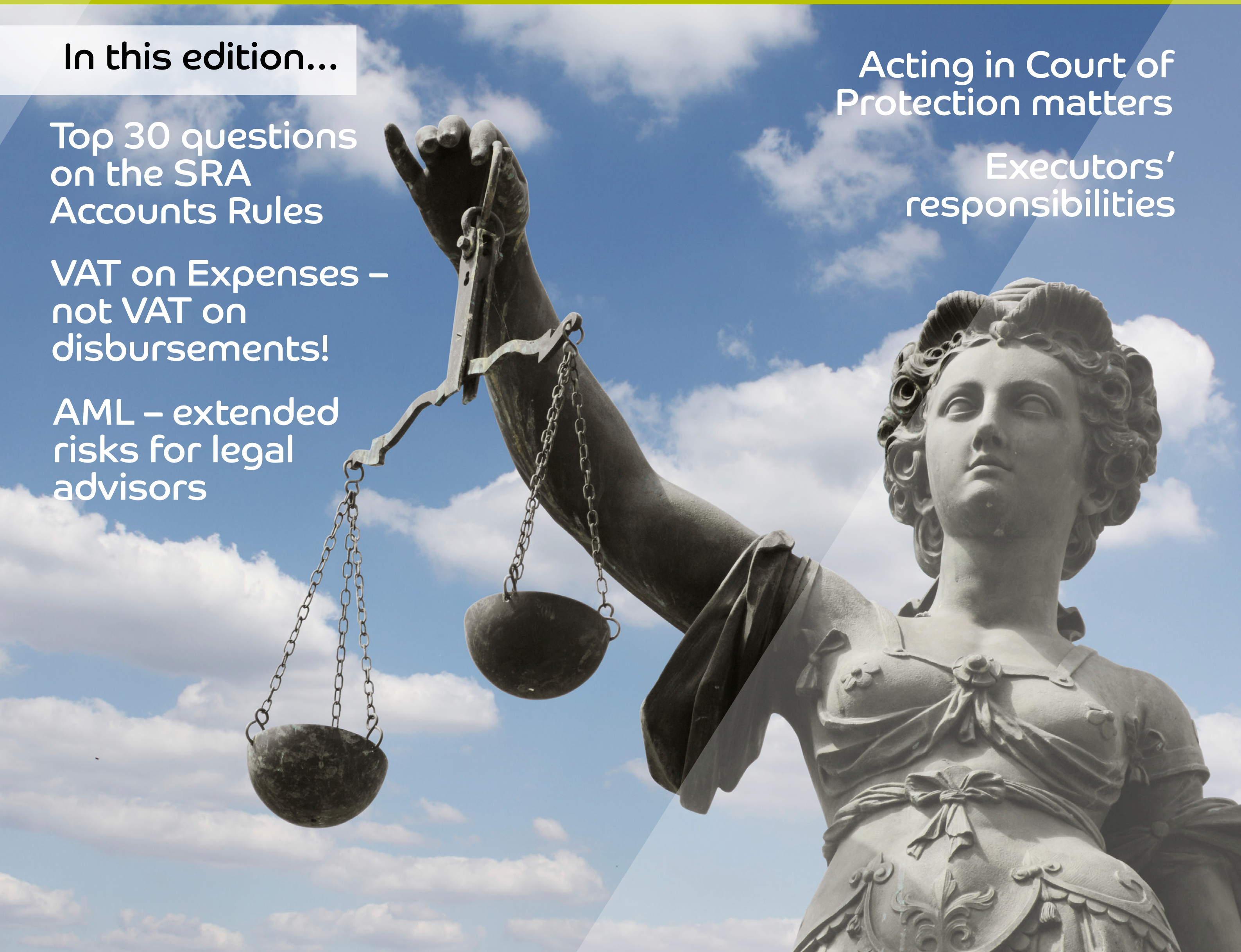
Spring 2020

the law

Working with The Law Society

Armstrong Watson's specialist publication for the legal profession



In this edition...

Top 30 questions on the SRA Accounts Rules

VAT on Expenses – not VAT on disbursements!

AML – extended risks for legal advisors

Acting in Court of Protection matters

Executors' responsibilities

Plus an interview with...

David Mulholland - Business Development Manager at Brooks Macdonald

ArmstrongWatson®
Accountants, Business & Financial Advisers
A track record of providing solutions to the legal profession

In this edition...

Supporting, Advising and Protecting Law Firms through challenging times

...we're with you

For trusted information and advice on any issue surrounding your business during the Covid-19 crisis please get in touch on 0808 144 5575 or email covid19help@armstrongwatson.co.uk

ArmstrongWatson®
Accountants, Business & Financial Advisers
www.armstrongwatson.co.uk

Cash Flow Management | Commercial Funding | Payroll | Grant & Loan Applications | Restructuring | Investments and Pensions | Remote Working Solutions & Security | HMRC Enquiries

Exclusively working in partnership with the Law Society for the provision of the following services to law firms.

Working with The Law Society

- Strategy Planning Workshops
- Business Plans
- Benchmarking
- Mergers & Acquisitions of Law Firms
- Law Firm Valuations
- Forecasts
- Raising Finance
- Lock-up Reviews
- Pro-active Tax Planning
- Tax Compliance
- Audits
- Accounts Rules Reporting
- Accounts Preparation
- LLP conversions
- Incorporations
- ABS Applications

Welcome

Welcome to the Spring 2020 edition of The LAW, the specialist publication for the legal profession from the legal sector team at Armstrong Watson.

As many of you will know, we host over 60 events for lawyers every year and given the current circumstances relating to Coronavirus, we are having to postpone a large number of them at the current time so it is nice to be able to reach out to you via this publication instead – I hope you are all keeping well.

In this edition, we feature part of an interview of Rosy Rourke by Law Firm Ambition. Law Firm Ambition is a specialist resource for law firms that want to grow, featuring advice and opinion from the industry's foremost experts. It covers everything from growth strategy to client management to marketing your firm for success. Law Firm Ambition was founded by Travelers, Armstrong Watson, Lloyds Bank, Burcher Jennings, The Cashroom, Conscious and Shieldpay – www.lawfirmambition.co.uk/about

Also in this edition we cover a number of topics relating to the advice of law firms to your clients, including:

- Acting for vulnerable clients and in Court of Protection matters
- Executors' responsibilities
- Risks on legal advisors relating to AML
- VAT on expenses incurred in acting for clients (not disbursements again)

Specialists are available from all of our 17 offices, to provide pro-active support and advice to lawyers in compliance and business improvement matters. This publication is designed to allow us to share our collective experience in acting for lawyers throughout the UK.

To find out more on any of the above, including how we can work with you to help you and your clients, please do get in touch with me.

Andy Poole

Andy Poole
Legal Sector Partner
@AW_AndyPoole
andy.poole@armstrongwatson.co.uk

SRA Accounts Rules compliance for law firms FAQs

Rosy Rourke was interviewed by new law firm resource website Law Firm Ambition on the top 28 SRA Accounts Rules compliance questions from law firms; the answers to the first five questions can be found below and the answers to the remaining questions can be found at:
www.lawfirmambition.co.uk/topics/compliance/sra-accounts-rules-compliance-law-firms-faqs

1. When would our reporting accountant need to qualify our Accountants' Report and submit it to the SRA?

Your accountant will be expected to use professional judgement when preparing the report and in deciding if it should be submitted.

The SRA's view is that reports should only be submitted where the breach is material and client money is at risk. A material breach may be one where there is intention to breach the rules, or if there is a significant weakness in the processes and controls in the practice which has led to the breach.

Most firms will have trivial non-reportable breaches. These should still be monitored by the practice in their breach register and reviewed by the reporting accountant, as repetitive trivial breaches may indicate poor systems and controls.

In addition, under the 2011 rules, all 'cease to hold' reports (if your firm ceases to hold client money) would also be delivered to the SRA. This would apply whether a report is qualified or not, and even if the practice still exists but has only changed its legal entity (such as on incorporation). See question 3 below for an update following the introduction of the new rules.

2. What should the reporting accountant provide to the law firm after each year's review?

The reporting accountant must provide the COFA of the practice with a signed copy of the report, whether qualified or unqualified. The COFA should ensure that all managers of the practice have access to and have seen the report.

The report must be signed and delivered to the COFA within six months of the end of the accounting period.

There is no longer a checklist for completion by the reporting accountant.

I would expect the reporting accountant to provide the practice with a management letter which details any breaches (reportable or non-reportable) found through their work, together with pro-active suggestions for improvement. In addition, any best practice points where systems and processes could be improved would also be detailed.

Although it may be agreed with the reporting accountant that they will submit any reports that are required to be submitted to the SRA, the ultimate responsibility for delivery is with the practice itself.

3. What has the impact been of the revised SRA rules since 25th November 2019?

The new rules came into force on 25th November 2019.

Although there was a lot of change, ultimately the underlying principles have remained the same. The focus is still on keeping client money safe.

The main areas of change were as follows:

- A revised definition of client money.
- Obligation to notify a client of a bill of 'costs' prior to transfer, rather than 'fees'. The definition of 'costs' includes disbursements, so it would seem that firms are not allowed to transfer funds from client to office to cover paid disbursements without delivering a bill to the client.
- Under the new rules, monies from the Legal Aid Agency can still be paid into office account. What has changed is the need to either pay unpaid disbursements within 14 days or transfer the unpaid amounts from office to client account. The funds can now remain in the office account until required. It would still constitute a breach should a practice hold funds indefinitely by delaying payments intentionally.
- Only where a practice has shut down and closed its client account are 'cease to hold' reports required to be submitted to the SRA unless requested otherwise.
- If the only client money that a firm holds is payment in advance for fees and disbursements, these monies can be paid into office account. This treatment is optional and is for those firms that do not wish to operate a client account. If you have a client account and wish to continue to operate it, then you can continue as you previously did.
- The introduction of third-party managed accounts as an alternative to holding client monies.

There were no transitional arrangements for the introduction of the new rules. Therefore it is vital that your practice has followed the new rules - and any new internal policies and procedures - immediately following the rule change on 25 November 2019. It is important that all partners, fee-earners and accounts/cashier staff are fully up to date and aware of the new rules.

4. How has the definition of client money changed under the new rules?

Rather than change the entire definition of client money, the revised Rule defines the client money which must be held in client account. Included in the definition is monies paid in advance for fees and disbursements before a bill has been raised.

An exemption is provided for firms where the only client monies held are for advance fees or disbursements. Those monies can now be held outside of client account, so a client account is no longer required.

The revised Rule allows firms to continue to deal with client money in the same way as they did previously.

To help protect clients where advance payments for fees and disbursements are held in office accounts, the client must be informed upfront. The COFA is required to monitor the processes and controls within a firm operating under the exemption. Clients will still have access to the SRA's compensation fund for those monies should the worst happen.

5. What will the new rules mean for our accounting system and processes?

Every practice should be reviewed and updated their policies and procedures and considered any updates required to these in order to implement the new rules.

This process should have been completed, or at least be well underway.

All fee earners, management and finance departments should have been fully trained in the 2019 rules. In addition, training is required around the impact the rules have had on your policies, procedures, systems and controls, to ensure that everyone is implementing them and being compliant.

Rosy Rourke - Legal Sector Director
rosy.rourke@armstrongwatson.co.uk

Law Firm Ambition is a specialist resource for law firms that want to grow, featuring advice and opinion from the industry's foremost experts. It covers everything from growth strategy to client management to marketing your firm for success. Law Firm Ambition was founded by Travelers, Armstrong Watson, Lloyds Bank, Burcher Jennings, The Cashroom, Conscious and Shieldpay.

VAT on Expenses – not VAT on disbursements!

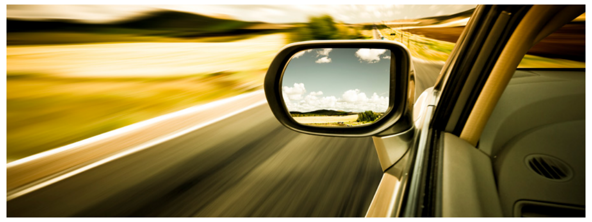
Ever since the Brabners case, plenty has been written about VAT on disbursements, not least by Armstrong Watson, having been the first to share our views on it. We now move on from that to cover a slightly different area – how to treat VAT on expenses, whether or not these costs are passed on to clients.

Dealing with business expenses is an inevitable part of the bookkeeping associated with law firms. It is a particularly tricky area when it comes to VAT compliance because the input VAT recovery can often depend on the circumstances. This article will help to explain when VAT can be recovered - and when it can't!

Travel and Subsistence

Businesses regularly pay expenses to employees to cover their costs of working away from their usual place of work. These costs (hotels, train travel, meals) are incurred for the purposes of the business and therefore VAT is recoverable providing there is a valid VAT receipt.

Employers can also recover the VAT on telephones used by employees – however apportionment should be considered where an employee is allowed to make private calls without charge and this private usage is more than incidental.



Business Entertainment

It is common for law firms to hold events to reward staff or customers – but when is the VAT reclaimable on the costs incurred in running the event?

The general rule states that VAT on entertaining customers is blocked, and that VAT on entertaining employees is recoverable. HMRC define entertaining widely to cover everything provided free of charge, from the obvious such as food and drink to the more obscure such as using yachts. There is an exception to this rule where if the entertainment is only provided to the partners or directors of the business and not to staff in general, then the input VAT is not recoverable.

If both employees and customers were invited to say a hired box at a sporting event, the lines become more blurred and the VAT recovery depends on the circumstances. The input VAT should be apportioned on a fair and reasonable basis unless the employees attend only to be hosts to the customers, when the VAT for the whole event would be blocked from recovery.

When it comes to staff perks, input tax can be recovered on costs such as gym membership if it is for overall staff benefit, and not for specific employees or the business owners. For staff and customer gifts, the input VAT is reclaimable but should be matched by an equivalent output VAT charge – because effectively this purchase is being put to personal use. However this does not apply to one-off gifts below the value of £50 that are not part of a series of gifts.

Personal use

Personal use extends to more than just employee perks. If a car is used for personal and business use then this also has implications for VAT – there are specific rules in relation to how costs should be accounted for in relation to fuel, leases and the purchase of cars.

If a business pays an employee or partner a mileage allowance for the business journeys in their own car then there is a specific VAT element of this mileage claim that can be reclaimed depending on the make and model of the car (and providing a VAT receipt is attached to the claim). However if a business pays for all of the fuel in relation to a car, and it is used privately as well as for business use, then a 'fuel scale charge' should be applied. This is an adjustment on the VAT return to account for output VAT on the personal use element. The fuel scale charge is set by HMRC and is applicable irrespective of the level of private use.

It is becoming more common for vehicles to be leased rather than bought outright. There are many different forms of leases on the market and the VAT treatment of these depends on when or if the title of the ownership of the vehicle passes. If the business leases a car in the form of a monthly rental where the ownership does not pass, then a VAT rule kicks in that makes 50% of the input VAT charged on the lease irrecoverable regardless of the level of private use of the car. This has caught out many businesses where the VAT on the invoice has been reclaimed in full.

On the whole the VAT charged on a car purchased by a business is blocked from being recovered. There are very limited circumstances where VAT can be reclaimed, for example on a pool car that is kept at the business premises, is not allocated to a particular employee, and is subject to a written policy to prohibit private use of the car. HMRC are strict in their application of this rule – it is very difficult to prove that a car is not available for any private use.

VAT is a complex area and if you are in doubt as to the correct VAT treatment of an invoice it is always worthwhile speaking to a specialist.

Emma Forrester - VAT Consultant
emma.forrester@armstrongwatson.co.uk

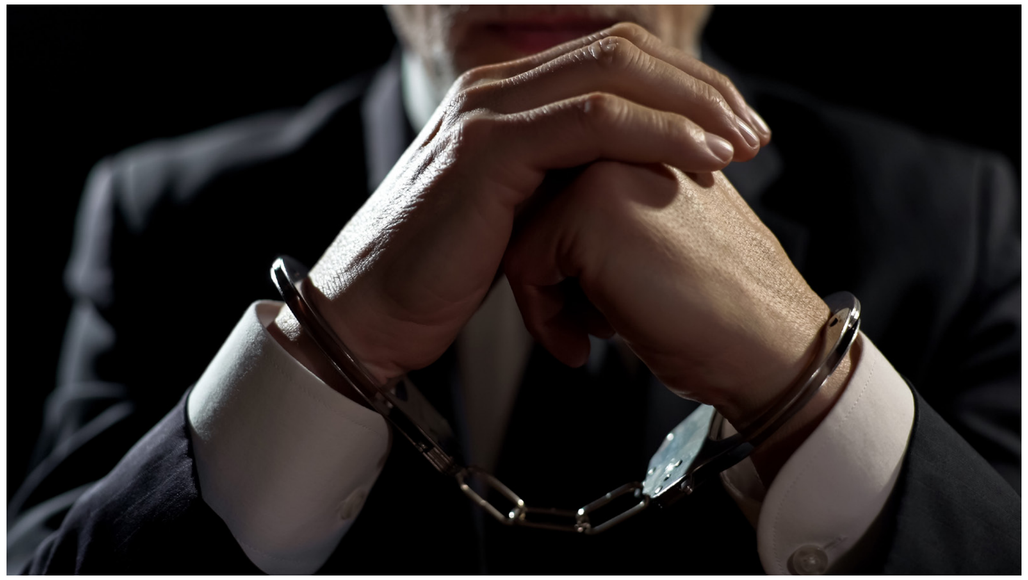
Would you go to prison for your clients?

How much do you really know your client and would you be prepared to go to prison for them?

It's a fact that day to day life for most legal and finance professionals is extremely busy and often highly stressful. On top of the day job, there are increasing levels of regulation governing how you do your job and interact with your clients.

Under the Money Laundering Regulations you are required to know your clients and understand where their finances come from. This includes understanding the ultimate owner of businesses and trusts, as well as trying to discern the rationale for any transactions they are asking you to assist with. Failure to do so can lead to fines and adverse publicity.

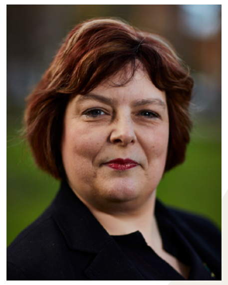
However, there is a much worse threat of not having strong know your client procedures and training. **I spend a significant part of my working life helping to prosecute and defend serious and organised crime and fraud. Over the years there has been an increasing view within police forces that the individuals involved in crime are only able to retain and utilise the proceeds of their crimes with the assistance of professional enablers such as solicitors, accountants, estate agents and wealth managers.** As a result the investigative focus is moving towards professionals who find themselves acting for individuals charged with offences involving significant funds. Over the last few years I have seen numerous solicitors and accountants become the subjects of financial investigations arising from their acting for clients charged with offences. For many of these the professional has ended up in the dock alongside their clients accused of money laundering.



In some instances the professional has been charged but not the ultimate client. If found guilty the professional faces up to 14 years imprisonment, with the courts issuing higher sentences to them on the basis that they should know what they are being involved in. In addition, they are also likely to face proceeds of crime proceedings, where the authorities seek to confiscate any assets generated by their involvement in the money laundering.

Unfortunately the burden on professionals is only going to get worse. The Money Laundering and Terrorist Financing (amendment) Regulations 2019 came into force on 10 January 2020 (MLRs). The MLRs bring tougher requirements to understand the ownership, control and senior management of trusts and companies, as well as a requirement to report discrepancies to Companies House. Anyone providing company services has to register with HMRC and cannot provide their services until the registration has been accepted. There are also new rules for letting agents, money service bureaus, art dealers and anyone providing tax advice. In addition, businesses proposing to introduce new products, business practices or technologies, have to carry out a money laundering risk assessment before they implement them.

So whilst it may not come as second nature to most professionals, being sceptical about what your clients are asking you to do may keep you from being on the sharp end of a criminal investigation.



Liesel Annible - Forensic Accounting Director
liesel.annible@armstrongwatson.co.uk

Executors' responsibilities

Martin Wilman, Assistant Manager within the Restructuring, Recovery & Insolvency team at Armstrong Watson considers the role and responsibilities of an executor when making a distribution out of a deceased estate and the importance of taking due care when either the deceased estate is insolvent, or a potential beneficiary may be bankrupt.

Insolvent estate

It is a common misconception that when a person dies, their debts are automatically discharged. However, this is not the case and any unpaid debts that are not provided for must be settled from the deceased's assets. Where the value of the assets is insufficient to do so, the estate is deemed to be insolvent.

The Administration of Insolvent Estates of Deceased Persons Order 1986 ("the DPO 1986") governs this area and applies where an existing bankrupt dies, or where following the death of an individual, it becomes apparent that their estate is insolvent.

Where a deceased person is not subject to a bankruptcy petition but their estate is deemed to be insolvent, the provisions of their will do not apply and their estate should instead be administered in accordance with the DPO 1986 and s.241A of the Insolvency Act 1986 ("the IA 1986").

Whilst it is possible for an insolvent estate to be administered informally, in most cases a petition for an insolvency administration order ("IAO") should be issued and the executors are entitled to make the necessary application. Once the IAO is made by the court, the estate will be administered by a trustee in bankruptcy.

Following an IAO, an executor owes a number of duties to the appointed trustee, including the submission of a statement of affairs; disclosure of any assets claimable by the estate; attending on the trustee; and providing information regarding the assets, liabilities and affairs of the deceased debtor. Failure to comply with these obligations may be a contempt of court.

Insolvent beneficiary

Assuming that the deceased's estate is solvent, an executor must then establish whether any beneficiary has been declared bankrupt, prior to distributing funds to them. The Law Society has published guidance in this area, which offers executors some clarification on their responsibilities but in short, a failure to check the solvency of the beneficiary may lead to a distribution being made incorrectly and a potential compensatory claim against the executor from a trustee in bankruptcy.

A bankrupt's property automatically vests in their trustee in bankruptcy under s.306 of the IA 1986. The definition of 'property' includes the right to have a deceased estate administered and a subsequent right to a distribution once the administration of the estate is concluded.

The timing of the bankruptcy order will affect the manner and the ability of a trustee in bankruptcy to deal with a distribution.

In the event that an individual is declared bankrupt after a testator's death, the trustee in bankruptcy will be entitled to receive any assets, monetary or otherwise, as defined in the will.

If the bankruptcy order is made before the testator's death and the individual remains un-discharged from their bankruptcy, a trustee has the right to claim the assets as 'after-acquired property' ("AAP") under s.307 of the IA 1986.

Under s.333 of the IA 1986, the bankrupt is required to give notice to their trustee in bankruptcy of the rights to, or any property that they have acquired, within 21 days of entitlement or acquisition. The onus is then on the trustee to formally claim the property as AAP within 42 days, otherwise the asset is lost.

Where an executor is aware that the beneficiary has been declared bankrupt prior to the deceased's death and in advance of making any distribution, they should seek to confirm that the necessary notices have been served and a distribution can then be made to the trustee.

Executors should seek advice if the trustee has failed to serve the notices appropriately, or the bankrupt has been discharged from bankruptcy. In both circumstances, the executors may be able to distribute in accordance with the will.

Practical steps

Whilst these obligations may appear daunting to some executors, there are a number of practical steps that an executor should take to mitigate their risk.

Firstly, the executor should establish the totality of the deceased individual's assets and liabilities and refrain from making any distributions until they are able to do so. In all cases reasonable funeral, testamentary and administration expenses are paid before any other debts. If the executor is in any doubt regarding the solvency of the estate, they should seek immediate professional advice.

If the executor has established that the estate is solvent, they should proceed to clarify whether the beneficiary is, or has previously been, declared bankrupt. Executors should always be mindful of the following:

- Simply relying on a beneficiary to disclose their bankrupt status is not sufficient;
- Neither should an executor rely on an appointed trustee to make direct contact with them;
- Bankruptcy searches should be carried out at the Land Charges Department and the Insolvency Service Online Register as a matter of course and not only when suspicion arises;
- Searches should be made in all known names of the individual, as only exact matches will be recognised and a search must be carried out immediately prior to any distribution;
- If a search returns a positive match, the executor should contact the appointed trustee to confirm it is safe to distribute; and
- Other matters to be aware of are pending bankruptcy petitions, unusual payment requests, overseas beneficiaries and Individual Voluntary Arrangements.

Whilst the Law Society's guidance offers a number of practical solutions to executors, it is important that they seek to protect themselves from the risk of a claim. If there is any doubt about an estate's solvency or a potentially bankrupt beneficiary, advice should be sought immediately and a member of Armstrong Watson's Restructuring, Recovery & Insolvency team would be delighted to assist.

Martin Wilman - RRI Assistant Manager
martin.wilman@armstrongwatson.co.uk

Acting in Court of Protection matters

Investment decisions and responsibilities when acting as a Deputy appointed by the Court of Protection

The Office of the Public Guardian (OPG) published new guidance in May 2019 which, among other things, emphasises the importance of proactive investing and the need to seek financial guidance in the majority of cases.

As a Deputy is appointed by the Court of Protection to look after the affairs of someone else, usually because their client cannot look after their own affairs, it is the responsibility of the Deputy to have the relevant investment experience and knowledge. The OPG guidance suggests that a Deputy should work with a Financial Advisor when they feel that they do not have the relevant expertise. Ascertaining what is sufficient relevant experience and knowledge can be difficult, as can understanding where the responsibility for each element of the decision making lies.

It is also of course important when acting in this capacity to assess whether a personal injury trust should be established. If a trust is not established, this could affect your client in respect of benefits they are in receipt of - either being reduced or even stopping altogether. In addition, your client's future entitlement to benefit support could be affected as well.

Investing the lump sum awarded needs careful consideration as the claimant might not have the ability to work again and this award is vital to their future wellbeing.

What is risk and understanding the principles of investing

Risk is the chance of losing some of the person's money. Generally, the greater the possible returns, the higher the risk an investor will have to take. All investments involve some degree of risk, but by making an informed decision to accept risk creates the opportunity for greater returns, known as the risk/reward trade-off.

The ability and willingness to accept risk will determine the most suitable range of assets for the investment. If you are not comfortable with, or do not understand the risk you're taking on behalf of the ultimate client, you should not invest.

The starting point for any investment strategy should be to think carefully about what you want your client's money to do in the short, medium and long term as your objectives for each of these could be different. As a general rule of thumb, the longer an investment is kept, the more likely it can overcome any short-term volatility. However, you should consider whether this is feasible, bearing in mind the client's financial needs.

Where to invest and the types of returns you can expect

There are techniques for managing risk and the most common is through asset class diversification.

Broadly, there are four main asset classes:

- Cash – you save money in a bank or building society account and receive interest
- Fixed interest securities (also called bonds) – you loan your money to a company or government and receive interest frequently and you capital back at a certain date in the future
- Property – you invest in a physical building. The returns come from both rent and capital appreciation
- Equities (stocks and shares) – you buy a stake in a company and receive potential dividends and capital appreciation

Which assets do you choose?

Nobody can predict which asset class will be the best performing each year and by only investing in one could see potential large differences in returns each year. By investing in products that contain a range of asset classes you can help to reduce the overall risk to which capital is exposed.

Checklist

1. Have you gathered all the financial information you need?
2. Have you been able to get the views of the client?
3. How much money is needed to invest?
4. What type of return is needed?
5. What's the level of risk needed to generate the level of return?
6. Will the investments satisfy the client's current and future needs?
7. Have you set a date to review the plan?

Of course you can act without seeking financial advice, however, if you act as a Deputy and you do not feel your expertise and knowledge satisfy each of these areas set out by the OPG their recommendation is that you seek financial advice.

Under those circumstances, financial advice will be tailored to your individual client's needs. It will consider the sum of money, the objectives and the time frames applicable to that individual. Good financial advice will be reviewed as a minimum once a year and documented to provide a strong audit trail for Court Deputies.

At Armstrong Watson we support Deputies with the combined value of Chartered Financial Advice, Chartered Tax Advice and a range of investment solutions providing active fund management, diversification and strategies designed specifically to combat inflation.

Justin Rourke - Senior Financial Planning Manager
justin.rourke@armstrongwatson.co.uk

An interview with...

Justin Rourke interviews David Mulholland, Business Development Manager at Investment Managers, Brooks Macdonald, on acting for vulnerable clients

Linked with his article on the requirements of Court of Protection Deputies in this edition of The LAW, Justin Rourke, Senior Financial Planning Manager at Armstrong Watson Financial Planning and Wealth Management, extends that theme by interviewing David Mulholland to find out his views on acting for vulnerable clients.

1. The regulatory landscape around vulnerability seems set for more change, how can financial and legal services providers adapt?

In the past few years there has been a cross industry focus on vulnerability caused by a wide range of consumer circumstances that can affect their ability to access and ascertain the value of the services they require. The ageing UK demographic amongst other factors is pushing regulators and service providers to think hard about their target clients and how best to support them in difficult circumstances.

In 2015 the National Audit Office commissioned a report – Vulnerable consumers in regulated industries – which assessed the current position of regulation over service interaction with vulnerable people in the UK. In this report the four industries assessed were financial services, water, energy and communications.

This report highlighted a need for better support for consumers and pointed out three broad effects of vulnerability: exclusion, financial difficulty and poor user experience.

Various industry specific reports on supporting vulnerable consumers have also been released and updated over the years and the Financial Conduct Authority (FCA) is soon to outline the findings of its research via industry stakeholders in the coming months.

Accessibility and inclusion are key themes across the reports from the FCA, Solicitors Regulation Authority (SRA) and the Legal Services Board (LSB) and all of the reports outline a framework of how to identify, record and support vulnerable clients. Completing an audit of the current levels of services offered to vulnerable clients is a great place to start when looking to adapt, as it is likely most financial advisers and law firms will already have a working knowledge of how to deal with a vulnerable client. Following this it is essential that firms train all client facing staff in identifying, recording and supporting client vulnerability.

2. What should clients expect from service providers?

Where a vulnerable client policy is in place to identify, record and support a vulnerable client, then issues can be spotted quickly and the required support can be delivered, and importantly, monitored to assess areas for further development.

One key point of discussion around supporting a vulnerable client is signposting for other essential services. Clients may exhibit a number of needs when interacting with professional service providers such as lawyers and financial advisers, however, each provider should know the limit of their service capability and look to build a network of complementary service providers. A good example of this would be the role of a Court of Protection deputy. This may include managing vulnerable client interaction with a number of services from care and case management to financial planning, holding robust due diligence for each provider employed.

LSB research into consumer vulnerability released in 2017 identified a greater need for clients to be treated with empathy, to receive more assistance in building an understanding of legal concepts and have information and costs delivered with more clarity. The same advice applies for financial services providers and many are working hard to break down the complexity of the services they recommend for vulnerable clients.

BROOKS MACDONALD

3. How should lawyers, independent financial advisers and investment managers approach the wide range of issues that can cause client vulnerability?

The FCA defines the vulnerable as follows; 'A vulnerable customer is someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care.'

The definition in itself gives a clue as to how far ranging the circumstances that cause a customer to be vulnerable can be, and vulnerability can also be permanent or temporary, and could be a result of physical or cognitive difficulties.

The implementation of a vulnerable client policy can support staff awareness of the various issues surrounding vulnerability, which will assist in developing a better understanding of the client and their needs in order to align service delivery appropriately. The vulnerable client policy can become a regular touch point for all staff and offer an opportunity to share examples of how a particular client was assisted. It's clear that firms will want to deliver positive outcomes for all clients, but unless case studies are shared some of these positive outcomes can be lost and not built into a process.

In addition the sharing of vulnerable client policies between firms, perhaps in different sectors, can promote confidence that a vulnerable client referral is made to an appropriately skilled firm and again points to the value in a well-researched signposting network.

Where referrals are concerned it is important for all parties to have a regular update on the client's changing circumstances. Intergenerational planning is a current hot topic, with many firms pointing to the level of assets retained by baby boomers who now face a range of challenges and objectives in their later lives, including covering the cost of care and ensuring protection is in place should they lose capacity to manage their own affairs.

This area of legal and financial services requires regular input from professional advisers and across the generations of families to ensure all aspects of client circumstances are accounted for, and should be underpinned by a common understanding or each firms approach to vulnerability.

4. Mental capacity seems an area of particular concern, what steps can be taken to ensure a consistent and appropriate service is provided?

This is tricky! Mental capacity is defined as the ability to make a decision at a certain time as follows: 'A person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.'

Without delving further into the Mental Capacity Act 2005 (England & Wales) it is clear from the above statement that the capacity to make a decision can be affected by a range of factors, and the assessment of the person's ability cannot be taken lightly.

A good example to align our ageing population to mental capacity is to note that a diagnosis of dementia does not mean a client does not have the capacity to make their own decisions, however - providing advice to this client may require some adjustment from the professional advisers in terms of service delivery, to ensure the client is given every opportunity to understand the services they are looking to use. It is already obvious that the client's family or a third party should be involved at an early stage, although some clients may not appreciate this suggestion.

Education is an important factor to consider here, and I believe that over time as more clients come to understand the regulatory focus on vulnerability, they may become less sensitive to it and appreciate its application via service providers.

More specifically, education is required around the role of an attorney or deputy whether professional or lay, and even of carers acting in some measure at least on behalf of clients in a financial capacity. The earlier this discussion around loss of capacity starts, the better the ability of clients, their families and advisers to work towards a positive outcome.

David Mulholland - Business Development Manager Investment Managers, Brooks Macdonald

0808 144 5575

www.armstrongwatson.co.uk/legalsector

ArmstrongWatson®

Accountants, Business & Financial Advisers

A track record of providing solutions to the legal profession

Armstrong Watson Accountants, Business & Financial Advisers is a trading style of Armstrong Watson LLP. Armstrong Watson LLP is regulated by the Institute of Chartered Accountants in England and Wales for a range of investment business activities. Armstrong Watson Audit Limited is registered to carry on audit work in the UK by the Institute of Chartered Accountants in England and Wales. Registered as a limited company in England and Wales, number 8800970.

This newsletter is a general guide to issues facing the legal sector. It is not a substitute for professional advice which takes account of your specific circumstances. Subjects covered change constantly and develop. No responsibility can be accepted by the firm or the authors for any loss occasioned by any person acting or refraining from acting on the basis of this publication.