

The MoJ's proposal for an ILCA scheme

Speakers: Lucy Dennett and Richard Miller

What we will cover

- Overview of MoJ proposal
- Requirements and processes
- Scheme administration and monitoring/enforcement
- Law Society response
- Next steps
- We will be polling you regularly throughout the session

POLL



Overview of proposals

- The MoJ proposes to claim 75% of the interest on pooled client accounts, and 50% of the interest on individual client accounts
- The funding will not be used for specific access to justice projects, but will be absorbed into general MoJ funding “to help strengthen the justice system”
- Firms would retain their own client accounts, but these accounts would have to meet specific conditions
- The MoJ will employ a Scheme Administrator responsible for overseeing the scheme and monitoring and enforcing compliance



POLL



Law Society initial view

We strongly oppose this proposal

- This adds the MoJ as another regulator to an already heavy regulatory burden
- This will be bad for access to justice
 - The costs currently covered by client interest will have to be passed on to clients where possible
 - Where not possible, e.g. legal aid, this may result in firms stopping providing services
 - There is no assurance the Treasury will let the MoJ keep this money
- The evidence underpinning the proposals is woefully inadequate
- The practicalities have been very poorly thought through

The proposals

What accounts will be included?

- The proposed scheme would apply to “funds held in all client accounts pursuant to activities undertaken by legal service providers in England and Wales who are regulated under the Legal Services Act 2007”
- The MoJ is consulting on whether funds that relate to unreserved activities should also be included

POLL



How much will be payable into the scheme?

- The MoJ is proposing to take:
 - 75% of the interest on pooled client accounts
 - 50% of the interest on individual client accounts
- The consultation includes questions on:
 - Whether the 75% figure should be 90% or 100%
 - Whether individual accounts, or some of them, should be exempt

2 POLLS



Bank account rules

- Accounts will have to meet rules set by the MoJ, e.g. as to the rate of interest and when it is paid
- Agreements to waive interest in return for a waiver of bank charges on office account would no longer be permitted
- You could no longer remit 100% of interest to clients
- There will be no obligation on banks to provide accounts meeting the rules

Administration and enforcement

- The scheme will be overseen and governed by a Scheme Administrator employed by the MoJ
- The administrator would also
 - Monitor your client accounts to check for compliance
 - Work with regulatory authorities to safeguard against and report non-compliance and fraud
- “Appropriate sanctions”, unspecified, will be put in place for non-compliance

Law Society response

This adds to the regulatory burden

- Firms are already overseen by the SRA, the FCA, LeO and the LSB. Legal aid firms also have the Legal Aid Agency.
- This proposal will introduce duplicate monitoring and oversight by the MoJ in addition to all existing regulation.
- It isn't clear what this obligation is. Is this a tax, a levy, sequestration? Firms already pay as much as 54% on profits, and now 75% of client interest in addition.

This will be bad for access to justice

- The costs of providing legal services have to be covered from somewhere
- When interest on client accounts is used, it is money that the client would not have had if they had held their own money in their own account
- Instead, clients will now have to cover these costs out of their own resources
- Where costs cannot be passed on, such as in legal aid, this will contribute further to the economic unviability of continuing to offer services
- Services will thus become more expensive for clients where they remain, and more difficult to find

The evidence underpinning the proposals is seriously lacking

- The gaps in the MoJ's knowledge highlighted by this consultation are stark - questions they ask include:
 - Whether firms hold client money on work other than reserved activities
 - Whether banks foresee any challenges in introducing banking products with the criteria proposed
 - How much interest is typically generated on a single client's funds
 - What reporting activity firms already undertake on client accounts and client account interest

The practicalities have been poorly thought through

- The consultation recognises the scheme will lead to increased costs for businesses, but not the level of such costs or what the consequences will be
- The paper seeks views on whether the scheme should apply to funds held in respect of reserved activities only
- There is no indication that banks will be willing to offer accounts meeting the requirements set out
- Provisions relating to monitoring and enforcement are extremely vague, but will require the MoJ to assess records from every firm's client account for compliance
- There is no consideration as to whether the proposed monitoring requirements may breach client confidentiality
- Some not-for-profit agencies are funded by firms donating client account interest. What will be the impact on these organisations of losing funding?



Next steps

What we have done to date

- We wrote to the minister outlining our concerns about this paper and seeking an extension to the unduly short deadline
- We set up a webpage to provide information on what this means for members
- We issued a press release setting out our initial view, and secured coverage in the Times
- We set up this webinar



Our next steps

- We are gathering feedback from members, including through your responses to the polls today
- We are preparing a detailed response to the proposals
- We are engaging with the banking sector
- We are continuing with our media and political lobbying

What happens post consultation?

- The MoJ will publish its conclusions following the consultation
- We understand primary legislation will be required
- The MoJ will then need to introduce secondary legislation and more detailed information on how the scheme will operate
- We believe the intended date for implementation is likely to be in 2028
- We will continue to challenge the legal, economic and practical problems with this proposal throughout



What can you do?

- Submit your own response to the consultation
- Speak to your MP about the impact this will have on legal businesses in their constituency
- Start considering the financial and administrative implications for your firm

3 POLLS



ANY QUESTIONS?