



Accounts Guidance

To be read in conjunction with Item 10 of the Accounts Code

Payment into Client Account

- i) When a **client account** is being opened, written notice should be given to the **Bank** or **Building Society** concerned in clear terms that the account is to be a **Client Account** and, in particular, that it may not be resorted to for the purpose of setting off against any other account of the body. The **Bank** or **Building Society** should also be asked to acknowledge its acceptance of this in writing.
- (ii) You/the entity may keep one **Client Account** or as many **Client Accounts** as you think fit.
- (iii) Subject to Requirement 10.3, the **CLC** permits schemes proposed by **Banks** to aggregate sums held in a number of **Client Accounts** in order to maximise the interest payable.
- (iv) **Client Accounts** are not intended to provide banking facilities for **Clients**.
- (v) There are criminal sanctions against assisting money launderers – see Anti-Money Laundering and Combating Terrorist Financing Code.

Client Money

- (i) **Client Money** includes money held or received:
 - (a) as agent, bailee or stakeholder;
 - (b) for payment of stamp duty land tax, Land Registry fees and telegraphic transfer fees (this does not become **Office Money** unless an obligation to pay out of **Office Account** has been incurred and the payment is recorded in the office columns of the appropriate **client** ledger account).
 - (c) as a payment on account of **costs** generally.
- (ii) Money held to the sender's order is **Client Money** if accepted and must be held in a **Client Account** unless it is received on the express terms that the cheque or draft (as opposed to the money itself) may not be presented for payment without the sender's consent. In this case you are under a professional obligation to return the cheque or draft to the sender on demand.
- (iii) A payment made by you to a **Client** which is credited to **Client Account** in accordance with requirement 10.4.2 becomes **Client Money** and must be recorded in both the **client** and office columns of the appropriate **client** ledger account.

(iv) You cannot be your own **Client** for the purposes of this Code; if a transaction is conducted for a **manager**, money held or received on your behalf is in principle **Office Money**. However, money received in such a case may still be **Client Money**, e.g.:

(a) where you/the entity act for a lender, money held or received on behalf of the lender is **Client Money**;

(b) where you/ the entity act for a **manager** and his spouse jointly (assuming that the spouse is not also a **manager** in the entity), money received on their joint behalf is **Client Money**;

(c) where you/the entity acts for an **employee** (whether or not a **Licensed Conveyancer**), consultant or director, such person is regarded as a **Client** of the entity and money received on his behalf is **Client Money**, even if that person conducts the transaction himself.

To be read in conjunction with Item 12 of the Accounts Code

Client Account Withdrawal & Transfer

(i) Money held on account of **Costs** and **Disbursements** becomes **Office Money** on the date the bill of **costs** is sent to the **Client** (requirement 12.1.4).

(ii) Money is 'expended' under requirement 12.2.3 at the time when a cheque is despatched, not when it is cleared. Money is also regarded as expended by the use of a credit account so that, for example, search fees, taxi fares and courier charges incurred in this way may be transferred to the **Office Account**.

(iii) Requirement 12.2.4 permits you to transfer from **client** to office **bank** account monies where a direct debit scheme is in operation. A liability to pay out of **Office Account** is deemed to have incurred when the anticipated payment from office **bank** account has been evidenced on a **Durable Medium** and recorded on the office side of the appropriate **client** ledger account.

(iv) The purpose of requirement 12.2.6 is to enable you, with the written authority of the **CLC**, to participate in schemes for automated payments to be made direct from **Client Account**. The **CLC** will generally only authorise individual payments to enable **aged balances** to be cleared.

(v) Bearing in mind note (ii), you should take care in drawing against a **Client Account** cheque or draft which has not yet been cleared. If the cheque or draft should be dishonoured, you will have to make a payment under requirement 10.4.2 to ensure there is no breach of requirement 12.4.

(vi) Similarly, if when acting for a **Client** you withdraw money from **Client Account** on the strength of information that a telegraphic transfer is on its way, but that transfer does not arrive, you will have to make a payment under requirement 10.4.2 to ensure there is no breach of requirement 12.4.

(vii) A **manager** of a body or the **Head of Finance & Administration** of a **Licensed Body** must be able to operate the **Office Account** of the body in order to be able to comply with requirement 12.5.

Withdrawals

(i) Nothing under requirement 12.8 shall prevent any other person from operating such systems or processes in conjunction with an **Approved Person**, provided that such systems or processes cannot be operated by that other person alone.

(ii) Oral authorisations to the **Bank** are no longer permitted without confirmation of such authorisation on a **Durable Medium**.

Withdrawals & Transfers

(i) Monies remaining in **Client Account** that cannot be paid to the **Rightful Recipient** can be dealt with under requirement 12.2.6 (bearing in mind the Aged Balance **Guidance** attached to this Code).

(ii) Provided certain criteria have been met, withdrawals are allowed where the **CLC** has given authority and the balance has been static for over 12 months.

To be read in conjunction with Item 13 of the Accounts Code

Accounting Records

(i) Where **Banks** operate automatic transfers to **Client Accounts** offering a higher rate of interest, separate cash accounts are not required to record these transfers.

(ii) Only **client** ledger accounts in the name of a **Client** are allowed. General or suspense **client** ledger accounts are not permitted.

Separate Designated Accounts

(i) 'Clearly identifiable' means that, looking at the ledger account, both the nature and owner of the mortgage advance are unambiguously stated.

(ii) Although a separate ledger account is not opened for the lender, the mortgage advance credited to the **client's** ledger account belongs to the lender, not to the borrower, until completion takes place.

Improper removal of such funds from a **Client Account** is contrary to requirement 12.4.

Reconciliation Statements

(i) Where, as a result of carrying out the comparisons and preparation of the reconciliation statement under requirement 13.9, any shortfall on **Client Account** is revealed it must be made good **Without Delay** by a payment into **Client Account** in accordance with requirement 10.4.2.

(ii) Where, as a result of carrying out the comparisons and preparation of the reconciliation statement under requirement 13.9, any credit balance on the office side of a **client** ledger account is revealed, it must be rectified by the appropriate action **Without Delay**.

(iii) Any outstanding credit on the *client bank* reconciliation should be cleared by a payment into *client bank* account **Without Delay**. The absence of a corresponding entry at the *bank* may create a shortfall on the relevant *client* ledger account.

To be read in conjunction with Item 14 of the Accounts Code

CLC Monitoring

- (i) Reasons are not required to be given for an inspection.
- (ii) You are required to provide, where required by the **CLC's** appointee, access to any computerised system.

Disciplinary Consequences

(iii) If it appears to the **CLC** that there has been a contravention of this Code, disciplinary proceedings may be taken against you as **Manager** or as an entity under the **Code of Conduct**.

(iv) Where following an inspection instituted under requirement 14.1 it appears to the **CLC** that there is reason to believe you have failed to comply with a provision of this Code, the **CLC** may require you to pay a reasonable sum as is determined by the **CLC** to cover the cost of a further inspection.

(v) Any report made by the **CLC's** appointee may be sent by the **CLC** to the Crown Prosecution Service or the **National Crime Agency** or to any of the accountancy bodies recognised by the **CLC**. It may be used as the basis for a preliminary investigation and may be taken into account by the **CLC** in relation to the possible disqualification of a **Reporting Accountant**. Please see Guidance at 16.7.2.

Interest directions

Without prejudice to any other remedy, a **Client** may apply to the **CLC** for a direction as to whether or not interest should have been earned in respect of **Client Money** held on his behalf by an **Authorised Person**. If the **CLC** directs that interest should have been earned then it may issue a direction as to the sum you pay to the **Client** in lieu of interest.

Deposit Interest

- (i) If appropriate, the **CLC** may require you to obtain an interest calculation from the relevant **Bank** or **Building Society**.

Informed Consent/contracting out

- (i) Whether it is appropriate to contract out depends on all the circumstances, for example, the size of the sum involved or the nature or status or bargaining position of the **Client**.

(ii) The larger the sum of interest involved, the greater your obligation to demonstrate that a **Client** who has accepted a contracting out provision was properly informed and has been treated fairly and reasonably.

To be read in conjunction with Item 16 of the Accounts Code

Accountant's Reports (1)

(i) Even when this Code does not require delivery of a Report, a condition on a **licence** to practise may impose a separate and binding obligation to that effect.

(ii) When **Client Money** is held or received by an entity, any **Manager** will have held or received **Client Money**.

(iii) **Employees** do not usually hold **Client Money**, even if they are signatories on an entity's **Client Account**.

(iv) If an **employee** does hold **Client Money**, an **Accountant's Report** will need to be delivered.

(v) You must apply to the **CLC** for consent to vary the **Accounting Period**.

(vi) When an entity is being wound up, you may be left with **Client Money** which is unattributable or belongs to a **Client** who, despite efforts, cannot be traced. It may then be appropriate to apply to the **CLC** for authority to withdraw this money from the **Client Account** under requirement 12.2.6 (see **CLC's Aged Balance Guidance** attached to this Code).

(vii) It is not a breach of requirement 16.5 for you to retain an independent accountant to write up the books of account and to instruct the same person to prepare and sign the **Accountant's Report**. However, the accountant will have to disclose these circumstances in the **Accountant's Report**.

Disqualification of Accountants

(i) The **CLC** may disqualify an accountant from giving an **Accountant's Report** if:

- a) they have been found guilty by the disciplinary tribunal of their professional body of professional misconduct or discreditable conduct; or
- b) it is satisfied that the **Reporting Accountant** has failed in their **Accountant's Report** to properly identify and explain to the satisfaction of the **CLC** any breaches of this Code.

(ii) In coming to a decision the **CLC** will take into account any representations made by the accountant and their professional body.

(iii) The **CLC** shall notify you if you are likely to be affected by an accountant's disqualification, and may also publish notification of such disqualification in the **CLC's 'Chronicle'** or other publication.

(iv) The **CLC** may impose a £100 penalty for late submission of an **Accountant's Report**.

Accountant's Report (2)

(i) Although requirement 16.12 requires the **Reporting Accountant** to deliver to the **CLC** the Accountant's Report together with the completed checklist, requirement 16.1 requires you to procure the delivery of the **Accountant's Report** to the **CLC** by the **Reporting Accountant** within the due date. The **Reporting Accountant** must provide you with a copy of the **Accountant's Report** and completed checklist.

(ii) Factors to be considered in determining whether a breach is 'trivial' include the amount involved, the nature of the breach, whether the breach was deliberate or accidental, how often the same breach occurred, and the time which passed before discovery and correction (especially the replacement of any shortage).

(iii) If an **Accountant's Report** is qualified only by reference to trivial breaches but which shows a significant difference between liabilities to **Clients** and **Client Money** held, either you or the **Reporting Accountant** must provide the **CLC** with an explanation for this difference, as required by the Accountant's Report Form.

To be read in conjunction with Item 17 of the Accounts Code

General Savings Provisions

(i) Upon receiving a written application from you the **CLC** may waive in writing in any particular case any of the provisions of requirement 16 and may revoke any waiver.

(ii) Nothing in this Code deprives you of your entitlement to money standing to the credit of a **client** ledger account.

Aged Balances

Purpose of *Guidance*

The purpose of this **Guidance** is to help the regulated community resolve the problem of **Aged Balances**; this money cannot be withdrawn from the **client account** without written authority of the **CLC**. The **Guidance** intends to highlight issues which may arise and suggest possible solutions. However, it is up to the individual **Authorised Person** to decide which options best suit their circumstances.

Part 1 of this note sets out ways in which you can avoid or minimise **Aged Balances**; and

Part 2 sets out the procedure which the **CLC** will adopt when it considers whether to give written authority in accordance with requirement 12.2.6 of the **CLC** Accounts Code.

Part 1 ~ How to Avoid Aged Balances - Example Procedure

On Receipt of Instructions: -

1. (a) obtain the **client's bank** details (name and address of **bank**, sort code, account number and name) e.g. by keeping a copy of cheques issued by the **client**;

(b) alternatively, obtain the **client's** credit card details.

Completion Statements

2. (a) "Completion Statement" means an itemised statement of money paid in and out concluding with a balance either owed by or to be paid to the recipient.

(b) Draft Completion Statements should be prepared and checked prior to exchange of contracts.

(c) All Completion Statements (whether in draft or final form) should be checked for accuracy by reference: -
 - (i) to the account or alternatively to their credit card account; and
 - (ii) to the **client** ledger, with evidence from the **rightful recipient** on **Durable Medium**.

Client Ledger Card

3. The **client** ledger card should be checked to ascertain whether a balance remains after the last payment is made and, if so, the balance should be accounted for immediately to the **Rightful Recipient**.
4. It is good practice to ensure that: -
 - (i) the **client** ledger balances are reviewed monthly to identify unexpected or dormant **client** balances;
 - (ii) If a balance is held against a contingent liability, a note is made on the **client** ledger card (alternatively the file) clearly identifying that liability; and
 - (iii) a schedule of **client** balances held for 3 months or more is maintained stating in each case the **client(s)** name(s), file/ledger number, the **Rightful Recipient**, the balance outstanding, the date of last movement and the reason for the balance.
5. Before a file is closed or archived: -
 - (a) the **client** ledger card should be checked to ensure: -
 - (i) no balance is outstanding;
 - (ii) all cheque payments have been cleared by the **bank**;
 - (b) a copy of the **client** ledger card showing a nil balance on both the **client** and **office account** should be placed on the file.

Unpresented Cheques

6. Unpresented cheques should be reviewed on a regular basis.

(a) Unpresented Mortgage Redemption Cheques ~ the **Rightful Recipient** should be contacted within 12 days or no later than one month after payment has been tendered and then at frequent intervals;

(b) All other cheques ~ the **Rightful Recipient** should be contacted after no more than two months after the cheque has been tendered and then at a minimum of two monthly intervals.

7. If a cheque has been lost or remains unpresented after six months: -

(a) a stop should be placed on the original cheque;

(b) the cheque should be written back to the **client** ledger account; and

(c) the monies paid: -

(i) either direct to the **Rightful Recipient's bank** account, alternatively credit card account; or

(ii) at the **Rightful Recipient's** direction.

Retention Monies

8. Where possible you should seek agreement providing for retention monies to be held on terms that provide for payment to a named person at a specified **bank** account if the terms for their release have not been satisfied within a specified period.

9. If no such term has been agreed: -

(a) the file should be reviewed every three months; and

(b) you should seek to obtain such an agreement.

10. It is good practice to maintain: -

(a) a schedule of retention balances stating in each case the **client(s)** name(s), the file/ledger number, the amount of and the reason for the retention and the last date for release; and

(b) a separate note of the reason for the retention and the last date for release on the **client** ledger card.

Aborted or Delayed Transactions

11. Regular contact should be maintained with the **client** where the matter has either aborted or been delayed.

Part 2 - Obtaining Authority from the CLC

1. Requirement 12.2.6 of the *CLC* Accounts Code provides that money may be withdrawn from ***Client Account***, where -

“the ***CLC*** has given written authority for a specific payment to a nominated payee”.

Authorisation

2. The ***CLC*** will consider giving this authorisation as follows: -

- 2.1 where the Aged Balance is less than £20.00:-

(a) the ***CLC*** must be provided with: -

(i) an Undertaking in the following terms: -

“In consideration of the ***CLC*** giving written authority in accordance with Requirement 12.2.6 of the ***CLC*** Accounts Code for the withdrawal of the monies set out in the schedule to this Undertaking (the “Annex”) I/We [names] undertake to the ***CLC*** that I/we shall within 14 days of a request from the ***Rightful Recipient*** pay the sum outstanding as set out in the Annex in accordance with this direction.”

(ii) the Annex which sets out in each case the ***client(s)*** name(s), the file/ledger reference, identifying the property to which the transaction related, the ***Rightful Recipient***, the balance outstanding and the date of last movement;

(b) on receipt of the Undertaking the ***CLC*** may give written authority for withdrawal of the sums set out in the Annex from the ***client account***;

(c) on receipt of the written authority from the ***CLC*** you can transfer the balances as set out in the Annex from ***client*** to office ***bank*** account providing the relevant entries have been made to a suitable office nominal ledger account e.g. “Write Offs” and places a copy of the authority issued by the ***CLC*** on the ***clients’*** file.

- 2.2 Where the Aged Balance amounts to £20 or more but less than £100 the ***CLC*** must be provided with: -

(a) a schedule setting out in each case the ***client(s)*** name(s), the file/ledger reference, identifying the property to which the transaction related, the ***Rightful Recipient***, the balance outstanding and the date of last movement;

(b) a copy of the ***client*** ledger card(s); and

(c) a signed certificate giving brief details of how the balance has arisen and stating you have taken all Reasonable Steps to trace the ***Rightful Recipient*** but have been unable to trace that person.

The ***Rightful Recipient*** is the person to whom monies held by the ***CLC Body*** on ***client account*** are correctly due.

2.3 'Reasonable Steps' are dependent on the particular circumstances and the sum involved. Examples are: -

- attempting to contact the **Rightful Recipient** at all known addresses, by all known telephone numbers and at any known e-mail address, or through Estate Agents;
- attempting to return funds using available **bank** or credit card details of the **Rightful Recipient**;
- contacting known friends/relatives of the **Rightful Recipient**;
- advertising in a local newspaper.

2.4 Where the Aged Balance is £100 or more the **CLC** must be provided with the information set out in 2.2(a) and (b) and, in addition: -

- (a) details of the Reasonable Steps taken to trace the **Rightful Recipient**;
- (b) brief details indicating how the balance has arisen; and
- (c) any other information the **CLC** may request.

2.5 If authority is given by the **CLC** for a withdrawal under paragraph 2.2 or 2.4

it will only be on the basis that a cheque or funds transfer for the sum so authorised must be drawn on the **client account** payable to the **CLC**. On receipt, the cheque will be placed to the credit of the **CLC's Compensation Fund** and utilised for the benefit of such Fund. You should place a copy of the authority issued by the **CLC** on the **clients'** file.

2.6 Where the **Rightful Recipient** cannot be identified, the **CLC** will, in exceptional

circumstances, give authority under Requirement 12.2.6 of the **CLC** Accounts Code for the withdrawal of funds from **client account** on the basis that a cheque or funds transfer for any sum so authorised must be drawn on the **client account** payable to the **CLC**. On receipt, the cheque will be placed to the credit of the **CLC's Compensation Fund** and utilised for the benefit of such Fund. You should place a copy of the authority issued by the **CLC** on the **clients'** file (or if this is not available in a central record hold it on a **Durable Medium**).

2.7 If the **Rightful Recipient** contacts you after funds have been paid into the

CLC's Compensation Fund you should contact the **CLC** with a view to the **Rightful Recipient** making a **claim** for reimbursement on the **Compensation Fund** unless the body is no longer trading in which case they should contact the **CLC** directly.