



Review of the CLC's Accounts Code Guidance

CLC Consultation Paper

February 2020

Deadline for responses: 18 March 2020

Summary and Background

- I. Between 17 April and 21 June 2019 the CLC consulted on proposed changes to the Accounts Code (the Code), which governs the handling of client money by CLC-regulated practices. The CLC has published the first [consultation paper](#) and a [summary of the responses](#) on its website.
- II. The CLC has drafted guidance to assist CLC Practices to comply with the proposed amendments in the draft Accounts Code (Appendix A, for reference only). This second consultation is seeking responses on the draft amended Aged Balances Guidance and the draft TPMA Guidance.

Proposals

- III. The Accounts Code Guidance is now separated into:
 - a. the Aged Balances Guidance (Appendix B), and
 - b. the TPMA Guidance (Appendix C).
- IV. The Aged Balances Guidance has been revised to reflect the changes proposed to paragraph 4 of the draft Accounts Code.
- V. These are that the £10 limit proposed in the first consultation is removed so that CLC Practices can determine whether any balances not exceeding £50 should be transferred to Office Account, paid to a Charity or to the CLC. Where the balance is paid to Office Account or to a Charity the CLC Practice will still remain liable to pay Aged Balances to the Rightful Recipient (paragraph 4.6 draft Accounts Code).
- VI. Any balance of more than £50 (currently £20) must be paid to the CLC (paragraph 4.7 draft Accounts Code).
- VII. TPMA Guidance has been drafted for CLC practices who wish to use a TPMA. It sets out what CLC practices should take into account when advising clients about TPMAs and what they need to tell clients. It also sets out how a practice can apply to the CLC for authorisation before entering into an arrangement to use a TPMA.
- VIII. In considering the new TPMA rule and guidance, you should have regard to the proposed definition of TPMA to be included in the CLC Glossary of Legal Terms (Appendix D).
- IX. The remainder of the current [Accounts Code Guidance](#) will be removed as it is considered now overly-prescriptive, outdated and duplicates provisions already in the Code.

Consultation Questions

- 1. Is the new Aged Balances Guidance sufficient to help your practice to understand and apply the revised aged balances rules in paragraph 4 of the draft Accounts Code?**
YES/NO If No, please provide details
- 2. Is the new TPMA Guidance sufficient to help your practice to understand and apply the new TPMA rules in paragraph 7 of the draft Accounts Code?**
YES/NO If No, please provide details
- 3. Is any further guidance needed for the draft Accounts Code?**
YES/NO If Yes, please set out the further guidance needed
- 4. Do you have any additional comments on the draft Aged Balances Guidance, TPMA Guidance or TPMA definition?**

Responding to this consultation

- The CLC will publish all responses and may refer to any of them specifically in any further document it publishes following this consultation. If you wish your response to be treated as confidential please let us know when you respond.
- You can respond to the consultation by email to consultations@clc-uk.org or by post to:

The Council for Licensed Conveyancers
We Work
131 Finsbury Pavement
London
EC2A 1NT

DX 42615 CHEAPSIDE

Submission Deadline: 18 March 2020

Appendix A

DRAFT ACCOUNTS CODE

1. General Provisions

- 1.1 The requirements of the Accounts Code apply to all CLC practices who receive or deal with money belonging to a Client.
- 1.2 Each Manager of a CLC Practice is jointly and severally responsible with any other Manager of that CLC Practice for compliance with the Accounts Code by the CLC Practice and its employees.
- 1.3 Managers must maintain proper governance, management and supervision of the CLC Practice and ensure appropriate systems, procedures, processes and internal controls are in place to comply with the Accounts Code.
- 1.4 To monitor compliance with the Accounts Code, the CLC may at any time request information which must be delivered at the time and place and in the format requested by the CLC.
- 1.5 The CLC is entitled to seek verification of information from clients, staff, service providers and banks. If requested, the CLC Practice will provide written permission to facilitate the provision of this information.
- 1.6 CLC Practices must comply with anti-money laundering and counter-terrorist financing legislation.

2. Client Account

- 2.1 A Client Account is a current or deposit account in the name of the CLC Practice designated as a 'Client Account' at a Bank or Building Society located in England or Wales.
- 2.2 A Client Account is used to hold Client Money, and must not be used as a banking facility for Clients.
- 2.3 The Client Account and Office Account may only be used for the provision of services regulated by the CLC. Separate bank accounts and separate accounting records must be maintained for any other services which are not CLC-regulated.

3. Client Money

- 3.1 Client Money is any money held or received on behalf of a Client by a CLC Practice incidental to the provision of legal services regulated by the CLC.
- 3.2 Client Money must be paid into Client Account Without Delay.
- 3.3 Client Money must always be immediately available to be applied in accordance with the Client's instructions.
- 3.4 Any shortfall on Client Account must be replaced Without Delay.
- 3.5 The Client side of the Client ledger must not go into debit.

- 3.6 The Office side of the Client ledger must not go into credit.
- 3.7 The CLC Practice must pay money received into the Client Account if there is doubt whether it is wholly Office Money.
- 3.8 Money incorrectly paid into a Client Account must on discovery be transferred out of the Client Account Without Delay.
- 3.9 The CLC Practice must advise the CLC Without Delay of the discovery of any misappropriation of Client funds and must make good any shortfall from its Office Account Without Delay.
- 3.10 Interest earned on Client Money must be credited to the respective Client ledger. The CLC Practice must obtain informed written consent from the Client if it wishes to depart from this requirement.

4. Withdrawals from Client Accounts

- 4.1 The CLC Practice may only withdraw money from a Client Account if:
 - a. it is to make a payment to or on behalf of the Client
 - b. it is to pay an invoice for services provided by the CLC practice which has been properly submitted to the Client
 - c. it is to reimburse the CLC Practice for money paid out of the Office Account on behalf of the Client
 - d. it has been paid into the Client account in error
 - e. it is transferred to another Client Account
 - f. it is in compliance with 4.4.
- 4.2 Payments out of a Client Account must be approved by a duly authorised signatory to the Client Account and may only be made by:
 - a. cheque
 - b. electronic payment (Faster Payment/CHAPS)
 - c. written bank instruction.
- 4.3 Money held in a Client Account must be paid to the Rightful Recipient as soon as there is no longer any proper reason to retain it.
- 4.4 Client Money may be withdrawn from a Client Account under 4.1(f) where there has been no movement on the Client ledger for over 12 months and the CLC Practice has:
 - a. established the identity of the Rightful Recipient
 - b. taken appropriate steps to return the Client Money to the Rightful Recipient (which have been unsuccessful), and
 - c. recorded the steps taken in accordance with requirement 4.4(a)-(b) and retained those records (together with all relevant documentation).

- 4.5 Having satisfied requirements 4.4(a)-(c), the CLC Practice may pay any Aged Balance not exceeding £50 to a nominated charity, to the Office Account or to the CLC.
- 4.6 The CLC Practice remains liable to repay monies due to the Rightful Recipient unless they have been paid to the CLC, in which case the CLC is liable to pay monies due.
- 4.7 Any withdrawal of an Aged Balance exceeding £50 must be authorised by and paid to the CLC. The CLC will repay the Client Money when demanded by the Rightful Recipient.

5. Accounting Records

- 5.1 The CLC Practice must update their Accounting Records at regular intervals, but not exceeding 30 days from the respective calendar month end.
- 5.2 Accounting Records must be drawn up in accordance with generally accepted accounting practices.
- 5.3 Accounting Records must be compiled by an individual with the appropriate skill and experience.
- 5.4 The accounting system must maintain accurate and chronological records of:
 - a. Client Money and Office Money transactions, with sufficient narrative to explain their purpose
 - b. the indebtedness of the CLC Practice to individual Clients
 - c. each Client's total indebtedness to the CLC Practice
 - d. individual transactions on individual Client Account ledgers
 - e. bills of costs which distinguish between costs, disbursements and VAT, and
 - f. the balance on any Client or Office ledger account (current and historic).
- 5.5 Bank reconciliation statements must be produced within 7 days of the respective calendar month end.
- 5.6 The reconciliation statement must compare the bank balance, the cash book balance and include a listing of reconciling items. Client bank accounts must also be reconciled to the Client Account listing.
- 5.7 Reconciling items need to be reviewed and cleared on a timely basis.
- 5.8 If accounting or cashiering functions are outsourced, the CLC Practice must have immediate and unrestricted access to its Accounting Records. The CLC Practice must maintain oversight of accounting and cashiering functions and remains responsible for the Accounting Records.
- 5.9 The CLC Practice must retain Accounting Records for no less than 6 years.

6. Accountant's Report

CLC Practice responsibilities

- 6.1 The CLC Practice must procure the delivery by the Reporting Accountant to the CLC of an Accountant's Report if at any time during an Accounting Period the CLC Practice held or received Client Money.
- 6.2 The Accountant's Report must be delivered by the Reporting Accountant to the CLC within 6 months of the end of the Accounting Period.
- 6.3 The CLC Practice must immediately notify the CLC of any changes to the identity, address or any other relevant details of the Reporting Accountant.
- 6.4 The CLC Practice must supply the Reporting Accountant with any and all records and explanations required to exercise their duties.
- 6.5 The CLC Practice must apply to the CLC for consent to vary the Accounting Period.

Reporting Accountant eligibility

- 6.6 The Reporting Accountant must be a member of one of the following accounting bodies and must be in good standing at the time of signing the Accountant's Report:
 - a. the Institute of Chartered Accountants in England and Wales
 - b. the Institute of Chartered Accountants of Scotland
 - c. the Institute of Chartered Accountants in Ireland, or
 - d. the Association of Chartered Certified Accountants.
- 6.7 The Accountant's Report must not be signed by a person or practice:
 - a. disqualified by the CLC
 - b. where the person or practice has an actual or reasonably apparent conflict of interest.

Reporting Accountant responsibilities

- 6.8 The Reporting Accountant must be engaged to:
 - a. determine whether the Accounts Code has been complied with, by examining:
 - i. internal controls, management oversight and supervision systems
 - ii. monthly Client Account reconciliations
 - iii. Client Account balances, transactions and shortfalls
 - b. complete, sign and deliver the Accountant's Report in the form required by the CLC with any supporting schedules to the CLC with a copy to the CLC Practice
 - c. report directly and immediately to the CLC without prior reference to the CLC Practice if in the course of the engagement evidence of theft or fraud affecting Client Money is discovered or there is a reasonable belief that Client Money may be at risk

- d. report directly to the CLC if their appointment is terminated after:
 - i. the issue of, or indication of the intention to issue, a qualified Accountant's Report
 - ii. concerns are raised with the CLC Practice in the course of their retainer
- e. retain the terms of engagement for at least 2 years after delivery of the Accountant's Report, and to provide the CLC with a copy on request.
- f. on request, provide the CLC any further relevant information relating to the compilation of the Accountant's Report.

6.9 By accepting the engagement the Reporting Accountant agrees that:

- a. the CLC will rely upon the content of the Accountant's Report
- b. a duty of care is owed by the Reporting Accountant to the CLC
- c. the Reporting Accountant's liability to the CLC will be limited to the loss and costs suffered by the CLC arising from items the Reporting Accountant has negligently or fraudulently failed to identify and specify in the Accountant's Report
- d. to the extent necessary to enable the Reporting Accountant to comply with the paragraphs 6.9(a)-(c), the CLC Practice waives its rights of confidentiality. The waiver extends to any report made, documents produced or information disclosed to the CLC in good faith and in accordance with these instructions, even though it may subsequently transpire that the Reporting Accountant was mistaken in his belief that there was cause for concern.

7. Third Party Managed Accounts (TPMAs)

- 7.1 A CLC Practice authorised by the CLC may enter into arrangements with a Client to use a TPMA provided the TPMA provider has been approved by the CLC.
- 7.2 The CLC Practice must make an application to the CLC for such authorisation which must include such information and documentation as the CLC requires.
- 7.3 The CLC Practice must take reasonable steps to ensure that the Client has been informed of and understands:
 - a. the terms of the contractual arrangements relating to the use of the TPMA, and
 - b. the Client's right to terminate the agreement and dispute payment requests made by the CLC Practice.

Appendix B

DRAFT AGED BALANCES GUIDANCE

Purpose of this Guidance

This guidance aims to help the regulated community resolve the problem of Aged Balances.

Note that the self-certification scheme means that firms do not need CLC authorisation to withdraw aged balances not exceeding £50.

Part 1 provides guidance on avoiding or minimising the occurrence of Aged Balances, and

Part 2 sets out the procedure which the CLC will follow, and the information you need to provide, when it considers whether to give written authority for the withdrawal of an aged balance of £50 or more.

Part 1: Avoiding Aged Balances

A. On Receipt of Instructions

1. Obtain the Client's bank account details (name and address of bank, sort code, account number and name).

B. Completion Statements

2. The CLC Practice should keep accurate and up to date completion statements:
 - (a) a completion statement is an itemised statement of money paid in and out of the Client Account, concluding with a balance either owed by or to be paid to the Rightful Recipient
 - (b) draft completion statements should be prepared and checked prior to exchange of contracts
 - (c) all completion statements (in draft or final form) should be checked for accuracy by reference to:
 - i. the transaction file, and
 - ii. the Client ledger.

C. Client Ledgers

3. The Client ledger 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:
 - (a) the Client ledger balances are reviewed monthly to identify unexpected or dormant Client balances
 - (b) if a balance is held against a contingent liability, a note is made on the Client ledger (or alternatively the file) clearly identifying that liability, and
 - (c) 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 should be checked to ensure:
 - i. no balance is outstanding, and
 - ii. all cheque payments have been cleared by the bank
 - (b) a copy of the Client ledger showing a nil balance on both the Client and Office Accounts should be placed on the file.

D. Unpresented Cheques

6. Unpresented cheques should be reviewed on a regular basis.
7. If a cheque has been lost or remains unpresented after 6 months:
 - (a) a stop should be placed on the original cheque
 - (b) the cheque should be written back to the Client ledger, and
 - (c) the monies should be paid either:
 - i. direct to the Rightful Recipient's bank account, or
 - ii. at the Rightful Recipient's direction.

E. Retention Monies

8. Where possible the CLC Practice 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 regularly, and
 - (b) you should seek to obtain such an agreement.
10. It is good practice to maintain and review regularly 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.

Part 2 – Withdrawal of Aged Balances

A. Aged Balances not exceeding £50

11. The CLC does not need to authorise the withdrawal of an Aged Balance not exceeding £50 provided that the conditions in paragraph 4.4 of the Accounts Code are met.
12. For all withdrawals ensure the relevant entries have been made to a suitable office nominal ledger account e.g. Write-Offs and, if appropriate, account for any tax e.g. VAT.

B. Aged Balances exceeding £50

13. The withdrawal of an Aged Balance exceeding £50 from the Client Account must be authorised by the CLC and paid to the CLC (paragraph 4.7 of the Accounts Code).
14. An application for authorisation must be signed and dated and must include:
 - (a) A schedule setting out the:
 - i. Client(s) name(s)
 - ii. file/ledger reference
 - iii. address of the property concerned
 - iv. name of the Rightful Recipient(s)
 - v. balance outstanding, and
 - vi. date of last movement on Client Account
 - (b) A copy of the Client ledger
 - (c) A description of how the balance came about, and
 - (d) A statement confirming that reasonable steps have been taken to locate the Rightful Recipient, describing what the reasonable steps were and that they were unsuccessful.

What are reasonable steps?

15. What amounts to reasonable steps will depend 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
 - attempting to return funds using available bank account details of the Rightful Recipient
 - contacting known contacts of the Rightful Recipient
 - advertising in a local newspaper
 - making a search of Companies House, the Probate Registry and/or HM Land Registry
 - making use of social media



- internet search.
16. Where the Rightful Recipient cannot be identified, the CLC will, in exceptional circumstances, give authority for the withdrawal of funds from Client Account on the basis that a funds transfer for any sum so authorised must be drawn on the Client Account payable to the CLC. On receipt, the funds will be placed to the credit of the CLC's Compensation Fund. You should place a copy of the authority issued by the CLC on the Client's file.
17. If the Rightful Recipient makes contact after funds have been paid into the CLC's Compensation Fund the CLC Practice 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.

Appendix C

DRAFT THIRD PARTY MANAGED ACCOUNTS GUIDANCE

Third Party Managed Accounts Guidance

1. A CLC Practice which has had CLC authorisation may use a Third Party Managed Account (TPMA) managed by a named TPMA provider.

Your responsibilities before entering into arrangements with a TPMA provider

2. The CLC Practice must ensure that the TPMA is authorised and regulated by the Financial Conduct Authority (FCA). This means it must be:
 - a. an authorised payment institution
 - b. a small payment institution that has adopted voluntary safeguarding arrangements to the same level as an authorised payment institution, or
 - c. an EEA authorised payment institution.

The CLC must authorise the use of the TPMA provider

3. If it would like to use a TPMA the CLC Practice should email the CLC at [address@clc-uk.org] with:
 - a. the Practice name and licence number
 - b. the name of the TPMA provider and its FCA authorisation number
 - c. the date on which it intends to start using the TPMA, and
 - d. such other information as the CLC may require.
4. Once authorisation is granted the CLC Practice does not need further authorisation where the same TPMA provider is used for another matter or Client. Further approval is required to use another TPMA provider.
5. The CLC Practice must inform the CLC in writing within 14 days after it stops using a TPMA provider.

Status of money held in a TPMA

6. Money held in a TPMA is not Client Money as it is not held or received by a CLC Practice and is not subject to paragraphs 1-6 of the Accounts Code.
7. Using a TPMA does not release the CLC Practice from the requirement to act in the best interests of its Clients, which includes protecting Client Money and assets (Overriding Principle 3, Code of Conduct). The CLC Practice must ensure that the decision to use a TPMA, and the TPMA provider used, is appropriate in the circumstances of each case.

Client protection and information arrangements

8. Before entering an arrangement with a TPMA provider, a CLC practice must take reasonable steps to ensure that the Client understands:
 - a. the terms and contractual arrangements relating to the use of the TPMA
 - b. their right to terminate the agreement
 - c. their right to dispute payment requests made by the CLC Practice
 - d. who will be responsible for costs associated with the arrangement
 - e. that the TPMA is regulated by the FCA and complaints about the TPMA provider should be made to that provider in accordance with their complaints process, and
 - f. that the regulatory protections applying to TPMAs are different to those applying to Client Money held in a Client Account.

9. The CLC Practice must obtain regular statements from the TPMA provider and ensure that these accurately reflect all transactions on the account.

10. The CLC Practice must retain statements from the TPMA provider for no less than 6 years, and provide the CLC with copies when requested.

Appendix D
DEFINITION OF THIRD PARTY MANAGED ACCOUNT (TPMA)

The definition will be included in the [CLC Glossary of Legal Terms](#).

Third Party Managed Account (TPMA)

means an account

- (a) held at a bank or building society in the name of a third party which is
 - i. an authorised payment institution,
 - ii. a small payment institution that has chosen to implement safeguarding arrangement in accordance with the Payment Services Regulations, or
 - iii. an EEA authorised payment institution(as each is defined in the Payment Services Regulations) regulated by the Financial Conduct Authority,
- (b) in which monies are owned beneficially by the third party, and
- (c) which is operated upon terms agreed between the third party, the CLC Practice and the Client as an escrow payment service.