This helpsheet is intended to assist members in practice with the Clients’ Money Regulations governing money held on behalf of clients.

THE REQUIREMENTS

What are the common issues we encounter?
Areas of non-compliance identified at monitoring visits include:
• lack of appropriate acknowledgement from banks regarding the terms of client bank accounts;
• non performance of regular reconciliations;
• banking clients’ monies in firm’s own bank account;
• inadequate annual compliance reviews; and
• insufficient alternate arrangements in place.

Client money related complaints are infrequent but will generally relate to the unauthorised withdrawal of funds from a client bank account (often in payment of outstanding fees).

The majority of issues are due to a lack of knowledge of the detail of the rules and the main points are therefore covered in this helpsheet.

What is clients’ money?
Put simply, it is money which a firm holds or receives for, or from a client (including money held by an Insolvency Practitioner licensed by ICAS) that is not immediately due and payable on demand to the firm for its own account, and which therefore falls to be held in trust for the client. The Regulations apply equally to Affiliates.

It does not include:
• fees paid in advance as agreed with the client;
• a cheque received that is drawn in favour of a client; or
• a cheque in relation to non client third parties (eg staff events fund) – whilst they do not belong to the firm they are not clients’ money.

I have control over a client’s own bank account, is this covered by the Regulations?
Yes, although it is not actual clients’ money. However, you must still:
• have the client’s written authority acknowledged by the bank before exercising that authority;
• maintain a full record of all the transactions that you undertake in relation this account.

This will include trust accounts, where trust monies will require to be held in the trustees’ names, as required by trust law.
My client pays fees monthly by standing order. Is this client’s money until I raise an invoice?
No, when fees are paid on this basis it is acceptable to pay these amounts in to the firm’s own account.

Is investment business clients’ money covered by the Regulations?
No, you must be authorised by the Financial Conduct Authority, and this is covered by the Financial Conduct Authority’s handbook.

When should I open and hold money in a clients’ money bank account?
Any clients’ money or mixed monies (ie a mix of clients’ money and amounts due to the firm) require to be deposited into a client money bank account. If you do not operate a client money bank account, you should make arrangements with your bank to open a client money account if you anticipate that you will receive any funds of this nature.

What steps should I go through?
You should:
• ensure that you have verified the identity of the client in accordance with the Money Laundering Regulations 2007;
• on opening an account, notify the bank in writing that:
  - funds held in the account are held for clients only and there is no right of offset against any other account of the firm;
  - any interest payable is credited to the account;
  - the bank must describe the accounts in its records to make it clear the money does not belong to the firm, even if it is a non designated account (such accounts usually bear the title “client account” or “[firm’s name] as agent of” etc.).

The bank must acknowledge this in writing within 20 days or you should make arrangements to transfer the monies into an alternative clients’ money bank account or pay the money back to the client.

Additional requirements apply to sole practitioners who hold clients’ money bank accounts.

There are also additional requirements for overseas clients’ money bank accounts.
What are the main requirements for operating clients’ money bank accounts?

You should refer to the Regulations for the full list of requirements, but the main points are:

• you should place all clients’ money in an interest bearing account (with a fair rate of interest) unless the interest would not be material (see below for more on materiality). The interest should be allocated to the client (unless a different arrangement is agreed in writing with the client);

• only funds you reasonably think to be clients’ money or mixed monies should be paid into the accounts;

• all clients’ money withdrawals must be authorised in writing by a principal of the firm and certain withdrawals on behalf of the client will require the client’s written authority;

• at all times the sum of the credit balances held for clients should equal at least the monies held in the client bank accounts – you must not withdraw for a client more than his or her balance;

• you should also ensure that a full record is maintained of all correspondence and transactions;

• money of any single client in excess of £10,000 that will be held for more than 30 days must be deposited into a separately designated client bank account (the title of such accounts should usually include the name of the client);

• you should remove any non clients’ monies discovered in the clients’ money account immediately;

• you should perform a reconciliation of the client bank account at least once every five weeks and any differences must be rectified immediately. This process should include a reconciliation of the total balances on all of your client bank accounts and also a reconciliation of each individual client balance; and

• a principal should ensure that the firm undertakes an annual compliance review to ensure that the account complies with the Regulations, ie that systems maintained are adequate and appropriate reconciliations are carried out.
TROUBLESHOOTING:
COMMON QUESTIONS AND ISSUES

Can I withdraw an amount from the clients’ money bank account as payment of fees due from the client?
Yes, but only where:
• the precise amount has been agreed with the client (or court or arbiter); or
• fees have been calculated by a formula agreed in writing by the client; or
• 30 days have passed since the date of delivery of a fee note and the client has not questioned this.

One of the most common payments into a client bank account is the client’s tax rebate. The fees element cannot be taken unless one of the three requirements above has been met (usually the 30 day rule). It is also important to remember not to withdraw funds from clients’ money accounts before they have actually been cleared by the bank.

My client has overpaid me for services provided, what action should I take?
You should not keep a balance received from a client without their knowledge and consent. You should:
• have a procedure in place to identify such amounts within a reasonable time; and
• return the overpayment to the client immediately upon discovery; or
• if you are unable to do so, then transfer the balance to the client bank account and inform the client immediately.

There are amounts held in the clients’ money bank account which have been there for a long period of time, should I take action on these?
You should identify these amounts as soon as possible and either transfer them in accordance with the nature of the amounts, or return them to the client. The client should not lose a material sum of interest because the money has remained in a low or non-interest bearing account. The interest due, therefore, needs to be calculated and accounted for to the client.

The banks will not set up an interest bearing account – what should I do?
Due to low interest rates at present, a number of banks are not offering interest bearing clients’ money bank accounts. This is only acceptable if you are able to ensure that none of the transactions or balances in the clients’ money account would have resulted in there being “material interest” to the client.
If “material interest” would arise, then you have two options:

- You will require to open a suitable interest bearing account for all transactions; or
- You could always enter into an alternative agreement with the client(s) that you do not need to pay the client interest unless it is above a certain agreed level (this can easily be done by inserting an additional sentence to this effect in your client engagement letters). This must be agreed in writing, preferably via the engagement letter or terms of business.

The Regulations require firms to exercise reasonable skill and care in assessing whether or not interest would be material. Firms should take all reasonable steps to ensure that a client does not lose material sums of interest because the Client Money is held on deposit in low or non-interest bearing accounts. The Regulations no longer provide guidance as to what would be considered material in terms of interest. As the firm could be called upon to justify its decision in this respect, the Regulations recommend that such determinations whether amounts of interest would be material should be periodically recorded.

**What should I do if the clients’ money bank account is interest bearing but the amount of interest is very low?**

If you have deposited the money into an interest bearing bank account, you must account to all clients for their share of the interest, unless you have entered into a written alternative agreement signed by the client (such as only paying interest above a certain level).

**I am unable to identify the owner of amounts held in the client bank account, what should I do?**

Where clients’ money cannot be attributed to identifiable clients or cannot be sent to them because their whereabouts are unknown, this must be retained, indefinitely, on deposit for the benefit of those clients.

The Queen’s and Lord Treasurer’s Remembrancer (or the equivalent in other jurisdictions) may, in certain circumstances where it can be shown that the clients’ money has no owner (rather than the owner being untraceable) be willing to accept the money. Monies should not be remitted there until he has agreed to accept it.

To minimise the likelihood of this occurring you should always make sure that you return clients’ money to the owner as soon as possible. It may also be appropriate, before accepting funds from clients, to enter into an agreement in writing with them as to how the money should be dealt with should such circumstances arise. For example, you could agree that sums under a certain amount would be donated to charity.
One of my clients has asked me to safe keep property, other than clients’ money, what should I do in these circumstances?
To do so, you should hold an appropriate Designated Professional Body licence. In addition you should maintain details of receipt of this property, together with its current location. Please refer to the ICAS Helpsheet “Investment Business” for further information.

If the client asks you to pass this property to a third party then you should obtain prior written instructions to do so. You shall also need to obtain an acknowledgement of the receipt of the property from the third party.

I am a sole practitioner, and the bank did not honour my alternate arrangements when I took ill – what do I do?
Regulation 30 requires sole practitioners to appoint an alternate to ensure that clients’ monies can be accessed and dealt with appropriately in the case of your incapacity or death. Your alternate must be able to legally operate the clients’ money bank account and be another appropriate “firm” (sole practice, partnership or corporate body). Your alternate does not have to be the same as your alternate for practice work. The updated Regulation 30, confirms that the “alternate” firm need not be comprised in whole or part of ICAS members, but they should be members of one of the professional bodies comprising the Consultative Committee of Accountancy Bodies (“CCAB”) and must hold a current practising certificate.

The Clients’ Money Regulations were originally devised in association with ICAEW and ICAI. However, in Scots Law the general rule is that an agent’s authority terminates upon death. The position in the event of incapacity is still unclear. In short, any mandate provided by a sole practitioner to their alternate will cease to have effect in the event of death (and possibly incapacity). There is sufficient doubt as to lead to uncertainty as to what action a bank might take in such situations and sole practitioners are advised to appoint their alternate as a joint holder to the client bank account. It is recognised that sole practitioners would not want their alternate to be able to access the account unless such circumstances arise, and so we advise that the following additional steps are taken:

- the sole practitioner and the nominated alternate should be joint account holders and joint signatories in relation to any clients’ money bank accounts; and
- the sole practitioner and the nominated alternate should enter into a written agreement whereby the nominated alternate undertakes not to give any instructions to the Bank in relation to the account(s), or to otherwise request information from the sole practitioner or the Bank in relation to the account(s) (either in relation to their administration
or the funds held on deposit), except in the event of the incapacity or death of the sole practitioner. Whilst the Bank will not require to receive a copy of this agreement it would be prudent for the sole practitioner and nominated alternate to explain the nature and purpose of the arrangement to the Bank to ensure compliance with the terms.

Any breach of the above agreement by the nominated alternate would not only give rise to civil remedies for breach of contract but would also be viewed by ICAS as a departure from acceptable standards of conduct and may result in disciplinary proceedings.
ADDITIONAL ASSISTANCE FROM ICAS

Further assistance on this matter including support materials is also available from our Practice Support Department by telephoning +44 (0)131 347 0254 or emailing practicesupport@icas.org.uk.

For more information regarding Regulatory Monitoring, ie Audit Monitoring or Practice Monitoring, contact auditandpracticemonitoring@icas.org.uk or phone +44 (0)131 347 0284.

For more information regarding the CA Practitioner Service, contact Linda Laurie on +44 (0)131 347 0249 or email caps@icas.org.uk.

USEFUL LINKS

Client Money Regulations; icas.org.uk/WorkArea/DownloadAsset.aspx?id=4294973365

Disclaimer

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