



## COUNCIL FOR LICENSED CONVEYANCERS

### ACCOUNTS GUIDANCE NOTE 4 AGED BALANCES

Issued by the Council for Licensed Conveyancers on  
22 July 2009

**This Accounts Guidance Note comes into force on 31 July 2009**

Licensed Conveyancers are reminded that they must at all times act in compliance with the Council's Rules. Rule 3.1.3 of the Licensed Conveyancers' Accounts Rules 2008 provides that every Licensed Conveyancer must:-

*"comply with the Accounts Guidance Notes unless he has good reason for not doing so in the particular circumstances."*

Rule 6.2.6 of the Licensed Conveyancers' Accounts Rules 2008 provides that money may be withdrawn from Client Account, where -

*"the Council has given written authority for a specific payment to a nominated payee".*

This Accounts Guidance Note adopts the definitions set out in the Licensed Conveyancers' Accounts Rules 2008.

#### **Introductory**

1. The CLC is aware that Aged Balances are a problem which many practices have been unable to resolve. Licensed conveyancers will be aware that when such balances build up, money cannot be withdrawn from the client account without written authority from the CLC.

**Part 1** of this note sets out ways in which practitioners 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 Rule 6.2.6 of the CLC Accounts Rules 2008 to help licensed conveyancers manage Aged Balances.

2. Licensed conveyancers are reminded that they must at all times act in compliance with the CLC's Rules.

### **Definitions**

3. **"Aged Balance"** ~ means
  - (a) a sum outstanding to the credit of an individual ledger account;
  - (b) where there has been legal completion of the conveyancing transaction or it has become abortive; and
  - (c) there has been no movement on the account for a period in excess of 12 months except for monies held in accordance with the terms of an undertaking in which case the 12 month period will begin from the date on which such monies are released.

**"Reasonable Steps"** (*Paragraph 16.2(c) and 16.3(a)*) 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.

**"Rightful Recipient"** ~ means the person to whom monies held by the licensed conveyancer on client account are correctly due.

## **Part 1 ~ How to Avoid Aged Balances**

### **On Receipt of Instructions: -**

4.
  - (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**

5.
  - (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 file; and
  - (ii) to the client ledger.

### **Client Ledger Card**

- 6. 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.
- 7. It is good practice for the licensed conveyancer 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.
- 8. 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**

- 9. Unpresented cheques should be reviewed on a regular basis.
  - (a) Unpresented Mortgage Redemption Cheques ~ the Rightful Recipient should be contacted promptly 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.
- 10. 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**

- 11. Where possible the licensed conveyancer 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.
- 12. If no such term has been agreed: -
  - (a) the file should be reviewed every three months; and
  - (b) the licensed conveyancer should seek to obtain such an agreement.
- 13. 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**

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

## **Part 2 ~ Obtaining Authority from the CLC**

- 15. Rule 6.2.6 of the CLC Accounts Rules 2008 provides that money may be withdrawn from Client Account, where -

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

### **Authorisation**

- 16. The CLC will consider giving authorisation under Rule 6.2.6 of the CLC Accounts Rules 2008 as follows: -

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

- (a) the licensed conveyancer sends to the CLC: -
  - (i) an Undertaking in the following terms: -

“In consideration of the CLC giving written authority in accordance with Rule 6.2.6 of the CLC Accounts Rules 2008 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 licensed conveyancer's client account;

(c) on receipt of the written authority from the CLC the licensed conveyancer transfers the balances as set out in the Annex from client to office bank account and then to an office nominal ledger account e.g. "Write Offs" and places a copy of the authority issued by the CLC on the clients' file.

**16.2** where the Aged Balance amounts to £20 or more but less than £100 the Licensed Conveyancer supplies to the CLC: -

(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 certificate in writing signed by the licensed conveyancer giving brief details indicating how the balance has arisen and stating that he has taken all Reasonable Steps to trace the Rightful Recipient but has been unable to trace that person.

**16.3** Where the Aged Balance is £100 or more a licensed conveyancer supplies to the CLC the information set out at paragraph 16.2(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.

**16.4** If authority is given by the CLC for a withdrawal under paragraph 16.2 or 16.3 it will only be on the basis that a cheque or funds transfer for the sum so authorised must be drawn on the licensed conveyancer's 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. The licensed conveyancer will place a copy of the authority issued by the CLC on the clients' file.

**16.5** Where the Rightful Recipient cannot be identified, the CLC will, in exceptional circumstances, give authority under Rule 6.2.6 of the CLC Accounts Rules 2008 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 licensed conveyancer's 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. The licensed conveyancer will place a copy of the authority issued by the CLC on the clients' file or if this is not available in a central record held on a Durable Medium.

- 16.6** If the Rightful Recipient contacts the licensed conveyancer after funds have been paid into the CLC's Compensation Fund, the Rightful Recipient should be referred to the CLC with a view to making a claim for reimbursement on the Compensation Fund.

### **Waiver**

- 17.** The CLC has given a general waiver of the provisions of paragraph 16 so that each Practice is permitted to transfer from client to office bank account any balance on any client account ledger of less than one pound, provided that such transfer is recorded appropriately on the client and office columns of the relevant client ledger account.
- 18.** Any balance of one pound or more on any client account ledger must continue to be dealt with in accordance with paragraph 16.
- 19.** The CLC reserves the right to revoke this waiver at any time. The revocation of the waiver may relate to every Practice, to one or more Practices or to one of more transactions of any Practice.

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