Review of the CLC's Accounts Code

CLC consultation paper

April 2019

Deadline for responses: Friday 21 June 2019

Summary

I. The Council for Licensed Conveyancers (CLC) is seeking views on the proposed changes to the Accounts Code which governs the handling of client money by those it regulates.

II. The core purpose of the Accounts Code is to ensure that money belonging to clients is kept safe.

III. The CLC previously published a consultation paper regarding proposed changes to the Accounts Code on 13 February 2017 with a consultation period of 12 weeks[1]. The CLC received 14 responses which have been considered when developing the proposals contained in this consultation.

IV. The CLC held four workshops during March 2019 which were attended by 42 different CLC Practices. The discussions at these workshops have helped to develop the proposals contained in this consultation.

V. Whilst ensuring that appropriate levels of consumer protection are maintained, the CLC's objective in reviewing the Accounts Code is to:

   a. Remove any unnecessary and disproportionate regulatory burden;

   b. Provide greater flexibility for CLC Lawyers and Practices to participate in a diverse legal market, increasing access for the public and quality of legal services;

   c. Provide greater clarity for CLC Lawyers and Practices so that the CLC's expectations are easily understood;

   d. Future-proof the Code as much as possible; and

   e. Maintain appropriate consumer protection.

VI. The CLC proposes to:

   a. Simplify the Accounts Code by removing any unnecessary barriers and restrictions to ensure that the Code is appropriate and proportionate.

   b. Amend the format of the Accountants Report to allow greater freedom for Reporting Accountants to determine the tests which are appropriate for any specific practice on its business model and risk profile.

   c. Reduce the time for submitting the Accountants Report to the CLC from 6 to 3 months.

   d. Introduce a new self-certification scheme for aged balances of up to £50.

   e. Enable CLC Practices to send aged balances of up to £10 to a nominated charity.

   f. Make provision for the use of Third Party Managed Accounts (TPMAs).

   g. Revise the Accounts guidance to be more targeted and focused.

VII. The aim is that the review of the Accounts Code will be completed in July 2019 with any changes coming into force in January 2020.

[1] http://www.clc-uk.org/wp-content/uploads/2017/12/CLC-Accounts-Code-Consultation-Paper-AS-PUBLISHED-20170113.pdf

Responding to this consultation

1. A list of all the questions, and proposed changes to the Accounts Code can be found at the end of this consultation.
2. The CLC reserves the right to publish any response and to refer to it 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.
3. You can respond to the consultation by email to consultations@clc-uk.org or by post to:

The Council for Licensed Conveyancers

We Work

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Submission Deadline: Friday 21 June 2019

Statutory Framework

4. The CLC was established by the Administration of Justice Act 1985 and is an approved regulator under the Legal Services Act 2007. The CLC's role is to safeguard the public and consumer interest by regulating providers to deliver high quality and accessible legal services.

5. As an approved regulator the CLC 'must, so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives'[2], namely :

   a. Protecting and promoting the public interest;

   b. Supporting the constitutional principle of the rule of law;

   c. Improving access to justice;

   d. Protecting and promoting the interests of consumers;

   e. Promoting competition in the provision of services by 'authorised persons';

   f. Encouraging an independent, strong, diverse and effective legal profession;

   g. Increasing public understanding of the citizen's legal rights and duties;

   h. Promoting and maintaining adherence to the professional principles.

6. The CLC's regulatory regime is underpinned by the Handbook which sets out the regulatory responsibilities of all individuals and practices that we regulate.

7. The Code of Conduct is the parent document of the CLC's regulatory approach. Non-mandatory Guidance, which accompanies many of the Codes, is also available.

8. To effectively secure the protection of, and the provision of choice for, the consumer of legal services, regulated persons must at all times comply with the following Overriding Principles:

   a. Act with independence and integrity.

   b. Maintain proper standards of work.

   c. Act in the best interests of their clients.

   d. Comply with your duty to the court.

   e. Deal with regulators and ombudsmen in an open and co-operative way.

   f. Promote equality of access and service.

9. These Overriding Principles are underpinned by principles of behaviour which must be demonstrated and specific requirements which must be complied with in order to achieve the Overriding Principles.

10. Any change to the CLC's regulatory arrangements must meet the core regulatory purpose of providing appropriate protection for the public and consumers, supporting the operation of the rule of law and the proper administration of justice.

11. The CLC will take account of all the regulatory objectives and will be mindful of best practice to ensure its regulation is proportionate and targeted only where needed.

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[2] S.28(2) Legal Services Act 2007

Introduction

12. The introduction of the CLC's 2011 Handbook marked the transition of the CLC from a 'rules based' regulator to an 'outcomes based' regulator. It also introduced Alternative Business Structures (ABS), reflecting the innovations of the Legal Services Act 2007.

13. The CLC believes that more can be done to provide CLC Practices with greater freedom to innovate, compete and grow. The CLC is committed to ensuring that its approach to regulation for consumer protection also supports these developments.

14. Periodic review of the Handbook and its associated guidance has been needed to take account of developments in the market place, changes in the regulatory and risk environment, and evolving consumer behaviour.

15. A review and update of the CLC's approach and regulatory arrangements also tests whether they remain fit for purpose and are in step with the changing legal market.

16. Recent changes to the Handbook include:

    a. Updating the Acting as Ancillary Insurance Intermediaries Code further to the implementation of the Insurance Distribution Directive;

    b. Changes to several of areas of the Handbook in order to implement the CMA recommendations around service, quality and price transparency.

Background

17. Misuse of client money is one of the key risks to consumer protection. Effective mitigation of this risk continues to be a priority for the CLC. A combination of outcomes in the Code of Conduct and detailed provisions in the Accounts Code currently seek to ensure that money belonging to a client is kept safe at all times.

18. The length of the current Accounts Code and guidance contributes to the difficulty some CLC Lawyers have in understanding and complying with the Accounts Code. There is unnecessary repetition and cross-references to other parts of the Code.

19. Practices at times may find themselves in technical breach of the Accounts Code even in circumstances where there is no risk to client money (e.g. failing to complete bank reconciliations within strict time constraints). This suggests that the current Accounts Code is unnecessarily complicated and does not have a sufficiently clear focus on the real risks to client money.

20. The CLC's intention in reviewing and amending the Accounts Code is to provide greater clarity for CLC Lawyers and Practices to better understand how to meet their obligation to keep client money safe.

CLC Regulatory Workshops

21. Throughout March 2019, the CLC held four workshops in Bristol, Birmingham, Manchester and London. A total of 42 CLC Practices attended the workshops and contributed to the discussions that helped to develop the proposals contained in this consultation.

Proposals

22. The CLC proposes to:

    a. Simplify the Accounts Code by removing any unnecessary barriers and restrictions to ensure that the Code is appropriate and proportionate.

    b. Amend the format of the Accountants Report to allow greater freedom for Reporting Accountants to determine the tests which are appropriate for any specific practice on its business model and risk profile.

    c. Reduce the time for submitting the Accountants Report to the CLC from 6 to 3 months.

    d. Introduce a new self-certification scheme for aged balances of up to £50.

    e. Enable CLC Practices to send aged balances of up to £10 to a nominated charity.

    f. Make provision for the use of Third Party Managed Accounts (TPMAs).

    g. Revise the Accounts guidance to be more targeted and focused.

A. Simplifying the Accounts Code

23. The current Accounts Code runs to 10 pages with an additional 10 pages of guidance. A simpler, more targeted set of requirements will make the Code easier to understand, increasing the instances of compliance. Streamlining the Code and guidance should focus practices on the real risks to client money and further enhance client protection.

24. We aim to avoid any unnecessary repetition and ensure the rules are clear and concise.

25. A draft version of the Accounts Code reflecting these changes is attached in **Annex B**.

26. The proposed key changes to the Accounts Code include:

    a. Making all managers responsible for the practice's compliance with the Accounts Code (paragraphs 1.2 and 1.3 of the draft Accounts Code).

    b. Removing current reference to the CLC's Code of Conduct and Overriding Principles to remove the potential for confusion about the scope of the Manager's responsibility.

    c. Removing overly prescriptive requirements on the frequency for updating Accounting Records to provide practices with greater flexibility in their approach to managing their Accounting Records (paragraphs 6.1-6.10).

    d. Requiring all Accounting Records to be kept for a minimum of 6 years; currently some records need be kept only for 2 years (paragraph 6.10).

    e. Removing detailed provisions in the Accounts Code that dictate the form an Accountant's Report should take (paragraph 7).

27. The CLC believes in a proportionate approach to regulation. While the proposals to simplify the Accounts Code are intended to provide practices with greater freedom and reduce regulatory burden, a practice's primary objective must always be to ensure that client money and assets are protected, and that there are systems and procedures in

place to ensure client money is kept safe at all times. In circumstances where practices wilfully, negligently or carelessly abuse their position, the CLC will respond robustly.

Question 1: Do you agree that the proposed Accounts Code is clearer and easier to understand?

B. Accountant's report

28. The Accounts Code places a mandatory requirement on all practices to obtain an Accountant's Report at the end of each Accounting Period and sets out the test, checks and procedures a Reporting Accountant must undertake in order to determine a CLC Practice's compliance with the Accounts Code.

29. The purpose of an Accountant's Report is to provide assurances that the practice is managing the Client Account in accordance with the Accounts Code, maintaining appropriate accounting records and carrying out regular checks to ensure it remains compliant with the Accounts Code.

30. Some practices have told us that they view the Accountants Report as an effective audit tool.

31. Whilst the Accountant's Report continues to provide appropriate assurances to the CLC, it is important that they remain fit for purpose and do not place disproportionate burdens and costs on practices.

32. The CLC proposes to amend the format of the Accountant's Report and remove some of the prescribed testing to place greater reliance on the professional judgement of the Reporting Accountant. The Accounts Code already stipulates a high degree of skill and expertise of the Reporting Accountant. The revised checklist ensures a level of consistency and provides practices with the comfort that that the Reporting Accountant has looked at everything required.

33. The proposed changes to the Accountant's Report together with guidance can be found at **Annex C**. This approach would ensure independent oversight of the management of client monies by practices but in a more proportionate and targeted way.

Question 2: Do you agree with the proposed revisions to the format of the Accountant's Report? In particular, do you think that it appropriately covers the principal areas of risk to client monies?

34. Currently, the CLC requires the delivery of the Accountant's Report within 6 months of the end of the annual Accounting Period. By the time the report is submitted to the CLC, issues addressed in the report may have occurred up to 18 months previously. This delay in reporting to the CLC may increase risk to clients which might otherwise have been avoided.

35. The CLC is consulting on the proposal to reduce the time for submitting the report from 6 months to 3 months after the end of the Accounting Period.

36. It is acknowledged that there can be various reasons for delays in obtaining and receiving the report which may be out of the control of CLC Practices. Therefore during the consultation period we also propose to discuss the impact of reducing the time with Reporting Accountants.

37. There is likely to be a transition period for submission of Accountant's Reports to allow Reporting Accountants to adjust to the new reporting cycle.

38. If it decides to retain the 6 month time limit for submitting reports, the CLC is considering whether an interim report may be helpful to promptly address issues of concern that would be contained in a qualified report.

39. In addition, the CLC would like views on whether Reporting Accountants should be required immediately to inform the CLC if they discover a breach of the Accounts Code that results in client monies not being adequately protected or utilised.

Question 3: Do you agree with the proposal to reduce the time limit for delivering the Accountant's Report to the CLC to from 6 to 3 months of the end of the Accounting Period?

Question 4: If the time limit remains at 6 months, do you agree that the Reporting Accountant should:

- **a. submit an interim report highlighting the areas of concern of a qualified report; and/or**
- **b. be required immediately to inform the CLC if they discover a breach of the Accounts Code that results in client monies not being kept safe?**

C. Aged Balances

40. At the end of a transaction there may be a residual balance for which the CLC Practice needs to return to the client. Practices are required to pay these to the client as soon as there is no proper reason to retain them.

41. Over a period of time, usually as a result of matters outside the direct control of the practice, small balances may accrue. It may not be possible to repay these monies to the Rightful Recipient (usually the client) because they have not told the practice about changes in their contact details.

42. Currently, if it has not been possible to account for all monies on a client ledger, practices must obtain authorisation from the CLC as to how such balances should be applied. When it makes an application for authorisation, a practice must provide evidence of the steps taken to identify and trace the Rightful Recipient of the funds. If the amount to be withdrawn is under £20, the CLC will usually allow the money to be transferred to the office account. If the amount is £20 or over the money withdrawn will only be permitted to be paid to the CLC (and then transferred to the CLC Compensation Fund). The balance will be paid by the Practice or the CLC if the Rightful Recipient is later traced.

43. We understand that some of the common causes of aged balances include:

   a. Failure by third parties such as management companies to cash notice fee cheques

   b. Clients 'rounding up' payments to practices

   c. Changes in the cost of disbursements including search fees

   d. Errors in calculating the completion statement

44. The CLC proposes to replace the current requirement with a new self-certification system. CLC Practices will be allowed to withdraw aged balances of up to £50 in relation to any one individual client without prior CLC authorisation and pay the funds to the office account. They will continue to be liable to account for those funds if the Rightful Recipient subsequently makes a claim for the balance held.

45. Practices will be required to meet the following criteria before they are able to withdraw an aged balance from a client account:-

a. Establish the identity of the Rightful Recipient of the money; and

b. Make adequate attempts to return the money to the Rightful Recipient; and

c. Pay the funds to the office account; and

d. Record the steps taken and retain those records, together with all relevant documentation

46. Any withdrawal of client money in excess of £50 will need to be authorised by and paid to the CLC. Compliance with these requirements will be one of the processes reported on and tested by the Reporting Accountant.

47. The introduction of a self-certifiable amount (to the limit of £50) demonstrates a commitment by the CLC to reduce the regulatory burden on the profession. The proposal is a proportionate measure which will reduce the administrative burden on CLC Practices.

48. From our recent workshops, we understand that many aged balances are of low value, usually less than £10. It is clear that the cost and time in trying to return such amounts to the client can be disproportionate.

49. For aged balances of less than £10, we propose introducing a scheme that allows CLC Practices to transfer this money to a (nominated) charity. A practice would be able to transfer this money to the charity as soon as it becomes an aged balance, without the prior consent of the CLC, provided that it has made a reasonable and proportionate effort to return the monies to the Rightful Recipient.

50. The practice would remain liable should the Rightful Recipient make a legitimate claim for those monies in the future.

51. The CLC recognises that there are risks in removing the obligation to obtain CLC authorisation prior to withdrawals from client accounts, namely:

a. Practices might feel that they can be less diligent in finalising matters and accounting to clients.

b. Public confidence in the profession may be compromised if there is no independent scrutiny of the steps taken by the practice to try to locate the rightful owners, and to return clients' money.

52. The CLC considers that these risks are adequately addressed by the safeguards imposed in the new system:

a. Self-certification is restricted to individual balances of up to £50; larger amounts will continue to be authorised by the CLC

b. Transfers to a nominated charity is restricted to individual balances of up to £10

c. Managers will have the responsibility to ensure practices take sufficient steps to pay Aged Balances to Rightful Recipients

d. Reporting Accountants will be required to check for compliance with the requirements of the new system when preparing the Accountant’s Report.

53. To support managers and practices managing these risks, the CLC will issue an Aged Balance guidance note which will provide a framework for practices to consider when managing Aged Balances.

54. Following the implementation of the new approach, the CLC will carry out a review of the new processes within 2 years to assess any negative impacts and if any are identified, will focus on taking any necessary steps to best mitigate these.

Question 5: Do you agree with the proposals to permit CLC Practices to withdraw money to the limit of £50 from a client account and pay into the office account without prior CLC authorisation in circumstances where they cannot locate their client?

Question 6: Do you agree with the proposals to permit CLC Practices to withdraw money to the limit of £10 from a client account to a nominated charity without prior CLC authorisation in circumstances where they cannot locate their client?

D. Third Party Managed Accounts (TPMAs)

55. A Third Party Managed Account (TPMA) is an account where a payment service provider holds money on behalf of two or more transacting parties. The costs of using TPMAs are not yet known, but they would appear to offer practices the opportunity for more streamlined management of client funds, allowing them more time to focus on the other aspects of the transaction that are their specialisation and unique strength.

56. A TPMA is not a traditional escrow account. An escrow account is an account opened in the joint name of the contracting parties and the parties hold the funds jointly. In a TPMA the money is held by the third party provider and contractual arrangements stipulate how the monies are to be used. The money is held by the third party provider in their name, the account is not in the name of either (or both) of the contracting parties.

57. As the money is not held by the CLC Lawyer or Practice it does not meet the definition of Client Money which means the provisions in the Accounts Code do not apply. A CLC practice will be able to apply to the CLC to waive the requirement to submit an Accountant's Report if it can demonstrate that it has not handled any Client Money during an Accounting Period.

58. The CLC proposes to explicitly permit the use of TPMAs as an alternative to client accounts, where the client protection arrangements provided by the TPMAs are assessed as being suitable.

59. The proposals would permit TPMAs operated by payment service providers regulated by the Financial Conduct Authority and/or the Payment Systems Regulator under the Payments Services Regulations 2017. Practices would be permitted to use a TPMA if:

   a. The TPMA is an authorised payment institution which has mandatory safeguarding arrangements; and

   b. The practice can demonstrate that they have suitable arrangements for the implementation, use and monitoring of TPMAs. For example, that appropriate information is provided to the client and appropriate internal controls are in place.

Question 7: Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

E. Accounts guidance

60. In addition to the Accounts Code, the current Accounts guidance is 10 pages in length. A simpler, more concise document which highlights best practice should help to make the Code easier to understand and follow, thereby increasing the instances of compliance and reducing compliance costs.

61. The guidance will include a detailed section on Aged Balances reflecting the proposals that are taken forward.

Next steps and implementation table

F. This consultation will be open until **Friday 21 June 2019**. During this period, the CLC will pro-actively target and facilitate discussions with key stakeholders, including CLC Practices.

G. The timetable for implementation is as follows:

Consultation on rule changes and guidance	Start	April 2019
	End	June 2019
Council approve rules		July 2019
Application to Legal Services Board		August 2019
Publication of Rules and Guidance		September 2019
Rules and Guidance in force		January 2020

Annex A: List of consultation questions

Question 1: Do you agree that the proposed Accounts Code is clearer and easier to understand?

Question 2: Do you agree with the proposed revisions to the format of the Accountant's Report? In particular, do you think that it appropriately covers the principal areas of risk to client monies?

Question 3: Do you agree with the proposal to reduce the time limit for delivering the Accountant's Report to the CLC to from 6 to 3 months of the end of the Accounting Period?

Question 4: If the time limit remains at 6 months, do you agree that the Reporting Accountant should:

a. **submit an interim report highlighting the areas of concern of a qualified report; and/or**
b. **be required immediately to inform the CLC if they discover a breach of the Accounts Code that results in client monies not being kept safe?**

Question 5: Do you agree with the proposals to permit CLC Practices to withdraw money to the limit of £50 from a client account and pay into the office account without prior CLC authorisation in circumstances where they cannot locate their client?

Question 6: Do you agree with the proposals to permit CLC Practices to withdraw money to the limit of £10 from a client account to a nominated charity without prior CLC authorisation in circumstances where they cannot locate their client?

Question 7: Do you agree with our approach to allowing TPMAs as an alternative to holding money in a client account?

Annex B: Proposed draft Accounts Code

Accounts Code

General Provisions

1.1 The requirements set out below apply to all CLC Lawyers and 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 over the CLC Practice and ensure appropriate systems, procedures, processes and internal controls are in place to comply with the Accounts Code.

1.4 In order to monitor compliance with the Accounts Code, the CLC may at any time request information and documentation. These 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 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 prevention of financing terrorism legislation.

Client Money

2.1 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.

2.2 A Client's Money must be paid into the Client Account and may only be used in accordance with a Client's instructions.

2.3 Upon discovery of any misappropriation of Client Money, you must notify the CLC Without Delay. The shortfall cause by the misappropriation must be rectified Without Delay by payment into Client Account.

Client Account

3.1 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.

3.2 A Client Account is used to hold Client Money, and is not intended to provide banking facilities for Clients.

3.3 Client Money must be kept entirely separate from money belonging to the CLC Practice and Office Money.

3.4 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 the provision of any services which are not CLC regulated.

3.5 The CLC Practice must ensure that any individual Client Account's balance does not go into debit and become overdrawn.

3.6 The CLC Practice must replace without delay any shortfall on a client's account.

3.7 Client Account money must always be immediately available.

3.8 The CLC Practice must pay money received into Client Account if there is doubt whether it is wholly Office Money. If it is later discovered that all or part of this money is Office Money the CLC Practice must transfer without delay such part as is Office Money to the Office Account.

3.9 Money incorrectly paid into a Client Account must on discovery be transferred out of the Client Account without delay.

3.10 Interest earned on Client Money must be recorded in the relevant client account ledger. The CLC Practice must obtain informed written consent from the Client if it wishes to depart from this requirement.

Withdrawals from Client Accounts

4.1 The CLC Practice may only withdraw money from a Client's Account if:

a. It is to make a payment to or on behalf of the Client

b. It is to pay an invoice which has been properly submitted to the Client

c. It is to pay a disbursement on behalf of the Client

d. It is to reimburse the CLC Practice for money paid out of the Office Account on behalf of the Client

e. It has been paid into an account in error

f. It is transferred to another Client Account

g. It is money not covered by requirement 4.1(a)-(f) and the CLC Practice has complied with the conditions set out in requirement 5.1.

4.2 Payments out of a Client Account must be duly authorised by the signatories to the Client Account and may only be made by:

a. Cheque

b. Electronic payment (BACS/CHAPS)

c. Written bank instruction.

4.3 The CLC Practice must advise the CLC without delay of the discovery of any misappropriation of client funds, and must make good the shortfall from its Office Account without delay.

4.4 All monies held in Client Accounts must be paid to the Rightful Recipient as soon as there is no longer any proper reason to retain these funds.

Aged Balances

5.1 Monies remaining in a Client Account that cannot be paid to the Rightful Recipient may be withdrawn under requirement 4.1(g) only where the balance has been static for over 12 months and the CLC Practice has:

a. Established the identity of the Rightful Recipient

b. Made adequate attempts to return it to the Rightful Recipient

c. Paid the funds to:

    a. the Office Account where the amount held does not exceed £50 in relation to any one individual client matter; **or**

    b. a nominated charity where the amount held does not exceed £10 in relation to any one individual client matter

   observing that the CLC Practice remains liable to repay monies due to the Rightful Recipient.

d. Recorded the steps taken in accordance with requirement 5.1(a)-(c) above and retained those records, together with all relevant documentation.

5.2 Any withdrawal of Client Money in excess of £50 must be authorised by and paid to the CLC which will be due when demanded by the Rightful Recipient.

Accounting Records

6.1 The CLC Practice must update the Accounting Records at regular intervals of not more than 30 days from the last month end based on the needs of the CLC Practice.

6.2 Accounting Records must be drawn up in accordance with generally accepted accounting practices.

6.3 Accounting Records must be compiled by an individual with the appropriate skill and experience.

6.4 The accounting system for the CLC Practice must at all times maintain accurate and chronological records of:-

a. Client Money and Office Money

b. The indebtedness of the CLC Practice to individual Client Accounts

c. The Clients' total indebtedness to the CLC Practice

d. Individual transactions on individual Client Accounts

e. All transactions with sufficient narrative to explain their purpose

f. Bills of costs which distinguish between costs, disbursements and VAT

g. The balance on any Client or Office ledger account (both current and historic).

6.5 Bank reconciliation statements must be produced within 7 days of the respective calendar month end.

6.6 The reconciliation statement must compare the bank balance, the cash book balance and a listing of reconciling items. Client bank accounts must also be reconciled to the Client Account listing.

6.7 Reconciling items need to be reviewed and cleared on a timely basis.

6.8 If the accounting or cashiering functions are outsourced, the CLC Practice must have immediate and unrestricted access to its Accounting Records.

6.9 The CLC Practice must retain Accounting Records for no less than 6 years.

Accountant Reports

7.1 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.

7.2 The CLC Practice must apply to the CLC for consent to vary the Accounting Period.

7.3 The Accountant's Report must be delivered by the CLC Practice within 3 months of the end of the Accounting Period.

7.4 The CLC Practice must immediately notify the CLC of any changes to the identity, address and any other relevant details of the Reporting Accountant.

7.5 The CLC Practice must supply the Reporting Accountant with:

a. Details of bank statements for all Client Accounts and Office Accounts kept or operated during the Accounting Period

b. Any other information and documentation that the Reporting Accountant considers necessary to complete the Accountant's Report.

7.6 The Reporting Accountant must be engaged:

a. To conduct tests and enquiries so as to determine whether the Accounts Code has been complied with, to include:

   i. The systems of internal control and management oversight and supervision

   ii. Monthly reconciliation of Client Accounts

   iii. Client Account balances, transactions and shortfalls.

b. To complete, sign and deliver the Accountant's Report in the form required by the CLC for the CLC Practice with any supporting schedules to the CLC with a copy to the CLC Practice.

c. To 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. To 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. The raising of concerns with the CLC Practice in the course of their retainer

iii. Where they have ceased to act because paragraph 7.8 applies.

e. To retain these terms of engagement for at least 2 years after completion of the issue of the Accountant's Report, and to provide the CLC with a copy on request.

f. To provide the CLC on request any further relevant information in their possession relating to the compilation of the Accountant's Report.

g. By accepting the engagement to provide an Accountant's Report the Reporting Accountant agrees that:

  i. The CLC will rely upon the content of the Accountant's Report

  ii. A duty of care is owed by the Reporting Accountant to the CLC

  iii. 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.

  iv. To the extent necessary to enable the Reporting Accountant to comply with the paragraphs 7.6(g) (i)-(iii), 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.

7.7 The Reporting Accountant must hold a current practising certificate at the time of signing the Accountant's Report and be a member of one of the following accounting bodies:

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

d. The Association of Chartered Certified Accountants

e. The Association of Authorised Public Accountants

7.8 The Accountants Report must not be signed by a person or practice:

a. Which has been disqualified by the CLC.

b. Where the CLC is not able to rely on the Accountant's Report because the Reporting Accountant has an actual or reasonably apparent conflict of interest.

Third Party Managed Accounts (TPMAs)

8.1 The CLC Practice may enter into arrangements with a Client to use a Third Party Managed Account in respect of legal services delivered by the practice to the client.

8.2 Before accepting instructions, the CLC Practice must ensure:

a. The TPMA provider is regulated and authorised by the Financial Conduct Authority and/or Payment Services Regulator; and

b. the Client has been fully informed of and understands:

i) the terms of the contractual arrangements relating to the use of the Third Party Managed Account; and

ii) the Client's right to terminate the agreement and dispute payment requests made by the CLC Practice.

8.3 The CLC Practice must obtain regular statements from the Third Party Managed Account provider and ensure that these accurately reflect all transactions on the account.

8.4 The CLC Practice must retain statements from the Third Party Managed Account provider for no less than 6 years, and provide the CLC with copy statements on request.

Annex C: Proposed draft Guidance for accountants completing the CLC accountant report

Accountants report and guidance

COMPLETION GUIDE

- This reporting template comes into effect for all reporting periods ending after [DATE].
- The accountants report is due within 3 months of the end of the reporting period.
- This report should be submitted to the CLC using any of the methods below:
    - Posting it to:

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

    - Sending it to: DX 42615 CHEAPSIDE
    - Emailing it to: monitoring@clc-uk.org
- Please ensure that prior to completing the report that you have read the CLC's Accounts Code and the guidance accompanying this report.

SECTION ONE – PRACTICE DETAILS

Practice name:		CLC number:	
Period ending:		Months in period under review:	
Practice Name & Address:			
Practice telephone:			

SECTION TWO – REPORTING ACCOUNTANT DETAILS

Name of reporting accountant:	
Professional body registered with & Registration number	

Email address:	

SECTION 3 – ACCOUNTANTS DECLARATION AND REPORT			
	Accountants Declaration		
1.1	I comply with paragraphs 7.7 and 7.8 of the Accounts Code	Yes	No
1.2	I was engaged in accordance with paragraph 7.6 of the Accounts Code	Yes	No
1.3	I have read the Accounts Code & Guidance and conducted my work in such a manner to enable me to form a view whether the CLC Practice has complied with the Accounts Code	Yes	No
1.4	No personal or business relationship exists or has existed which has prevented me from carrying out my instructions fully and providing the Accountant's Declaration based solely on my inspection of the CLC Practice	Yes	No
1.5	I conclude that the CLC Practice complies with the Accounts Code	Yes	No
	Accountants Report Findings		
2.1	Did the practice provide all records, bank statements and explanations requested?	Yes	No
2.2	Are the systems and internal controls of the practice sufficient to prevent and detect breaches to the Accounts Code?	Yes	No
2.3	Indicate whether your report is qualified or unqualified	Unqualified	Qualified
	If you answered NO to any of the above questions and statements or are qualifying your report, please attach full details and explanations on separate company letter headed paper.		
3.1	Is there any other information that you consider should be brought to the CLC's attention – if YES, please attach on separate company letter headed paper details of these concerns, findings or information.	Yes	No

Name of Accountant completing this report:	
Signature:	
Date:	

Guidance for accountants completing the new accountants report

Introduction

The new accountants report is significantly less prescriptive than the previous version and aims to rely on the accountant's judgement to determine the plan and scope of the accountants review as well as conclude on the materiality of any breach.

Our intention is to move away from a prescriptive "check box" approach to a more outcome based approach. This gives the reporting accountant the flexibility and discretion to exercise their judgement by allowing them to:

1. Tailor the approach and the extent of the testing based on the practice's size, complexity and control environment.
2. Consider the impact of the control environment as it relates to client money.
3. Focus on risks relevant to the practice and its management of the client account.
4. Only qualify the report when there is material breach of the accounts code that puts client money at risk.

Accountant's responsibilities

The reporting accountant is engaged by the practice to review and report on:

1. The practice's compliance with the Accounts Code requirements, specifically:
    a. Operation of the client account (Part 3 & 4)
    b. The treatment of aged balances (Part 5)
    c. Accounting provisions (Part 6)
    d. Bank reconciliations (Part 6)
2. Whether there is an appropriate system of internal controls, management oversight and supervision that ensures compliance with the accounts code.
3. Whether breaches or failings in 1 & 2 above have or are likely to put client money at risk.

Qualification of report

Our aim with the revised format of the accountant's report is to allow the reporting accountant to determine based on the outcome of their review whether the report should be qualified. We would not expect the accountant to qualify the report based on trivial or accidental non-compliance with the Accounts Code where it is clear that it was an administrative issue that was quickly identified and rectified.

We expect the accountant to qualify his report based on the risk to the client:

- Whether a client has lost money because of negligence, fraud or control breakdowns, whether or not it has at a later stage been detected and refunded.
- Whether there is a high likelihood that a client could lose money because of controls and supervision breakdowns.

- Whether there have been material breaches of the Accounts Code rules that have been persistent or not immediately rectified on discovery.

Materiality

The overriding consideration in determining materiality, would be whether client money is being put at risk of loss through negligence, fraud or error. To assist in determining whether a breach is material the following table of circumstances has been developed:

	Almost always results in a qualification or should be reported to the CLC	A factor that on its own or combined with other factors may result in a qualification
A shortfall in the client account that is not attributed to an administrative or clerical error.	X	
A shortfall in the client account that is attributed to an administrative or clerical error that has been replaced or corrected in a timely manner.		X
Any shortfall in a client account that is either not replaced or not replaced in a timely manner.	X	
Breach of CLC Codes resulting in failure to adequately protect client money.	X	
Actual or suspected fraud or dishonesty by a Director, manager, employee or shareholder of the practice.	X	
Actions of a third parties that has or may put client money at risk.		X
Any material breaches of the CLC Accounts Code	X	
Accounting records and processes are inadequate to ensure compliance with the Accounts Code	X	
Accounting records are unreliable or inaccurate		X
Practice is unable or unwilling to provide documentation requested and necessary for the reporting accountant to conduct their review.	X	
Client bank reconciliations are not compiled in the manner and within the periods specified by the Accounts Code	X	
Client bank reconciliations, are not completed within specified timelines or are not of an appropriate standard		X
Reconciling items on bank reconciliations have been outstanding for more than 30 days		X
The control environment supporting the operation of the client account is inadequate		X
Aged balances are not being actively and appropriately avoided and managed		X
Regular or routine use of suspense accounts.		X

Test checks

Although the onus is on the reporting accountant to develop and conduct a plan to test the practices compliance with the Accounts Code, the checklist that formed the basis of the old accountant's report is a useful guide for the development of a review plan. The tests specified in the previous Accounts Code have been included as a guide for the development of a testing program.

1	**Book-keeping system**
1.1	The accounting records clearly distinguish between client and office monies dealt with by the practice.
1.2	A separate ledger account is maintained for each individual client and the particulars of all client money received, held or paid on account of each client, including funds held on separate designated deposits, or elsewhere, are recorded.
1.3	The current balance on each client and office ledger account is always shown or is readily ascertainable from the accounting records.
1.4	The current balance shown on each client and office ledger account is correct.
1.5	A central record or file of copies of all bills of costs has been retained on a durable medium.
1.6	The practice has established and maintained proper accounting systems, procedures, processes and internal controls to ensure compliance with the Accounts Code.
1.7	Where it is possible to ascertain, the Practice has accounted to their Clients' as soon as possible after completion of any transaction or after any retainers have been terminated.
1.8	Where it is possible to ascertain, all monies held in client bank account have been paid promptly to the Rightful Recipient when due.
2	**Postings to ledger accounts and casts:**
2.1	All dealings with client money have been appropriately recorded in a client cash book.
2.2	All dealings with client money have been appropriately recorded on the client side of a separate client ledger account for each Client or each Client matter.
2.3	Postings have been recorded in chronological sequence with the date being that of the initiation of the transaction.
3	**Receipts and payments of client money:**
3.1	Sample receipts and payments of client money as shown in bank and building society statements have been compared with the records of receipts and payments of client money and are correct.
3.2	The withdrawals from client bank account were made by payments other than in cash (i.e. CHAPS, BACS, Cheques etc).

3.3	Sample paid cheques have been obtained and details agreed to payment records. (Where paid cheques are retained by the CLC Body's Bank, copies of the selected sample of paid cheques will need to be requested from the Bank).
3.4	A test examination of client ledger accounts revealed that no withdrawals on behalf of any client exceeded the total of the money held to the credit of that client.
3.5	If the test in 3.4 above revealed that withdrawals on behalf of a client exceeded the total of the money held to the credit of that client, such overpayments were corrected without delay.
3.6	Withdrawals from client bank account in respect of costs were properly required for or towards payment of the practice's costs where there has been delivered to the client a bill of costs or other written intimation of the amount of the costs.
3.7	Where money has been withdrawn from client bank account in respect of disbursements, the withdrawal related to the reimbursement of money:- a) already expended by the CLC Body out of office account and evidenced on a durable medium b) for which the CLC Body has incurred a liability to pay out of office account as evidenced on a durable medium.
4	**System of recording costs and making transfers:**
4.1	The payments or liabilities mentioned in test 3.7 above were debited to the client ledger before the monies were withdrawn from client bank account
4.2	Transfers between client and office bank accounts have been recorded in both the client and office columns of the appropriate client ledger accounts.
4.3	The system of recording costs has been ascertained and is suitable.
4.4	The withdrawals from client bank account have been made by way of a cheque or by way of a transfer to the office bank account.
5	**Examination of documents for verification of transactions and entries in accounting records:**
5.1	A test examination of several client files has been made.
5.2	All client files requested for examination were made available.
5.3	The financial transactions evidenced by documents in the client files were correctly recorded in the books of account in a manner complying with the Code.
6	**Office accounts:**
6.1	Check such client office ledgers, cash books and bank and building society statements as the CLC Practice maintains with a view to ascertaining whether any client money has not been paid into a client account.
6.2	Investigate client office ledger credit balances and ensure that such balances do not include client money incorrectly held in office account.

6.3	In the event of client office ledger credit balances existing on client ledger accounts, the practice has investigated them and corrected the position without delay.
7	**Client money not held in client account:**
7.1	Has the CLC Practice disclosed any dealings in which money has been withheld from client bank account?
7.2	Has an appropriate written client instruction/acknowledgement or written authorisation from the CLC been received in each instance?
8	**Authorised Withdrawals from Client Bank Account(s):**
8.1	Cheques or other written instructions for withdrawal from client bank account have been signed by an Approved Person.
8.2	Where CHAPS terminals or other electronic systems have been used to withdraw monies from client bank account the system has been operated by an Approved Person, or authorised electronically by an Approved Person.
9	**Client to Client Transfers:**
9.1	All transfers of money from the ledger account of one Client to that of another Client have been effected in accordance with the Accounts Code.
10	**Client ledger for Borrower and Lender:**
10.1	When acting for both lender and borrower in a mortgage transaction between them and separate client ledger accounts for both Clients have not been opened, the funds belonging to each Client are clearly identifiable.
11	**Deposit Interest:**
11.1	Where appropriate, the practice has accounted to clients for interest earned in accordance with the Accounts Code.
12	**Information and Explanations:**
12.1	All records and explanations required have been received and satisfactorily cleared.
13	**Reconciliations and extraction of client ledger balances:**
13.1	The client bank reconciliation, extraction of client and office ledger balances and comparison between liabilities to clients and cash available has been checked for a sample of reconciliations
13.2	All accounts, disclosed by the practice or the practice's Bank, containing client money have been included in the reconciliation.
13.3	The client bank reconciliation total is complete and correct having being calculated by:- • the closing client bank account balance plus an accurate and complete list of outstanding lodgements less an accurate and complete list of unpresented cheques.

13.4	The cash book balances at each of the dates selected have been reconciled to the balances in client account and elsewhere as confirmed directly by the relevant banks and building societies.
13.5	The client cash account balance is correctly calculated by the accurate and prompt recording of transactions.
13.6	All client ledger account balances as at the reconciliation date have been listed and totalled and no debit balances have been included in the total.
13.7	The total liabilities to clients as shown by such ledger accounts has been compared to the balance on the bank reconciliation statement and agreed.
13.8	Where the comparison in 13.6 and/or 13.7 shown above revealed differences, a reconciliation statement showing the cause of the differences had been prepared.
13.9	In the event of debit balances existing on client ledger accounts, the practice has investigated them and corrected the position without delay.
13.10	In the event of the reconciliations selected not agreeing, the differences have been investigated and corrected promptly.
13.11	The reconciliations were completed within 7 days of the reconciliation date to which they relate.
13.12	Each reconciliation selected has been achieved by the comparison and agreement without adjusting or balancing entries of the: • Client ledger balances total; • Client cash book(s) balances total; • Client bank accounts total
14.1	Reconciliations have been carried out at least once in each calendar month.
14.2	All client reconciliations were prepared at least once at the end of each calendar month.
14.3	Each reconciliation is in the form of a statement set out in a logical format which is likely to reveal any discrepancies.
14.4	The client bank reconciliation total has been compared with the balance on the client cash book(s).
14.5	The total of the client ledger credit balances has been compared with the balance on the client bank reconciliation statement.
14.6	Reconciliation statements have been retained on a durable medium.
14.7	In the event of the reconciliations selected not agreeing, reconciliation statements showing the cause of the differences have been prepared and the differences have been investigated and corrected promptly.

Annex D: Destination table and new provisions

Destination table

Current Provision		Reworded and Simplified	Removed	Consolidated and Simplified	*Destination in proposed draft Code*
1.	Act with independence and integrity		x		
2.	Maintain high standards of work		x		
3.	Act in the best interests of your Clients		x		
4.	You keep Client Money Safe		x		
5.	You promote ethical practice and compliance with regulatory requirements				
6.	You maintain proper governance, management, supervision, financial and risk management arrangements and controls				1.3
7.		x			3.3
8.					1.6
9.					
9.1.1.		x			1.2
9.1.2.		x			2.2
9.1.3.		x			3.4
9.1.4.				Part of rules 9.1.4 and 6 combined	1.3
9.1.5.		x			3.5
9.1.6.		x			3.6
9.1.7.			x		
10.	Payment into Client Account				
10.1.			x		
10.2.		x			3.7
10.3.			x		
10.4.			x		
10.4.1.			x		
10.4.2.			x		
10.4.3.		x			3.8
11.	Money to be withheld from Client Account				
11.1.			x		
11.1.1.			x		
11.1.2.			x		
12.	Withdrawal and Transfer from Client Account				
12.1.1.		x			3.9
12.1.2.			x		
12.1.3.			x		
12.1.4.		x			4.1
12.2.		x			4.1
12.2.1.		x			4.1

12.2.2.		x			4.1
12.2.3.		x			4.1
12.2.4.			x		
12.2.5.		x			4.1
12.2.6.			x		
12.3.			x		
12.4.		x			3.5
12.5.		x			3.6
12.6.			x		
12.7.			x		
12.8.		x			4.2
12.8.1.		x			4.2
12.8.2.		x			4.2
12.8.3.			x		
12.9.			x		
12.10.		x			4.1
12.11.		x			4.2
12.12.					4.2
12.13.			x		
12.13.1.			x		
12.13.2.			x		
12.13.3.			x		
12.14.		x			4.4
13. Accounting Records					
13.1.		x			6.1
13.1.1.				x	6.4
13.1.2.				x	6.4
13.2.				x	6.4
13.2.1.				x	6.4
13.2.2.				x	6.4
13.3.				x	6.4
13.3.1.				x	6.4
13.3.2.				x	6.4
13.3.3.				x	6.4
13.4.			x		
13.4.1.			x		
13.4.2.			x		
13.4.3.			x		
13.5.		x			6.4
13.6.		x			6.4
13.7.			x		
13.8.		x			6.4
13.9.	Reconciliations			x	6.6
13.9.1.				x	6.6
13.9.2.				x	6.6
13.9.3.				x	6.6
13.10.				x	6.7
13.10.1.				x	6.7
13.10.2.				x	6.5
13.11.			x		
13.12.					6.8
13.13.	Retention of Records	x			6.9
13.14.		x			6.9
13.15.		x			6.9

13.16.	Misappropriation of Clients' Money	x			2.3 & 4.3
14. CLC Monitoring					
14.1.				x	1.4
14.2.				x	1.4
14.3.		x			1.5
14.4.			x		
15. Deposit interest					
15.1.				X	3.10
15.2.			x		
15.3.				x	3.10
16. Accountants Report					
16.1.		x			7.1
16.2.		x			7.3
16.3.			x		
16.4.		x			7.4
16.5.				Rule 16.5 and 16.6 combined	7.7
16.6.	Requirements to be qualified to certify Accountants Reports			Rule 16.5 and 16.6 combined	7.7
16.7.		x			7.8
16.8.					7.6
16.9.			x		
16.10.		x			7.5
16.11.			x		
16.12.		x			7.6
17. General Saving Provisions					
17.1.			x		
18. Reporting Accountant's Terms of Engagement – Schedule 1					
18.1.		x			7.6
18.2.		x			7.6
18.2.1.		x			7.6a
18.2.2.		x			7.6b
18.2.3.		x			7.6c
18.2.4.		x			7.6d
18.2.5.		x			7.6e
18.2.6.		x			7.6f
18.3.		x			7.6g
18.3.1.		x			7.6g(i)
18.3.2.		x			7.6g(ii)
18.3.3.		x			7.6g(iii)
18.4.		x			7.6g(iv)

New Provisions

1.1	Who the Accounts Code applies to.
2.1	Definition of Client Money.
3.1	Definition of Client Account.
3.2	How the Client Account may be used.
4.1g	Circumstances in which money from a client account can be withdrawn without prior CLC authorisation when the criteria set out in 4.1(a)-(f) are not met.

5.1	The criteria that must be met to enable the withdrawal of an aged balance (not exceeding £50) from client account.
5.2	Any individual client balance in excess of £50 will still need to be authorised by and paid to the CLC.
6.2	Accounting records must be drawn up in accordance with generally accepted accounting practices.
6.3	Accounting records must be compiled by an individual with the appropriate skill and experience.
8.1	The practice may use a TPMA in respect of providing legal services to the client.
8.2	Criteria that must be met before using a TPMA.
8.3	The practice must obtain regular statements from the TPMA to ensure they reflect the transactions.