

21 June 2019

Dear Sir/Madam

### **The CLC's Accounting Rules**

The Legal Services Consumer Panel (Panel) welcomes the opportunity to respond to the Council for Licensed Conveyancers consultation on reviewing its Client Accounts Rules.

The Panel agrees with the CLC's overall objectives. We support a move towards principles based regulation because we recognise that overly prescriptive rules often lack the capability of being applied flexibly or of responding to change. Detailed rules may leave gaps, produce inconsistencies, lead to rigidity, and may be susceptible to creative compliance. A principles-based approach, on the other hand, is more likely to produce behaviour which fulfils the regulatory objectives and useful innovation. We believe that this set of proposals is likely to lead to accounting rules that are outcome focused, proportionate, clear and enforceable.

The Panel has considered all the proposals carefully, and we are satisfied that the CLC has struck the right balance between a principles based approach and the need to be prescriptive where necessary. The Panel supports all the proposals.

That said, the Panel believes that to be successful, these proposals must be accompanied by appropriate supervision, enforcement and accountability. This is particularly important because the CLC's consultation relates to client money, where misconduct poses high risk to the regulatory objectives.

### **Third Party Managed Accounts**

The Panel agrees with the CLC's proposal to allow firms to use alternatives to holding client money through the use of a Third Party Managed Account. However, we believe that TPMA should be accompanied by a set of mandatory criteria. These mandatory criteria are essential to ensuring that the proposal works in both the interest of consumers and providers. Our proposed criteria are:

- there is independence of the third party from the transacting party
- there is transparency of status and ownership of the third party
- that the third party is regulated by the Payment Services Regulator (under the umbrella of the Financial Conduct Authority)
- that there are clear mechanisms for dealing with disputes

- that there are clear provisions for termination of the arrangements

The Panel would also like to take the opportunity to note that Third Party Managed Accounts are likely to grow in the sector. Therefore, we would like to urge all the legal services regulators to consider a consistent strategy and guidance around their use.

I hope these comments are helpful. Please contact Lola Bello, Consumer Panel Manager, with any enquiries.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S Chambers'.

Sarah Chambers

Chair, Legal Services Consumer Panel



## **The Society of Licensed Conveyancers**

### **The Society of Licensed Conveyancers response to the CLC Consultation regarding Review of the CLC's Accounts Code**

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

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?**

The revisions to the format are suitable and do cover 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?**

The proposal to reduce the time limit for delivering the Accountant's Report from 6 months to 3 months may be suitable for smaller firms but may cause issues for the larger firms where the preparation of the Accountant's Report may take longer.

**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**

This may be a good idea but if there is still a 6 month delivery period there is no guarantee that an Accountant will have access and the ability to submit an interim report prior to the 6 month delivery period.

- 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?**

This would safeguard client monies.

**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?**

This is a practical solution.

**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?**

This is a practical solution but £10 is still a very low figure, therefore we propose £50.

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

Yes, but TPMAs are still at very early stages and from a practical point of view their implementation is unlikely to be widespread for some time.

## **CLC Accounts Code and Guidance**

### **Response from Thirdfort**

Great to see a regulator taking such a forward thinking approach to innovation across the industry.

As a TPMA provider, and having read your approach to roll out TPMAs, I think your approach to Q7 is sensible.

We not only see benefits around reduced risk in handling client money but innovators of these solutions such as Thirdfort also offer firms an out of the box way to significantly streamline the admin associated with identifying the Source of client Money.

Happy to provide further clarification if needed.

## CLC Accounts Code and Guidance

### Response from Shieldpay

It is with great excitement that we see the introduction of these much more streamlined rules and the concept of TPMA. We are also so glad to have the ongoing support of the CLC in our endeavours and very excited to see all of this coming together.

### Accountants Report

Para 57- 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.

Would it be possible to have direct reference in Rule 7 - Accountant Reports of this? Or is it intended that this will appear in the guidance?

### Aged balances

Para 5.1 We agree with the CLC's changes to the of Aged balances rules and these being self certified for balances up to £50. The administrative burden with dealing with these is far too excessive as per para 48 of the consultation.

Clarify on how aged balances should be dealt with when held with a TPMA would be useful. These should be subject to the TPMA's own rules and the CLC rules should not apply. In practice, as a TPMA, we would send the balance of the funds back to the source of the funds. We will always be able to identify the source of the funds. However, in the unlikely event that the source of the funds is no longer an account which accepts funds, we would send the funds to a charity of our choice.

### Interest on client funds

**Para 3.10 - states that interest earned on client money must be recorded in the relevant client ledger. The CLC practice must obtain informed written consent from the Client if it wishes to depart of this requirement.**

Under a TPMA, as funds are no longer held by a firm, they would not be entitled to receive the interest from this, nor would this naturally fall into the hands of the Client.

Clarity on how interest held with a TPMA should be accounted for would be useful as we often get CLC and SRA firms asking us specifically on this point. From our understanding of the rules, firms need explicit consent to keep this interest now. Are we correct in assuming that how this is dealt with now and if a TPMA is holding funds, that this is subject to the TPMA's own rules and the CLC rules should not apply?

### Statements

Para 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.**

Many firms consider the later part of the para means they are still required to maintain a full client ledger, and so negating one of the perceived advantages of a Third Party Managed Account solution. Would it be possible to either provide further guidance on what the extent of this requirement is. Would a completion statement from the firm which matches the TPMA's records be sufficient or would full accounts need to be done?

## **CLC Accounts Code and Guidance**

### **Response from Smartfield Accountants**

Dear Sir / Madam,

I have reviewed the CLC consultation paper on the "Review of the CLC's Accounts Code". I have following comments to make:

1. Flexibility in choice of test is welcomed;
2. Reduction in the time limit to submit the accountants report is practically impossible because as accountants we need to write to the bank for the confirmation of balances and copies of the cheques, which takes up to 3 months. In my view the time limit should be extended to be inline with the Companies House deadline of nine months after the year end date.

If you need any further information then please contact me.

## **CLC Accounts Code and Guidance**

### **Response from Francis Parffrey Legal Services Limited**

Dear CLC

My responses to the consultation paper are:

1, 2: Yes

3: No – suggest 4 months as reporting time falls around the end of the SA reporting time for the HMRC when accountants are very busy.

4, 5, 6 and 7: Yes

## **CLC Accounts Code and Guidance**

### **Response from Enact Conveyancing Limited**

Dear Sirs,

Please find attached feedback from enact. We are more than happy to have further discussions on any of the points raised.

Subject to our comments this is a very positive change.

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

Yes – We would prefer that CLC Lawyer and Manager was defined term in the Code for clarity.

#### **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?**

Yes

#### **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?**

We would prefer 4 months as cutting the period from 6 months to 3 months seems disproportionate in one step. What we would not want is an additional fee being payable if the Accountants have to expedite this as we already pay a substantial fee for the Report.

#### **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?**

Yes – However it may be practically difficult to achieve this until the audit is concluded (except in cases of serious material breaches that are readily self-evident) hence the reason we would prefer 4 months as a definitive time scale.

#### **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?**

Yes

#### **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?**

Yes – However we would be grateful for confirmation that the penny balance waiver previously granted to the CLC by Mark Goring still applies as if it does not we would be in a significantly worse position from an aged balance position as it would not be practical to wait 12 months to clear a penny balance. Alternatively could this be expanded to include penny balances for everyone.

#### **Question 7: Do you agree with our approach to allowing TPMA's as an alternative to holding money in a client account?**

A qualified Yes provided this does not result in a greater risk to client monies, the TPMA holds appropriate indemnity insurance, the TPMA Terms and Conditions are not materially prejudicial to consumers.

The evidence to date is not compelling of existing and potential entrants to the market.



I enclose an extract of worrying materially prejudicial terms and conditions relating to a party which are materially prejudicial to consumers :

“ Clause 7.3

The thirdfort service is provided “as is” to the fullest extent permissible pursuant to applicable Law, Thirdfort disclaims all warranties and conditions express or implied, including, but not limited to, implied warranties of satisfactory quality and fitness for a particular purpose, in relation to the thirdfort Service, its use and the results of such use.

Thirdfort specifically disclaims any warranty that :-

7.3.1. the Thirdfort Service and its availability shall be uninterrupted or error free;

7.3.2. defects shall be corrected;

7.3.3. there are no viruses or other harmful components;

7.3.4 the security methods employed shall be sufficient; or

7.3.5 regarding correctness, accuracy or reliability.

7.4 All warranties, representations conditions and all other terms of any kind whatsoever implied by statute or common law are excluded from the ELUA to the fullest extent permitted by Law.

It would be disappointing if products could be released without sufficient safeguards in place to protect consumers, as ultimately that would mean a risk to the reputation of the CLC and future negligence action against entities for recommending the consumer uses the product, without highlighting the risks in the event of loss and potential claims against the Compensation Fund, which we do not believe was ever intended to underwrite commercial products.

## Response from Premier Property Lawyers

### Review of the CLC's Accounts Code

CLC consultation paper

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

*I believe on the whole the Accounts Code is clearer and easier to understand but I do have concerns about the rules being less prescriptive – for those of us that have been in the industry a long time obviously the old rules are still remembered and they do help in the setting of appropriate procedures, systems and controls. My worry would be for those new to Legal Cashiering that perhaps with the rules being less detailed this could lead to less strict controls. A small example is the amendment to Rule 9.1.5 which has been reworded and simplified as Rule 3.5. You have omitted to reference Office in credit – which may not cause Client account to be overdrawn but could result in client money being in Office account in error. By omitting this requirement to show where office is in credit this breach may not be picked up.*

**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?**

*This is a more difficult question to answer – what I am hoping is that the new format can standardise the way Accountants audit under the rules. I believe the accountants themselves are best placed to answer this question.*

**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?**

*Yes.*

**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?

*Yes.*

**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?**

*Yes.*

**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?**

*I am struggling to understand why there is a lesser limit for a donation to a nominated charity? I would be grateful to understand why the CLC Practice could not donate up to £50.00 if they so wished? Obviously keeping the records etc and following the rest of the code? Can it not be at the choice or discretion of The CLC Practice to donate or take into office account? The CLC Practice would be ultimately responsible to pay the Rightful Recipient if requested. This rule seems to not allow the CLC Practice to donate more than £10.00 if they wish? I'm not seeing why The CLC would impose this limit?*

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

*I would like to see further details and explanation of how The CLC can impose the necessity for statements to be requested by The CLC Practice to the TPMA as a requirement when they are not regulated by the CLC – how would this be enforced? Why would the CLC Practice need to see the transactions on the account if the CLC Practice did not hold and therefore had no regulatory responsibility for those client funds?*

## **CLC Accounts Code and Guidance**

### **Response from John M Lewis & Co.**

Dear Sirs

Please see my response to your consultation questions regarding the above as follows:-

1. Yes, they are clear and to the point.
2. Yes I agree as any discrepancies in client account would be revealed and therefore client funds will be protected.
3. I think this proposal could be difficult to achieve or cost firms more as their accountant firm would possibly need to re-schedule annual audits to accommodate a tighter time frame and thereby charge more to the CLC client. This could however be tempered by using both points a and be referred to in respect of requiring an interim report.
4. See response above.
5. I agree that £50 is a more reasonable amount and commensurate with the cost of stopping and re-issuing cheques or the cost of postage or phone calls in trying to locate the recipient.
6. Yes I agree. We have found several clients who don't even bother banking a cheque sent for less than £10.
7. Although I am not yet sure whether I would want to be using a TPMA for our practice, I do see it as a system that will be used more frequently in the future so CLC will need to provide authorisation so that CLC firms are not left behind if this system takes off.

**Response by Nairnsey Fisher & Lewis**

**Review of the CLC's Accounts Code**

CLC consultation paper

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

Yes

**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?**

We agree that it is simpler and covers the principal area 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?**

We are concerned that it may not be easy to engage Accountants to produce the report in a reduced period of time and would prefer the period to remain at 6 months.

**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;

We would not object to this but would suggest option b below would be the most appropriate route to protect the public speedily and to trigger an urgent inspection of the practice concerned by the CLC.

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?**

Yes

**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?**

Yes

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

We have no objection to detailed discussions by the CLC with TPMA's but would want the CLC to approve authorised TPMA providers for the profession following extensive trials before they became accepted generally.