

## REVIEW OF THE CLC ACCOUNTS CODE & GUIDANCE

### Summary of Consultation Responses

September 2019

#### Introduction

Between 17 April and 21 June 2019 the CLC consulted publicly on proposed changes to the Accounts Code (the Code), which governs the handling of Client money by CLC-regulated practices. The consultation received ten responses from CLC practices, the Legal Services Consumer Panel, the Society of Licensed Conveyancers, an accountancy practice, and two third party managed account (TPMA) providers.

The purpose of this paper is to summarise responses to the questions in the consultation paper. The CLC's formal response to the feedback provided will be provided separately.

The proposals consulted on include:

1. Simplifying the Code to reduce regulatory burdens, make it easier to understand, and to ensure it is appropriate and proportionate.
2. Amending the format of the Accountant's Report to allow more flexibility for Reporting Accountants to determine the appropriate tests for a given practice.
3. Reducing the time for submitting the Accountant's Report to the CLC from six to three months.
4. If the time limit is not reduced, requiring an interim report highlighting the areas of concern of a qualified report; and/or requiring that the CLC is immediately informed of any breach that results in client monies not being kept safe.
5. Introducing a self-certification scheme for aged balances of up to £50.
6. Allowing practices to donate aged balances of up to £10 to a nominated charity.
7. Explicitly allowing the use of TPMAs.

#### Background

The proposals in the current consultation were developed following:

- the CLC's previous public consultation regarding changes to the Code starting in February 2017 and running for 12 weeks, which received 14 responses; and
- four workshops attended by 42 CLC practices in March 2019.

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

7 respondents agreed that the simplified version of the Code is clearer and easier to understand. The remaining 3 respondents (an accountancy practice and the TPMA providers) did not answer the question.

A conveyancing practice requested clarification of new rule 4.2, which replaces 12.8, 12.8.1, 12.8.2 and 12.8.3 and relates to who is able to approve payments from a Client Account. As a result, new

rule 4.2 was reworded to specify that “Payments out of a Client Account must be approved *by a duly authorised signatory to the Client Account...*”<sup>1</sup>

They also noted that the omission of the words ‘Office in Credit’ in new rule 3.5 (formerly 9.1.5) might result in Client Money being in the Office Account in error and the breach not being detected.

The same practice expressed some concern that less prescriptive rules may lead to those who are new to legal cashiering setting inadequate or inappropriate procedures, systems, and controls.

**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?**

8 of 10 respondents approved of the revised form of the Accountant’s Report and agreed it covers the principal areas of risk to client monies. The TPMA providers did not 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 from six to three months from the end of the Accounting Period?**

Six respondents disagreed with the proposal to reduce the time limit, two agreed that it should be reduced (a conveyancing practice and the Legal Services Consumer Panel), and two did not respond (TPMA providers).

Two CLC practices noted that accountants may charge higher or additional fees for an expedited process, or because they need to reschedule annual audits. One of the practices qualified its response by adding that this may be tempered by introducing the proposals in question 4 a) and b).

Another practice thought a reduced timeframe may make it more difficult to engage an accountant to do the work, while the Society for Licensed Conveyancers submitted that while a shorter timeframe may be achievable for smaller firms, it would cause issues for larger ones where reports take longer to prepare.

The accountancy practice responded that a reduced time limit would be “practically impossible” as obtaining confirmation of balances and copies of cheques from the bank can take up to three months in itself. They submitted that the time limit should be extended to nine months, in line with the Companies House reporting deadline.

**Question 4: If the time limit remains at six 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 Code that results in client monies not being kept safe?**

Three respondents (two practices and the Legal Services Consumer Panel) agreed that both a) and b) would be positive measures, although one of the practices noted that it may be practically difficult to achieve until the audit is concluded (except in cases of serious material breaches that are readily self-evident).

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<sup>1</sup> The former proposed wording of new rule 4.2 stated that “Payments out of a Client Account must be duly authorised by the signatories to the Client Account...”

A further three respondents (two practices and the accountancy practice) did not agree with either of the proposals.

The Society for Licensed Conveyancers and the remaining practice did not explicitly object to a) but agreed that b) would be a more effective way of protecting client monies.

The TPMA providers did not respond to this question.

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

8 of 10 respondents agreed with this proposal. One TPMA provider and the accountancy practice did not answer this question.

One practice added that £50 is a more reasonable amount that is commensurate with the cost of stopping and re-issuing cheques, or the cost of postage or phone calls made in trying to locate a client.

One TPMA provider agreed with the proposal and requested guidance be provided as to how a TPMA should deal with Aged Balances. They noted that a TPMA will always be able to identify the source of funds, and if the account no longer accepts deposits the TPMA would donate the money to a charity of its choice.

**Question 6: Do you agree with the proposal to permit CLC Practices to donate 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?**

One TPMA provider and accountancy practice did not answer this question.

Three practices and the Legal Services Consumer Panel agreed with the proposal, with one practice noting that several of its clients would not bother cashing a cheque for less than £10.

The Society of Licensed Conveyancers agreed with a provision for donating aged balances to charity but suggested the limit should be raised to £50. Another practice noted that it is not clear why the charity limit is not also £50, given that the CLC practice would remain liable to pay the Rightful Recipient upon request.

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

The accountancy practice did not answer this question.

The remainder of the respondents (9) responded in the positive, although 8 of them qualified their answers with the following:

- It is not clear how the CLC would enforce a requirement that TPMAs must provide statements when requested by a CLC Practice.
- It is not clear why the CLC Practice would need to see the transactions on the TPMA account if they have no regulatory responsibility for those client funds.
- The use of TPMAs must not result in greater risk to client monies.

- TPMA's should hold appropriate indemnity insurance and their terms and conditions must not be materially prejudicial to consumers.
- There must be sufficient consumer safeguards in place, a lack of which could present a risk to the CLC's reputation and potential negligence action against entities for recommending unsafe products.
- The CLC should work to authorise the use of TPMA's now so that its regulated firms are not left behind.
- That TPMA's should have mandatory criteria attached, including relating to: independence; transparency; dispute resolution mechanisms; provisions for termination of arrangements; and appropriate regulatory oversight by the FCA.
- The CLC should approve authorised TPMA providers for use by the profession following extensive trials.

One TPMA provider noted the benefits of TPMA's as being reduced risk in handling client money, and significant streamlining of the administrative burden associated with identifying the source of client money.