



Accounts Guidance

AGED BALANCES GUIDANCE

Purpose of this Guidance

This guidance aims to help the regulated community resolve the problem of Aged Balances.

Note that the self-certification scheme means that firms do not need CLC authorisation to withdraw aged balances not exceeding £50.

Part 1 provides guidance on avoiding or minimising the occurrence of Aged Balances, and

Part 2 sets out the procedure which the CLC will follow, and the information you need to provide, when it considers whether to give written authority for the withdrawal of an aged balance of £50 or more.

Part 1: Avoiding Aged Balances

A. On Receipt of Instructions

1. Obtain the Client's bank account details (name and address of bank, sort code, account number and name).

B. Completion Statements

2. The CLC Practice should keep accurate and up to date completion statements:

- (a) a completion statement is an itemised statement of money paid in and out of the Client Account, concluding with a balance either owed by or to be paid to the Rightful Recipient
- (b) draft completion statements should be prepared and checked prior to exchange of contracts
- (c) all completion statements (in draft or final form) should be checked for accuracy by reference to:
 - i. the transaction file, and
 - ii. the Client ledger.

C. Client Ledgers

3. The Client ledger 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.
4. It is good practice to ensure that:
 - (a) the Client ledger balances are reviewed monthly to identify unexpected or dormant Client balances
 - (b) if a balance is held against a contingent liability, a note is made on the Client ledger (or alternatively the file) clearly identifying that liability, and
 - (c) 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.
5. Before a file is closed or archived:
 - (a) the Client ledger should be checked to ensure:
 - i. no balance is outstanding, and
 - ii. all cheque payments have been cleared by the bank
 - (b) a copy of the Client ledger showing a nil balance on both the Client and Office Accounts should be placed on the file.

D. Unpresented Cheques

6. Unpresented cheques appearing on the bank reconciliation should be reviewed monthly and where appropriate action taken to encourage Clients (in particular) to pay them in at a bank.
7. If a cheque has been lost or remains unpresented after 6 months:
 - (a) a stop should be placed on the original cheque
 - (b) the cheque should be written back to the Client ledger, and
 - (c) the monies should be paid either:
 - i. direct to the Rightful Recipient's bank account, or

- ii. at the Rightful Recipient's direction.

E. Retention Monies

8. Where possible the CLC Practice 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.

9. If no such term has been agreed:

- (a) the file should be reviewed regularly (but no less than once every 3 months) , and
- (b) you should seek to obtain such an agreement.

10. It is good practice to maintain and review regularly (but no less than once every 3 months) 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.

Part 2 – Withdrawal of Aged Balances

A. Aged Balances not exceeding £50

11. The CLC does not need to authorise the withdrawal of an Aged Balance not exceeding £50 provided that the conditions in paragraph 4.4 of the Accounts Code are met.

12. For all withdrawals ensure the relevant entries have been made to a suitable office nominal ledger account e.g. Write-Offs and, if appropriate, account for any tax e.g. VAT.

B. Aged Balances exceeding £50

13. The withdrawal of an Aged Balance exceeding £50 from the Client Account must be authorised by the CLC and paid to the CLC (paragraph 4.7 of the Accounts Code).

14. An application for authorisation must be signed and dated and must include:

- (a) A schedule setting out the:

- i. Client(s) name(s)
 - ii. file/ledger reference
 - iii. address of the property concerned
 - iv. name of the Rightful Recipient(s)
 - v. balance outstanding, and
 - vi. date of last movement on Client Account
- (b) A copy of the Client ledger
- (c) A description of how the balance came about, and
- (d) A statement confirming that reasonable steps have been taken to locate the Rightful Recipient, describing what the reasonable steps were and that they were unsuccessful.

What are reasonable steps?

15. What amounts to reasonable steps will depend 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
- attempting to return funds using available bank account details of the Rightful Recipient
- contacting known contacts of the Rightful Recipient
- advertising in a local newspaper
- making a search of Companies House, the Probate Registry and/or HM Land Registry
- making use of social media
- internet search.

16. Where the Rightful Recipient cannot be identified, the CLC will, in exceptional circumstances, give authority for the withdrawal of funds from Client Account on the basis that a funds transfer for any sum so authorised must be drawn on the

Client Account payable to the CLC. On receipt, the funds will be placed to the credit of the CLC's Compensation Fund. You should place a copy of the authority issued by the CLC on the Client's file.

17. If the Rightful Recipient makes contact after funds have been paid into the CLC's Compensation Fund the CLC Practice should contact the CLC with a view to the Rightful Recipient making a claim for reimbursement on the Compensation Fund unless the body is no longer trading in which case they should contact the CLC directly. To be used in conjunction with **Accounts Code**.

THIRD PARTY MANAGED ACCOUNTS GUIDANCE

Third Party Managed Accounts Guidance

1. A CLC Practice which has had CLC approval may use a Third Party Managed Account (TPMA) managed by a named TPMA provider as an alternative to a Client Account.

Your responsibilities before entering into arrangements with a TPMA provider

2. As defined in the Glossary of Legal Terms, TPMA means an account

- (a) held at a bank or building society in the name of a third party which is
 - a. an authorised payment institution, or
 - b. a small payment institution that has adopted voluntary safeguarding arrangements to the same level as an authorised payment institution, or
 - c. an EEA authorised payment institution.

(as each is defined in the Payment Services Regulations) regulated by the Financial Conduct Authority,

(b) in which monies are owned beneficially by the third party, and

(c) which is operated upon terms agreed between the third party, the CLC Practice and the Client as an escrow payment service.

3. As a matter of good practice, the CLC Practice should undertake an assessment

of the viability of the business of the TPMA and satisfy itself that there is minimum risk to Client Money and that the Client will be protected in the event that the TPMA closes.

The CLC must approve the use of the TPMA provider

4. An application under paragraph 7.1 of the Accounts Code should be sent to the CLC at monitoring@clc-uk.org with:

- a. the Practice name and licence number
- b. the name of the TPMA provider and its FCA authorisation number, and
- c. the date on which it intends to start using the TPMA.

The CLC may request further information under paragraph 7.2 of the Accounts Code.

5. Once approval is granted the CLC Practice does not need further approval where the same TPMA provider is used for another matter or Client. Further approval is required to use another TPMA provider.

6. The CLC Practice should inform the CLC in writing within 14 days after ceasing to use a TPMA provider.

Status of money held in a TPMA

7. Money held in a TPMA is not Client Money as it is not held or received by a CLC Practice and is not subject to the Accounts Code.

8. Using a TPMA does not release the CLC Practice from the requirement to act in the best interests of its Clients, which includes protecting Client Money and assets (Overriding Principle 3, Code of Conduct). The CLC Practice should ensure that the decision to use a TPMA, and the TPMA provider used, is appropriate in the circumstances of each case and does not result in a greater risk to a Client's money. This will include satisfying itself that the TPMA provider has appropriate insurance in place, the terms and conditions of which are not materially prejudicial to Clients.

Client protection and information arrangements

9. In order to demonstrate compliance with paragraph 7.4 of the Accounts Code, before entering an arrangement with a TPMA provider, a CLC practice should take reasonable steps to ensure that the Client understands:

- a. the terms and contractual arrangements relating to the use of the TPMA
- b. their right to terminate the agreement
- c. their right to dispute payment requests made by the CLC Practice
- d. who will be responsible for costs associated with the arrangement
- e. that the TPMA is regulated by the FCA and complaints about the TPMA provider should be made to that provider in accordance with their complaints process, and
- f. that the regulatory protections applying to TPMAs are different to those applying to Client Money held in a Client Account.

10. The CLC Practice should obtain regular statements from the TPMA provider and ensure that these accurately reflect all transactions on the account.

11. Paragraphs 5.9 and 1.4 of the Accounts Code which require the CLC Practice to retain Accounting Records for no less than six (6) years and provide information requested to the CLC will also be deemed to apply to statements received from the TPMA provider.