



Accounts Code & Guidance

Accounts Code

In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies regulated by the **CLC** must comply with this Code. You must not permit anyone else to act or fail to act in such a way as to amount to a breach of this Code.

In the case of an **Authorised Person** who no longer holds a **Licence** or **Certificate of Recognition**, this Code applies as if that **Licence** or **Certificate of Recognition** were still in force until such time as any relevant part of this Code has been fully and appropriately complied with.

Outcomes-Focused

The **Code of Conduct** requires you to deliver the following **Outcomes**:

- **Clients receive an honest and lawful service (Outcome 1.2);**
- **Client money is kept separately and safely (Outcome 1.3);**
- **Appropriate arrangements, resources, procedures, skills and commitment are in place to ensure Clients always receive a high standard of service (Outcome 2.3);**
- **Each Client's best interests are served (Outcome 3.1).**

Appropriate handling of **Client Money** helps you delivery these **Outcomes** and requires you to act in a principled way:

1. **Act with Independence and Integrity. (Overriding Principle 1)**
2. **Maintain High standards of Work. (Overriding Principle 2)**
3. **Act in the Best Interests of your Clients. (Overriding Principle 3)**
4. You keep **Client Money** Safe. (**CoC** P1h)
5. You promote ethical practice and compliance with regulatory requirements.(**CoC** P2g)

6. You maintain proper governance, management, supervision, financial and risk management **arrangements** and **controls**. (CoC P2i)

You must also comply with the following **specific requirements**:

7. You keep **Client money** entirely separate from your money or the money of the entity. (CoC P1k)
8. You comply with anti-money laundering and prevention of financing terrorism legislation. (CoC P1m)
9. You:
 - 9.1.1 ensure that your partners, **employees** and directors (including partners, **employees** and directors who are not **Authorised Persons**) comply with this Code;
 - 9.1.2 use each **Client's money** only for that **Client's** matters;
 - 9.1.3 only pay money into, and withdraw money from, the **Client Account** and the **Office Account** for purposes related to the provision of services regulated by the **CLC**;
 - 9.1.4 establish and maintain proper accounting systems, procedures, processes and internal **controls**, to ensure compliance with this Code;
 - 9.1.5 ensure there is no debit balance on the **client** side of a **client** ledger account nor a credit balance on the office side of a **client** ledger account;
 - 9.1.6 remedy any breach of these requirements **without delay**;
 - 9.1.7 account to the **Client** as soon as possible after completion of any transaction or after a retainer has been terminated.

Payment into Client Account

- 10.1. Subject to the provisions of the 10.4 and 11.1 requirements, upon receiving **Client Money** you pay it into a **Client Account without delay**.
- 10.2 Money held in a **Client Account** is available immediately, even at the sacrifice of interest, unless the **Client** otherwise instructs.
- 10.3 Money held in **Separate Designated Accounts** is not aggregated with money held in other **Client Accounts**.

Guidance – Payment into Client Account

(i) When a **client account** is being opened, written notice should be given to the **Bank** or **Building Society** concerned in clear terms that the account is to be a **Client Account** and, in particular, that it may not be resorted to for the purpose of setting off against any other account of the body. The **Bank** or **Building Society** should also be asked to acknowledge its acceptance of this in writing.

- (ii) You/the entity may keep one **Client Account** or as many **Client Accounts** as you think fit.
- (iii) Subject to Requirement 10.3, the **CLC** permits schemes proposed by **Banks** to aggregate sums held in a number of **Client Accounts** in order to maximise the interest payable.
- (iv) **Client Accounts** are not intended to provide banking facilities for **Clients**.
- (v) There are criminal sanctions against assisting money launderers – see Anti-Money Laundering and Combating Terrorist Financing Code.

10.4 Only **Client Money** is paid into or held in a **Client Account** except:

10.4.1 such money belonging to you as an **Authorised Person** as may be necessary for the purpose of opening or maintaining the **Client Account**;

10.4.2 money to replace any sum which for any reason has been or is about to be withdrawn from the account in breach of 12.5, such money then becoming **Client Money**;

10.4.3 where you receive money and are in doubt as to whether it is wholly **Office Money** you pay such money into a **Client Account** and within one calendar month of receipt ascertain and withdraw such part as is **Office Money**.

Guidance – Client Money

(i) **Client Money** includes money held or received:

(a) as agent, bailee or stakeholder;

(b) for payment of stamp duty land tax, Land Registry fees and telegraphic transfer fees (this does not become **Office Money** unless an obligation to pay out of **Office Account** has been incurred and the payment is recorded in the office columns of the appropriate **client** ledger account).

(c) as a payment on account of **costs** generally.

(ii) Money held to the sender's order is **Client Money** if accepted and must be held in a **Client Account** unless it is received on the express terms that the cheque or draft (as opposed to the money itself) may not be presented for payment without the sender's consent. In this case you are under a professional obligation to return the cheque or draft to the sender on demand.

(iii) A payment made by you to a **Client** which is credited to **Client Account** in accordance with requirement 10.4.2 becomes **Client Money** and must be recorded in both the **client** and office columns of the appropriate **client** ledger account.

(iv) You cannot be your own **Client** for the purposes of this Code; if a transaction is conducted for a **manager**, money held or received on your behalf is in principle **Office**

Money. However, money received in such a case may still be **Client Money**, e.g.:

(a) where you/the entity act for a lender, money held or received on behalf of the lender is **Client Money**;

(b) where you/ the entity act for a **manager** and his spouse jointly (assuming that the spouse is not also a **manager** in the entity), money received on their joint behalf is **Client Money**;

(c) where you/the entity acts for an **employee** (whether or not a **Licensed Conveyancer**), consultant or director, such person is regarded as a **Client** of the entity and money received on his behalf is **Client Money**, even if that person conducts the transaction himself.

Money to be withheld from Client Account

11.1 Notwithstanding the provisions of this Code, you do not pay into a **Client Account** money:

11.1.1 which a **Client** instructs you to withhold from such an account, such instruction being either on a **Durable Medium** from the **Client** or acknowledged by you on a **Durable Medium** to the **Client**; or

11.1.2 which has been withheld from **Client Account** with the written authorisation of the **CLC** (authority is given only in very exceptional circumstances).

Withdrawal and Transfer from Client Account

12.1 Subject to requirement 12.3, there must be withdrawn from a **Client Account**:

12.1.1 **Without Delay** following discovery, money that has been incorrectly paid into it;

12.1.2 as soon as possible and in any event within one calendar month of receipt, **Office Money** paid into it in accordance with requirement 10.4.3;

12.1.3 **Without Delay Office Money** no longer necessary to maintain a **Client Account**;

12.1.4 within 28 days of the date on which a bill of **costs** is sent to a **Client**, money held on account of **Costs** and **Disbursements**, provided it is made clear to the **Client** or the paying party on a **Durable Medium** either before or at the time the bill of **costs** is sent that such money will be applied towards or in payment of that bill of **costs**. (The work for which the money is applied under this requirement must have been completed, whether at the end of a matter or at an interim stage (with the **Client's** agreement)).

12.2 In addition to the withdrawals referred to in requirement 12.1 and subject to requirement 12.3, there may only be withdrawn from **Client Account** money:

12.2.1 properly required for payment to or on behalf of a **Client**;

- 12.2.2 properly required for payment of a Disbursement on behalf of a **Client**;
- 12.2.3 properly required in full or partial reimbursement of money already expended by you out of the **Office Account** on behalf of a **Client**;
- 12.2.4 properly required in full or partial reimbursement of money for which you have incurred a liability to make a payment out of **Office Account** on behalf of a **Client**;
- 12.2.5 which is transferred to another **Client Account** ;
- 12.2.6 Where the **CLC** has given written authority for a specific payment to be made to a nominated payee or where the **CLC** has approved a scheme for automated payments direct from **Client Account**.
- 12.3 Withdrawals out of **Client Account** under requirements 12.1.4, 12.2.3 and 12.2.4 are specific sums relating to **Costs** or **Disbursements**. Round sum withdrawals on account of **Costs** or **Disbursements** are not permitted.
- 12.4 Money withdrawn under 12.1 and 12.2 does not exceed the total of the money held to the credit of both the **Client** and the **Client Account** in which the money is held.
- 12.5 You replace **Without Delay** any shortfall to a **Client** or to a **Client Account** by payment into **Client Account** under 10.4.2.

Guidance – Client Account Withdrawal & Transfer

(i) Money held on account of **Costs** and **Disbursements** becomes **Office Money** on the date the bill of **costs** is sent to the **Client** (requirement 12.1.4).

(ii) Money is 'expended' under requirement 12.2.3 at the time when a cheque is despatched, not when it is cleared. Money is also regarded as expended by the use of a credit account so that, for example, search fees, taxi fares and courier charges incurred in this way may be transferred to the **Office Account**.

(iii) Requirement 12.2.4 permits you to transfer from **client** to office **bank** account monies where a direct debit scheme is in operation. A liability to pay out of **Office Account** is deemed to have incurred when the anticipated payment from office **bank** account has been evidenced on a **Durable Medium** and recorded on the office side of the appropriate **client** ledger account.

(iv) The purpose of requirement 12.2.6 is to enable you, with the written authority of the **CLC**, to participate in schemes for automated payments to be made direct from **Client Account**. The **CLC** will generally only authorise individual payments to enable **aged balances** to be cleared.

(v) Bearing in mind note (ii), you should take care in drawing against a **Client Account** cheque or draft which has not yet been cleared. If the cheque or draft should be dishonoured, you will have to make a payment under requirement 10.4.2 to ensure there is no breach of requirement 12.4.

(vi) Similarly, if when acting for a **Client** you withdraw money from **Client Account** on the strength of information that a telegraphic transfer is on its way, but that transfer does not arrive, you will have to make a payment under requirement 10.4.2 to ensure there is no breach of requirement 12.4.

(vii) A manager of a body or the Head of Finance & Administration of a **Licensed Body** must be able to operate the **Office Account** of the body in order to be able to comply with requirement 12.5.

12.6 Undrawn **Costs** or **Disbursements** must not remain in **Client Account** either in anticipation of future errors which could result in a shortage on that account or any current shortage on that account and are not available as a set off against any general shortage on **Client Account**.

12.7 Any withdrawal in your favour is recorded in both the **client** and office columns of the appropriate **client** ledger account in accordance with requirement 13.

12.8 Subject to requirement 12.9 a withdrawal from **Client Account** is made as follows:-

12.8.1 cheques or other written instructions for withdrawal from **Client bank** account are signed by an **Approved Person**;

12.8.2 where CHAPS terminals or other electronic systems are used to withdraw monies from **Client bank** account and authority has not been given in accordance with requirement 12.8.3, such systems are operated by an **Approved Person**;

12.8.3 where payments are authorised electronically, such authority is only given by an **Approved Person**.

Guidance – Withdrawals

(i) Nothing under requirement 12.8 shall prevent any other person from operating such systems or processes in conjunction with an **Approved Person**, provided that such systems or processes cannot be operated by that other person alone.

(ii) Oral authorisations to the **Bank** are no longer permitted without confirmation of such authorisation on a **Durable Medium**.

12.9 Authority in accordance with requirement 12.8 is not required for the transfer of money from one **Client Account** to another **Client Account** at the same **Bank** or **Building Society** except where either is a **Separate Designated Account**. (Authority for any such transfer is required in accordance with requirement 12.8).

12.10 A transfer of money from the ledger account of one **Client** to that of another **Client** is only made if it would have been permissible under this Code for the money to be

withdrawn from **Client Account** in the case of the first **Client** and for the money to be paid into **Client Account** in the case of the second **Client**.

- 12.11 A withdrawal from a **Client Account** in your favour is by way of a cheque to you or by way of a transfer to your **Office Account**.
- 12.12 Withdrawals in cash from a **Client Account** are not permitted.
- 12.13 Except with the prior written authority of both **Clients** no sum in respect of a **Private Loan** from one **Client** to another is paid out of funds held for the lender:
 - 12.13.1 to the borrower directly; or
 - 12.13.2 by a payment from one **Client Account** to another; or
 - 12.13.3 by a transfer from the ledger account of the lender to that of the borrower;
- 12.14 All monies held in the **Client Account** are paid to the **Rightful Recipient** as soon as there is no longer any proper reason to retain these funds.

Guidance – Withdrawals & Transfers

(i) Monies remaining in **Client Account** that cannot be paid to the **Rightful Recipient** can be dealt with under requirement 12.2.6 (bearing in mind the Aged Balance **Guidance** attached to this Code).

(ii) Provided certain criteria have been met, withdrawals are allowed where the **CLC** has given authority and the balance has been static for over 12 months.

Accounting Records

- 13.1 You update **Accounting Records** at least once a week and ensure they are properly written up to show clearly all dealings with:
 - 13.1.1 **Client Money** received, held or paid, including **Client Money** withheld from a **Client Account** under 11.1; and
 - 13.1.2 **Office Money** and any other monies received, held or paid in any **Office Account**.
- 13.2 **Accounting Records** are sufficient to:
 - 13.2.1 show and explain accurately every transaction relating to each **Client**;
 - 13.2.2 disclose at any time total indebtedness to each **Client** and also each **Client's** total indebtedness to you/the entity.
- 13.3 All dealings with **Client Money** are appropriately recorded:
 - 13.3.1 In a **client** cash account or in a record of sums transferred from one **client** ledger account to another; and

13.3.2 on the **client** side of a separate **client** ledger account for each **Client** or for each **Client** matter;

13.3.3 with sufficient narrative on the ledger and cash account to explain each entry.

Guidance – Accounting Records

(i) Where **Banks** operate automatic transfers to **Client Accounts** offering a higher rate of interest, separate cash accounts are not required to record these transfers.

(ii) Only **client** ledger accounts in the name of a **Client** are allowed. General or suspense **client** ledger accounts are not permitted.

13.4 If **Separate Designated Accounts** are used:

13.4.1 a combined cash account must be kept in order to show the total amount held in **Separate Designated Accounts**; and

13.4.2 a record of the amount held for each **Client** must be made either in a deposit column of a **client** ledger account, or on the **client** side of a **client** ledger account kept specifically for a **Separate Designated Account**, for each **Client**;

13.4.3 upon receipt of information that interest has been credited to the **Separate Designated Account**, corresponding entries must be made in the Accounting Records.

13.5 The current balance on each **client** and office ledger account is shown, or is readily ascertainable, from **Accounting Records** kept in accordance with this Code.

13.6 All dealings with **Office Money** relating to any **Client** must be appropriately recorded in an office cash account and on the office side of the appropriate **client** ledger account.

13.7 When acting for both lender and borrower in a mortgage transaction between them, separate **client** ledger accounts for both **Clients** need not be opened provided that the funds belonging to each **Client** are clearly identifiable and the lender is an institutional lender which provides mortgages in the normal course of its activities.

Guidance – Separate Designated Accounts

(i) 'Clearly identifiable' means that, looking at the ledger account, both the nature and owner of the mortgage advance are unambiguously stated.

(ii) Although a separate ledger account is not opened for the lender, the mortgage advance credited to the **client's** ledger account belongs to the lender, not to the borrower, until completion takes place.

Improper removal of such funds from a **Client Account** is contrary to requirement 12.4.

- 13.8 You retain on a **Durable Medium** a central record or file of copies of all bills of **costs** distinguishing in each bill between **Costs**, paid **Disbursements** and **Disbursements** not yet paid at the date of the bill and VAT.

Reconciliations

- 13.9 At least once in each calendar month you:
- 13.9.1 prepare a **bank** reconciliation statement by comparing the balance on the **client** cash account with the balances shown on the **client bank** statements and passbooks (after allowing for all unpresented items) of all **Client Accounts** and **Separate Designated Accounts** and any **Client Money** held by you/the entity in cash;
- 13.9.2 as at the same date prepare a listing of all the balances shown by the **client** and office ledger accounts and compare the total of the **client** ledger credit balances with the balance on the **client bank** reconciliation statement; and
- 13.9.3 prepare a reconciliation statement showing the cause of the differences (if any) shown by each of the above comparisons.
- 13.10 The steps required under requirement 13.9 are:
- 13.10.1 prepared to a date not more than five weeks after the date to which they were last prepared; and
- 13.10.2 completed within 7 days of the date to which they are prepared.
- 13.11 Records maintained in accordance with requirements 13.1 to 13.9 are kept separate from those for any other business. Where the accounts of more than one business are maintained on the same system, they are capable of being reproduced independently by the system.
- 13.12 You have immediate and unrestricted access to the **Accounting Records**.

Guidance – Reconciliation Statements

- (i) Where, as a result of carrying out the comparisons and preparation of the reconciliation statement under requirement 13.9, any shortfall on **Client Account** is revealed it must be made good **Without Delay** by a payment into **Client Account** in accordance with requirement 10.4.2.
- (ii) Where, as a result of carrying out the comparisons and preparation of the reconciliation statement under requirement 13.9, any credit balance on the office side of a **client** ledger account is revealed, it must be rectified by the appropriate action **Without Delay**.
- (iii) Any outstanding credit on the **client bank** reconciliation should be cleared by a payment into **client bank** account **Without Delay**. The absence of a corresponding entry at the **bank**

may create a shortfall on the relevant *client* ledger account.

Retention of Records

- 13.13 You retain on a **Durable Medium** for at least six years from the date of the last entry all documents or other records required by requirement 13.1 to 13.9.
- 13.14 You retain for at least two years:
- 13.14.1 all paid cheques, unless any relevant **Bank** or **Building Society** has agreed it will retain such cheques or copies of the cheques on a **Durable Medium** on your behalf for that period; and
- 13.14.2 originals or copies of all other authorities for the withdrawal of money from the **Client Account**.
- 13.15 All statements and passbooks, as printed by the **Bank** or **Building Society** for **Client Accounts, Separate Designated Accounts**, accounts in which **Client Money** has been held and any **Office Account** is retained for at least six years from the date of the last entry.

Misappropriation of Clients' Money

- 13.16 Upon discovery of any misappropriation of **Client Money** you notify the **CLC Without Delay**. (The shortfall caused by the misappropriation must be rectified **Without Delay** by payment into **Client Account** in accordance with requirement 10.4.2).

CLC Monitoring

- 14.1 In order to monitor compliance with the **CLC's Code**, at the time and place determined by the **CLC**, you produce all information held on a **Durable Medium** relating to the business (to include his **Accounting Records**, papers, files and financial accounts) as would be reasonably required to enable the preparation of a report.
- 14.2 For the purposes of requirement 14.1, you hold **Accounting Records** on a **Durable Medium** and produce/make these available to the **CLC's** appointee in the manner required by the **CLC**.

Guidance – CLC Monitoring

- (i) Reasons are not required to be given for an inspection.
- (ii) You are required to provide, where required by the **CLC's** appointee, access to any computerised system.

Guidance - Disciplinary Consequences

- (iii) If it appears to the **CLC** that there has been a contravention of this Code, disciplinary

proceedings may be taken against you as **Manager** or as an entity under the **Code of Conduct**.

(iv) Where following an inspection instituted under requirement 14.1 it appears to the **CLC** that there is reason to believe you have failed to comply with a provision of this Code, the **CLC** may require you to pay a reasonable sum as is determined by the **CLC** to cover the cost of a further inspection.

(v) Any report made by the **CLC's** appointee may be sent by the **CLC** to the Crown Prosecution Service or the **Serious Organised Crime Agency** or to any of the accountancy bodies recognised by the **CLC**. It may be used as the basis for a preliminary investigation and may be taken into account by the **CLC** in relation to the possible disqualification of a **Reporting Accountant**. Please see Guidance at 16.7.2.

14.3 The **CLC** is entitled to seek verification from your **Clients**, staff and **Banks** or Building Societies. If necessary, you provide written permission for such information to be given.

14.4 If you do not give the **CLC** permission to remove original documents from your premises, you provide us with photocopies on our request.

Deposit Interest

15.1 When holding **Client Money** in a **Client Account** or which should have been paid into a **Client Account**, subject to 15.3 you must account to the **Client** for any interest earned or which should have been earned on such money.

Guidance – interest directions

Without prejudice to any other remedy, a **Client** may apply to the **CLC** for a direction as to whether or not interest should have been earned in respect of **Client Money** held on his behalf by an **Authorised Person**. If the **CLC** directs that interest should have been earned then it may issue a direction as to the sum you pay to the **Client** in lieu of interest.

15.2 If the **CLC** directs pursuant to paragraph 22 of Schedule 8 to the **1990 Act** that such a sum should be paid, you pay to the **Client** the amount directed within fifteen days of the **CLC** sending notification of that direction.

Guidance – Deposit Interest

(i) If appropriate, the **CLC** may require you to obtain an interest calculation from the relevant **Bank** or **Building Society**.

- 15.3 You provide sufficient information in writing to enable the **Client** to give informed consent in writing if it is felt appropriate to depart from requirement 15.1. This includes expressly drawing the **Client's** attention to any contracting out provision which may be contained in **terms of engagement**.

Guidance – Informed Consent/contracting out

- (i) Whether it is appropriate to contract out depends on all the circumstances, for example, the size of the sum involved or the nature or status or bargaining position of the **Client**.
- (ii) The larger the sum of interest involved, the greater your obligation to demonstrate that a **Client** who has accepted a contracting out provision was properly informed and has been treated fairly and reasonably.

Accountant's Reports

- 16.1 If you have at any time during an **Accounting Period** held or received **Client Money** you procure the delivery by the **Reporting Accountant** to the **CLC** of an Accountant's Report for that period.
- 16.2 The **Accountant's Report** is delivered to the **CLC** within six months of the end of the **Accounting Period** except that, where on the date of coming into force of this Code, the **Accounting Period** has already ended. The form of the **Accountant's Report** to be delivered shall be that prescribed by this Code.
- 16.3 If you have two or more places of business and choose separate **Accounting Periods** for these, you provide a separate **Accountant's Report** for each place of business.
- 16.4 You immediately notify the **CLC** of any changes to the identity, address and other relevant details of the **Reporting Accountant**.
- 16.5 Subject to Requirement 16.7 the **Reporting Accountant** is qualified to sign and give an **Accountant's Report** on behalf of an **Authorised Person** if he is a member of an accountancy body recognised by the **CLC** and holds a current practising certificate issued by that body when he signs the report.

Guidance – Accountant's Reports (1)

- (i) Even when this Code does not require delivery of a Report, a condition on a **licence** to practise may impose a separate and binding obligation to that effect.
- (ii) When **Client Money** is held or received by an entity, any **Manager** will have held or received **Client Money**.
- (iii) **Employees** do not usually hold **Client Money**, even if they are signatories on an entity's **Client Account**.
- (iv) If an **employee** does hold **Client Money**, an **Accountant's Report** will need to be

delivered.

(v) You must apply to the **CLC** for consent to vary the **Accounting Period**.

(vi) When an entity is being wound up, you may be left with **Client Money** which is unattributable or belongs to a **Client** who, despite efforts, cannot be traced. It may then be appropriate to apply to the **CLC** for authority to withdraw this money from the **Client Account** under requirement 12.2.6 (see **CLC's Aged Balance Guidance** attached to this Code).

(vii) It is not a breach of requirement 16.5 for you to retain an independent accountant to write up the books of account and to instruct the same person to prepare and sign the **Accountant's Report**. However, the accountant will have to disclose these circumstances in the **Accountant's Report**.

Requirements to be qualified to certify Accountant's Reports

16.6. The **Accountant's Report** is certified by a member of one of the following accountancy 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.

16.7 The **Accountant's Report** is not certified by an accountant who:-

16.7.1 either at any time between the beginning of the **Accounting Period** to which the **Accountant's Report** relates and the signing of the **Accountant's Report** they were a partner, **employee** or officer in the entity to which the **Accountant's Report** relates or was employed by the same employer as the **Authorised Person** for whom the **Accountant's Report** is given; or

16.7.2 they have been disqualified by the CLC and have been given by the **CLC** notice of disqualification which has not been withdrawn.

Guidance - Disqualification of Accountants

(i) The **CLC** may disqualify an accountant from giving an **Accountant's Report** if:

- a) they have been found guilty by the disciplinary tribunal of their professional body of professional misconduct or discreditable conduct; or
- b) it is satisfied that the **Reporting Accountant** has failed in their **Accountant's Report** to properly identify and explain to the satisfaction of the **CLC** any breaches of this

Code.

(ii) In coming to a decision the **CLC** will take into account any representations made by the accountant and their professional body.

(iii) The **CLC** shall notify you if you are likely to be affected by an accountant's disqualification, and may also publish notification of such disqualification in the **CLC's** 'Chronicle' or other publication.

- 16.8 You ensure that your **Reporting Accountant's** rights and duties are stated in **terms of engagement**, which include the terms set out in the Schedule. The **terms of engagement** and a copy are signed by both you and the **Reporting Accountant** and you retain the copy.
- 16.9 The **Reporting Accountant** examines your **Accounting Records** and other relevant documents at your office, not their own, and does not remove any original records from the premises.
- 16.10 You provide the **Reporting Accountant** with details of all accounts kept or operated by you in connection with your entity at any **Bank** or **Building Society** at any time during the **Accounting Period** to which the **Accountant's Report** relates, including **Client Accounts**, **Office Accounts** and accounts which are not **Client Accounts** but which contain **Client Money**.
- 16.11 The **Reporting Accountant** examines your **Accounting Records** to ensure compliance with this Code and carries out the checks and tests as prescribed on the **CLC** website and Management Information System.
- 16.12 The **Reporting Accountant** signs and delivers to the **CLC** the **Accountant's Report** together with the completed checklist in the form prescribed by the **CLC**.

Guidance – Accountant's Report (2)

(i) Although requirement 16.12 requires the **Reporting Accountant** to deliver to the **CLC** the **Accountant's Report** together with the completed checklist, requirement 16.1 requires you to procure the delivery of the **Accountant's Report** to the **CLC** by the **Reporting Accountant** within the due date. The **Reporting Accountant** must provide you with a copy of the **Accountant's Report** and completed checklist.

(ii) Factors to be considered in determining whether a breach is 'trivial' include the amount involved, the nature of the breach, whether the breach was deliberate or accidental, how often the same breach occurred, and the time which passed before discovery and correction (especially the replacement of any shortage).

(iii) If an **Accountant's Report** is qualified only by reference to trivial breaches but which shows a significant difference between liabilities to **Clients** and **Client Money** held, either

you or the **Reporting Accountant** must provide the **CLC** with an explanation for this difference, as required by the Accountant's Report Form.

General Saving Provisions

17.1 When acting on a **Client's** instructions, you have the general right on the grounds of **Client** privilege to decline to produce any document the **Reporting Accountant** requests for examination purposes. Where such a refusal occurs, the **Reporting Accountant** must qualify his **Accountant's Report** and include an explanation for such qualification.

Guidance – General Savings Provisions

(i) Upon receiving a written application from you the **CLC** may waive in writing in any particular case any of the provisions of requirement 16 and may revoke any waiver.

(ii) Nothing in this Code deprives you of your entitlement to money standing to the credit of a **client** ledger account.

Reporting Accountant's Terms of Engagement - Schedule 1

18.1 The terms on which you instruct a **Reporting Accountant** include the following:-

18.2 'In accordance with the **CLC** Accounts Code you are instructed:

18.2.1 to conduct tests and checks prescribed by the **CLC**;

18.2.2 to sign and deliver to the **CLC** the **Accountant's Report** together with the completed checklist in accordance with requirement 16.11; and provide me with a copy;

18.2.3 to report directly to the **CLC** without prior reference to me/this firm/this company if, in the course of carrying out work in preparation of the **accountant's report**, you discover evidence of theft or fraud affecting **client money** or information which is likely to be of material significance in determining whether I am/this entity is a **fit and proper person** to hold **client money**;

18.2.4 to report directly to the **CLC** should your appointment be terminated following the issue of, or the indication of intention to issue, a qualified **Accountant's Report** or following the raising of concerns prior to the preparation of an **Accountant's Report**;

18.2.5 to retain these **terms of engagement** for at least two years after termination of the retainer and to produce them to the **CLC** on request; and

18.2.6 following any report made to the **CLC** under 18.2.2- 18.2.4, to provide to the **CLC** on request any further relevant information in your possession or in the possession of your firm.

- 18.3 By accepting instructions under requirement 16 of the Accounts Code you agree that:-
- 18.3.1 the **CLC** will rely upon the content of your Report,
- 18.3.2 a duty of care is owed by you to the **CLC**; and
- 18.3.3 your liability to the **CLC** will be limited to the loss and costs suffered by the **CLC** arising from items which you have negligently or fraudulently failed to specify in your Report.
- 18.4 To the extent necessary to enable you to comply with the preceding paragraphs, I/We waive my/the firm's/the company's right of confidentiality. This waiver extends to any report made, document produced or information disclosed to the **CLC** in good faith in accordance with these instructions, even though it may subsequently transpire that you were mistaken in your belief that there was cause for concern'.

Aged Balances Guidance

Purpose of Guidance

The purpose of this ***Guidance*** is to help the regulated community resolve the problem of ***Aged Balances***; this money cannot be withdrawn from the ***client account*** without written

authority of the **CLC**. The **Guidance** intends to highlight issues which may arise and suggest possible solutions. However, it is up to the individual **Authorised Person** to decide which options best suit their circumstances.

Part 1 of this note sets out ways in which you can avoid or minimise **Aged Balances**; and

Part 2 sets out the procedure which the **CLC** will adopt when it considers whether to give written authority in accordance with requirement 12.2.6 of the **CLC** Accounts Code.

Part 1 ~ How to Avoid Aged Balances - Example Procedure

On Receipt of Instructions: -

1. (a) obtain the **client's bank** details (name and address of **bank**, sort code, account number and name) e.g. by keeping a copy of cheques issued by the **client**;
(b) alternatively, obtain the **client's** credit card details.

Completion Statements

2. (a) "Completion Statement" means an itemised statement of money paid in and out concluding with a balance either owed by or to be paid to the recipient.
(b) Draft Completion Statements should be prepared and checked prior to exchange of contracts.
(c) All Completion Statements (whether in draft or final form) should be checked for accuracy by reference: -
 - (i) to the account or alternatively to their credit card account; and
 - (ii) to the **client** ledger, with evidence from the **rightful recipient** on **Durable Medium**.

Client Ledger Card

3. The **client** ledger card should be checked to ascertain whether a balance remains after the last payment is made and, if so, the balance should be accounted for immediately to the **Rightful Recipient**.
4. It is good practice to ensure that: -
 - (i) the **client** ledger balances are reviewed monthly to identify unexpected or dormant **client** balances;
 - (ii) If a balance is held against a contingent liability, a note is made on the **client** ledger card (alternatively the file) clearly identifying that liability; and
 - (iii) a schedule of **client** balances held for 3 months or more is maintained stating in each case the **client(s)** name(s), file/ledger number, the **Rightful Recipient**, the balance outstanding, the date of last movement and the reason for the balance.

5. Before a file is closed or archived: -
 - (a) the **client** ledger card should be checked to ensure: -
 - (i) no balance is outstanding;
 - (ii) all cheque payments have been cleared by the **bank**;
 - (b) a copy of the **client** ledger card showing a nil balance on both the **client** and **office account** should be placed on the file.

Unpresented Cheques

6. Unpresented cheques should be reviewed on a regular basis.
 - (a) Unpresented Mortgage Redemption Cheques ~ the **Rightful Recipient** should be contacted within 12 days or no later than one month after payment has been tendered and then at frequent intervals;
 - (b) All other cheques ~ the **Rightful Recipient** should be contacted after no more than two months after the cheque has been tendered and then at a minimum of two monthly intervals.
7. If a cheque has been lost or remains unpresented after six months: -
 - (a) a stop should be placed on the original cheque;
 - (b) the cheque should be written back to the **client** ledger account; and
 - (c) the monies paid: -
 - (i) either direct to the **Rightful Recipient's bank** account, alternatively credit card account; or
 - (ii) at the **Rightful Recipient's** direction.

Retention Monies

8. Where possible you 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 every three months; and
 - (b) you should seek to obtain such an agreement.
10. It is good practice to maintain: -

(a) a schedule of retention balances stating in each case the **client(s)** name(s), the file/ledger number, the amount of and the reason for the retention and the last date for release; and

(b) a separate note of the reason for the retention and the last date for release on the **client** ledger card.

Aborted or Delayed Transactions

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

Part 2 - Obtaining Authority from the CLC

1. Requirement 12.2.6 of the *CLC* Accounts Code provides that money may be withdrawn from **Client Account**, where -

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

Authorisation

2. The **CLC** will consider giving this authorisation as follows: -

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

(a) the **CLC** must be provided with: -

(i) an Undertaking in the following terms: -

“In consideration of the **CLC** giving written authority in accordance with Requirement 12.2.6 of the **CLC** Accounts Code for the withdrawal of the monies set out in the schedule to this Undertaking (the “Annex”) I/We [names] undertake to the **CLC** that I/we shall within 14 days of a request from the **Rightful Recipient** pay the sum outstanding as set out in the Annex in accordance with this direction.”

(ii) the Annex which sets out in each case the **client(s)** name(s), the file/ledger reference, identifying the property to which the transaction related, the **Rightful Recipient**, the balance outstanding and the date of last movement;

(b) on receipt of the Undertaking the **CLC** may give written authority for withdrawal of the sums set out in the Annex from the **client account**;

(c) on receipt of the written authority from the **CLC** you can transfer the balances as set out in the Annex from **client** to office **bank** account providing the relevant entries have been made to a suitable office nominal ledger account e.g. “Write Offs” and places a copy of the authority issued by the **CLC** on the **clients’** file.

- 2.2 Where the Aged Balance amounts to £20 or more but less than £100 the **CLC** must be provided with: -

(a) a schedule setting out in each case the **client(s)** name(s), the file/ledger reference, identifying the property to which the transaction related, the **Rightful Recipient**, the balance outstanding and the date of last movement;

(b) a copy of the **client** ledger card(s); and

(c) a signed certificate giving brief details of how the balance has arisen and stating you have taken all Reasonable Steps to trace the **Rightful Recipient** but have been unable to trace that person.

The **Rightful Recipient** is the person to whom monies held by the **CLC Body** on **client account** are correctly due.

2.3 'Reasonable Steps' are dependent on the particular circumstances and the sum involved. Examples are: -

- attempting to contact the **Rightful Recipient** at all known addresses, by all known telephone numbers and at any known e-mail address, or through Estate Agents;
- attempting to return funds using available **bank** or credit card details of the **Rightful Recipient**;
- contacting known friends/relatives of the **Rightful Recipient**;
- advertising in a local newspaper.

2.4 Where the Aged Balance is £100 or more the **CLC** must be provided with the information set out in 2.2(a) and (b) and, in addition: -

(a) details of the Reasonable Steps taken to trace the **Rightful Recipient**;

(b) brief details indicating how the balance has arisen; and

(c) any other information the **CLC** may request.

2.5 If authority is given by the **CLC** for a withdrawal under paragraph 2.2 or 2.4

it will only be on the basis that a cheque or funds transfer for the sum so authorised must be drawn on the **client account** payable to the **CLC**. On receipt, the cheque will be placed to the credit of the **CLC's Compensation Fund** and utilised for the benefit of such Fund. You should place a copy of the authority issued by the **CLC** on the **clients'** file.

2.6 Where the **Rightful Recipient** cannot be identified, the **CLC** will, in exceptional circumstances, give authority under Requirement 12.2.6 of the **CLC** Accounts Code for the withdrawal of funds from **client account** on the basis that a cheque or funds transfer for any sum so authorised must be drawn on the **client account** payable to the **CLC**. On receipt, the cheque will be placed to the credit of the **CLC's**

Compensation Fund and utilised for the benefit of such Fund. You should place a copy of the authority issued by the **CLC** on the **clients'** file (or if this is not available in a central record hold it on a **Durable Medium**).

- 2.7 If the **Rightful Recipient** contacts you after funds have been paid into the **CLC's Compensation Fund** you 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.