

Aim and purpose

Section 83 of the Immigration and Asylum Act 1999 places a statutory duty on the Immigration Services Commissioner, requiring her to promote good practice. This note, which supports that duty, sets out the Commissioner's views regarding the use of a client account.

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1. Introduction

1.1 The purpose of this Note is to promote good practice and to help advisers keep their clients' money safe. It supplements the OISC's Practice Note 2.2 on Fees and Accounts <http://oisc.homeoffice.gov.uk/servefile.aspx?docid=236> .

1.2 The Note emphasises the following:

- The importance of keeping client funds separate from the organisation's main business accounts;
- The circumstances in which funds can be withdrawn from a client account;
- That advisers remain accountable for all funds withdrawn from a client account;
- That at the end of an immigration matter an adviser must fully account to their client for monies spent; and
- That any surplus funds, including interest, belong to the client and not to the adviser or the advice organisation.

1.3 Advisers must comply with the principles set out in the Commissioner's *Rules* and *Code of Standards* concerning effective financial management, and, in particular, must:

- i. keep other peoples' money separate from money belonging to the adviser or organisation;
- ii. keep other peoples' money safely in a bank or building society account identifiable as a separate client account;
- iii. use each client's money only for that client's matters;
- iv. establish and maintain proper accounting systems and proper internal controls over those systems to ensure compliance with the *Rules*;

- v. keep proper accounting records to show accurately the position with regard to the money being held by the adviser for each client;
- vi. account for interest on other peoples' money in accordance with the *Rules*; and
- vii. co-operate with the OISC in checking compliance with the *Rules*.

2. The Client Account

2.1 A client account is a current or deposit account at a branch or the head office located in the United Kingdom of a bank or building society. The account must be in the name of the advice organisation or adviser, as regulated by the OISC. The account's title must include the word "Client", for example, The Immigration Consultants Ltd – Client Account.

2.2 The purpose of a client account is to protect client money and prevent it from being mixed with monies related to the adviser's general business activities. The Commissioner's *Rules 18 and 19* and *Code 63(a)* require that, where it is necessary for an adviser to retain client money, those funds must be held in a client account which is distinct and separate from the businesses' bank account.

2.3 There are two types of client account:

(a) a "separate designated client account" – This is an account for money relating to a single client and which includes in its title a reference to the identity of the client; and

(b) a "general client account" - Any other client account.

2.4 An adviser will generally have any number of separate designated client accounts and general client accounts.

2.5 Various types of advisers may have different client accounts. The client account(s) of:

- a sole adviser must be in the name under which the sole adviser is regulated by the OISC, whether that is the sole adviser's own name or the organisation's name;
- a partnership must be in the name under which the partnership is regulated by the OISC;
- an incorporated practice must be in the company name as registered at Companies House.

In addition, the name of the account must also include the word "client" in full (an abbreviation is not acceptable, see 2.1 above).

2.6 If an adviser has a client account, they must have a written policy on this subject which must include the following:

- The account's purpose;
- Who has responsibility for the account;
- The bank details;
- How payments into the client account are made;
- Withdrawals and transfers from the client account;
- Keeping accounting records for the client account;
- Dealing with reconciliations and arrangements for errors;
- Dealing with deposit interest on the client account; and
- Accountant's Report containing details of transactions through the client account and all reconciliations

2.7 Advisers must pay client money received by them into their client account without delay. There must be control over who has access to the client account and under what circumstances, and this must be in accordance with the adviser's general governance requirements.

2.8 Money held in a client account must be immediately available to be given to the client on demand, even at the sacrifice of interest, unless the client otherwise instructs in writing.

2.10 A client account must not become overdrawn.

2.11 Any interest on a client account belongs to the client and not the adviser.

2.12 An adviser must not provide banking facilities through a client account. Payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to a transaction or to a service forming part of the adviser's normal regulated activities.

3. What clients should be told about the client account and return of monies at the end of the client's instructions

3.1 Clients should be told about the existence of the client account and its purpose. Best practice is for advisers to inform their clients that at the conclusion of their instructions, there will be an accounting for all funds received and spent on the client's behalf.

3.2 A client may be asked to pay a deposit in advance for work that may be undertaken on their behalf. It can happen that these funds may not be exhausted at the conclusion of the clients' instructions and there will be surplus funds remaining.

3.3 If, at the conclusion of the client's matter, there are any surplus funds remaining including interest, the following applies:

- Client money together with any interest accrued must promptly be returned to the client as soon as there is no longer any legitimate reason, such as agreed future transactions or acting on a retainer basis, for the adviser to keep those funds.
- An adviser must promptly inform the client in writing of the amount of any client money being retained at the end of a matter or the termination of

their instructions and the reason for that retention. They also must continue to inform the client in writing at least once every twelve months thereafter of the amount of client money still being held and the reason for the retention for as long as they continue to hold that money.

Withdrawals and transfers from a client account

4. WITHDRAWALS

- 4.1 Advisers must have appropriate systems and procedures in place governing withdrawals from client accounts, including who is permitted, by the advice organisation to sign and make withdrawals.
- 4.2 Client money may only be withdrawn from a client account when it is:
- (a) properly required for a payment to, or on behalf of, the client;
 - (b) properly required for payment of a disbursement on behalf of the client (see section 6 below);
 - (c) properly required in full or partial reimbursement of money spent by the adviser on the client's behalf ;
 - (d) transferred to another client account within the same organisation if appropriate and agreed in writing by the clients involved;
 - (e) withdrawn on the client's instructions provided that these instructions are in writing or given orally and later confirmed by the client in writing; for example, telephone instructions later confirmed in writing.
 - (f) a refund to the adviser of an advance paid by the advice organisation to the

client that is no longer required to fund a payment on behalf of the client;
and

- (g) money which has been paid into an account in breach of the *Rules*; for example, money paid into an incorrect client account - see paragraph 4.4 below;

4.3 Office money is money legitimately belonging to the advice organisation. It may only be withdrawn from a client account when it is:

- (a) money properly paid into the account to open or maintain it;
- (b) money properly required for payment of the adviser's costs;
- (c) part of a mixed payment placed in a client account; or

money which has been paid into a client account in breach of the *Rules* (for example, interest wrongly credited to a general client account) - see paragraph 4.4 below. 4.4 Payments of office money must not result in the client account becoming overdrawn.

4.5 Money which has been paid into a client account in breach of the *Rules* must be promptly withdrawn from the client account on discovery.

4.6 Money withdrawn in relation to a particular client from a general client account must not exceed the money held on behalf of that client in all general client accounts.

4.7 Money held for a client in a separate designated client account must not be used for payments for another client unless 4.2(d) above is satisfied.

4.8 A withdrawal from a client account in the organisation's favour must either be by way of a cheque, a transfer to the organisation's office account or to the adviser's personal account. The withdrawal must not be made in cash.

4.9 If an adviser properly requires payment of their fees from money held for a client in a client account, they must first give or send a bill of costs or other written notification of the costs incurred to the client or the paying party.

4.10 Once the adviser has complied with paragraph 4.9 above, the money earmarked for costs becomes office money and must be transferred out of the client account within 14 days.

5. CASH TRANSACTIONS AND THE CLIENT ACCOUNT

5.1 The client account must be used to process cash payments from clients.

5.2 There must be a valid receipt given for all payments received. This must correspond to payments made through the client account and properly reconciled, (see 2.6 above and section 7 below).

5.3 For all monies that have passed through the client account, clients must be given a printed document that is logged by the adviser every time cash is received for a service. This log/ account must be available to the Commissioner for inspection upon request (*Rule 21*). Any payments made by a client or in respect of fees paid for work not yet done must be kept in a client account (*Rule 18*).

6.1 Disbursements are generally expenses that an adviser has to pay on behalf of a client for services provided to the client or on the client's behalf. These are payments made from the client account. These payments must be distinguished between what is already covered in the adviser's hourly rate and what is not. Immigration advisers may charge their clients disbursements in addition to their normal fees. The following explains the connection between disbursements and the client account.

6.2 Disbursements can include, for example, UKBA fees, fees for expert assessments/ reports fees and for instructing a barrister for advice on the client's case or for representing the client commonly known as 'counsel's fees'). Disbursements can also include photocopying charges, costs for special postage or courier fees,

and, where necessary, travel and accommodation costs.

6.3 Essentially disbursements can be categorised as follows:

- Office Fees (e.g. Photocopying/special postage/courier/travel/accommodation)
- Court Fees¹
- Counsel's Fees²
- Expert Fees (e.g. Country expert, psychologist, medical reports, interpreters/translators, social workers, accountants etc). The use of experts can vary from case to case. Always the work they undertake and charge for, including VAT, must always be properly accounted for.

6.4 Experts may charge fees for further work, visits, cancellations and for attending a Tribunal hearing as a witness. They usually charge for attendance as a daily fee, which is not dependent upon the actual time involved. Most experts also usually charge extra to cover the expense of travelling to a hearing by car, taxi or public transport and for any overnight accommodation, if required.

6.5 What is vital is that the client is informed of these disbursements and that payment for these are made from the client account as early as possible (*Rules 9-14*). All such payments must be clearly evidenced and accounted for (*Rules 15-21*).

7. ACCOUNTING RECORDS AND RECONCILIATIONS

7.1 Any money improperly withheld or withdrawn from a client account must be rectified promptly.

7.2 The responsibility to remedy such breaches rests not only on the person who caused the breach, but also on the advice organisation generally. This duty extends to an obligation to replace any missing client money from the business owner's own resources, even if the money was misappropriated by an employee or another

¹Guidance on First-tier Tribunal fees is at <http://www.justice.gov.uk/downloads/tribunals/immigration-and-asylum/lower/online-fees-guidance.pdf>

²The level of counsel's fees will depend both on the individual's case and who the client wishes the adviser to instruct.

senior member of staff and whether or not a claim was subsequently made against the adviser's insurance policy.

- 7.3 Paying an outstanding genuine invoice from the client account is acceptable when the client cannot be traced and the OISC has given its prior approval.

8. MONITORING BY THE OISC

- 8.1 The OISC monitors and reviews the use of an adviser's client account(s) in a variety of ways:

- (a) **Accounts required to be seen** – This is covered in the Practice Note on Fees and Accounts 2.2 as mentioned above <http://oisc.homeoffice.gov.uk/servefile.aspx?docid=181>

Rules 20 (and Code 65): A registered person should have audited or certified and otherwise verified business accounts to which the following apply:

- A) Accounts and records must comply with current legislation.
- B) The Commissioner's Rules and Codes of Standards do not replace any obligations/requirements of any UK law or institution (e.g. VAT, HM Revenue and Customs, the Companies Act, the Charities Commission, Companies House).
- C) Registered advisers must give access to historic and day-to-day financial records to the Commissioner upon request.

Rules 21 (and Code 66): Upon request, registered advisers must produce to the Commissioner their latest set of accounts.

- (b) **Conflicts of interest** – Where there is a real or potential conflict of interest (*Codes 15 and 16*), the adviser is required to explain fully the circumstances to their client. The adviser can only continue if the client

agrees. In no circumstances can an adviser act as a surety in a bail application.

- (c) **Where there is no client account** – It is a breach of *Rule 18* and *Code 63* for an adviser to hold client money without having a separate client account.

9. MONEY AND INTEREST LEFT IN THE CLIENT ACCOUNT

- 9.1 Advisers are required to return client money in the client account to their clients promptly - that is as soon as there is no longer any proper reason for holding such money, such as retainer fees or future applications to the UKBA. Payments received after an adviser has already accounted to the client, for example by way of a refund, must also promptly be paid to the client. The adviser's obligation to return funds which rightfully belong to the client extends to all balances and interest, regardless of the amount of money involved.
- 9.2 If funds are retained in the client account, then the adviser must inform the client promptly in writing providing details of the amount held at the end of the matter and the reason for retention. Further, the adviser must inform their client in writing at least once every twelve months of the amount of client money still held in the client account and the reason for its retention, for as long as they continue to hold that money (see 3.3 above).

10. CLIENTS OUTSIDE THE UK

- 10.1 It can happen that a client has paid the adviser a fee while they are outside the UK, such as prior to entry or after departure. If the client is located outside the UK and has paid the adviser money, for example on retainer, this money must be paid into a client account. If the client later wants to withdraw their application and terminate their instructions or dies before the work is completed, any outstanding monies must be paid back to the client or their estate, as appropriate. When this is not possible, the adviser may hold the monies for up to twelve months from the date of their last contact with the client. During that time all reasonable and appropriate steps must be made to return any outstanding money and interest to the client, and evidence of this must be available for inspection by the Commissioner at any time.