

Policy document

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Clients' Money

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Clients' Money

Purpose

1. This policy applies in relation to all UK and Ireland offices of *firms* and, subject to paragraph 37, to the *Principals* of such *firms*. A *firm* must receive or hold *clients' money* only in accordance with this policy.
2. Where a *firm* is authorised by the Financial Conduct Authority (FCA), any monies received or held which are Investment Business Clients' Money as defined by the *FCA Handbook* must be dealt with in accordance with that Handbook, which takes precedence over the requirements of this policy.
3. This policy primarily describes the duties of *firms*. However, under paragraph 37 disciplinary proceedings can be brought against *members* or *associate members* as well as *firms*.

Policy statement

4. AAT requires all licensed *members* holding any *clients' money* on behalf of a client to comply with this policy in its entirety.

Terminology

5. All terms in italics, save titles of publications, are defined in the *AAT Glossary* which supports the entire policy framework.

Policy detail

Clients' money

6. *Clients' money* means money of any currency (whether in the form of cash, cheque, draft or electronic transfer) which a *firm* holds or receives for or from a client. This includes money held by a *firm* as stakeholder, and which is not immediately due and payable on demand to the *firm* for its own account. *Clients' money* must be held in the currency in which it was received unless the client instructs otherwise in writing.
7. A *firm* sometimes has a power or control over a client's own account. Even though this does not strictly meet the definition of *clients' money*, the *firm* must ensure it has the specific written authority of the client acknowledged by the *Bank* before exercising that authority, and it must maintain adequate records of the transactions it undertakes.
8. For the purposes of this policy, *clients' money* does not include:
 - a) fees identifiable as advance payment for agreed professional work
 - b) a cheque or draft received by a *firm*, which is drawn in favour of a client or third party.

Client identification

9. Before holding any *clients' money* on behalf of a client the *firm* must first verify the identity of the client.

Guidance

Converting or concealing criminal property or terrorist funds, for example by allowing them to be passed through a *clients' money* account, is a criminal offence under the *Proceeds of Crime Act 2002*. However, no offence is committed if a prompt report is made, when this is suspected, to the law enforcement authorities and their permission obtained to continue the transaction. More guidance on the recognition of when this might be the case, and advice on reporting money laundering suspicions, is contained in AAT's *Anti Money Laundering Toolkit*.

Where *clients' money* is held for the first time after the implementation date of this policy, on behalf of someone who was already a client at that date, the *firm* should consider carefully if it has sufficient evidence of the *client's* identity from previous dealings.

Under the Money Laundering Regulations firms must verify the identity of all new clients. This would meet the identification requirements outlined above.

Opening a *client bank account*

10. All money which is *clients' money* must be held in a *client bank* account separate from other accounts of the firm, which may be either a general client account or designated to a specific client name. A *firm* which receives or holds *clients' money* or *mixed monies* or money which, under paragraph 16, the *firm* is required to pay into a client account, must immediately open one or more *client bank accounts*. Any *firm* may maintain one or more *client bank accounts* as appropriate.
11. On opening a *client bank account*, a *firm* must notify the *Bank* in writing that:
 - a) all money standing to the credit of that account is held by the *firm* as *clients' money* and that the *Bank* is not entitled to combine the account with any other account or exercise any right to set off or counterclaim against money in that account in respect of any money owed to it on any other of the *firm's* accounts; and
 - b) interest payable on the money in the account must be credited to that account; and
 - c) the *Bank* must describe the account in its records to make it clear that the money in the account does not belong to the *firm*; and
 - d) the *Bank* must acknowledge in writing that it accepts these terms.
12. For a *client bank account* in the UK or Ireland, if the *Bank* does not provide the acknowledgement required under paragraph 11 d) above within 20 business days of the *firm* sending the *notice*, the *firm* must:
 - a) withdraw all money from the account
 - b) close the account
 - c) deposit the money with another *Bank* in a *client bank account*, following the steps in paragraph 11; or
 - d) as a last resort, return the money to the client.

13. A *firm* may hold *clients' money* in a *Bank* outside the UK or Ireland only if:
- a) the client is informed in writing of the country or territory where the account will be held; and
 - b) the client is informed in writing either that the *Bank* has given the acknowledgement required under paragraph 11d), or, where the *Bank's* acknowledgement has not been received, the *firm* has advised the client that the *clients' money* held in that account may not be protected as effectively as it would if held in a *Bank* in the UK or Ireland; and
 - c) the client has agreed in writing to the money being paid into, or remaining in, that *Bank*.
14. A *firm* may not hold *clients' money* (or money which would, if held in a *Bank* be *clients' money*) outside the European Union unless:
- a) the client is informed in writing of the country or territory where the account will be held; and
 - b) the client has agreed in writing to the money being paid into, or remaining in, the institution where the money is held; and
 - c) the client accepts in writing that where money is so held it will not have the protection afforded by this policy.

Payment into a *client bank account*

15. *Clients' money* or *mixed monies* received by a *firm* or by any *principal* must be paid immediately into a *client bank account*, or to the client.
16. A *firm* must pay money into a *client bank account* only if:
- a) the *firm* is required to make such payment under this policy; or
 - b) the money is the *firm's* own money; and
 - c) it is required to be so paid for the purpose of opening and maintaining the account and the amount is the minimum amount required for that purpose; or
 - d) it is so paid in order to restore in whole or in part any money paid out of the account in contravention of this policy.
17. A *firm* shall not be regarded as having breached paragraphs 15 or 16 simply because it transpires that money which the *firm* paid into a *client bank account* in the reasonable belief that it was required so to do under this policy should not have been paid into such an account, provided that immediately upon discovering the error the *firm* takes the necessary steps to withdraw the money which has been paid in error.
18. Where money of any one client in excess of £10,000 is held or is expected to be held by the *firm* for more than 30 days, the money must be paid into a *client bank account* designated by the name of the client or by a number or letters allocated to that account. (Note: The *client bank account* in this paragraph must be a separate account, rather than a memorandum account in the *firm's* books. In other words, the account will be for that client (or clients acting jointly) only.)

Interest

19. Subject to paragraphs 20 and 21, a *firm* must:

- a) place *clients' money* in an interest-bearing account unless the interest earned would not be material; and
- b) ensure that a fair rate of interest on the money is earned; and
- c) ensure that all interest earned is paid or credited to the client, or as the client instructs in writing.

Guidance

Interest would be material under paragraph 19 if the money is likely to be held for at least the number of weeks shown in the left hand column of the following table and the minimum credit balance of the client equals or is more than the sum in the right hand column (see paragraph 23 for aggregated *clients' money*).

Number of Weeks	Minimum Balance
8	£1,000
4	£2,000
2	£10,000
1	£20,000

This is merely a guide. The obligation of the *firm* is to take reasonable steps to ensure that the client does not lose material sums of interest because the money remains in low or non-interest bearing accounts. There may be circumstances, for example, where money should be placed on overnight deposit.

The fair rate of interest earned must be at least the minimum deposit rate offered publicly by a *Bank* for small deposits.

20. Paragraph 19 does not apply to *clients' money* held by a *firm* as stakeholder though a *firm* may not itself earn interest on it unless paragraph 21 applies.

21. The *firm* and the client may agree in writing different arrangements for the payment of interest on *clients' money* held. This agreement must be in the engagement letter with the client.

Guidance

Interest on *clients' money* received by way of cheque should be calculated from the day it is either received or cleared. Both payments and withdrawals must be treated in the same way, and the client notified of which method the *firm* will apply.

Members must consider any income tax implications relating to interest received and paid on *client bank accounts*.

22. It is a breach of this policy if a *firm* fails to comply with any of the terms of an agreement such as referred to in paragraph 21.

23. For the purposes of paragraphs 19 to 22, *clients' money* held by a *firm* for two or more clients acting together in one or more transaction must be treated as though held for a single client.

Withdrawal from a *client bank account*

24. When a cheque or draft including money which is not *clients' money* is paid into a *client bank account*, the money which is not *clients' money* must be withdrawn as soon as the cheque or draft is cleared.
25. A *firm* may withdraw from a *client bank account*:
- a) money, not being *clients' money*, paid into a *client bank account* for the purpose of opening or maintaining the account; or
 - b) the part of *mixed monies* which are not *clients' money*
 - c) money paid into a *client bank account* contrary to this policy or which would have been so but for paragraph 17
 - d) money required to be withdrawn under paragraph 24
 - e) interest which the client has agreed in writing should not be paid to them (see paragraph 21)
 - f) money properly required for a payment to a client
 - g) money properly required for or towards payment of a debt due to the *firm* from a client otherwise than in respect of fees earned by the *firm*
 - h) money withdrawn in accordance with paragraph 28, for or towards payment of fees payable to the *firm* by the client
 - i) money drawn on a client's written authority or in conformity with any written contract between the *firm* and the client
 - j) money which may be properly transferred into another *client bank account* or into a *Bank* account in the name of an individual client or clients acting jointly (see paragraph 23)
 - k) money withdrawn and paid to a registered charity in accordance with paragraphs 41 or 42.

Guidance

This paragraph sets out the various circumstances in which money may be withdrawn from a *firm's client bank account*. It requires such withdrawals to be authorised by a *Principal* of the *firm* or by an employee of the *firm* who holds written authority delegated by the *Principal*. The written delegation should specify any restrictions on its use. In deciding who can have this authority, the *Principal* must consider the trust that is being placed in the individual and their ability to carry out this function with due care and integrity. The *Principal* remains responsible for the *firm's* compliance with the *clients' money* policy, regardless of any delegation they have made. Paragraph 33 requires the *Principals* to review the *firm's* compliance with the *Regulations*; this review should include the operation of any delegated powers.

26. *Clients' money* must be returned to the client promptly as soon as there is no longer any reason to retain it.
27. The *firm* must ensure that at all times the sum of the credit balances held for all clients is at least equal to the total balance held in all *client bank accounts* and that no amount may be withdrawn from the *Bank* account for any client which is greater than the credit balance held for that client.

28. Money may not be withdrawn from a *client bank account* for or towards payment of fees payable by the client to the *firm* unless:
- a) the precise amount has been agreed by the client or has been finally determined by a court or arbiter; or
 - b) the fees have been accurately calculated in accordance with a formula agreed in writing by the client on the basis of which the correct amount can be determined; or
 - c) 30 days have elapsed since the date of delivery to the client of a statement of fees and the client has not questioned the amount specified as due.
29. Monies which, in terms of paragraph 25, are payable to the *firm* must be withdrawn as soon as reasonably practicable.

Guidance

This policy governs the treatment and withdrawal of fees from monies held in a *client bank account*. It does not relate to commissions received by a *firm*. In this respect, the attention of members is drawn to Section 220 of the AAT *Code of Professional Ethics*, on conflicts of interest and confidential information.

Records and reconciliation

30. A *firm* must keep *clients' money* records (including the notice and acknowledgement under paragraph 11d) which show all the following:
- a) details of all money paid into and out of all *client bank accounts*
 - b) entries of all *clients' money* paid direct to the client, or, on the client's instructions, paid to a third party, identifying that person
 - c) entries of all cheques received and endorsed over by the *firm* to the client or, on the client's instruction, endorsed over to a third party, identifying that person
 - d) entries of all electronic money transfers received or made and transferred direct to the client or, on the client's instructions, transferred to a third party, identifying that person
 - e) details of all transactions on each client's ledger account which will readily identify the balance held for each client and which will reconcile to the total of *clients' money* held in the *client bank accounts* details of all unclaimed monies withdrawn from the *client bank account* in accordance with paragraph 41 or 42, including the name and contact details of the recipient of those monies.
31. A *firm* must:
- a) at least once every five weeks, reconcile the total balances on all its *client bank accounts* with the total corresponding credit balances in respect of its clients, as recorded by it, correcting immediately any differences identified; and
 - b) at the same time as carrying out that reconciliation, reconcile the balance on each *client bank account*, as recorded by it, with the balance on that account as set out in the statement issued by the *Bank* and, correct immediately any differences identified, unless these arise solely as a result of timing differences.
32. The *firm* must preserve, and keep available for inspection, all records kept in accordance with paragraphs 30, 31 and 33a), for at least six years from the date on which they were made.

Returns and reports

33. *Principals* must:

- a) confirm that their *firm* meets the requirements of this policy and shall supply such evidence as this policy and/or the *Council* may require to support such confirmation; and
- b) ensure that their *firm* conducts a review at least annually, to consider whether its systems have been adequate to enable it:
 - i. to comply with this policy
 - ii. to carry out reconciliations in accordance with paragraph 31; and
 - iii. to prepare any return required under paragraph 33a), confirming its compliance with this policy.

34. Where possible the review should be conducted by a *Principal* who is not involved in the handling of *clients' money*.

35. The *firm* must report significant breaches of this policy to AAT.

36. To enable the *Council* to ascertain whether or not this policy is being complied with, it:

- a) may appoint one or more people to inspect the books and records of a *firm* or any of its *Principals*. Notice of this, given by or on behalf of *Council* or on behalf of *Council*, to the *firm* or any of its *Principals* will be signed by the Chief Executive, or their nominee; or
- b) may require the *firm* to provide an *Independent Accountant's Report*.

It is the responsibility of the *firm* and its *principals* to make books and records available for inspection in accordance with such a Notice, and/or to provide an *Independent Accountant's Report* in accordance with any such requirement.

The responsibility of a *Principal*

37. Every *Principal* shall be responsible for any breach of this policy on the part of their *firm* unless they prove that responsibility for the breach was entirely that of another *Principal* or *Principals*.

38. Where, as a result of disciplinary proceedings arising out of a breach of this policy, a *firm* is ordered to pay a fine, monetary penalty or costs, all the *firm's Principals* will be jointly and severally liable. Paragraph 37 will have no application to such liability.

39. A *firm* (including a sole practitioner) which is wholly owned and/or controlled, whether directly or indirectly, by a single *member* may receive or hold *clients' money* only if it has arrangements with another appropriately qualified *firm* or person to enable the proper distribution or processing of *clients' money* in the event of the member's incapacity or death. The *firm* must notify AAT of such arrangements via the *licence* renewal process following any change (including cancellation) in the arrangement.

Guidance

Paragraph 39 requires *firms* which are, directly or indirectly, wholly owned or controlled by a single *member* to have an arrangement with another person to provide *clients* with access to their money held by the *firm* in the event of the incapacity or death of that *member*. This may be the provider of continuity of practice as is required in the *Continuity of Practice policy*. Such *firms* could be a limited company with a single director and no company secretary, or a limited liability practice where one *member* is an individual and the other *member* is a company, and the individual is the sole director of that company. However, *firms* may adopt different structures but still be controlled by a single *member*.

It is not possible for this guidance to outline every situation whereby an alternate will be required under paragraph 39. A *firm* which is a partnership of individuals but which has only a single equity partner would not need to make arrangements under paragraph 39 as other 'partners' are able to deal any client money held by the *firm*. The paragraph details when these arrangements have to be in place. The arrangement could most easily be with another *firm* where there is already an alternate or consultation arrangement in place.

40. When selecting an alternate, the *member* should consider:

- a) if the alternate is to be a *firm*, whether that *firm* is itself subject to similar client money requirements, such as a law firm, or is otherwise capable of undertaking the task
- b) if the alternate is to be an individual, whether they have the appropriate experience to meet these responsibilities.

In either case, the *member* needs to be convinced of the integrity of the proposed alternate and that the alternate understands the *clients' money* policy and what the alternate may be required to do. Whoever is chosen, it is best practice to inform clients of the identity of this person.

Unidentified and untraced clients

41. Where a *firm* has been unable, after taking reasonable steps over at least five years, to trace a client, any unclaimed monies need no longer be treated as *client's money*. The *firm* may then donate the monies to a registered charity, subject to the following conditions:

- a) sums of up to £10,000 per client may be paid to any registered charity
- b) for sums over £10,000 per client, the charity must provide an indemnity against any claim subsequently made by the client for the money.

42. Where a *firm* is ceasing to practise, payment of any unclaimed *clients' money* to a registered charity must be on the following terms:

- a) that the registered charity provides an indemnity for all sums paid whatever the amount
- b) there is no requirement for the client to have remained untraced for five years.

43. On cessation the *firm* must inform AAT in writing of all sums paid to a registered charity in accordance with this policy. This information must include

- a) the client's name and last known contact details, and
- b) the sum paid, and
- c) the name and contact details of the recipient registered charity.

44. For the purposes of paragraphs 42 and 43, ceasing to practise does not include any arrangement whereby a *firm* succeeds to the business of another.

45. Any sums not paid to a registered charity in accordance with paragraph 41 or 42 must be retained on deposit for the benefit of the unidentified or untraced client.

Guidance

Paragraph 41 enables *firms* to pay unclaimed *clients' money* to a registered charity. There is no requirement to do so, but funds not paid to a registered charity must be retained on deposit for the benefit of the unidentified or untraced client in accordance with paragraph 45. Before any payment to a charity is made, reasonable steps to trace the client must have been taken. These should be proportionate to the sums involved but could include writing to the client at their last known address, conducting searches of the electoral roll or at Companies House, advertising in a local newspaper and employing tracing agents. Obviously, more effort should be made to trace a missing client if the sums involved are more than £10,000. The *firm* will remain liable to the client to repay any monies that have been paid to a registered charity.

There is no requirement to take steps to trace a client when a *firm* is ceasing to trade. Please refer to paragraphs 42 to 44.

To avoid this arising, it may be appropriate before accepting funds from clients to make a written arrangement with them about what would happen should such circumstances arise. For example, the *firm* either in its engagement letter, or on acceptance of the funds, could detail the means by which monies which subsequently become unclaimed would be dealt with.

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