



Public Guardian practice note

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OPG's approach to solicitor client accounts

Summary

Some solicitor deputies may have received correspondence from OPG concerning the use of their client accounts to manage deputyship funds, and the interaction between a deputy's

duties under the Mental Capacity Act 2005 (MCA), SRA Accounts Rules 2011 (SARs) and the MCA Code of Practice.

This note clarifies OPG's position.

Context

Rule 14.5 SARs provides as follows:

“You 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 an underlying transaction (and the funds arising from) or to a service forming part of your normal regulated activities.”

We have clarified the purpose of this provision with the SRA and understand that it is intended to prevent client accounts being used for improper or criminal purposes including fraud and money laundering. It does not restrict the use of client accounts where there is a reasonable connection to an underlying legal transaction or recognised professional

duties of a solicitor which you are providing. (Further guidance on this may be obtained from the SRA.)

The MCA Code of Practice suggests that funds should not be ‘mixed’ with those of other people. This would include not mixing them with the funds of other clients unless good reasons were provided.

OPG is of the view that holding monies on general client account does not constitute good reason, even when the protection that holding money in a solicitor’s client account is taken into consideration, for example the requirement for most firms to obtain an independent accountant’s report. The same protection would be afforded to a separate or designated client account that is segregated from the general account.

Clarification

OPG’s first clarification is that we have no objection in principle to use of general client accounts as a temporary or holding position prior to deputies setting up segregated client accounts or separate bank accounts as expected, to manage ongoing transactions.

Solicitor deputies are reminded that there are factors other than the SARs that they may wish to consider.

The first is that in addition to SRA requirements, OPG will need to be satisfied that deputies have proper safeguards in place to

protect deputyship funds. Deputies act under the authority of the court on behalf of vulnerable people, and extra care may need to be taken around who can authorise payments from deputyship funds.

Setting up a separate bank account for a deputyship with named signatories may be simpler in practice.

Secondly, a deputy has a general duty to act in the incapacitated person's best interests, which can include managing their funds to gain the best return. There will be cases where large balances in a client account will not represent the best investment strategy for a client. In these cases OPG will question the appropriateness of keeping significant excess funds in this way.

Professional deputies are reminded of OPG's standards for professional deputies, which can be accessed at:

<https://www.gov.uk/government/publications/office-of-the-public-guardian-deputy-standards>

Standard 1a (9) states:

“Open a deputyship account in the client's name with the deputy named as such on the account. Ensure that all funds held for the client are held in accounts and/or

investments in their name and kept separate from the funds of the deputy or other parties.”

OPG's second clarification is that solicitor deputies are reminded that their management of funds should be organised with the best interests of their client in mind.

OPG continues to work with professional deputies to ensure that our supervision is proportionate and appropriate, and if you have any comments on this note or any other matter then please contact us.

For further advice:

Office of the Public Guardian
Telephone 0300 456 0300
www.gov.uk/opg