

# Practice Note on Fees and Accounts

## Accounts

### Client Account

1. Registered organisations looking to open a client account must open a current or deposit account only with a bank that operates in the United Kingdom.
2. Client money is money that a registered organisation receives and holds for its clients. It can include, but is not limited to, payments made by a client in advance of agreed work being completed by the registered organisation or payments made for unpaid disbursements.
3. The purpose of a client account is to protect client money and prevent it from being mixed with monies related to the registered organisation's general business activities.
4. A Client account is not necessary if the registered organisation invoices clients only after the work is completed and arranged for clients to make any necessary payments direct to the Home Office or other authorities. Further information for registered organisations unable to open client accounts can be found at paragraphs 24-27 below.
5. The client account of:
  - a) a sole adviser must be in the name under which the sole adviser is authorised by the Commissioner or the organisation's registered name;
  - b) a partnership must be in the name under which the partnership is registered by the Commissioner;
  - c) an incorporated practice must be in the company name as registered at Companies House and as notified to the Commissioner.

The account's title must include the word "Client", for example, "The Immigration Consultants Ltd - Client Account" (an abbreviation is not acceptable).

6. If a registered organisation has a client account, they should have a policy related to the operation of this account. Such a policy must include details of who has responsibility for the account and how withdrawals and transfers from the client account are made. This policy might additionally include the following:

- the account's purpose;
- the bank details;
- how payments into the client account are made;
- how withdrawal and transfers from the client account are made;
- the accounting records for the client account;

- how reconciliations and errors in the account will be addressed; and
- how interest on the client account will be dealt with.

7. Registered organisations are expected to pay client money received into their client account without delay. There should be control over who has access to the client account and under what circumstances, and this should be in accordance with the registered organisation's general governance arrangements and client account policy mentioned above.

8. Money held in a client account must be immediately available to the client on demand.

9. A client account must not become overdrawn.

10. Any interest on a client account belongs to the client and not the registered organisations.

11. A registered organisation must not use money in the client account for business purposes. Payments into, and transfers or withdrawals from, a client account have to be in respect of instructions relating to a transaction or to service forming part of the registered organisation's normal registered activities.

#### Use of the client account

12. Further to Code 9.4, clients must be made aware at the outset that if they pay money to the registered organisation in advance of work to be done, that such money remains the clients and will be deposited into the client account.

13. If the fee is paid into the client account, the registered organisation must inform the client when the agreed work has been completed and that they will be using money in the client account to pay the fee for that work. This should be done by sending the client a written invoice stating what work has been done.

14. After the invoice has been issued the relevant fee must be transferred into the business bank account. It is no longer client money.

15. If, at the conclusion of the client's matter, there are any surplus funds remaining in the client account, those funds (including any interest accrued) must promptly be returned to the client.

#### Withdrawals from a client account

16. Registered organisations must have appropriate systems and procedures in place governing withdrawals from client accounts, including who is permitted by that organisation to sign and make withdrawals.

17. 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 below);

- c) properly required in full or partial reimbursement of money spent by the organisation 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; and
- f) money which has been paid into an account in breach of the Code. Such money must be promptly withdrawn upon discovery.

18. Money held for a client in a separate designated client account must not be used for payments for another client unless 17(d) above is satisfied.

19. Money withdrawn from a client account, which is required for payment for work completed, must only be paid directly into the registered organisations business account.

20. Registered sole practitioners who operate a client account must have appropriate arrangements in place to allow the distribution processing of client's money in the event of their incapacity or death.

21. Disbursements are generally expenses that a registered organisation has to pay on behalf of a client for services provided to the client or on the client's behalf. These are payments that may be made from the client account.

22. Examples of disbursements might include office fees (such as special postage/ courier) or travel and accommodation costs, where such costs are not already included in the agreed client fee for the work to be undertaken.

23. As an alternative to clients paying fees to registered organisations that will subsequently need to be passed to authorities (such as Home Office application fee), clients should be encouraged to pay fees directly to the authorities. The Commissioner recognised that there may be exceptional instances where this is not possible, for example where the client does not have a bank account and in such circumstances these fees may be paid into the client account.

#### Unable to open a client account

24. The Commissioner is aware that some organisations are unable to open and/or maintain client accounts due to a number of reasons, one being due to the anti-money laundering regulations requirements (The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR)).

25. The main purpose of a client account is the protection of client money. To ensure that this objective is met in cases where an organisation is unable to open and/or maintain a client account nor take money after completion of the case, the Commissioner recommends that organisations set up, with the express written agreement of their client, Progress Payment Schedule (PPS).

26. The purpose of this arrangement is to reduce the risk of organisations not being paid after completion of work and to ensure clients only pay for the advice and services they receive.

27. Therefore, instead of invoicing client after the completion of the work, organisations can charge clients a reasonable sum incrementally through the agreed PPS as the case progresses. The organisation will only invoice for the work completed along the way. This will help the organisation to recover a portion of their fee in case the client decided to withdraw instructions before completion or in the event of non-payment.

28. It is up to the adviser to provide their client with a breakdown of the work and to demonstrate that the fee charged at every stage of the PPS is commensurate with the work undertaken.

29. If an organisation wished to use the PPS system, they must update their business plans before using a PPS and must give prior notification to the Commissioner that they intend to use the PPS system.

30. The Commissioner can inspect an organisation's PPS documents at any time without giving the organisation any prior notice. If the organisation refuses to allow the Commissioner inspection, the Commissioner will take this into account when assessing an organisation's fitness and competence to provide immigration advice and/or services.

31. For those organisations that believe that there are exceptional reasons why they should be exempted from Code 9.4, the requirement to hold client money in a client account, they should write to the Commissioner and give their reasons for requesting an exemption from that Code. The Commissioner will consider each request, considering all the circumstances and evidence provided and provide a written response to the organisation. It is important to note that an organisation applying for an exemption from this Code must satisfy the Commissioner that necessary, appropriate and sufficient safeguards are in place to still ensure the protection of client money. The burden is on the organisation to prove they should be granted an exemption.

#### Petty Cash

32. If petty cash is required to cover office running costs, an account float should be created (using money from the business account of the registered organisation) from which petty cash may be taken. Clear records of monies going into and out of petty cash must be retained and should be available to the Commissioner upon request.

#### Fees

33. The reasonableness of a fee is judged by a number of factors. The registered organisation must take into account the actual work undertaken, as well as a consideration of the market rate for that type of advice and service.

34. An organisation may be found to be overcharging clients and in breach of Code 9.1 where, for example, the standards of advice and service fall below what could

reasonably be expected to have been delivered given the agreed instructions, or where the work agreed to be undertaken is not delivered because of a fault of the registered organisation.

35. If a registered organisation charges a fee at an hourly rate, they must maintain and retain detailed and accurate records evidencing the work completed and the time taken in order to justify the fee charged.

36. The Commissioner insists on transparency in all dealings with clients. Discounts are perfectly acceptable but the reasons for providing the discount should be recorded in writing in the client care letter and in the attendance notes. Any discounts provided must not be subsidised by fees paid by other clients.