

## **CODE OF CONDUCT: BUSINESSES HANDLING CLIENT MONIES**

The Office of Fair Trading is committed to ensuring that the market works well for consumers. This Code is intended to apply as best practice guidance to businesses who hold a licence and whose business involves the handling of client money or the taking of deposits from clients in accordance with the provisions of the Fair Trading Act.

This Code has been issued in accordance with the provisions of Section 91(3) of the Fair Trading Act and is designed to help maintain and enhance the reputation of service providers and protect consumers against misrepresentation and malpractice.

### **1. CLIENT MONEY AND THE OPERATION OF CLIENT ACCOUNTS**

- 1.1 If you hold or receive client money, you must keep one or more client accounts.
- 1.2 A "client account" is an account kept at a bank or building society for holding client money in accordance with the requirements of this Code.
- 1.3 The client account(s) of:
  - (a) a sole trader must be in the name under which that person is known, whether that is their own name or the business' name;
  - (b) a partnership must be in the name under which the partnership is known;
  - (c) an incorporated business must be in the company name, as registered at Companies House; andthe name of the account must include the word "client" in full (an abbreviation is not acceptable).
- 1.4 A client account must be a bank account or a building society account in Gibraltar.
- 1.5 There are two types of client account:
  - (a) a "separate designated client account" which 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" which is any other client account.
- 1.6 Money held in a client account must readily be made available to the client if requested, unless the client otherwise instructs.
- 1.7 A business may have any number of separate designated client accounts and general client accounts.
- 1.8 Client accounts should be reconciled regularly and at least monthly to your bank statements and clearly identify which client holds which deposit with you. Monies not reconciled must be investigated in a timely manner and efforts made to return money to clients where it is no longer necessary to hold a deposit.

## **2. USE OF A CLIENT ACCOUNT**

- 2.1 Client money must without delay be paid into a client account and must be held in a client account.
- 2.2 Only client money may be paid into or held in a client account, except:
  - (a) an amount of the business's own money required to open or maintain the account; or
  - (b) an advance from the business to fund a payment on behalf of a client in excess of funds held for that client such sum becoming client money upon payment into the account.
- 2.3 Client money must be returned to the client promptly, as soon as there is no longer any proper reason to retain those funds. Any payments received after you have already accounted to the client, for example by way of a refund, must also be paid to the client promptly.
- 2.4 You must promptly inform a client in writing of the amount of any client money retained at the end of a transaction (or the substantial conclusion of a transaction), and the reason for that retention. You must inform the client in writing at least once every twelve months thereafter of the amount of client money still held and the reason for the retention, for as long as you continue to hold that money.
- 2.5 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 or to a service forming part of your normal business activities.

## **3. WITHHOLDING MONIES FROM CLIENT ACCOUNT**

- 3.1 It is improper to seek blanket agreements, through standard terms of business or otherwise, to allow you to hold client money outside a client account.
- 3.2 If a client instructs you to hold only part of a payment, the entire payment must first be placed in a client account before transferring the relevant part out and dealing with it in accordance with the client's instructions.
- 3.3 Clients' written instructions regarding client monies shall be kept for a minimum of six years.

## **4. RECEIPT AND TRANSFER OF COSTS**

- 4.1 When you receive money paid in full or part settlement of your bill or similar notification of costs you must determine the composition of the payment without delay, and deal with the money accordingly; and
  - (a) if the sum comprises office money only, it must be placed in your office account;
  - (b) if the sum comprises only client money, the entire sum must be placed in your client account; or
  - (c) if the sum includes both office money and client money, you should follow Rule 6 of this Code.

- 4.2 If you properly require payment of your fees from money held for a client in a client account, you must first send the client a bill, or other written notification of the costs incurred. "Properly" implies that the work has actually been done, whether at the end of the matter or at an interim stage, and that you are entitled to settlement of your fees from the monies held.
- 4.3 Costs transferred out of a client account must be specific sums relating to the bill or similar written notification of costs and covered by the amount held for the particular client. Round sum withdrawals on account of costs are a breach of this Code.
- 4.4 A payment for an agreed fee shall be paid into an office account. An "agreed fee" is one that is fixed and is evidenced in writing and has been accepted by the client.
- 4.5 Undrawn costs must not remain in a client account as a "cushion" against any future costs or errors that could result in a shortage on that account.

## **5. DISBURSEMENTS**

- 5.1 Money received for paid disbursements is office money.
- 5.2 Money received for unpaid disbursements is client money.
- 5.3 Money received for other unpaid disbursements for which you have incurred a liability to the payee (for example, any expenses incurred by you against third parties, such as taxi fares) is office money.
- 5.4 Money received for disbursements anticipated but not yet incurred is a payment on account and is therefore client money.

## **6. RECEIPT OF MIXED PAYMENTS**

- 6.1 A "mixed payment" is one which includes client money as well as office money.
- 6.2 A mixed payment must either:
  - (a) be split between a client account and office account as appropriate; or
  - (b) be placed without delay in a client account.
- 6.3 If the entire payment is placed in a client account, all office money should be transferred out of the client account within 21 days of receipt.

## **7. WITHDRAWALS FROM A CLIENT ACCOUNT**

- 7.1 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;
  - (c) properly required in full or partial reimbursement of money spent by you on behalf of the client;
  - (d) transferred to another client account on the agreement of your client;
  - (e) withdrawn on the client's instructions, provided the instructions are agreed in writing; or

(f) money which has been paid into the account in breach of this Code (e.g., money paid into the wrong separate designated client account).

- 7.2 Office money may only be withdrawn from a client account when it is:
- (a) money properly paid into the account to open or maintain it;
  - (b) properly required for payment of your costs;
  - (c) part of a mixed payment placed in a client account under rule 6; or
  - (d) money which has been paid into a client account in breach of this Code.
- 7.3 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 your general client accounts.
- 7.4 Money held for a client in a separate designated client account must not be used for payments for another client.
- 7.5 Businesses should put in place appropriate systems and procedures governing withdrawals from client accounts. A withdrawal from a client account in your favour must be either by way of a cheque, or by way of a transfer to the office account. The withdrawal must not be made in cash.
- 7.6 In the case of a withdrawal by cheque, the specific authority is usually a signature on the cheque itself. Signing a blank cheque is not a specific authority.

## **8. DEALING WITH COMPLAINTS AND THE OFFICE OF FAIR TRADING'S ROLE**

- 8.1 Make every reasonable effort to reach a speedy solution in the event of a dispute with a client regarding any client account issue. You should also deal with a client's formally appointed representative in the same way.
- 8.2 You should maintain and operate a complaints procedure. Such procedures should be in writing and explain how to complain to you and, if need be, to the Office of Fair Trading.
- 8.3 All verbal and written complaints should be recorded by you. All written complaints should be acknowledged in writing within 14 calendar days of receipt and investigation promptly undertaken. Where possible, a senior member of staff not directly involved in the transaction should deal with the client.
- 8.4 If the client remains dissatisfied, they should be told how their complaint may be pursued further within your business. Following the conclusion of your investigation, a written statement of your final view, and including any offer made (where relevant), should be sent to the client. This letter should also tell the complainant how the matter can be referred to the Office of Fair Trading.
- 8.5 An investigation may be made by the Office of Fair Trading against you in the case of a breach. If not resolved, the Office of Fair Trading can refer to the matter to the Office of Fair Trading Commission which may, in its discretion issue an enforcement order against your business. This order may, amongst other remedies, order you to pay the client the amount of

any such award within a specified period for payment as ordered by the Commission.