



Client Account Rule Guidelines

for Members of

ARLA, NAEA, ICBA and NAVA



AN INTRODUCTION to Client Money Accounting Rule

The Principles of this Rule shall apply to all members of all Divisions of NFOPP who transact in clients money.

- This paper and the attached accountants report defines the minimum level of accounting control required by a Principal Partner or Director where clients' funds are transacted by the business of that member. It is presented in a manner that anyone with a rudimentary knowledge of bookkeeping will find easy to comprehend. If complied with, it should be impossible for a Member to confuse clients' money with their own, or to inadvertently make improper payments.
- In a partnership or company, all principals, partners or directors share the responsibility of maintaining a proper bookkeeping system. Any misappropriation or error by one principal, partner, director or a member of staff is the responsibility of every principal, partner or director. It is therefore incumbent upon each principal, partner or director to satisfy himself that any breach in the regulations which he becomes aware of, is rectified immediately

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INTERPRETATION and DEFINITIONS of some key terms used in client accounting

3.1

a	Member's Firm	Firm under the control of any principal, partner, or director who is a member of ARLA, NAEA, NAVA, or ICBA.
b	Client	Any person or body for whom the Member holds or receives clients' money (which may include a Landlord or Tenant, Purchaser or Vendor); including past, present and prospective clients.
c	Client (s') ledger	Documents, journals, file cards, printouts – handwritten or mechanical or computer generated which comprise a permanent chronological record of transactions and balances for an individual client, at any one time.
d	Clients' money	Any money held or received by a Member (usually rents, deposits, floats etc) that does not belong solely to the Member and over which there is exclusive control. (See clause 3.8 of this Rule)
e	Client (bank) Account(s)	A suitably designated and recognised current or deposit account at a bank or building society into which clients' money is paid or transferred. (See clause 3.7 Of this Rule) (Sometimes called a "pooled" client bank account.)
f	Bank	The Bank of England, the Post Office (in the exercise of its powers to provide banking services) or an authorised institution which has permission to accept deposits under the Financial Services and Markets Act 2000.
g	Building Society	As defined in section 119(1) of the Building Societies Act 1986 and is an authorised institution, which has permission to accept deposits under the Financial Services and Markets Act 2000.
h	Office Account	Any normal trading, business or office bank account opened or maintained by the Member in which are held, or transferred, funds belonging to the Member and/or from which outgoings incurred or due from the Member, are paid; as distinct and separate from a client bank account.
i	Records	All documentation relating to the necessary operation and monitoring of the accounting/bookkeeping process in compliance with the rules of membership (including any bye-laws, rules of conduct, codes of practice including appendices of ARLA, NAEA, NAVA, or ICBA.
j	Reconciliation	An analysis that identifies, on a given date, any differences between balances on client ledgers against sums held in the client bank account(s) and the client account cash book.
k	Accountant's Report	The annual Form and/or Certificate, annexed to this guideline in Schedule 1, duly completed and signed by the Accountant and provided to the relevant membership body.
l	Accountant	A suitably qualified or authorised person as detailed in clause 3.23 of this paper "Qualifications of Accountants"
m	Payment(s)	Any type or style of disbursement, withdrawal or transfer from a client bank account.
n	Connected Person/Associate	A person is an associate of another if he is the spouse or a relative of that other or of a business associate of that other. As above "relative" means brother, sister, uncle, aunt, nephew, niece, lineal ancestor or linear descendant, and references to a spouse include a former spouse and a reputed spouse; and for the purposes of this subsection a relationship shall be established as if an illegitimate child or step-child of a person had been a child born to him in wedlock.

GENERAL

3.2

The relevant division reserves the right to waive or modify, with or without conditions, in any particular case the requirements and/or general provisions of this rule.

Provision of this Rule to relevant staff and the reporting accountant

3.3

It is the duty and responsibility of Membership that this rule is readily available to and understood by all partners, directors and principals etc., of a Member Firm and, most essentially, by any staff responsible for operating the accounting process and procedures of that Member. ***A copy of this Rule (including Schedule 1 and 2) [see later in this rule must be provided to the reporting accountant prior to commencement of an examination of the Member's client accounts.]***

Key Elements

3.4

The relevant membership body requires its Members to comply with these rules in respect of their client accounts to ensure that clients' money is protected. The key basic elements that need to apply to clients' money entrusted to a Member are as follows: -

- It must be properly recorded in the Member's books/ledgers of account (paper, electronic or otherwise) so that it is clearly identifiable to each client.
- It must be paid into a specifically designated "Client (bank) Account" with a recognised bank or building society [see 3.1 (f) & (g)] and thus kept separate from the Member's own money.
- All transactions must be monitored and reconciled on a regular basis.

Client (bank) accounts must be properly designated (see clause 3.7 below), easily identifiable and the individual beneficial owners of any money contained therein should be attributable without difficulty, for the following main reasons: -

- To prevent a bank or building society offsetting a credit balance in one account against a debit or charge incurred by another.
- To enable a receiver or liquidator or other investigator to identify money which does not belong to the Member or their business.
- To allow such accounts to be easily monitored and reconciled both internally and externally to demonstrate the financial integrity of the Member and ensure the smooth running of its accounting practices.

Access to, or availability of, Client money

3.5

A Member must ensure that at all times; all client money is held in client bank accounts and is available on demand to clients without undue delay or penalty. (For the avoidance of doubt, client money must not be placed or held in "off-shore" accounts or fixed/variable rate Term Bonds or similar Funds or arrangements.)

3.6

A Member must not conduct personal or office transactions through a client bank account, save that it shall be permissible for the Member to manage and collect rent on a property or properties belonging to any principal, partner, or director of the Firm so long as the number of properties involved are de minimis (e.g. in the minority), declared to and so recorded by the Accountant whilst completing the annual audit. It is permissible to hold tenants deposit monies in a client account. This clause must be read in conjunction with clauses 3.8.b and 3.9.a.

NAME and CONDITIONS of a CLIENT (Bank) ACCOUNT

3.7

A Member must maintain at least one client (bank) account to receive and hold clients' money and any such account(s) must: -

- a) Include both the word "client" and the name of the Member Firm in the title, and
- b) The Member Firm must hold on file in its records, written confirmation from any bank or building society where a client account is held, that the following conditions apply to any such account(s): -
 - I. All money held in the account is clients' money; and
 - II. The bank or building society is not entitled to combine the account with any other account or to exercise any right of set-off or counter claim against money in that account in respect of any sum owed to it on any other accounts of the Member or the Member's Firm.

CLIENTS' MONEY

3.8

Clients' money shall include the following: -

- a) Money of a client (landlord, tenant or applicant, vendor or purchaser) to which the Member or the Member's Firm is not beneficially entitled and over which it has exclusive control.
- b) Money held in respect of properties owned jointly by a principal, or one or more partners, or directors, together with a person who is not a co principal, co-partner or director of the Member Firm. (The Member Firm is considered a trustee for such money, which must be paid into a client bank account.)
- c) Payments or lodgements in respect of fees and/or disbursements received before these have been earned or incurred by the Member's Firm, or passed on to a third party.

3.9

Clients' money does not include the following: -

- a) Money (other than tenants' deposits) received in respect of properties wholly owned by a principal, or by one or more partners or directors of the Member Firm.
- b) Money held in an account jointly with a third party who is not a client and over which the Member Firm does not have power of withdrawal. In the rare circumstances where such accounts are operated, the Member Firm must promptly confirm to the client in writing (and retain a copy) that the account is not a client account; such money is not covered by the Division's Client Money Protection Bonding Scheme; and is not monitored by the Division as part of its client accounting compliance procedures. (A separate record should be maintained in respect of such money, although this is not clients' money as it is not in the sole control of the Member.)
- c) Money held in an account from which a particular client can separately withdraw money and the Member's Firm therefore, does not have exclusive control. In the rare circumstances where such accounts are operated, the Member's Firm must promptly confirm to the client in writing (and retain a copy) that the account is not a client account; such money is not covered by the Division's Client Money Protection Bonding Scheme; and, is not monitored by the Division as part of its client accounting compliance procedures.

3.10

Interest on clients' money: -

- a) A Member's Firm may enter into an arrangement, which must be in writing (for example via Terms of Business, Tenancy Agreement, letter of engagement, pre-tenancy application documents or similar etc), with a client (Landlord or Tenant) that allows the Member Firm's to retain interest earned on money held on a client's behalf. (Such written arrangements/documents shall constitute part of the Records as defined in this Rule.) Where no such arrangement exists, any interest earned, belongs to the client; e.g. the relevant client
- b) Subject to (a) above, where interest is credited to client bank accounts of a Member's Firm the client account(s) should be organised in such a way that the Member Firm is able to account to each individual client for the amount of interest earned or due to them.
- c) A Member's Firm holding clients' money (in this context, tenancy deposits bonds) as Stakeholder during a tenancy, is entitled to retain any interest that may accrue to such money (Potters vs. Loppert 1972) providing this entitlement is made known to the relevant client(s), in writing, from commencement; e.g. in line with clause 3.10(a) of this Rule.

3.11

Payments INTO a client (bank) account: -

Payment of money into a client bank account is restricted to the following: -

- a) The minimum sum required to open or maintain the client bank account;
- b) Clients' money (see clause 3.8);
- c) An amount required to be paid by a Member's Firm to restore in whole or part any money paid out, or withdrawn, in contravention of this Rule
- d) A cheque or bank draft that includes clients' money as well as other money.

3.12

A Member's Firm must bank all receipts of client money into an appropriate client bank account within a maximum of two working days from the day on which it was received.

3.13

Payments OUT OF a client (bank) account: -

A Member's Firm should only withdraw, transfer or make a payment from a client bank account in the following circumstances: -

- a) Money paid in to open or maintain the account in accordance with paragraph 3.11(a) of this Rule and where it is no longer required.
- b) Money paid into the account in accordance with 3.11(d) of this Rule, which does not belong to the client, for payment to the person lawfully entitled to it.
- c) Within three working days of becoming aware of a relevant contravention, money paid into the account in contravention of this Rule.
- d) Money payable to a client, or, to an appropriate person suitably authorised (in writing) to receive such payments on that client's behalf.
- e) Money being paid directly into another client bank account.
- f) Reimbursement of money to the Member's Firm for money expended by the Member's Firm on behalf of the client.
- g) Money lawfully and contractually due, in respect of a Member's Firm's fees and charges.
- h) Legitimate disbursements e.g. amounts subject to invoices, costs or demands incurred or received on behalf of the client.
- i) Provided that in the case of money drawn under sub-paragraphs (f) and (h) above: -
 - (1) The payment is in accordance with lawful and contractual written arrangements (for example via Terms of Business, pre-contract/tenancy application documents, Tenancy Agreement, letter of engagement etc), previously agreed between the parties, or,
 - (2) The client, or their authorised representative, has been notified or invoiced in writing by the Member's Firm of the amount and purpose for which the money is being withdrawn and no objection has been raised within a reasonable timescale.
- j) Provided always that under clause (3.13), no payment shall be made for or on behalf of an individual client which exceeds the total amount held on behalf of that particular client.

3.14

Methods of Payments from a client (bank) account: -

- a) A cheque;
- b) An electronic transfer to another bank or building society account provided that such an arrangement does not constitute a direct debit transaction;
- c) A bank draft;
- d) Cash; (In exceptional cases and where sufficient (staff) safety and (financial) security measures can, in the opinion of the Member's Firm, be taken for the holding of such money prior to payment; the handing over of such money and, where sufficient records of receipt are obtained upon collection of the money.)

3.15

Signatories to payments from a client (bank) account: -

To avoid undue delays or inconvenience to clients or others entitled to receive payments; during any absence from the business, the Principal, Partner or Director must make adequate provision for designated personnel to be able to authorise and/or make appropriate payments.

A Member's Firm has a duty of care to ensure that appropriate controls exist around the ability of any individual(s) to make payments from a client bank account and must maintain an up to date and accurate record listing, as a minimum: -

- a) The full names of such persons, and,
- b) Any limits or restrictions governing the amounts for which that individual is authorised either exclusively or, jointly with others, and,
- c) An example or specimen signature of each person.

The original of such a list or schedule should be lodged with the relevant bank or building society used by the Member's Firm and a copy retained within the records of the Member's Firm.

RECORDS

3.16

Every Member's Firm must keep properly detailed and written up accounting records which should include, for example: -

- a) The amount, relevant dates, name/identity, property address, reference number etc., as are necessary to show and demonstrate the Member's Firm's dealings with;
- b) All clients money received, held or paid out by them; and
- c) Any other money dealt with through a client account; and that the bookkeeping system is adequately designed and operated;
- d) To show separately in respect of each client, all clients' money which is received, held, paid out by them on account of each client; and
- e) To enable the current balance of all clients' money held on behalf of each client to be shown.

3.17

All dealings referred to in paragraph 3.16(a) above shall be recorded as appropriate, either

- I. In a clients' cash book, or in a client column of a cash book; or
- II. In a journal recording transfers from the ledger account of one client to that of another;

and, in either case additionally in a clients' ledger or in a client's column of a ledger.

3.18

Records must include a list of all persons for whom a Member's Firm is or has been holding clients' money, reconciliation documents, and a list of all the bank and building society account(s) in which the money is held and must include counterfoils or duplicate copies of all receipts issued in respect of client's money received, which shall contain the particulars required to be shown in the accounts.

3.19

The records kept for the purpose of complying with this Rule must be preserved for six years from the end of the accounting period to which they relate, or from when the account shows a nil balance following a cessation of the contractual relationship between the parties, whichever is the later. The Division recommends that a Member's Firm consult with their accountant before disposing of, or destroying, any historic accounting records.

3.20

Where a computerised bookkeeping system is in operation, this must be capable of producing printed information to conform to this Rule, which therefore is or can be preserved in a permanent format to comply with 3.19 above.

RECONCILIATION (S) – Format and Frequency

3.21

Every Member's Firm shall: -

- (a) at least once every two calendar months (and no later than ten weeks of a previous reconciliation), cause the balance on their client's cash book(s) to be reconciled: -
 - I. With the balance in their client bank account(s) using the bank/building society statement(s); and
 - II. With the total of each client's balance in the clients' ledger, and
- (b) that such documents necessary to support the reconciliation so produced have been kept safe, complete and readily available in the cash book or other appropriate place.

QUALIFICATIONS of ACCOUNTANTS

3.22

An accountant is disqualified from making a Report under this Rule if, at any time between the beginning of the accounting period to which the Report relates and the completion of the Report, the Reporting Accountant shall be a connected person to any Principal, Partner or Director of Member's Firm or to any member of the staff employed by the Member's Firm in the preparation of the client accounting records. The accountant must be a member of a relevant professional body and where the client funds held are subject to the Estate Agents Act 1979 must be a registered Auditor as per section 1239 of the Companies Act 2006.

3.23

Where this clause does not conflict with 3.22 above, an accountant is eligible and qualified to give an accountants' Report for the purposes of this rule if he/she is: -

A member of any of the following;

- (a) The Institute of Chartered Accountants in England and Wales;
- (b) The institute of Chartered Accountants of Scotland;
- (c) The Institute of Chartered Accountants in Ireland;
- (d) The Association of Chartered Certified Accountants;
- (e) The Association of Authorised Public Accountants.

And also, if the agent carries out transactions regulated by the Estates Agents Act 1979;

- I. An individual who is a registered Auditor within the terms of Section 1239 of the Companies Act 2006; or
- II. An employee of such an individual; or
- III. A partner in or employee of a partnership that is a registered Auditor within the terms of the Companies Act 2006; or
- IV. A director or employee of a company which is a registered Auditor within the terms of the Companies Act 2006; or
- V. A member or employee of a limited liability partnership under the Limited Liability Partnership Act 2000 which is a registered Auditor within the terms of the Companies Act 2006.

ACCOUNTANT'S REPORT – TIMING and FORMAT

3.24

Once in every period of twelve months, each Member 's Firm shall cause to be prepared and delivered to the Federation an Accountant's Report, in the form set out in Schedule 1 and 2 of this RULE [Member Firms who are regulated by the Royal Institution of Chartered Surveyors (RICS) may comply with this clause by provision of the appropriate RICS Certificate and Accountant's Report

3.25

The Report (Schedule 1 and Schedule 2) referred to in this Rule must be submitted to the Federation by the Member's Firm no later than six months after the end of the accounting period to which it relates. [A failure to comply with this timescale may incur penalties.]. This timescale may be altered with prior arrangement

3.26

The relevant accounting period: -

- a) Shall cover not more than twelve months*;
- b) Shall begin at the expiry of the last preceding accounting period for which a report under this Rule has been submitted to the Federation; and
- c) Shall, where possible, correspond to a period or consecutive periods for which the accounts of the Member's Firm are ordinarily made up.

*[Except where otherwise agreed by the Federation (for instance to allow for a change in year-end accounting date); in such circumstances the Federation may at its discretion request additional information in order to be satisfied of the continuing compliance of the Member's Firm.]

3.27

A change of the accounting period of a Member's Firm must to be notified to the Federation at least one month before the end of the originally notified accounting period.

3.28

Where no clients' money has been held by the Member's Firm during the relevant period; a Report shall be completed, by the Accountant, to this effect.

3.29

Where a member has an interest in more than one Firm, a separate Report for each of the Firm's registered Firms must be submitted.

3.30

Where a Member's Firm has more than one place of business, one or more Report(s) may be submitted in respect of the business, provided that the Report(s) cover(s) all clients' money held, received or paid out by the Member's Firm.

ACCOUNTANT'S REPORT – SCOPE and CONTENT

3.31

It is the duty of each Member's Firm to provide to their accountant at appropriate times (*usually this would be both at the point of agreeing their terms of engagement and at the time of the audit visit*):

- An up to date copy of this Rule, including,
- Schedule 1 (as annexed to this Rule) - which specifies the enquiries, by way of a check-list, which the reporting accountant is required to make before completing and submitting his/her Report (which should include a copy of Schedule 1), and,
- Schedule 2 (as annexed to this Rule) - which comprise the format of the Accountant's Report that will need to be completed and submitted to the Federation in due course.

(All of these documents are available as pdf files to be downloaded from the Member's section of the Federation's website www.arla.co.uk

[As per clause 3.24 of this Rule, Member's Firms who are regulated by the Royal Institution of Chartered Surveyors (RICS) may comply with this Rule by provision of the appropriate RICS Certificate and Accountant's Report.]

Client Accounting COMPLIANCE CHECK VISITS and INVESTIGATIONS

Reason/rationale for such visits/investigations

3.32

In order to comply with obligations placed on the National Federation of Property Professionals under its Client Money Protection Bonding Scheme and its duty both to its own membership and the public to robustly monitor compliance with accounting rules, the Federation may, at any time, carry out or authorise a visit or inspection as part of the random spot checks carried out by the Federation from time to time upon Member's Firm(s) or, as a result of information coming to the attention of the Federation.

Notification of such visits/investigations

3.33

The relevant selected Member's Firm will be provided with at least a minimum of 10 working days notice of the intention of the to carry out such a visit.

Duty to co-operate and provide information/records

3.34

It is a condition of membership that a Member's Firm co-operates with such a visit or inspection and in this regard will be required to produce or make available, at a time and place duly notified, such records and documents (howsoever maintained or stored) as necessary for inspection and review by a person appointed by the Federation, in order that a report on compliance may be produced.

Scope of visits

3.35

Such visits or investigations may or may not comprise an Audit (insomuch as this term applies to compliance with this Rule) and may or may not be restricted to an assessment of the systems, procedures and controls operated by the Member's Firm with regard to Rule.

Liability for costs of such visits/inspections

3.36

If, following such a visit or inspection carried out under this Rule, the Member's Firm is found to have contravened or breached the relevant rules, the Federation reserves the right to require the Member's Firm to pay an amount, which shall be no more than the total costs, towards the expenses and/or expenditure incurred by the Federation in carrying out such a visit and/or investigation. (For the avoidance of doubt, this amount shall be separate from any other fine or sanction imposed by the Federation for a contravention or breach of its rules.)

Ongoing liability to co-operate after membership ceases

3.37

Where membership ceases (for whatever reason) and the Federation has cause to believe it (the Federation) may be, or may become, liable to a claim under the NFoPP Client Money Protection Scheme, that Member and their Firm shall have an ongoing liability to provide full access to the Federation or its representatives in relation to this Rule.

OLD - DORMANT CLIENT BALANCES

3.38

If a Member's Firm has credit balances in its client account(s), which represents money previously held for clients who cannot now be traced or which cannot now be attributed to or identified as belonging to a particular client; the Member's Firm is not entitled to take that money, it can never belong to the Member's Firm. It represents funds entrusted to the Member's Firm and would thus be a breach of trust to take a clients money even where the Member's Firm have tried and failed to trace and/or identify the relevant client.

3.39

Such funds should be transferred to and recorded in a suitably designated "Client Suspense Account". (For the avoidance of doubt, any such account remains within the scope of this Rule and still subject to regular reconciliation and the year-end audit.)

3.40

- a) A Member's Firm must take reasonable steps to identify to whom the money belongs through their accounting and other records and this should include carrying out an extensive investigation of the audit trail; and,
- a) In the case of an old or ex-client for whom the Member's Firm no longer act; reasonable steps must be taken to trace the client and this might include writing to the last known place of residence; to the clients professional advisers (solicitors, accountants etc); writing to their bank or any other contacts (referees, guarantors, next of kin, employers etc) provided within their file.

3.41

Under exceptional circumstances, and following written explanation of;

- a) The actions taken by the Member's Firm and,
- b) The current situation and status of any investigations and,
- c) Disclosure of the amount involved and,
- d) Sufficient time (usually at least six years) having elapsed from last contact from the client or activity on the relevant client ledger account,

the Federation may allow the old or dormant client funds to be donated by the Member's Firm to a suitable registered charity; subject to an undertaking that any valid proven claim subsequently received by the Member's Firm from the beneficial or legal owner would be immediately met by the Member's Firm from its own resources. The transfer of such funds to a charity may require a note to the Member's Firm business accounts of a potential liability to a future claim. Any such sums dealt with in this manner should form part of any disclosure to a future potential purchaser of the business.

3.42

Where any merger, acquisition, amalgamation etc or similar takes place between a Member's Firm and any other Firm or Company, any such funds held in the relevant Client Suspense Account as required under 3.39 above, should be transferred to the new Company or Firm with appropriate and sufficient information and, upon the Member's Firm receiving a satisfactory written contractual undertaking that such amounts will, subject to a valid future claim, be refunded to the beneficial or legal owner. A Member's Firm is advised to include in any contract of sale (or similar) an indemnity from the purchaser that any client funds previously transferred, as a charitable donation, will be a liability of the purchaser.

Non-Compliance – Breaches of The Accounting Rule

3.43

For the avoidance of doubt; the Federation considers breaches of, or a failure to comply with, the general or specific requirements of the Accounting Rule. The Accounting Rule as a serious matter that may result in significant sanctions being imposed and may jeopardise membership of the Federation.

Schedules 1 and 2

3.44

1. Schedule 1 to this Rule comprises the "Checklist of enquiries by the Accountant" when considering compliance with The Accounting Rule.
2. Schedule 2 to this Rule comprises the "Accountants Report Form" which needs to be completed and signed by the Accountant in reporting compliance or otherwise with The Accounting Rule.

Tri-partite agreements for audits

(Member Firm – Accountants – Regulatory/Professional body)

3.45

It should be noted that the requirement of a Member's Firm to provide a Report under this Rule would not constitute a contract between the Accountants of the Member's Firm and the Federation. A Member's Firm must take appropriate steps to include in its letter of engagement/contract with its Accountants a clause that permits a copy of any such Report (or the RICS equivalent) to be provided to the Federation in order to comply with The Accounting Rule.

