



THE INSTITUTE
OF CHARTERED
ACCOUNTANTS
IN ENGLAND AND WALES

21 November 2008

Our ref: ICAEW REP 130/08

David Lamb
Financial Services Authority
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By email: david.lamb@fsa.gov.uk

Dear Mr Lamb

FSA LETTER TO MICHAEL IZZA DATED 24 OCTOBER 2008 RELATING TO CLIENT ACCOUNTS AND SIMILAR ARRANGEMENTS

Thank you for the letter of 24 October from Peter Smith to Michael Izza requesting information on *Client accounts and similar arrangements*. I have been asked to respond on his behalf.

The Financial Services Faculty leads the representational work of the Institute of Chartered Accountants in England & Wales (ICAEW) on in respect of financial services. As such, we have close contact with members working both for regulated financial services firms, and in firms providing professional services to such businesses.

Whilst we have made efforts to consult with our members over the questions raised, given the timeframe and also time of year, the level of consultation has necessarily been limited. Our comments on practical implementation must be construed in that light, and not be considered to represent the full or comprehensive views of the accountancy profession.

Please contact my colleagues Peter Burton, Head of Regulatory Policy, or John Gaskell, Manager, Financial Planning, should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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ICAEW Representation

ICAEW REP 130/08

CLIENT ACCOUNTS AND SIMILAR ARRANGEMENTS

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INTRODUCTION

1. The Institute of Chartered Accountants in England and Wales (ICAEW) welcomes the opportunity to comment on the letter of 24 October from Peter Smith addressed to Michael Izza concerning client accounts and similar arrangements.

WHO WE ARE

2. The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 130,000 members in more than 140 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 700,000 members worldwide.
3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The Institute ensures these skills are constantly developed, recognised and valued.
4. The Financial Services Faculty leads the representational work of the Institute of Chartered Accountants in England & Wales (ICAEW) on in respect of financial services. As such, we have close contact with members working both for regulated financial services firms, and in firms providing professional services to such businesses.

ANSWERS TO DETAILED QUESTIONS

5. Our answers to the specific questions raised by the FSA are set out below.

Question 1. If your members use client accounts can you provide us with (or the link to) the specific professional rules that relate to the setting up and use of these accounts?

6. Our clients' money regulations can be viewed at www.icaew.com/membershandbook, then look for section 6.6. No password is required to view this document.

Question 2. Apart from these rules, are there any other provisions of the general law which you feel are particularly relevant to the operation of client accounts?

7. We would regard trust law as the main element of general law that is applicable. Also relevant would be banking law and, in so far as it is general law, the Financial Services Compensation Scheme (FSCS).

Question 3. What specific arrangements if any, are you aware that your members currently make to safeguard client accounts should a third party (ie a bank fail)?

8. Until recent events, our view is that this was not a consideration that received much attention. Following discussion with the FSCS, we have alerted our members to

some of the issues using the article attached as an appendix to this response. How this may change firms' approach is unclear at the moment.

Question 4. What kinds of clients (ie private individuals or businesses) make use of client accounts?

9. We have no specific information on this point but in our view, money is generally held on behalf of individuals, trusts and estates, 'smaller' businesses and, on occasion, under powers of attorney.

Question 5. What are the sources or the purpose of the monies held in your members' client accounts? (NB It would be extremely helpful to have figures about the average amount of money held in a client account, by type of client and by source of money, should you hold this.)

- (a) house purchase/selling funds
 - (b) redundancy or inheritance payments
 - (c) pension lump sums
 - (d) money awaiting investment in, or resulting in sales of, securities or investments
 - (e) damages in respect of personal injury or similar
 - (f) Other - please provide source or purpose.
10. Again we have no specific information but note that one frequent source of client money relates to tax refunds. The firm will receive a refund on behalf of a client from HMRC, deduct an agreed fee and pay over the balance. Generally when a firm is arranging an investment etc for a client, the client would make the cheque payable to the 'end' recipient, not the firm. However, we have not performed a full survey of our members and some of our member firms may use their client money accounts to effect transactions between clients and counterparties.

Question 6. Roughly how long are the types of funds mentioned above left in client accounts?

- (a) a few days
 - (b) 1 week
 - (c) 2 - 4 weeks
 - (d) 5 - 12 weeks
 - (e) longer - please specify average length of time
11. We do not have any specific information on this point and note that the length of time can vary significantly, dependant upon circumstances. It may be necessary to hold some amounts for over one year, for example certain amounts relating to payment of tax on trusts and estates under administration.

Question 7. How do your members select banks or building societies with which to place their client accounts?

12. Again, we have no detailed information on this point. Firms would either use the same bank as they use for their own banking arrangements or use specialist solutions. For example, the Royal Bank of Scotland has a bespoke client bank arrangement that allows (easier) access by the firm and the easier creation of multiple accounts for different clients. One member commented that it was also important to have access to a local branch, which can be an issue in rural areas.

Question 8. Are clients generally consulted or made aware about which institution their funds are placed with?

13. Clients are not generally consulted, but see our clients' money regulations 9(d) and 9(e). Also, see our note detailed as part of our answer to question 3.

Question 9. How are funds held, ie is there a separate named account for each client, or are funds of different clients aggregated together?

14. See our client money regulation 13.

Question 10. What is the usual destination(s) of funds when they leave a client account (eg are they usually paid by cheque or electronic transfer or to purchase an asset ie a house)

15. We do not have specific information about this, but in our view payment would normally be by cheque. However, the specialised accounts mentioned in question 7 are designed for electronic transfer.

Question 11. Do your members generally divide client's money's between different deposit takers or use one particular deposit taker?

16. We do not have information on this point.

Question 12. If money is divided between different deposit takers, what is the reason for this?

17. See above.

Question 13. Are you aware of any products currently marketed to organisations which are not currently covered by the FSCS (eg large businesses) to protect client accounts?

18. We are not aware of such products.

Question 14. If so, do you think a similar model could be adapted to provide a solution for individuals and how would you expect this product to be marketed?

19. See above.

Question 15. Do you think it be practicable to set up insurance policies for short term coverage of monies held in client accounts?

20. We can envisage the development of insurance products for the short term coverage of monies held in client accounts, with the proviso that it would probably only be effective for balances significantly above the depositor protection limit. The development of any such products would, of course, need to be economically viable and capable of competitive pricing. Any assessment of the underlying economics would require input from the insurance industry.
21. Were such products to be developed, we would expect consistent application between professional firms and the banking sector. If the use of insurance products was mandated only for professional firms, it would risk creating a form of

secondary banking where depositing money with a professional firm would have better security than with an underlying bank, which is counter-intuitive.

Question 16. How would you expect such products to be paid for?

- a) by fee
 - b) by requiring the consumer to forego the interest he would usually expect to be paid for a deposit in a client account
 - c) a combination of the two.
22. Given the transient nature of clients money, the interest earned may be minimal or none at all. Any premium would no doubt be calculated on a percentage of funds held and this would be passed onto clients.

Question 17. What is your view of the potential appetite of consumers and their representatives for such products?

23. In view of recent government action and statements, our view is that probably most consumers and their advisers no longer see this issue as a risk.

Question 18. Do you have any views on the advantages or disadvantages of either (a) informing or (b) obtaining customers consent before depositing funds with a particular deposit taker?

24. As you will see from our note attached to question 3, we are suggesting to firms that clients are advised of the bank used to hold clients' money. Obtaining consent, especially if the receipt of the client money was unexpected, is probably a lengthy and uneconomic process and is likely to manifest itself in a negative format, ie 'The money will be deposited at X bank unless we hear to the contrary'. There are also issues relating to clarification of when institutions are to be treated as related for compensatory purposes, particularly in circumstances relating to mergers and takeovers.

FSF/JG/PB/IC November 08

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APPENDIX – ICAEW Article for authorised firms

Clients' money accounts and the Financial Services Compensation Scheme

Some firms have asked us about clients' money accounts in the unlikely event that the bank that holds the account were to fail and this note aims to assist firms.

If an FSA authorised bank were to fail, and if a firm held its clients' money account at that bank, the individual clients would be eligible to compensation under the FSCS, providing the client is:

- an individual
- a sole trader
- a partnership (unless it has net assets of more than £1.4m) or
- a company or limited liability partnership (provided it qualifies as 'small').

Exclusions to the eligibility criteria are set out in [section 4.2.2](#) of the FSA's compensation rule book.

There are other matters you should consider. If the client also has their own account with the same bank, the compensation limit of £50,000 applies to the combined total of money held in both the clients' money account and in the client's own account(s). Also, the compensation paid is by reference to separate FSA authorisations and a single authorisation (and therefore single compensation limit) may apply to a number of bank 'brands'. You may therefore wish to give clients the name of the bank that holds your clients' money account. You must also be able to identify the money held for individual clients, which is of course a requirement of the [Clients' Money Regulations](#).

The compensation limit was £35,000 until very recently and is £100,000 for joint account holders. These limits may change again. Any recovery of amounts above the compensation limit will depend on what can be recovered through the normal insolvency processes.

Whether the client would have a claim against your firm for any unrecovered monies is more complicated. There would need to be evidence that the firm has been negligent in the way in which it has handled clients' money.

Given these new issues, you may wish to reconsider the circumstances in which you hold clients' money.