**Client Money Procedures**

**Client Money** is money in any currency that [Broker’s Name Inserted here] receive and hold for our clients when carrying on insurance mediation. It can include premiums, claims money and premium refunds as well as professional fees due from clients for example for onward payment to a loss adjuster.

[Broker’s Name Inserted here] ’s own money is not client money and must not be held in the client money bank account because it can invalidate the trust status of the account.

Money stops being client money if it is paid to the client or to the insurer

When money is received from a client this must be allocated to the client on the computer system

## Client Money Bank Account

Client money must be segregated into the client money bank account which has been set up as a statutory trust account.

As the firm has set up a statutory trust account it is important to note that the firm cannot make advances of credit from the client money account. i.e. we must not pay an insurer a premium until the money has been received from the client. Likewise we cannot pay a claim until we have received the settlement from the insurer. If we do wish to make such payments, at the discretion of Director’s Name an advance can be made from the firm’s own funds.

In setting up the statutory trust accounts the firm has obtained written confirmation from [insert the name of the bank(s) used to hold client money] that:-

1. The title of our client money account distinguishes it from other accounts of [Broker’s Name Inserted here] by including the words ‘client money’.
2. All money held in the account is held by our firm as trustee.
3. The bank is not entitled to combine the client money account with any other account or to exercise any right or set-off or counterclaim against money in that account in respect of any sum owed to it on any other account of the firm.

## Risk Transfer

An insurer may agree to let [Broker’s Name Inserted here] hold money as agent on its behalf. When money is held in this way the insurer bears the risk for any losses arising from either us failing to transfer the money or from the misappropriation of the client money by us. These agreements are called Risk Transfer Agreements.

If all insurers are granting risk transfer there would be no need for the [Broker’s Name Inserted here] to have permission to hold client money. However, the client money manager must be sure that all premiums are held on a risk transfer basis if they wish to cancel [Broker’s Name Inserted here] ’s permission to hold client money.

A risk transfer agreement is an agency agreement which makes clear when money is held by us as agent of the insurer.

## Co-mingling

This is when a firm mixes client money with risk transfer money. Insurers who grant risk transfer must agree to money being held in this way and they must agree to subordinate their interests to the interests of the client. It should be noted that money that is co-mingled is considered client money for the purposes of the CASS rules. [Broker’s Name Inserted here] Co-mingles.

## Receiving Client Money

Client money must be paid into a client bank account as soon as practicable. In most circumstances client money is paid into the client money bank account by close of the following business day.

CHAPs or BACS payments are made directly into the client bank account. If an automated payment is received in error into our own business account then it is transferred to the client money bank account no later than the next business day.

## Refunds

If paying a refund or a claims settlement by cheque it is important to remember that our fiduciary duty to the client is not discharged until the cheque has been banked by the client.

Refunds must be paid into the client money bank account or directly to the client as soon as practicable.

Refunds must not be paid to the client until the firm has received the money from the insurer or third party and the money has cleared into our client money bank account.

#### Mixed Remittances

On receipt of a mixed remittance, part client money and part money that is not client money e.g. a fee, this must be paid into the client bank account as soon a practical. The firm must then remove the money that is not client money from the client bank account as soon as practical and no later than 25 business days after the mixed remittance has cleared.

#### Withdrawing Commission and Fees from Cleared funds

[Broker’s Name Inserted here] draws down commissions on cleared funds [once a month / or as appropriate to your firm] following the client money calculation. This is in accordance with the Terms of Business in place with our clients and the insurers we deal with.

If payments are received in instalments we are only able to draw down commission on the instalment as it is earned by the firm.

#### Client money passed to Third Parties

If we need to pass client money to a third party, such as another insurance broker, it is important that we keep a record of the money held at third parties as this will be required for completing the client money calculation.

Our fiduciary duty to our client is not discharged until we can confirm that the client money has been paid to the insurer or to an agent of the insurer.

#### Cleared Funds

It is important that a reasonable amount of time is allowed between banking a cheque and drawing on it. It is prudent to allow 3-5 working days for a cheque to clear.

If we knowingly draw on an uncleared cheque we are extending credit which is not permitted with a statutory trust client money bank account.

With a credit card payment it is also prudent to allow at least five working days after processing for clearance.

## Client Money Calculation

At least once every 25 business days [Broker’s Name Inserted here] must perform a client money calculation to ensure that the money held on behalf of the insurers meets the money debited to our accounts. Any shortfall must be made good and any excess removed from the client money bank account on the day the calculation is performed.

[Broker’s Name Inserted here] uses the accruals method to perform the client money calculation.

The client money calculation is carried out using our own accounting records as these are the most up to date figures but, within 10 business days of the calculation being done we must reconcile our records with the bank statements.

The reconciliation can be completed as part of the client money calculation provided the calculation is still completed within one business day.

The bank statement reconciliation contributes to safeguarding client money as it reduces the risk of theft and enables identification of errors either by us or by the Bank.

Any difference between our records and the bank statements must be identified and corrected as soon as possible unless the difference is solely as a result of timing differences between the bank and the firm’s records. If we are unable to identify the reason for the difference we must assume that the record indicating a greater amount in the client money account is the correct record and should top up the client money account if necessary.

Please note, cheques which have been drawn for the benefit of a client but have not been presented and cleared could create a surplus in the client money account which if removed after doing the client money calculation could result in an actual shortfall.

## Client Money Calculation - Accruals Method

The accruals method aggregates amounts of client money recorded in the business ledgers and includes insurance debtors and creditors.

It is important that following the client money calculation any surplus is removed from the client money bank account or any shortfall is made good. Any adjustment must be carried out on the day the client money calculation is performed. The firm’s own money must not be kept in the client money bank account as this could invalidate the trust status of the account and mean the client money is not adequately protected.

First [Broker’s Name Inserted here] must calculate the client money **resource** (client money we have) which is

1. The aggregate of balances on the firm’s client money bank ledgers as at close of business on the previous business day plus
2. Any money held at third parties plus
3. Any insurance debtors (not including pre-funded items)

Next [Broker’s Name Inserted here] must calculate the client money **requirement** (what we owe) which is:

1. The sum of all insurance creditors shown in the firm’s ledgers as sums owed by the firm to clients, insurers and other persons plus
2. Unearned commission of the firm plus
3. Money held at third parties plus
4. If applicable money held at appointed representatives or other agents.

Then compare the requirement with the resource. If the requirement is greater than the resource we must use our own money to make good the shortfall. This must be discussed with Director’s Name and the reason for the shortfall discussed and documented. It needs to be considered whether the FCA needs to be advised. The FCA must be advised if the firm cannot make good the shortfall (see breaches policy).

If the client money requirement is less than the client money resource, we must withdraw the surplus from the client bank account. Any adjustments must be performed on the day the calculation is completed.

[Broker’s Name Inserted here] must notify the FCA immediately if we are unable to or do not perform the client money calculation as this is a serious breach.

## Example Client Money Calculation (using the accruals method)

|  |  |  |
| --- | --- | --- |
| Resource |  |  |
| Bank Balances |  |  |
| Statutory Trust Account 1 | £36,502.45 |  |
| Statutory Trust Account 2 | £40,120.78 |  |
| Suspense Account (unreconciled items) | £350.07 |  |
| Client Currency Account | £15,103.00 |  |
|  |  |  |
| Aggregate Bank Balances | £92,076.30 |  |
|  |  |  |
| Money Held at Third Parties |  |  |
| Intermediate Broker 1 | £7,550.75 |  |
| Intermediate Broker 2 | £19,362.03 |  |
| Overseas Broker | £3,775.00 |  |
|  |  |  |
| Aggregate of balances held at third parties | £30,687.78 |  |
|  |  |  |
| Insurance Debtors (not including pre funded items) |  |  |
| Insurance Debtors (due from clients) | £27,239.90 |  |
| Insurance Debtors (due from Insurers) | £22,108.25 |  |
|  |  |  |
| Total Insurance Debtors | £49,348.15 |  |
| Resource Available | £172,112.23 |  |
|  |  |  |
| Requirement |  |  |
|  |  |  |
| Insurance Creditors |  |  |
| Insurance Creditors (due to insurers) |  | £52,256.56 |
| Insurance Creditors (due to other persons) |  | £ 9,123.75 |
| Insurance Creditors (due to clients) |  | £17,149.39 |
|  |  |  |
| Total Insurance Creditors |  | £78,529.70 |
|  |  |  |
| Interest Accrued |  | £365.25 |
| Unearned Commission |  | £23,526.25 |
| Money Held at third Parties |  | £30,687.78 |
| Money with Appointed Representatives |  | £8,506.25 |
|  |  |  |
| Requirement to Cover |  | £141,615.23 |
| Resource | £172,112.23 |  |
| Surplus / deficit |  | £30,497.00 |

Note: pre-funded items include client money recorded on the business ledger as being advanced to a client, insurer or other person before it is received.

#### Common reasons for a shortfall

* Premiums have been paid to insurers before the money has been received from the client.
* Money has been paid to the client before it was received from the insurer.
* Commission has been withdrawn before it is due and payable to [Broker’s Name Inserted here] .

#### Common Reasons for an excess

* Commission has become due and payable but has not been withdrawn
* Interest has accrued on the credit balance and has not been paid to [Broker’s Name Inserted here] .

#### Keeping the client informed

It is important to tell our clients how we handled their money. This information must be included in the TOBA that we hand to our clients.

When the money is received from the client either in the form of a cheque or cash, the money must be banked by the close of the next business day following receipt.

BACS payments coming into the client money bank account must be credited to the correct client on the day that it is received or at the latest within 24 hours.

Money received from Premium Finance companies directly into the client money bank account must be allocated to the correct client on the day that it is received.

Any card payments received must be cleared and reconciled to the correct client.

[Broker’s Name Inserted here] Accounts Department must check that the money has been credited to the correct account on the next working day.

When insurer statements are received, the accounts department must check that the amount requested from insurers matches the amount debited by [Broker’s Name Inserted here] and the amount received from the client. Once completed the accounts department must reconcile the statement on the computer system and send the payment by cheque or bacs to the insurer in accordance with the terms of credit agreed with the insurer.

Once commission is due and payable the firm is to draw down commission.

The FCA requires records in respect of Client Money to be retained for a minimum of three years. However, [Broker’s Name Inserted here] retains records relating to Client Money for seven years in case a query arises on the Client Assets Report.

## Aged Debtor reports

Aged debtor reports must be run on a weekly basis and any item falling into the 30-60 day bracket must be investigated. Any problem clients must be referred to senior management to be dealt with appropriately taking into consideration the firm’s vulnerable customers policy, forbearance and treating customers fairly.

## Credit Write backs (Legacy Balances)

Credit write backs are an accounting transaction (the reduction or elimination of a creditor balance) which may or may not be followed by a cash transfer out of the client money bank account.

Credit write backs tend to occur when there are unclaimed amounts in the client money account or where the broker has received an over payment. Examples of when such amounts may appear in the client money bank account include:-

1. Incomplete accounting for settlement transactions where there are foreign exchange differences, ancillary charges and immaterial settlement differences.
2. Bad debts which have been written off and subsequently recovered.
3. Long standing legacy balances created by data transfers or business acquisitions where the audit trails has since been lost and or
4. Identifiable over payments.

Client money is held by our firm as trustee and we have a fiduciary duty to our clients. Therefore we have a liability to restore client money wrongly transferred to our own account from our client account. This liability is strict and cannot be mitigated by the transfer being done in good faith. Any movement of money must be based on documented persuasive evidence in compliance with the relevant rules, guidance and trust law.

It is our duty to establish and maintain effective systems and controls for compliance with applicable requirements and standards under our regulatory system including compliance with CASS. If significant uncorrelated or unmatched cash is found to be in the client money account our systems and controls are evidently ineffective and must be reviewed by Director’s Name immediately.

It is noted that the exemption in the Limitation Act 1980 which states that a firm’s liability to an unsecured creditor ceases after the expiry of six years does not apply to trust accounts therefore, any credit write back taken from a client money trust account remains in scope for legal action irrespective of the period of time elapsed since the originating transactions.

[Broker’s Name Inserted here] recognises that credit write-backs may be taken in the following instances:

Where balances held in the client money account have arisen through incorrect or incomplete accounting then in the first instance the credit write back is itself a correction and should be made. However, incomplete accounting entries are likely to relate to settlement transactions such as foreign exchange rate differences, ancillary charges and immaterial settlement differences. The FCA would not normally expect these types of transactions to result in a cash transfer out of the client money account.

Alternatively, legacy balances that have been held in the client money account for long periods may have been created by data transfers or business acquisitions which do not permit a firmly evidenced conclusion to be drawn as to their nature. In these circumstances [Broker’s Name Inserted here] must asses whether there is sufficient persuasive evidence available to allow a credit write back to be taken.

A cash transfer is only permitted once we have considered and documented the following:-

* The quality of our systems and controls (for the period covered by the proposed write back and subsequently).
* The degree of due diligence reasonably capable of being carried out to identify the monies and their ownership.
* Whether leaving the monies in the client money account has the potential to impair the trust status and
* The extent to which these monies relate to legacy or pre regulation transactions and balances (age).
* Whether the money is more likely than not to be the firm’s money (how have we satisfied ourselves that this money should be transferred out of the client money bank account.)

The above considerations must be signed off by the board.

The following are examples of the type of evidence the FCA expect [Broker’s Name Inserted here] to be able to present. All or some of the following should be presented depending on the circumstances:-

* Satisfying our auditors as to the appropriateness of any credit write-back
* Independent written legal opinion on the appropriateness of any credit write-back.
* Confirmation that documented credit write-back procedures approved by the board have been complied with.
* Copies of written communication to insurance creditors or their agents
* Details of the age of the balances i.e. when where they last active and
* Board resolution to confirm that the write back is not essential for the regulated entity to meet Threshold Condition 4 Resources.

Evidence of whether the credit write-back relates to pre or post regulation transactions and whether the commitment relates to commercial or consumer business.