

Risk Management: Using a Client Account as a Bank Account



Introduction

The processing of funds through client account for purposes unconnected with legal advice has, for many years, been considered very serious. Reports have suggested that client bank accounts have been used improperly as banking facilities, with all the attendant risks of involvement in financial crime and the evasion of insolvency processes.

Our rules, principles and outcomes

Where clients ask you to process funds through your client account, you need to balance their best interests against the Principles set out in the CILEx Code of Conduct and your legal obligations.

It should also be borne in mind that you will be required to comply with the requirements set out in The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017). There are criminal sanctions against assisting money launderers.

Allowing your firm's bank account to be used improperly may involve a breach of the CILEx Code of Conduct including:

- Principle 1: upholding the rule of law and the proper administration of justice.
- Principle 2: maintain high standards of professional and personal conduct and justify public trust in you, your profession and the provision of legal services.
- Principle 3: behave with honesty and integrity.
- Principle 7: ensure your independence is not compromised.
- Principle 8: act effectively and in accordance with proper governance and sound financial and risk management principles.
- Principle 9: identify, assess, manage and promptly address risks to money and assets entrusted to you by clients and others.

In addition, Rule 3.4 of the CILEx Accounts Rules states:

- You must not effect any payments or receipts through Client Account unless those payments and receipts are incidental to the provision of substantive legal services by you to a client.
- You must not provide banking facilities through a client account.

The rules on not providing banking facilities are very clear.

Risks

Providing banking facilities through a client account is unacceptable in itself.

You should only receive funds into a client account in relation to an underlying transaction that you or your entity is advising on.

Absence of a reasonable connection between the underlying legal transaction and the payments.

Consider the following:

- Just providing advisory legal services make it more difficult to show a reasonable connection.
- A retainer does not give you licence to process funds freely through client account on the client's behalf.
- Question why you are being asked to receive funds by a client and for what purpose.
- Only hold funds where necessary for the purpose of carrying out your client's instructions in connection with an underlying legal transaction or a service forming part of your normal regulated activities.
- Ask why the client cannot make an unconnected payment themselves.
- The client's convenience is not the paramount concern and, if the client does not have a bank account in the UK, this considerably increases the risks.

You should be prepared to justify to a regulator any decision to hold or move client money.

Significant aggravating factors include the risks of insolvency and money laundering.

Funds should not be paid into, or transferred out, of Client Account, to avoid responsibilities imposed by insolvency legislation or to perpetuate suspected financial crime or tax fraud.

Criminals often target client accounts to lend credibility to fraudulent schemes or to launder the proceeds of their criminal activity. You must not allow money to move through client account unless it is in connection with a genuine transaction about which you are providing legal services.

The MLR 2017 require you to take proper complete due diligence before accepting any funds into client account and not act if you do not fully understand the transaction on which you are advising. You must have an ongoing awareness of the risks of a transaction as you deal with it.

Private client services

Historically, some lawyers agreed to receive and hold funds for clients to enable them to pay routine bills and invoices on their clients' behalf. This was mainly for the clients' convenience, as they may be based abroad or because they are incapacitated, and operating their own bank accounts was seen as difficult.

However, with online and telephone banking, allowing a client account to be used in this way is no longer appropriate as it increases the risks in relation to potential money laundering or other breaches of the law, such as exchange control consent regulation and sanctions breaches.

You should carefully consider all of the relevant circumstances and the risks involved before you agree to hold funds in this way, as you will not to be able to justify your decision to us.

However, this should not affect your ability to make reasonable and proper payments on your client's instructions, for example, upon completion of a house purchase on your client's instructions. However, once a transaction is complete, any remaining client money must be returned to the client promptly, as soon as there is no longer any proper reason to retain those funds.

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