

# Guide to client monies for property agents

If you are a letting or property management agent in England that hold clients' money, you must join a 'client money protection scheme'. These schemes ensure landlords and tenants are compensated if the agent cannot repay their funds. This is different to the tenancy deposit protection scheme.

The rules are different in Scotland, Wales and Northern Ireland.

## Approved schemes:

- ❑ Client Money Protect
- ❑ Money Shield
- ❑ Propertymark
- ❑ RICS
- ❑ Safeagent (previously NALS)
- ❑ UKALA Client Money Protection

You may be fined up to £30,000 if you do not join a client money protection scheme.

## You must:

- ❑ hold your clients' money in an account with a bank or building society authorised by the Financial Conduct Authority
- ❑ get a certificate confirming membership of the scheme you join, and provide it to anyone who asks, free of charge

## You'll need to display the certificate:

- ❑ in any office where you deal with the public
- ❑ on your website

You may be fined up to £5,000 if you do not display a certificate of membership or provide when asked.

## Key elements of clients' money

The key basic elements that need to apply to clients' money are as follows:

- ❑ Each transaction must be properly recorded in the agent's books/ledgers of account (paper, electronic or otherwise) so that it is clearly identifiable to each client
- ❑ Monies must be paid into a specifically designated "Client (bank) Account" with a recognised bank or building society and thus kept separate from the agent's own money.

This account must:

- include both the word "client" and the name of the Agent in the title
- have written confirmation from any bank or building society where a client account is held, that the following conditions apply to any such account(s):

All money held in the account is clients' money; and

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 Agent.

- ❑ All transactions must be monitored and reconciled on a regular basis (recommended carried out monthly for best practice)
- ❑ Client (bank) accounts must be properly designated, 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 agent
  - To allow such accounts to be easily monitored and reconciled both internally and externally to demonstrate the financial integrity of the Agent and ensure the smooth running of its accounting practices.

### Clients' money includes the following

- ❑ Money of a client (landlord, tenant or applicant, vendor or purchaser) to which the Agent is not beneficially entitled and over which it has exclusive control
- ❑ 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 Agent. (The agent is considered a trustee for such money, which must be paid into a client bank account.)
- ❑ Payments or lodgements in respect of fees and/or disbursements received before these have been earned or incurred by the agent, or passed on to a third party.
- ❑ Tenants' deposits passed to a Tenancy Deposit Scheme.

### Clients' money does not include the following

- ❑ 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 agent.
- ❑ Money held in an account from which a particular client can separately withdraw money the agent therefore, does not have exclusive control. In the rare circumstances where such accounts are operated, the agent 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 Client Money Protection Scheme; and the account is not monitored as part of its client accounting compliance procedures.

### Interest on clients' money

An agent 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 firm to retain interest earned on money held on a client's behalf. Where no such arrangement exists, any interest earned, belongs to the client; e.g. the relevant client.

- ❑ Subject to the above, where interest is credited to client bank accounts of a agent, the client account(s) should be organised in such a way that the agent is able to account to each individual client for the amount of interest earned or due to them.
- ❑ An agent 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 providing this entitlement is made known to the relevant client(s), in writing, from commencement;

## Payments into client (bank) account

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

- ❑ the minimum sum required to open or maintain the client bank account.
- ❑ an amount required to be paid by an agent to restore in whole or part any money paid out, or withdrawn.
- ❑ a cheque or bank draft that includes clients' money as well as other money.

An agent 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.

## Payments out of a client (bank) account

An agent should only withdraw, transfer or make a payment from a client bank account in the following circumstances:

- ❑ Money paid in to open or maintain the account.
- ❑ Money paid into the account which does not belong to the client, for payment to the person lawfully entitled to it.
- ❑ Within three working days of becoming aware of a relevant contravention, money paid into the account in contravention of this Rule.
- ❑ Money payable to a client, or, to an appropriate person suitably authorised (in writing) to receive such payments on that client's behalf.
- ❑ Money being paid directly into another client bank account.
- ❑ Reimbursement of money to the agent for money expended by the agent on behalf of the client.
- ❑ Money lawfully and contractually due, in respect of a agent's fees and charges.
- ❑ Legitimate disbursements e.g. amounts subject to invoices, costs or demands incurred or received on behalf of the client.

## Methods of payments from a client (bank) account:

- ❑ A cheque
- ❑ An electronic transfer to another bank or building society account provided that such an arrangement does not constitute a direct debit transaction
- ❑ A bank draft
- ❑ Cash (in exceptional circumstances where sufficient controls are in place).

## 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.

An agent 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:

- ❑ the full names of such persons
- ❑ any limits or restrictions governing the amounts for which that individual is authorised either exclusively or, jointly with others
- ❑ 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 firm and a copy retained within the records of the firm.

## Record keeping

An agent must keep properly detailed accounting records, using an adequately designed bookkeeping system. Such records should include:

- ❑ All clients' money received, held or paid out by the agent
- ❑ The amount, relevant dates, name/identity, property address, reference number etc. as are necessary to identify individual transactions
- ❑ Any other money dealt with through a client account
- ❑ To show separately in respect of each client, all clients' money which is received, held, paid out by them on account of each client.

All dealings referred to above shall be recorded as appropriate, either in a clients' cash book, or in a client column of a cash book; or in a journal recording transfers from the ledger account of one client to that of another. In either case, additionally in a client's ledger or in a client's column of a ledger.

Records must include a list of all persons for whom an agent 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.

The records 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.

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

## Reconciliations – Format and Frequency

Every agent shall at least once a month, reconcile the balance on their client's cash book(s) to with the balance in their client bank account(s) using the bank/building society statement(s) and with the total of each client's balance in the clients' ledger.

Such documents necessary to support the reconciliation should be kept safe, complete and readily available in the cash book or other appropriate place. Reconciliations should be reviewed and approved by a separate member of staff that prepared the reconciliation to ensure adequate segregation of duties are in place.

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