

Guidance

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Granting authority to withdraw residual client balances

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Status

This guidance explains how we make decisions to grant authorisation to a firm to withdraw amounts over £500 from client accounts. We will have regard to it when exercising our regulatory functions.

Who is this guidance for?

All SRA-regulated firms and individuals.

Purpose of this guidance

Firms can only withdraw money held in your client account on our prior written authorisation or in prescribed circumstances. This is because the money belongs to the client or third party and can only be used for proper purposes for which it is held, for example, in connection with the matter on which the firm is acting.

Paragraph 4.2 of the Code of Conduct for Solicitors, RELs and RFLs [<https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/>] requires solicitors to safeguard money and assets entrusted to the firm by clients and others whilst rule 2.5 of SRA Accounts Rules [<https://www.sra.org.uk/solicitors/standards-regulations/accounts-rules/>] (Accounts Rules) requires money belonging to clients and other third parties to be returned promptly as soon as there is no longer a proper reason to retain it.

However, on occasion firms may find themselves holding money in a client account at the end of a matter, and which they are unable to return to the client or third party legally entitled to it (sometimes called a residual balance).

Firms are allowed to pay residual balances of £500 or less on any one client matter to a charity of the firm's choice provided they comply with the prescribed circumstances. [<https://www.sra.org.uk/solicitors/standards-regulations/accounts-rules/>]

regulations/withdraw-client-money/] They do not need to make an application to us to do this.

For amounts over £500 on any one client matter, we may grant a written authority to authorise a firm to make the withdrawal (see rule 5.1(c) of the Accounts Rules). This guidance explains how we make decisions to grant authorisation to a firm to withdraw amounts over £500.

The guidance should be read in the context of decision making at the SRA and other guidance documents, listed at the end of this document. It is a living document and we will update it from time to time.

How we deal with an application

Why might an application to withdraw a residual balance be made?

In the majority of cases, a residual balance will arise because the firm cannot trace the client as they have moved without notifying the firm. In a smaller number of cases the client might not be prepared to accept the money: for example, because the money reminds them of a past relationship that failed, or it is an inheritance or settlement they do not wish to receive.

A request to us should be made in writing. It can be made by anyone on behalf of a firm we regulate, for example the firm's accountant, but the authority will be granted to the firm itself.

Relevant factors

We will look at whether the applicant firm has made adequate attempts to trace and repay the rightful owner

We will assess the application having regard to:

- the amount of money and the length of time it has been held by the firm
- the steps taken to trace the owner of the money
- the costs involved in making further enquiries
- the likelihood of success of tracing the client or third party given the information held
- the proposed use to be made of the money, for example to be paid to charity or transferred to the firm's business account.

We require the firm to provide evidence of the steps already taken to locate the client. We will then review what has been done and the result of those actions to decide whether adequate steps have been taken.

What are "adequate steps" to trace and repay the owner?

Adequate steps will differ according to circumstances. We will consider whether the reasonable costs of taking steps to trace the client or third party are proportionate in relation to the amount of money held. Therefore, the larger the sum involved, the greater attempts we would expect to be made.

We would expect firms to make use of social media, newspapers or tracing services and, where appropriate, make a search of Companies House and/or the Probate Registry.

In most cases we would expect firms, as a minimum, to make use of the Department of Work and Pensions' (DWP) letter forwarding service, in addition to undertaking any free searches on the internet. It is likely that adequate steps would include placing an advert in an appropriate publication, if proportionate in view of the amount of money. This may be a local or national newspaper, depending on the circumstances.

Other adequate steps may mean employing a tracing agent or investigator to help trace the client. If the cost is proportionate to the amount of money held and we are of the view that, in the particular circumstances, it may be successful in tracing the client, we are likely to recommend firms do this before we make a decision

The decision

Where we are satisfied adequate attempts have been made to trace and repay the owner, but they cannot be found or do not accept the money, we will grant the authority requested. This authority will record the amount of money and the name of the party to whom the money is owed. The decision will usually impose a condition on the firm to pay the balance, plus accrued interest, to a charity of their choice.

The condition attached to the decision will include a requirement for the firm to obtain an indemnity from the charity that is not time limited. The indemnity will need to provide for reimbursement of the money to the firm or the owner of the funds should they come forward at a later date. This indemnity protects both the client/owner and the firm, particularly where the firm has closed.

We require the payment to include any interest to which the client/owner would have been entitled in accordance with the firm's interest policy. This is because any interest belongs to the person on whose behalf the money was held.

Example 1

A firm has 20 residual client balances of varying amounts over £500 each. The total of the balances is £5800. The firm no longer has current details of the clients' whereabouts and has searched for them on the internet and social media without success. The files do not contain details of any third parties who might be in contact with the clients.

The firm makes an application to us to pay the balances to charity. The application is assessed and the firm is advised to use the DWP letter forwarding service where they have a client's name and any address whether current or otherwise. The firm is asked to provide to us evidence of the result of the searches. As the clients were mostly local, we also ask the firm to investigate the cost of placing an advert in a local newspaper. The firm tells us that the cost of such an advert is £120.00. We consider that it is proportionate to ask the firm to advertise for information on the whereabouts of each of the 20 untraceable clients. The firm pays the cost of the advert from its business account. As a result of the advert and the DWP service, eight clients are located and contact the firm, which pays them the amounts due to them.

After a reasonable amount of time has passed to allow any remaining clients to contact the firm, we grant an authority for the remaining 12 balances to be paid to charity, as we consider that the firm has taken adequate steps to locate the clients.

Where the client will not accept the money

As stated in 2.1 above, there are some rare occasions when, despite being able to contact the client, the client refuses to accept payment of the money due to them.

The continued refusal to accept the payment may put the firm in breach of their obligations to return money promptly at the end of the matter and, in extreme circumstances, may mean that the solicitor is assisting the client to do something improper. An example of this is where a client is in receipt of welfare benefits and believes the payment will take them above the savings threshold and so does not wish to accept the money. The firm will also remain liable to pay the money to the client in full should the client change their mind at a later date. We therefore advise the firm that it is better for them to come to an arrangement with the client for payment of the monies to them, and our involvement should be the last resort.

However, if all reasonable attempts to persuade the client to accept the money are unsuccessful, we may decide that is in the public interest for us to grant an authority to withdraw the balance. We will normally suggest to the firm that they should write to the client warning them that they intend to apply to us for such authority and to make it clear that, if we agree, the money will go to charity.

Example 2

Mr A is in contact with his solicitors, but is refusing to accept the sum of £2,500 from a personal injury claim despite having agreed to the settlement offer from the defendants. The money has been held for a number of months. Although the firm holds the client's bank details they cannot be sure they are current. As a consequence, they are unable to transfer the monies directly into Mr A's bank account.

The firm has asked Mr A for an explanation of why he does not want to accept the money, but he has not responded to their emails or letters. The firm write to the client, having checked with the DWP that he is resident at this address, to explain that to hold the funds indefinitely would put the firm in breach of their obligations. The firm set a time scale by which Mr A must respond with confirmation as to how the funds should be paid to him. When he fails to do so, the firm ask us to authorise withdrawal of that amount to pay to charity. We make further suggestions including instructing an agent to attend the property to ensure Mr A understands the position and to encourage him to accept payment.

Mr A accepts the payment and the firm withdraw their application.

Where it is not possible for us to authorise a withdrawal

There are some situations where we are asked to authorise a withdrawal from client account but we are unable to. They include:

Dissolved companies

The Companies Act 2006 [<http://www.legislation.gov.uk/ukpga/2006/46/contents>] provides that money held in a client account belonging to a dissolved company incorporated in England and Wales vests in the Crown as "bona vacantia". As a consequence, we cannot authorise any withdrawals of residual balances that previously belonged to a client that is now a dissolved company. This should be paid to the Treasury Solicitor. Similarly, for companies incorporated overseas, the Treasury Solicitor is also of the view that residual balances should be paid to the Crown.

Estate matters

In estate matters where the firm is acting on behalf of executors, or the firm is acting as executor, an authority will not be granted. In these circumstances, the executors are the client and instructions can be taken from them as to how the residual balance should be dealt with.

Example 3

A firm has been acting in the administration of an estate. The administration has been completed but the firm is left with £5000 in client account. This

money is payable to a beneficiary who cannot be traced. The firm remains in contact with the lay executors.

We would not grant authority to pay this money to charity. The firm should take instructions from the executors who are ultimately responsible for administering the estate. If the beneficiary cannot be traced, the executors can instruct the firm to pay this money elsewhere.

Out-of-pocket expenses

Firms have no legal authority to deduct from client money, any costs incurred in attempting to trace or communicate with the client. We can take into account any reasonable out-of-pocket expenses when granting authority to pay the monies to charity and permit these to be paid to the firm.

The kind of expenses we allow are DWP fees and the cost of an advert or tracing agent, but not the cost of correspondence or telephone calls. Any such expenses should not be deducted from the money held until we have granted authorisation. The firm should pay expenses such as the DWP or tracing agent's fees from its own funds.

The firm will remain liable to the client for the full sum owed and, should the client reappear, will have to reimburse the client for the full sum including all expenses deducted.

Further guidance

Decision Making at the SRA guidance [<https://www.sra.org.uk/sra/decision-making/decision-making-sra/>]

Further help

If you require further assistance, please contact the Professional Ethics helpline [<https://www.sra.org.uk/contactus>] .