



The Bar Council

Client money and payments in advance

Purpose:	To address the interaction between the prohibition on handling client money and permissible payments in advance
Overview:	Prohibition on handling client money – what is ‘client money’ – payments ‘on account’ of fees are not permissible – permissible up front, fixed fee arrangements – alternative of using third-party services
Scope of application:	Self-employed barristers
Issued by:	The Ethics Committee
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Status and effect:	Please see the notice at end of this document. This is not "guidance" for the purposes of the BSB Handbook I6.4.

The prohibition on self-employed barristers handling client money

1. Under the old (8th edition) of the Code of Conduct, self-employed barristers were prohibited from handling client money.
2. This prohibition remains in place under the new Bar Standards Board (BSB) Handbook. It has not been altered or watered down.
3. The prohibition is now in the following terms in rC73:

“Except where you are acting in your capacity as a manager of an authorised (non-BSB) body, you must not receive, control or handle client money apart from what the client pays you for your services.”

4. This applies to public access cases just as much as to other cases. It also applies to barristers who obtain authorisation from the BSB to conduct litigation. The **sole** exception is the receipt of money in payment of fees.

5. Any breach of this prohibition amounts to professional misconduct and may be subject to enforcement or supervisory action by the BSB.

What is client money?

6. Client money is defined in the Handbook as:

- a) money, securities or other assets beneficially owned by a client, or
- b) money, securities or other assets provided by, or for the benefit of, your client or intended by another party to be transmitted to your client.

7. So far as self-employed barristers are concerned, it excludes a fixed fee paid in advance, and a payment made in settlement of an accrued debt (i.e. the payment of fees or expenses which are already due to the barrister).

Misconceptions about what this means in practice

8. The prohibition is fairly simple to state, but there may be some misconceptions about its practical application, particularly in relation to payments 'on account' of fees and other payments made in advance.

BSB Guidance

9. The BSB has set out extensive guidance on the prohibition on handling client money at gC103 to gC112 in the Handbook, which repays reading in full. You should consider specifically the important points in relation to payments on account and other payments in advance.

A practical starting point

10. One practical step to take in deciding whether you can accept a payment from a client might be to ask yourself this question: is it a payment of fees or expenses which are already due to me?

11. If it is, then it is likely to be permissible. If it is not, then it is likely to involve handling client money.

12. That test is too simplistic to cover all situations but may be a useful starting point. You will find a brief discussion below concerning where the dividing line may lie in cases involving fixed fee amounts payable in advance.

Payments on account

13. A payment on account does not represent fees which are already due: it represents money paid to a barrister, to be held 'on account' until fees fall due in the future.
14. Accordingly, one important effect of the prohibition is that **you cannot accept a payment on account of fees.**
15. The sole exception is where client monies are held by a third-party payment service which complies with rC74(see further below).

Payments through chambers or others

16. The prohibition on accepting payments on account applies both to payments made to you **and** to payments made into or held in your chambers' bank account.
17. Monies held by chambers which do not represent fees which are already due to a member of chambers are just as much client monies as monies held by an individual barrister.
18. Accordingly, such monies held by your chambers which relate to you are likely to be held (or are likely to be regarded by the BSB as being held) on your behalf, putting you in breach of the prohibition on handling client money. Similarly, those barristers responsible for administering or controlling your chambers' bank account may also be in breach of the Handbook by permitting or participating in a breach of the prohibition by you.
19. The prohibition also applies to monies paid to or held by a 'ProcureCo', and through other arrangements which give you control over monies belonging to a client.
20. As stated in gC103-104:

"The prohibition in Rule C73 applies to you and to anyone acting on your behalf, including any "ProcureCo" being a company established as a vehicle to enable the provision of legal services but does not in itself supply or provide those legal services. Rule C73 prohibits you from holding client money or other client assets yourself, or through any agent, third party or nominee.

Receiving, controlling or handling client money includes entering into any arrangement which gives you de facto control over the use and/or destination of funds provided by or for the benefit of your client or intended by another party to be transmitted to your client, whether or not those funds are beneficially owned by your client and whether or not held in an account of yours."

21. To put it simply, the prohibition on handling client monies cannot be avoided or side-stepped by using a chambers' bank account (or any other, similar arrangement) to receive or hold monies.

Fixed fees in advance

22. If you agree to be paid a fixed fee for a piece of work, and that the fee will be payable before you start work, then you will be allowed to accept payment of that fee before any work is done. Such a payment is not client money, because it belongs to you as a payment of fees already due to you as soon as it is received.

23. If you subsequently come under an obligation to return the payment (for example, the fee was for a hearing which got cancelled) then you can do so without breaching the prohibition on handling client money. This is because the money would be treated as yours when received by you as a fee for work you had agreed to do. Therefore you are not returning client money which you had been holding on account; you are making the payment out of your own money pursuant to an obligation you have to re-imburse the client.

Other permitted arrangements

24. There are also two other types of arrangement which are allowed.

25. First, you and your client may agree that you will be paid a **fixed minimum** amount in advance, with the possibility of an additional fee falling due in defined circumstances (e.g. if the work reasonably takes longer than a specified number of hours).

26. An example might be as follows. Say that you charge an hourly rate of £100, and you anticipate that a piece of work will take ten hours. You thus estimate the resulting fee at £1,000. You and your client might agree that your client will pay you a fixed minimum fee of £1,000 before you do any work, but that if it reasonably takes you longer than ten hours, then your client will pay you for the additional time spent at your hourly rate. The resulting agreement is that you will be paid £1,000 in advance, and will be entitled to keep that full amount even if the work takes you less than ten hours, but you will be entitled to an additional fee if it takes longer.

27. In order to be permissible, the terms of any such agreement will need to be clear, including as to how any additional fee will be calculated, (see rC22) and such an arrangement should only be made with a client who can reasonably be expected to understand its effect, and who appears to do so.

28. In connection with that first type of arrangement, you should pay attention to the first to third bullet points, and the last bullet point at gC107. This is quoted in the next paragraph.

29. The second type of arrangement is similar but involves an additional possibility that an amount may be payable back to your client. This is outlined at gC107¹. The permissible ‘pay back’ element is explained at length in the fourth bullet point:

“If you have decided in principle to take a particular case you may request an ‘upfront’ fixed fee from your prospective client before finally agreeing to work on their behalf. This should only be done having regard to the following principles:

- *You should take care to estimate accurately the likely time commitment and only take payment when you are satisfied that:*
 - *it is a reasonable payment for the work being done; and*
 - *in the case of public access work, that it is suitable for you to undertake.*
- *If the amount of work required is unclear, you should consider staged payments rather than a fixed fee in advance.*
- *You should never accept an upfront fee in advance of considering whether it is appropriate for you to take the case and considering whether you will be able to undertake the work within a reasonable timescale.*
- *If the client can reasonably be expected to understand such an arrangement, you may agree that when the work has been done, you will pay the client any difference between that fixed fee and (if lower) the fee which has actually been earned based on the time spent, provided that it is clear that you will not hold the difference between the fixed fee and the fee which has been earned on trust for the client. That difference will not be client money if you can demonstrate that this was expressly agreed in writing, on clear terms understood by the client, and before payment of the fixed fee. You should also consider carefully whether such an arrangement is in the client’s interest, taking into account the nature of the instructions, the client and whether the client fully understands the implications. Any abuse of an agreement to pay a fixed fee subject to reimbursement, the effect of which is that you receive more money than is reasonable for the case at the outset, will be considered to be holding client money and a breach of rC73. For this reason, you should take extreme care if contracting with a client in this way.*
- *In any case, rC22 requires you to confirm in writing the acceptance of any instructions and the terms or basis on which you are acting, including the basis of charging.”*

30. If all of those requirements are strictly complied with, **and** if the correct legal analysis is that you do not hold money belonging to your client at any point, then

¹ This original gC107 was revised and expanded in the Second Edition of the Handbook, published in April 2015. Paragraph 28 quotes the revised and expanded guidance.

there will be no breach of rC73. However, as the guidance indicates, it will be far from easy to be confident that this outcome has actually been achieved, and it may be difficult for you to demonstrate both that your client understood the implications of such an arrangement (including what it meant in legal and practical terms for no part of the 'upfront' payment to be held on trust) and that this was in your client's interest. You might readily find that you have crossed the line and have handled client money. The Bar Council suggests that the BSB's guidance should be taken as containing a clear warning of the difficulties and risks involved in such an arrangement, and that you should take very great care indeed if you decide to pursue this possibility in any particular case.

Third party payment services

31. The most straight forward way of achieving a result similar to that of requiring money to be paid on account is likely to be to use a third-party payment service (such as an escrow provider) which complies with rC74.

32. The availability of such services – and any decision not to use them – might be taken into account by the BSB if you were to breach rC73 by entering into an arrangement involving a prohibited payment on account, but that would be a matter for them. If you use an escrow or other third-party payment service you should ensure it complies with the guidance in gC108 to gC111. One of the key requirements is that the provider is not holding the money as your agent and that it cannot be paid out without the client's consent. Another is that the client's money will be safe and there is guidance on how you may satisfy yourself as to this in gC110.

Further information

33. If you need further information or assistance on the prohibition on handling client money, then the Bar Council's Ethical Enquiries Service would be pleased to try to assist you (please email Ethics@BarCouncil.org.uk).

Important Notice

This document has been prepared by the Bar Council to assist barristers on matters of professional conduct and ethics. **It is not "guidance" for the purposes of the BSB Handbook I6.4, and neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman is bound by any views or advice expressed in it.** It does not comprise – and cannot be relied on as giving – legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on it. For fuller information as to the status and effect of this document, please see [here](#).