

RICS PROFESSIONAL STANDARD



Client money handling for livestock auctioneers

UK

1st edition, February 2021

Effective from 8 February 2021

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RICS standards framework

RICS' standards setting is governed and overseen by the Standards and Regulation Board (SRB). The SRB's aims are to operate in the public interest, and to develop the technical and ethical competence of the profession and its ability to deliver ethical practice to high standards globally.

The [RICS Rules of Conduct](#) set high-level professional requirements for the global chartered surveying profession. These are supported by more detailed standards and information relating to professional conduct and technical competency.

The SRB focuses on the conduct and competence of RICS members, to set standards that are proportionate, in the public interest and based on risk. Its approach is to foster a supportive atmosphere that encourages a strong, diverse, inclusive, effective and sustainable surveying profession.

As well as developing its own standards, RICS works collaboratively with other bodies at a national and international level to develop documents relevant to professional practice, such as cross-sector guidance, codes and standards. The application of these collaborative documents by RICS members will be defined either within the document itself or in associated RICS-published documents.

Document definitions

Document type	Definition
RICS professional standards	<p>Set requirements or expectations for RICS members and regulated firms about how they provide services or the outcomes of their actions.</p> <p>RICS professional standards are principles-based and focused on outcomes and good practice. Any requirements included set a baseline expectation for competent delivery or ethical behaviour.</p> <p>They include practices and behaviours intended to protect clients and other stakeholders, as well as ensuring their reasonable expectations of ethics, integrity, technical competence and diligence are met. Members must comply with an RICS professional standard. They may include:</p> <ul style="list-style-type: none"> • mandatory requirements, which use the word 'must' and must be complied with, and/or • recommended best practice, which uses the word 'should'. It is recognised that there may be acceptable alternatives to best practice that achieve the same or a better outcome. <p>In regulatory or disciplinary proceedings, RICS will take into account relevant professional standards when deciding whether an RICS member or regulated firm acted appropriately and with reasonable competence. It is also likely that during any legal proceedings a judge, adjudicator or equivalent will take RICS professional standards into account.</p>
RICS practice information	<p>Information to support the practice, knowledge and performance of RICS members and regulated firms, and the demand for professional services.</p> <p>Practice information includes definitions, processes, toolkits, checklists, insights, research and technical information or advice. It also includes documents that aim to provide common benchmarks or approaches across a sector to help build efficient and consistent practice.</p> <p>This information is not mandatory and does not set requirements for RICS members or make explicit recommendations.</p>

1 Introduction

RICS-regulated firms sell many different assets at auction. This professional standard provides mandatory requirements and guidance for RICS firms acting as livestock auctioneers.

Background: sale by auction

During an auction, the auctioneer will seek open and competitive bids from prospective purchasers for the livestock entered by the vendors. Once the auctioneer is satisfied that the highest available bid has been made, they mark this with the fall of their hammer, setting the price for the sale. At that point, the highest bidder becomes the purchaser and is contractually bound to pay for the livestock. The auctioneer has a duty to account to the vendor for the price achieved, having taken their own commission and costs due under their terms of business.

It is the terms of the relationships between first the vendor and the auctioneer, and then the purchaser and the auctioneer, with regard to payment for the livestock that will dictate whether the money is received by the auctioneer as an agent or as a principal.

An auction conducted by an auctioneer for a vendor involves three contracts:

- a contract between the vendor and the auctioneer instructing the auctioneer to act as the vendor's agent in arranging and managing the auction process – this can be called the 'instruction contract'
- a contract between the vendor and the highest bidder (who becomes the purchaser on the fall of the hammer) for the sale of the livestock – this can be called the 'supply contract' transferring ownership, and
- a contract between the purchaser and the auctioneer that will govern, among other matters, the payment arrangements under which the auctioneer may be either a principal or an agent according to the terms – this can be called the 'transaction contract' governing payment.

For further analysis, see the Court of Appeal decision in *Chelmsford Auctions v Poole* [1973] 1 All ER 810, CA.

Effective date

This RICS professional standard is effective from 8 February 2021.

2 Agent/principal in the financial transaction

RICS-regulated firms selling any property at auction for a third party **must** do so as an agent, ensuring that purchase money is handled as client money, unless the following conditions are met:

- The asset sold is exclusively livestock.
- The sale is at the auctioneer's premises (which might also occasionally include an alternative premises).
- The sale is not wholly or mainly for one client.

If these conditions are met, the firm may contract to act as a principal in the financial transaction.

Where a firm has contracted to act as a principal in the financial transaction, it **must** ensure that its terms of business with the vendor are clear and include the following information:

- The nature of the contract is not that of an agent, but of a principal in the financial transaction.
- Sale proceeds will not be paid into a client money account.
- The RICS Client Money Protection Scheme will not apply to protect the vendor in the event of the firm's insolvency or any other default.

There **must** be signage on display inside or just outside the auction making clear that monies are not protected by the Client Money Protection Scheme.

3 Requirements where the auctioneer receives the payment as an agent

Where the contracts provide that the auctioneer will pay the vendor only once the auctioneer has been paid, the auctioneer is acting as an agent. Generally, the contracts will allow intervening time for funds to clear. In this instance, the vendor is fully exposed to the risk of the purchaser defaulting and cannot ordinarily look to the auctioneer if the auctioneer has not been paid.

Once the payment has been received from the purchaser, the auctioneer holds it in a fiduciary capacity with a duty to protect the money. The auctioneer is then specifically liable to the vendor for that sale price, net of commission and any other costs due under their terms of business.

Money received from the purchaser where the firm receives the payment as an agent is client money and **must** be handled in accordance with the requirements of RICS' [Client money handling](#)

If the auctioneer wishes to provide any guarantee of payment to the vendor, the firm **must** take its own legal advice on this. Money from the firm to pay any such guarantee **must not** be paid into the client money account before being paid to the vendor.

4 Requirements where the auctioneer receives the payment as a principal

Where, under the contracts, the auctioneer receives the purchase monies as a principal, their duty to pay the vendor is not linked to their obtaining the payment from the purchaser. In this situation, the contracts require the auctioneer to pay the vendor, usually on a specified timetable, irrespective of whether the purchaser has yet paid the auctioneer – or pays at all. In this situation, the vendor is insulated from any default by the purchaser.

In situations where the auctioneer is a principal in the receipt of the purchase monies, they assume two risks that they would not carry as agent:

- the risk that the purchaser fails to pay for the livestock – the credit risk, and
- the cost of financing the time between paying the net proceeds of the sale to the vendor and being paid by the purchaser.

Common law provides a security for payment for the livestock, linked to the possession of the livestock, known as a 'lien'. The auctioneer's lien under common law and any powers reserved under the conditions of sale are important safeguards against these risks.

As the auctioneer is now not holding the money received from the purchaser in a fiduciary capacity for the vendor, it follows that this is not client money.

There is therefore a risk to the vendor that if the auctioneer becomes insolvent, the vendor will not be able to recover any monies, even if purchase monies have been paid to the firm.

There is a longstanding practice in this industry of auctioneer firms absorbing this risk by contracting as principals in the financial transaction. We believe that this is in the public interest, in that it generally provides more protection for the client.

Where a firm has chosen to act as a principal, money received from the purchaser is not client money as defined in RICS' [Client money handling](#).

Because a client money account **must only** hold client money, monies received from a purchaser where the firm is acting as a principal **must not** be placed in a client money account (see paragraph 2.2.1 of [Client money handling](#)).

The firm should set up a separate market account for all funds connected to livestock auctioneering when they are receiving the money from a purchaser as a principal, but this account **must not** be referred to as a client money account. The money held in that account is office money.

From the outset, the obligation is placed on the livestock auctioneer to determine in which capacity they are receiving money from a purchaser paying for livestock – i.e. whether they are acting as an agent or as a principal in the financial transaction. The livestock auctioneer **must** make their role abundantly clear to all vendors and purchasers.

Strictly speaking, the auctioneer is acting as an agent in both of the scenarios outlined. The distinction is that, in the second scenario, the terms of the collateral contract with the purchaser enable the auctioneer to take direct enforcement action against the purchaser itself, in the event that the purchaser fails to make payment. In the first scenario, where the agent is simply facilitating the transfer of funds from the purchaser to the vendor, it would be for the vendor to bring any legal action against the purchaser in the event of a default.

The key point that auctioneers need to turn their minds to is whether they have a collateral contract with the purchaser. If they do not, they need to bear in mind that any monies they receive from the purchaser will be held as client monies.

5 Requirements for all auctioneers

Whether a firm that practices livestock auctioneering acts as an agent or a principal in receiving the purchase price for livestock sold at auction depends on its terms of business and the conditions of sale.

These **must** be transparent and fair. They **must** also make the auctioneer's status in this matter abundantly clear to vendors, outline whether they are acting as a principal or an agent in the financial transaction, and whether that means:

- a monies will be held in a recognised client money account, or
- b monies are payable to vendors irrespective of how – or if – the auctioneer recovers the purchase price from the purchaser, so that the money will not be held in a client money account and therefore no cover would be available for it from the RICS Client Money Protection Scheme in the event of the auctioneer becoming insolvent or as a result of any other loss.

There **must not**, under any circumstances, be potential for any confusion on the part of the vendor as to the role of the auctioneer in receiving the purchase price from the purchaser for livestock sold. The obligation is therefore placed on the auctioneer to ensure vendors are clear on this point, and in particular that vendors understand whether there are client money accounts in operation or not, and the potential ramifications if not.

In addition, while the terms of the contract between the vendor and the auctioneer may well be set out in a separate document (the terms of business), the auction will be governed by the auctioneer's conditions of sale, which will include terms for the contract between the auctioneer and the successful bidder (the purchaser).

Separately, as previously stated, common law provides a security for payment for the livestock, linked to possession of the livestock, known as a 'lien'. Consequently, once the purchaser has taken possession of the livestock, the auctioneer's lien becomes a security over the purchase price. However, this may be of little benefit in the sale of livestock for slaughter, which are likely to be swiftly converted.

The auctioneer can therefore sue the purchaser for that price in their own name. This may be waived or enhanced by the terms of the conditions of sale. These conditions may also expressly provide for retention of the auctioneer's title, as a further basis on which the auctioneer could sue the purchaser where the purchaser has taken the livestock but not paid for it.

Disclaimer: This professional standard does not purport to offer legal advice. Firms are strongly encouraged to take professional advice to determine the terms upon which they contract with vendors and their conditions of sale.

Delivering confidence

We are RICS. Everything we do is designed to effect positive change in the built and natural environments. Through our respected global standards, leading professional progression and our trusted data and insight, we promote and enforce the highest professional standards in the development and management of land, real estate, construction and infrastructure. Our work with others provides a foundation for confident markets, pioneers better places to live and work and is a force for positive social impact.

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