

Basis of conclusion



RICS Client money handling professional statement (UK)

October 2019



Background

RICS requires firms to have robust systems and controls in place to manage their clients' money. Historically, RICS has produced a number of guidance documents detailing our requirements, including *RICS' Clients' money: General advice for firms*. In order to ensure firms are handling money appropriately under this guidance, RICS undertakes regular monitoring visits.

On 1 April 2019, new legislation came into force that made membership of a government approved Client Money Protection Scheme (CMPS) a mandatory requirement for residential property agents holding client money in England.

As a result of the introduction of this legislation, and becoming an approved CMPS, RICS introduced new rules relating to the requirements for holding client money. These rules now require harmonising with our guidance through the development of a single standard.

About the professional statement

Given the need for mandatory requirements, it was agreed that the document should be a professional statement and that it will apply only in the UK.

As outlined in our consultation document, the professional statement will explain the responsibilities of regulated firms and individual members to protect client's money and provide guidance on how to keep client money secure.

Process

A working group made up of experienced RICS regulatory accountants and regulated firms was established to develop the professional statement. Several issues and new risks were identified by the working group when developing the document, which were either addressed in the draft statement or queried in the consultation document.

In particular the working group identified an issue about the status of money held by fixed charge property receivers. It consulted practitioners in this area and took specific legal advice. A conclusion was reached that, because of the personal nature of the appointment of receivers, the money they hold is not client money within the definition of the CMPS, and therefore of this statement. This position is set out in the consultation document and we are looking into whether we can cooperate with NARA, the Association of Property and Fixed Charge Receivers, to produce specific guidance for receivers on this topic.

The public consultation on this professional statement opened on 1 July 2019 and closed on 31 July 2019. RICS e-mailed the contact officers of all RICS-regulated firms that reported holding client money at their last annual report to inform them of the consultation and invited contributions.

In addition to the written consultation we undertook a number of engagement activities to build awareness of the professional statement and the proposals we were making. At Stay Informed events and Professionalism in Property workshops across the UK we alerted members to the work on the professional statement and invited contributions to the consultation.

Respondents

The consultation document was downloaded 238 times.

We received comments and questionnaire responses from 31 participants, 30 of whom represented regulated firms. The other response was from an accountant representing a third-party transaction service provider. These responses were collated and considered by the working group.

Of those who expressed an opinion 83% agreed that the draft statement was clear about the requirements on firms and members. Most did not believe that the statement would have a negative impact, although some were concerned about an increased regulatory burden. Where specific causes of this concern were identified in comments, RICS has carefully considered these and made the changes set out below to mitigate any negative impact.

This document focuses only on the more significant changes made, but a number of minor textual refinements put forward by commentators have also been adopted, which improve the overall clarity.

RICS is very grateful to all those who responded.

RICS' response to material feedback received

Feedback theme	RICS response
<p>Payment of fees from client account</p>	<p>Consultation comment(s)</p> <p>Firms undertaking property management work commented that the management agreement is likely to expressly stipulate the fee basis and the frequency upon which the firm's fees are payable. They also commented that in these circumstances it is unnecessarily onerous to require prior notification of these agreed fees being taken from client account where the client has consented not to receive such notification. They point out that this could be many transactions for a large client each month.</p> <p>RICS response</p> <p>We have amended the statement to provide that prior notification is not necessary before payment of fees from the client account where this has been previously agreed in writing with the client.</p>
<p>Handling unidentified funds</p>	<p>Consultation comment(s)</p> <p>The consultation document proposed a requirement that unidentified client money must be paid to a charity if the owner of the money could not be identified by proper efforts after one year of receipt. The firm must obtain an indemnity from the charity in case a beneficiary is found later.</p> <p>This varies from the current guidance, which allows firms to make such a payment to charity after six years but does not require it. Our experience is that firms can sometimes amass a large amount of money in suspense accounts over six years and this large amount of unidentified money presents a risk of fraud to the firm, its insurers and ultimately the RICS Client Money Protection Scheme. We believe that a shorter timeframe may also encourage firms to make efforts to find beneficiaries in a timely way, which may result in more being identified.</p> <p>We received four comments suggesting longer timescales for payment of unidentified funds to a charity, ranging from three to six years, with one suggesting that a shorter timescale may make it less likely that charities will accept the money; and one suggesting there could be significant implications for the firm and charities if the period is reduced resulting in increased costs of management and a liability on both. It said that no evidence had been given for the change.</p>

Feedback theme	RICS response
	<p>RICS response</p> <p>We have accepted the comment that one year would be too short a timeframe. We considered five years but felt that this would not reduce the risk significantly. Having made enquiries with Lionheart, who confirmed that their willingness to take unidentified funds would not reduce if the period for their donation was three years, and considered their evidence that no one has sought reimbursement under the indemnity they provide for these funds, our view is that the small risks that would arise from requiring this donation after three years are outweighed by the reduction in risk from firms holding significantly less money in suspense accounts.</p>
Written procedures	<p>Consultation comment(s)</p> <p>Several commenters were concerned that the requirement to produce and publish written procedures for handling client money could add to the regulatory burden on firms and create security risks by providing unnecessary information to potential fraudsters.</p> <p>RICS response</p> <p>For residential property agents in England, the publication of written procedures is a statutory requirement. We have considered the approach other bodies with approved client money protection schemes are taking and made enquiries with MHCLG. We have amended the requirements to make it clear that firms should direct clients and others to the RICS professional statement and then consider whether any necessary information about procedures for handling client money is necessary to provide clarity to clients. We have shortened the suggested list of topics and made it clear that these are suggestions for information to be provided, not additional requirements for firms to have in place.</p>
Technology solutions for handling client money	<p>Consultation comment(s)</p> <p>A comment was made by a transaction services provider that to allow for the use of modern payment service providers, technology intermediaries offering payment solutions, or Open Banking integrated service providers, some amendments to the statement would allow for wider possibilities while maintaining exclusive control of client money for the regulated firm.</p>

Feedback theme	RICS response
	<p>RICS response</p> <p>We agree that we should work with emerging technology solutions, where these offer appropriate security of client money, to ensure that firms (particularly SMEs) can take advantage of solutions that may offer them improvements in flexibility, cost and service. We have therefore included new definitions for ‘appropriately contracted third-party transaction service provider’ and ‘exclusive control’ and made amendments to other areas of the statement to allow money to be held by appropriately contracted third-party transaction service providers if the firm retains exclusive control over their client money.</p>

A comprehensive schedule of comments and responses to this feedback is available on request.

Next steps

The professional statement only varies from the existing guidance in a small number of particulars. The standard also links to the new CMPS, and for property agents the legislation that underpins it, which is already in force. We would therefore recommend that the new standard is published as soon as possible after approval by the Board and brought into effect from 1 January 2020.