

# Payments to the wrong account

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In my previous article in the March Bulletin, I commented on the circumstances in which a practitioner/firm needs to have a trust account. I noted that it could well be that a client makes a payment to you on account of legal fees, but in circumstances where you aren't yet entitled to that money – for example where you have done the work and told the client how much the bill will be, but you haven't yet given your client an invoice. I said that any such money would be trust money, and therefore should be paid into your trust account (and subsequently only dealt with in accordance with the requirements of regulation 45 of the *Legal Practitioners Regulations*). I also said that, if you receive legal fees in that situation (i.e. without having yet raised an invoice), then you cannot simply pay that money into your office account.

I subsequently touched on this topic when I spoke at the Law Society's Small Practice Conference. Some of the questions asked and comments made in response indicated that one of the main difficulties in practice arises when a client doesn't follow directions as to the account into which he or she should transfer funds electronically.

For example, a client has previously received a bill that has on it the firm's office account details. The client pays the bill by EFT. Either the matter is ongoing or new instructions are received, and the lawyer subsequently asks the client to pay some money into trust. The client is given the details for the trust account but, not understanding the significance of doing so, simply pays it to the same account as before – the office account.

In that situation, there is clearly nothing the practitioner or firm could have done (other than what was done – providing the trust account details!) to prevent that trust money being received in the office account. Under clause 12(1) of Schedule 2 of the

*Legal Practitioners Act*, the law practice must, "as soon as practicable after receiving trust money ... deposit the money in a general trust account of the practice". That is, the money needs to be transferred straight away from the office account into the trust account.

Of course, the reverse can also happen. That is, a client has received a bill which has on it the firm's office account details but, having previously made a payment into the firm's trust account, the client pays it into the trust account again. Money to which the firm is properly entitled, and which therefore isn't "trust money" as defined, has been paid into the firm's trust account instead of being paid into the office account.

On the face of it, this will have resulted in a breach of clause 21(1) of Schedule 2, which says that a practice "must not ... mix trust money with other money".

Again, in this case, the money needs to be transferred from the trust account to the office account straight away.

In either case, there will have been a trust account "irregularity", which must be reported to the Law Society as soon as practicable (as required by clause 24(1) of Schedule 2).

In both cases, as long as the practitioner has acted swiftly to identify the error and transfer the money to the correct account, then there is most unlikely to be any adverse consequences (either by way of a breach of the Act or in terms of a misconduct issue).

A similar situation might arise if, as part of a settlement, one cheque is provided on account of a number of components comprising the settlement sum, including the firm's fees (for which an account has already been raised). Because of the other components comprising the settlement sum, the cheque is made payable to the firm's trust account. In that scenario, the firm's bank should be asked to split the way in which the cheque is paid – with the fees component being paid into the office account, not the trust account. But, if that is not done, then the same approach as outlined above (ie notification to the Law Society and rectification by transfer of funds) should be undertaken as soon as practicable.

The situation I've described of course only arises if the firm has already raised its account. If it hasn't, then all of the money is trust money.

The answer to these practical difficulties is not to only give clients the firm's trust account details for all payments, such that all payments (including fees) come through your trust account. Rather, the answer is to do everything you can to make sure that a payment is made into the correct account – and, if it isn't, then to correct it quickly and correspond appropriately with the Law Society about it.

If you are ever in any doubt as to how to deal with such a scenario, then I suggest that you speak to Ros Burke and her team at the Law Society. **B**

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