



SIP 11 consultation questionnaire

RESPONSE OF R3, ASSOCIATION OF BUSINESS RECOVERY PROFESSIONALS. R3 is the trade association for the UK's insolvency, restructuring, advisory, and turnaround professionals. We represent insolvency practitioners, lawyers, turnaround and restructuring experts, students, and others in the profession. Our Full Members are qualified, regulated and work across the spectrum of the profession, from the global legal and accountancy firms through to smaller, local practices.

The insolvency, restructuring and turnaround profession is a vital part of the UK economy. The profession rescues businesses and jobs, creates the confidence to trade and lend by returning money fairly to creditors after insolvencies, investigates and disrupts fraud, and helps indebted individuals get back on their feet. The UK is an international centre for insolvency and restructuring work and our insolvency and restructuring framework is rated as one of the best in the world by the World Bank. R3 supports the profession in making sure that this remains the case.

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Firm name: R3, The Association of Business Recovery Professionals

1. Do you believe that the revised version of SIP 11 identifies all appropriate principles?

The key principles must be that the office holder is responsible for all funds related to an insolvency appointment (whether solvent or insolvent, estate monies or third party), that such funds must be held securely, only used for proper purposes and protected from misappropriation. All transactions relating to such funds must be clearly recorded.

Overall we consider that the SIP is comprehensive, given it is principles based (however see additional comments below).

2. If 'no', what additions do you believe should be made to the principles contained in the SIP?

Principle 3: *An insolvency practitioner should clearly differentiate and segregate estate money, client money and the money belonging to the office holder or entity in which they are working.* The key principle must be that the office holder is responsible for all funds relating to an insolvency estate, whatever the source of funds or whether they are actually third party monies. In providing a definition of estate money, client money and third party funds it should be made

clear that this includes funds which have been associated with an insolvency estate but cannot now be attributed to any particular creditor or estate and are held in a holding account, for example; dividend payments which have been returned because the creditor bodies are unable to allocate them to a particular creditor and are returned to the office holder in a lump sum which then has to be reconciled to individual insolvency estates; PPI monies which are received by the entity in which the office holder works before being allocated to individual estates; dividend payments held pending distribution to creditors.

Principles 3 and 4 should therefore be extended to include the funds held in holding accounts.

Principle 4: Estate money and client money must only be handled for their proper purposes, held securely and be subject to appropriate financial controls. Estate money must be held in accordance with the principles and standards of this SIP.

We consider that recognition needs to be given to the fact that not all IPs may be subject to the same client money rules depending on whether they are regulated by an accountancy based RPB (such as ICAEW) or not (such as IPA). We therefore consider that this principle needs to be expanded by the addition of the following '*Client money must be held in accordance with the client money rules and regulations as may from time to time be in force by virtue of the insolvency practitioner's authorisation by a Recognised Professional Body*'. It would also be helpful to add, by way of a footnote, links to where details of these Client money rules may be found.

We further consider that there should not be a different approach or expectation between client money, estate money and funds held in a holding account. The same responsibilities and standards should apply.

3. Do you believe that the revised version of SIP 11 identifies the key compliance standards?

No.

4. If 'no', what additions do you believe should be made to the key compliance standards contained in the SIP?

Whilst recognising that for practical reasons the office holder should not be the only signatory on accounts through which estate monies pass, we consider that it should be a requirement in all cases for the office holder to be a signatory on any estate account and have full access to all records maintained of estate accounts and the client account maintained by the entity in which they are working. This should provide the office holder with the necessary oversight of the operation of such accounts.

Compliance statement 5: Office holders should ensure that records are maintained to identify estate money (including any interest earned thereon) for each case for which they are the office holder. We consider that this requirement should be expanded such that records don't just identify estate money, but fully document all transactions involving estate money.

Compliance statement 6: We consider that the bank maintaining the accounts so described should be asked to provide a letter confirming that the accounts held meet the requirements set out in Compliance statement 6 of the SIP.

5. Are there any other amendments you would wish to suggest to the SIP? Please provide details below.

Introduction para 1. We consider that 'interested parties' should not be restricted to those with a financial interest in the manner in which funds are held. It could be argued that creditors and other interested parties have no financial interest in some estates because there is no possibility of a dividend.

Para 1 should therefore be amended to read 'This statement of insolvency practice concerns the handling of funds by insolvency practitioners in connection with their appointment as an office holder. Creditors and other interested parties should be confident that funds are held appropriately and securely and that their interests are adequately protected'.

Para 2 a) Estate money: We consider it unnecessary to state that office holders should be responsible for any deductions made from the funds held, as it is implicit that responsibility for estate money includes its disbursement.

Para 2 b) Client money: We consider that reference to the client money rules is better placed in para 4.

Para 2: A definition of holding account should be included.

Para 2 should therefore be amended to read:

a) Estate money

Estate money is all money deriving from the realisation of an asset, income or trading receipt of the insolvent estate received by the office holder in their capacity as such. It is held for the prevailing statutory purposes of the insolvency case. Office holders are at all times responsible for estate money.

b) Client money

Client money is money belonging to a third party. It may include (but is not limited to) money provided other than in consideration for the acquisition of an asset of the estate; funds held by the insolvency practitioner prior to or following their appointment as an office holder; or monies coming into the hands of an insolvency practitioner which are the property of individuals or companies for which they are acting other than in the capacity as office holder.

c) Money belonging to the office holder or an entity in which they are working.

d) Holding account

For practical reasons the insolvency practitioner or entity in which they work may combine estate funds into a holding account. For example, in order to facilitate dividend payments to creditors, for the receipt of PPI funds or the insolvency practitioner may, from time to time, receive funds which were originally estate monies but have been returned to them in such a manner that funds relating to individual estates cannot be readily identified with such funds being placed into a holding account until such time as they can be allocated to an individual estate.

Para 6d: For consistency '*or a practice*' should be replaced by the word 'entity'.

Para 7: It is questioned whether an account maintained in the name of the office holder could be classed as a 'client account'. We suggest that para 7 is reworded as follows:

'Where an office holder receives estate money in a manner such that it cannot be paid directly into an estate account, such money may be cleared through a client account. Funds paid into such accounts should be paid out to the case to which they relate as soon as is reasonably practicable.

Para 9d: We consider that payments should be amended to 'transaction' to cover transfers from the accounts.

6. Do you consider that the key compliance standards collectively provide sufficiently robust protection for client money?

No.

7. If 'no', what additional protections do you believe should be provided for?

The current provisions do not provide for the independent confirmation that funds are actually held in an account as per the records maintained. Where a small number of individual accounts are held reconciling a bank statement with the records maintained is a relatively achievable procedure. Where the office holder is responsible for multiple accounts however, for example where the entity in which he works provides IVAs on a volume basis, it becomes unworkable to physically reconcile individual estate accounts with bank statements. Also, where a client account is held in the form of a 'hub' account, where estate accounts are held in one main account, this makes the individual reconciliation of individual estate accounts more difficult. In these situations we consider that the office holder should be required to obtain an annual independent audit of the account(s) to ensure that funds recorded as being held are actually physically present. This should enable the office holder to identify at a relatively early stage where records maintained have been falsified to cover up misuse of client funds.

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