

FEES IN ADVANCE

The legislation that regulates barristers receiving fees in advance in direct access matters changed on 1 July 2015. Clause 106A of the *Legal Profession Regulation 2005* was repealed on that date (along with the *Legal Profession Act 2004*).

The new provisions are clauses 15 and 16 of the *Legal Profession Uniform Law Application Regulation 2015* ('the Application Regulation'). Links to the legislation can be found on the Uniform Law page of the Bar Association website.

Trust money is defined in the *Legal Profession Uniform Law* (s. 129). It includes money received by a barrister on account of legal costs in advance of providing the services. Clause 15 of the Application Regulation permits a barrister to receive and hold fees in advance in **direct access matters only** and subject to a number of restrictions –

- the barrister maintains a '**trust money account**' with an ADI for the **sole purpose** of holding fees in advance;
- the trust money account cannot be linked to any credit or mortgage facility;
- the barrister **notifies the Bar Association** of the name and certain details of the account, **within 14 days** of opening account;
- fees in advance are **deposited** in the trust money account as soon as practicable after they are received by the barrister;
- the barrister provides a detailed written **receipt** as soon as practicable to the person from whom the money is received;
- the money **remains deposited** in the trust money account until a bill is given to the client, or the money is refunded to the client or paid to a solicitor later engaged by the client;
- the barrister appoints an **external examiner** to carry out an annual examination (first examination to be submitted to the Bar Association no later than 7 June 2017 and is to cover the period from commencement of the regulation).

This is only a summary of the provision. It is essential that a barrister who receives fees in advance examines clause 15 in detail.

Holding fees in advance on 1 July 2015 – transitional arrangements

* A barrister who held trust money (fees in advance) in an account that complied with clause 106A of the Legal Profession Regulation 2005 immediately before its repeal may take advantage of a transitional provision and continue to receive and hold trust money in the circumstances set out in clause 106A until 1 October 2015, but is required to give written notice of the account to the Bar Association as soon as practicable.

* The transitional provision is clause 16 of the Legal Profession Uniform Law Application Regulation 2015.

* If you operated an account under clause 106A but actually held no fees in advance in the account on that date, then the transitional provisions do not apply and any fees in advance received after 1 July are to be dealt with under clause 15 of the new regulation.

Any questions? Please contact the Bar Association's certification officer Barrie Anthony.