

Chapter 7

Client money rules

7.11 Treatment of client money

Title transfer collateral arrangements

7.11.1

R

(1) [deleted]

(2) [deleted]

A *firm* must not enter into a *TTCA* in respect of *money* belonging to a *retail client*.

Where a *firm* entered into a *TTCA* in respect of *money* belonging to a *retail client* (or *money* which would belong to a *retail client* but for the arrangement) before 3 January 2018, the *firm* must terminate that *TTCA*.

[**Note:** article 16(10) of *MiFID* and article 5(5) of the *MiFID Delegated Directive*]

Money that is subject to a *TTCA* does not amount to *client money*, provided that the *TTCA* is not with a *retail client*.

[**Note:** recital 52 to *MiFID*]

7.11.2

R

[deleted]

7.11.3

R

(1) A *firm* must ensure that any *TTCA* is the subject of a written agreement made on a *durable medium* between the *firm* and the *client*.

(2) Regardless of the form of the written agreement in (1) (which may have additional commercial purposes), it must cover the *client's* agreement to:

(a) the terms for the arrangement relating to the transfer of the *client's* full ownership of *money* to the *firm*;

(b) any terms under which the ownership of *money* is to transfer from the *firm* back to the *client*; and

(c) (to the extent not covered by the terms under (b)), any terms for the termination of:

(i) the arrangement under (a); or

(ii) the overall agreement in (1).

- (3) A *firm* must retain a copy of the agreement under (1) from the date the agreement is entered into and until five years after the agreement is terminated.

7.11.4 **G** The terms referred to in **■ CASS 7.11.3 R (2)(b)** may include, for example, terms under which the arrangement relating to the transfer of full ownership of *money* to the *firm* is not in effect from time to time, or is contingent on some other condition.

7.11.4A **R**

(1) A *firm* must properly consider and document the use of *TTCAs* in the context of the relationship between the *client's* obligation to the *firm* and the *money* subjected to *TTCAs* by the *firm*.

(2) A *firm* must be able to demonstrate that it has complied with the requirement under (1).

(3) When considering, and documenting, the appropriateness of the use of *TTCAs*, a *firm* must take into account the following factors:

(a) whether there is only a very weak connection between the *client's* obligation to the *firm* and the use of *TTCAs*, including whether the likelihood of a liability arising is low or negligible;

(b) the extent by which the amount of *money* subject to a *TTCa* is in excess of the *client's* obligations (including where the *TTCa* applies to all *money* from the point of receipt by the *firm*) and whether the *client* might have no obligations at all to the *firm*; and

(c) whether all the *client's* *money* is made subject to *TTCAs*, without consideration of what obligation the *client* has to the *firm*.

(4) Where a *firm* uses a *TTCa*, it must highlight to the *client* the risks involved and the effect of any *TTCa* on the *client's* *money*.

[Note: article 6 of the *MiFID Delegated Directive*]

7.11.5 **G** [deleted]

7.11.6 **G** Where a *firm* has received full title or full ownership to *money* under a collateral arrangement, the fact that it has also granted a security interest to its *client* to secure its obligation to repay that *money* to the *client* would not result in the *money* being *client* *money*. This can be compared to a situation in which a *firm* takes a charge or other security interest over *money* held in a *client* *bank* *account*, where that *money* would still be *client* *money* as there would be no absolute transfer of title to the *firm*. However, where a *firm* has received *client* *money* under a security interest and the security interest includes a "right to use arrangement", under which the *client* agrees to transfer all of its rights to *money* in that account to the *firm* upon the exercise of the right to use, the *money* may cease to be *client* *money*, but only once the right to use is exercised and the *money* is transferred out of the *client* *bank* *account* to the *firm*.

7.11.7 **G** *Firms* are reminded of the *client's* best interest rule, which requires a *firm* to act honestly, fairly and professionally in accordance with the best interests of its *clients* when structuring its business particularly in respect of the effect of that structure on *firms'* obligations under the *client money rules*.

7.11.8 **G** [deleted]

Termination of title transfer collateral arrangements

7.11.9 **R** (1) If a *client* communicates to a *firm* that it wishes (whether pursuant to a contractual right or otherwise) to terminate a *TTCA*, and the *client's* communication is not in writing, the *firm* must make a written record of the *client's* communication, which also records the date the communication was received.

(2) A *firm* must keep a *client's* written communication, or a written record of the *client's* communication in (1), for five years starting from the date the communication was received by the *firm*.

(3) (a) If a *firm* agrees to the termination of a *TTCA*, it must notify the *client* of its agreement in writing. The notification must state when the termination is to take effect and whether or not the *client's money* will be treated as *client money* by the *firm* thereafter.

(b) If a *firm* does not agree to terminate a *TTCA*, it must notify the *client* of its disagreement in writing.

(4) A *firm* must keep a written record of any notification it makes to a *client* under (3) for a period of five years, starting from the date the notification was made.

7.11.10 **G** ■ CASS 7.11.9 R (3)(a) refers only to a *firm's* agreement to terminate an existing *TTCA*. Such agreement by a *firm* does not necessarily need to amount to the termination of its entire agreement with the *client*.

7.11.11 **G** When a *firm* notifies a *client* under ■ CASS 7.11.9 R (3)(a) of when the termination of a *TTCA* is to take effect, it should take into account:

(1) any relevant terms relating to such a termination that have been agreed with the *client*; and

(2) the period of time it reasonably requires to return the *money* to the *client*, or to update its records under ■ CASS 7.15 (Records, accounts and reconciliations) and to segregate the *money* as *client money* under ■ CASS 7.13 (Segregation of client money).

7.11.12 **R** If a *TTCA* is terminated then, unless otherwise permitted under the *client money rules* and notified to the *client* under ■ CASS 7.11.9R(3)(a), the *firm* must treat that *money* as *client money* from the start of the next business day following the date of termination as set out in the *firm's* notification under ■ CASS 7.11.9R (3)(a).

Where the *firm's* notification under ■ CASS 7.11.9R(3)(a) does not state when the termination of the arrangement will take effect, the *firm* must treat that *money as client money* from the start of the next *business day* following the date on which the *firm's* notification is made.

- 7.11.13 **G** A *firm* to which ■ CASS 7.11.12 R applies should, for example, update its records under ■ CASS 7.15 (Records, accounts and reconciliations) and segregate the *money as client money* under ■ CASS 7.13 (Segregation of client money), from the relevant time at which the *firm* is required to treat the *money as client money*.

Delivery versus payment transaction exemption

- 7.11.14 **R** (1) Subject to (2) and ■ CASS 7.11.16 R and with the agreement of the relevant *client*, *money* need not be treated as *client money* in respect of a delivery versus payment transaction through a *commercial settlement system* if:
- (a) in respect of a *client's* purchase the *firm* intends for the *money* from the *client* to be due to it within one *business day* following the *firm's* fulfilment of its delivery obligation to the *client*; or
 - (b) in respect of a *client's* sale, the *firm* intends for the *money* in question to be due to the *client* within one *business day* following the *client's* fulfilment of its delivery obligation to the *firm*.
- (2) If the payment or delivery by the *firm* to the *client* has not occurred by the close of business on the third *business day* following the date on which the *firm* makes use of the exemption under (1), the *firm* must stop using that exemption for the transaction.

- 7.11.15 **G** [deleted]

- 7.11.16 **R** A *firm* cannot, in respect of a particular delivery versus payment transaction, make use of the exemption under ■ CASS 7.11.14 R in either or both of the following circumstances:

- (1) it is not a direct member or participant of the relevant *commercial settlement system*, nor is it sponsored by such a member or participant, in accordance with the terms and conditions of that *commercial settlement system*;
- (2) the transaction in question is being settled by another *person* on behalf of the *firm* through an account held at the relevant *commercial settlement system* by that other *person*.

- 7.11.17 **R** Where a *firm* does not meet the requirements in ■ CASS 7.11.14 R or ■ CASS 7.11.16 R for the use of the exemption in ■ CASS 7.11.14 R, the *firm* is subject to the *client money rules* in respect of any *money* it holds in connection with the delivery versus payment transaction in question.

- 7.11.18** **G** (1) In line with **■ CASS 7.11.14 R**, where a *firm* receives *money* from the *client* in fulfilment of the *client's* payment obligation in respect of a delivery versus payment transaction the *firm* is carrying out through a *commercial settlement system* in respect of a *client's* purchase, and the *firm* has not fulfilled its delivery obligation to the *client* by close of business on the third *business day* following the date of the *client's* fulfilment of its payment obligation to the *firm*, the *firm* must treat the *client money* in accordance with the *client money rules* until delivery by the *firm* to the *client* occurs.
- (2) Upon settlement of a delivery versus payment transaction a *firm* is carrying out through a *commercial settlement system* (including when it is settled within the three *business day* period referred to in **■ CASS 7.11.14 R (2)**) then, in respect of:
- (a) a *client's* purchase, the *custody rules* apply to the relevant *safe custody asset* the *firm* receives upon settlement; and
- (b) a *client's* sale, the *client money rules* will apply to the relevant *money* received on settlement.
- 7.11.19** **R** A *firm* will not be in breach of the requirement under **■ CASS 7.13.6 R** to receive *client money* directly into a *client bank account* if it:
- (1) receives the *money* in question:
- (a) in accordance with **■ CASS 7.11.14 R (1)(a)** but it is subsequently required under **■ CASS 7.11.14 R (2)** to hold that *money* in accordance with the *client money rules*; or
- (b) in the circumstances referred to in **■ CASS 7.11.18 G (2)(b)**; and
- (2) pays the *money* in question into a *client bank account* promptly, and in any event by close of business on the *business day* following:
- (a) the expiration of the relevant period referred to in **■ CASS 7.11.14 R (2)**; or
- (b) receipt of the *money* in the circumstances referred to in **■ CASS 7.11.18 G (2)(b)**.
- 7.11.20** **R** (1) If a *firm* makes use of the exemption under **■ CASS 7.11.14 R**, it must obtain the *client's* written agreement to the *firm's* use of the exemption.
- (2) In respect of each *client*, the record created in (1) must be retained during the time that the *firm* makes use, or intends to make use, of the exemption under **■ CASS 7.11.14 R** in respect of that *client's* monies.
- 7.11.21** **R** (1) Subject to (2)(a), *money* need not be treated as *client money*:
- (a) in respect of a delivery versus payment transaction for the purpose of settling a transaction in relation to *units* in a *regulated collective investment scheme* in either of the following circumstances:
- (i) the *authorised fund manager* receives the *money* from a *client* in relation to the *authorised fund manager's* obligation

to issue units, in an *AUT* or *ACS*, or to arrange for the issue of *units* in an *ICVC*, in accordance with *COLL*; or

- (ii) the *money* is held in the course of redeeming *units* where the proceeds of that redemption are paid to a client within the time specified in *COLL*.

(2) (a) Where, in respect of *money* received in any of the circumstances set out in (1), the *authorised fund manager* has not, by close of business on the *business day* following the date of receipt of the *money*, paid this *money* to the *depository* of an *AUT* or *ACS*, the *ICVC* or to the *client* as the case may be, the *authorised fund manager* must stop using the exemption under (1) for that transaction.

- (b) Paragraph (2)(a) does not prevent a *firm* transferring *client money* segregated under (2)(a) into the *firm's* own account, provided this is done only for the purpose of making a payment on the same day from that account in accordance with ■ CASS 7.11.34R(1) to ■ CASS 7.11.34R(3) (Discharge of fiduciary duty).

7.11.22 **R** An *authorised fund manager* will not be in breach of the requirement under ■ CASS 7.13.6R to receive *client money* directly into a *client bank account* if it received the *money* in accordance with ■ CASS 7.11.21 R (1) and is subsequently required under ■ CASS 7.11.21 R (2) to hold that *money* in accordance with the *client money rules*.

7.11.23 **G** Where proceeds of redemption paid to the *client* in accordance with ■ CASS 7.11.21 R (1)(a)(ii) are paid by cheque, the cheque should be issued from the relevant *client bank account*.

7.11.24 **R**

- (1) If a *firm* makes use of the exemption under ■ CASS 7.11.21 R, it must obtain the *client's* written agreement to the *firm's* use of the exemption.
- (2) In respect of each *client*, the record created in (1) must be retained for the duration of the time that the *firm* makes use of the exemption under ■ CASS 7.11.21 R in respect of that *client's money*.

Money due and payable to the firm

7.11.25 **R**

- (1) *Money* is not *client money* when it becomes properly due and payable to the *firm* for its own account.
- (2) For these purposes, if a *firm* makes a payment to, or on the instructions of, a *client*, from an account other than a *client bank account*, until that payment has cleared, no equivalent sum from a *client bank account* for reimbursement will become due and payable to the *firm*.

7.11.26 **G** *Money* will not become properly due and payable to the *firm* merely through the *firm* holding that *money* for a specified period of time. If a *firm* wishes to cease to hold *client money* for a *client* it must comply with

■ CASS 7.11.34 R (Discharge of fiduciary duty) or, if the balance is allocated but unclaimed *client money*, ■ CASS 7.11.50 R (Allocated but unclaimed client money) or ■ CASS 7.11.57 R (De minimis amounts of unclaimed client money).

7.11.27 **G** Money held as *client money* becomes due and payable to the *firm* or for the *firm's* own account, for example, because the *firm* acted as *principal* in the contract or the *firm*, acting as agent, has itself paid for *securities* in advance of receiving the purchase *money* from its *client*. The circumstances in which it is due and payable will depend on the contractual arrangement between the *firm* and the *client*.

7.11.28 **G** *Firms* are reminded that, notwithstanding that *money* may be due and payable to them, they have a continuing obligation to segregate *client money* in accordance with the *client money rules*. In particular, in accordance with ■ CASS 7.15.2 R, *firms* must ensure the accuracy of their records and accounts and are reminded of the requirement to carry out *internal client money reconciliations* either in accordance with the standard methods of *internal client money reconciliation* or the requirements for a *non-standard method of internal client money reconciliation*.

7.11.29 **G** When a *client's* obligation or liability, which is secured by that *client's* asset, crystallises, and the *firm* realises the asset in accordance with an agreement entered into between the *client* and the *firm*, the part of the proceeds of the asset to cover such liability that is due and payable to the *firm* is not *client money*. However, any proceeds of sale in excess of the amount owed by the *client* to the *firm* should be paid over to the *client* immediately or be held in accordance with the *client money rules*.

Commission rebate

7.11.30 **G** When a *firm* has entered into an arrangement under which *commission* is rebated to a *client*, those rebates need not be treated as *client money* until they become due and payable to the *client* in accordance with the terms of the contractual arrangements between the parties.

7.11.31 **G** When *commission* rebate becomes due and payable to the *client*, the *firm* should:

- (1) treat it as *client money*; or
- (2) pay it out in accordance with the *rule* regarding the discharge of a *firm's* fiduciary duty to the *client* (see ■ CASS 7.11.34 R);

unless the *firm* and the *client* have entered into an arrangement under which the *client* has agreed to transfer full ownership of this *money* to the *firm* as collateral against payment of future professional fees (see ■ CASS 7.11 (Title transfer collateral arrangements)).

Interest

7.11.32 **R** A *firm* must pay a *retail client* any interest earned on *client money* held for that *client* unless it has otherwise notified him in writing.

- 7.11.33** **G**
- (1) The *firm* may, under the terms of its agreement with the *client*, pay some, none, or all interest earned to the relevant *client*.
 - (2) Where interest is payable on *client money* by a *firm* to *clients*:
 - (a) such sums are *client money* and so, if not paid to, or to the order of the clients, are required to be segregated in accordance with **■ CASS 7.13** (Segregation of client money);
 - (b) the interest should be paid to *clients* in accordance with the *firm's* agreement with each *client*; and
 - (c) if the *firm's* agreement with the *client* is silent as to when interest should be paid to the *client* the *firm* should follow **■ CASS 7.13.36 R** (Allocation of client money receipts);
 irrespective of whether the *client* is a *retail client* or otherwise.

Discharge of fiduciary duty

- 7.11.33A** **R**
- (1) **■ CASS 7.11.34R(2)(c)**, **■ CASS 7.11.34R(2)(d)** and **■ CASS 7.11.34R(10)** do not apply to a *firm* following a *primary pooling event*.
 - (2) **■ CASS 7.11.34R(2)(e)** only applies to a *firm* following a *primary pooling event*.

- 7.11.34** **R** Money ceases to be *client money* (having regard to **■ CASS 7.11.40 R** where applicable) if:
- (1) it is paid to the *client*, or a duly authorised representative of the client; or
 - (2) it is:
 - (a) paid to a third party on the instruction of, or with the specific consent of, the *client* unless it is transferred to a third party in the course of effecting a transaction under **■ CASS 7.14.2 R** (Transfer of client money to a third party); or
 - (b) paid to a third party pursuant to an obligation on the *firm* where:
 - (i) that obligation arises under an enactment; and
 - (ii) the obligation under that enactment is applicable to the *firm* as a result of the nature of the business being undertaken by the *firm* for its *client*; or
 - (c) transferred in accordance with **■ CASS 7.11.42 R**; or
 - (d) transferred in accordance with **■ CASS 7.11.44 R**; or
 - (e) transferred in accordance with **■ CASS 7A.2.4R(4)**; or
 - (3) subject to **■ CASS 7.11.39R**, it is paid into a bank account of the *client* (not being an account which is also in the name of the *firm*); or
 - (4) it is due and payable to the *firm* in accordance with **■ CASS 7.11.25 R** (Money due and payable to the firm); or
 - (5) it is paid to the *firm* as an excess in the *client bank account* (see **■ CASS 7.15.29 R (2)** (Reconciliation discrepancies)); or

- (6) it is paid by an *authorised central counterparty* to a clearing member other than the *firm* in connection with a *porting* arrangement in accordance with ■ CASS 7.11.35 R; or
- (7) it is paid by an *authorised central counterparty* directly to the *client* in accordance with ■ CASS 7.11.36 R; or
- (8) it is transferred by the *firm* to a *clearing member* in connection with a *regulated clearing arrangement* and the *clearing member* remits payment to another *firm* or to another *clearing member* in accordance with ■ CASS 7.11.37 R (1); or
- (9) it is transferred by the *firm* to a *clearing member* in connection with a *regulated clearing arrangement* and the *clearing member* remits payment directly to the *indirect clients* of the *firm* in accordance with ■ CASS 7.11.37 R (2); or
- (10) it is paid to charity under ■ CASS 7.11.50 R or ■ CASS 7.11.57 R.

7.11.35 **R** *Client money* which the *firm* places at an *authorised central counterparty* in connection with a *regulated clearing arrangement* ceases to be *client money* for that *firm* if, as part of the default management process of that *authorised central counterparty* in respect of a default by the *firm*, it is ported by the *authorised central counterparty* in accordance with article 48 of *EMIR*.

7.11.36 **R** *Client money* which the *firm* places at an *authorised central counterparty* in connection with a *regulated clearing arrangement* ceases to be *client money* if, as part of the default management process of that *authorised central counterparty* in respect of a default by the *firm*, it is paid directly to the *client* by the *authorised central counterparty* in accordance with the procedure described in article 48(7) of *EMIR*.

7.11.37 **R** *Client money* received or held by the *firm* and transferred to a *clearing member* who facilitates indirect clearing through a *regulated clearing arrangement* ceases to be *client money* for that *firm* and, if applicable, the *clearing member*, if the *clearing member* in accordance with the *EMIR indirect clearing default management obligations* or the *MiFIR indirect clearing default management obligations* (as applicable):

- (1) remits payment to another *firm* or to another *clearing member*; or
- (2) remits payment to the *indirect clients* of the *firm*.

7.11.38 **R** *Client money* received or held by the *firm* for a *sub-pool* ceases to be *client money* for that *firm* to the extent that such *client money* is transferred by the *firm* to an *authorised central counterparty* or a *clearing member* as a result of *porting*.

7.11.39 **R** A *firm* must not pay *client money* into a bank account of the *client* that has been opened without the consent of that *client*.

7.11.40 **R** When a *firm* draws a cheque or other payable order to discharge its fiduciary duty to the *client*, it must continue to treat the sum concerned as *client money* until the cheque or order is presented and paid by the bank.

Transfer of business

7.11.40A **R** ■ CASS 7.11.41G to ■ CASS 7.11.47R do not apply to a *firm* following a *primary pooling event*.

7.11.40B **G** ■ CASS 7A.2.4R(4) (Pooling and distribution or transfer) applies to a *firm* in respect of transfers of *client money* to another *person* following a *primary pooling event*.

7.11.41 **G** A *firm* may transfer *client money* to a third party as part of transferring all or part of its business if, in respect of each *client* with an interest in the *client money* that is sought to be transferred, it:

- (1) obtains the consent or instruction of that *client* at the time of the transfer of business (see ■ CASS 7.11.34 R (2)(a); or
- (2) complies with ■ CASS 7.11.42 R (see ■ CASS 7.11.34 R (2)(c); or
- (3) complies with ■ CASS 7.11.44 R (see ■ CASS 7.11.34 R (2)(d)).

7.11.42 **R** Subject to ■ CASS 7.11.44 R, money ceases to be *client money* for a *firm* if:

- (1) it is transferred by the *firm* to another *person* as part of a transfer of business to that *person* where the *client money* relates to the business being transferred;
- (2) it is transferred on terms which require the other *person* to return a *client's* transferred sums to the *client* as soon as practicable at the *client's* request;
- (3) a written agreement between the *firm* and the relevant *client* provides that:
 - (a) the *firm* may transfer the *client's client money* to another *person*; and
 - (b) (i) the sums transferred will be held by the *person* to whom they are transferred in accordance with the *client money rules* for the *clients*; or
 - (ii) if not held in accordance with (i), the *firm* will exercise all due skill, care and diligence in assessing whether the *person* to whom the *client money* is transferred will apply adequate measures to protect these sums; and
- (4) the *firm* complies with the requirements in (3)(b)(ii) (if applicable).

7.11.43 **G** In considering how and whether to introduce the written agreement referred to in ■ CASS 7.11.42 R (3), *firms* should have regard to any relevant

obligations to *clients*, including requirements under the *Unfair Terms Regulations*.

Transfer of business: de minimis sums

- 7.11.44 **R** (1) *Client money* belonging to those categories of *clients* set out in (2) and in respect of those amounts set out in (2) ceases to be *client money* of the *firm* if it is transferred by the *firm* to another *person*:
- (a) as part of a transfer of business to that other *person* where these sums relate to the business being transferred; and
 - (b) on terms which require the other *person* to return a *client's* transferred sums as soon as practicable at the *client's* request.
- (2) (a) For *retail clients* the amount is £25.
 (b) For all other *clients* the amount is £100.

- 7.11.45 **G** For the avoidance of doubt, sums transferred under **■** CASS 7.11.44 R do not, for the purposes of that *rule*, require the instruction or specific consent of each *client* at the time of the transfer or a written agreement as set out in **■** CASS 7.11.42 R (3).

Transfer of business: client notifications

- 7.11.46 **R** Where a *firm* transfers *client money* belonging to its *clients* under either or both of **■** CASS 7.11.42 R and **■** CASS 7.11.44 R it must ensure that those *clients* are notified no later than seven *days* after the transfer taking place:
- (1) whether or not the sums will be held by the *person* to whom they have been transferred in accordance with the *client money rules* and if not how the sums being transferred will be held by that *person*;
 - (2) the extent to which the sums transferred will be protected under a compensation scheme; and
 - (3) that the *client* may opt to have the *client's* transferred sum returned to it as soon as practicable at the *client's* request.
- 7.11.47 **R** The *firm* must notify the *FCA* of its intention to effect any transfer of *client money* under either or both of **■** CASS 7.11.42 R and **■** CASS 7.11.44 R at least seven *days* before it transfers the *client money* in question.

Allocated but unclaimed client money

- 7.11.47A **R** **■** CASS 7.11.48G to **■** CASS 7.11.58G do not apply to a *firm* following a *primary pooling event*.
- 7.11.47B **G** **■** CASS 7A.2.6AR (Closing a client money pool) applies to a *firm* following a *primary pooling event* in respect of allocated but unclaimed *client money*.

- 7.11.48** **G** The purpose of **■ CASS 7.11.50 R** is to set out the requirements *firms* must comply with in order to cease to treat as *client money* any unclaimed balance which is allocated to an individual *client*.
- 7.11.49** **G** Before acting in accordance with **■ CASS 7.11.50 R** to **■ CASS 7.11.58 G**, a *firm* should consider whether its actions are permitted by law and consistent with the arrangements under which the *client money* is held. For the avoidance of doubt, these provisions relate to a *firm's* obligations as an *authorised person* and to the treatment of *client money* under the *client money rules*.
- 7.11.50** **R** A *firm* may pay away to a registered charity of its choice a *client money* balance which is allocated to a *client* and if it does so the released balance will cease to be *client money* under **■ CASS 7.11.34 R** (10), provided:
- (1) this is permitted by law and consistent with the arrangements under which the *client money* is held;
 - (2) the *firm* held the balance concerned for at least six years following the last movement on the *client's* account (disregarding any payment or receipt of interest, charges or similar items);
 - (3) it can demonstrate that it has taken reasonable steps to trace the *client* concerned and to return the balance; and
 - (4) the *firm* complies with **■ CASS 7.11.54 R**.
- 7.11.51** **G** Where the *client money* balance held by a *firm* is, in aggregate, £100 or less for a *client* other than a *retail client* or, for a *retail client*, £25 or less, the *firm* may comply with **■ CASS 7.11.57 R** instead of **■ CASS 7.11.50 R**.
- 7.11.52** **E**
- (1) Taking reasonable steps in **■ CASS 7.11.50 R** (3) includes following this course of conduct:
 - (a) determining, as far as reasonably possible, the correct contact details for the relevant *client*;
 - (b) writing to the *client* at the last known address either by post or by electronic mail to inform it of the *firm's* intention to no longer treat the *client money* balance as *client money* and to pay the sums concerned to charity if the *firm* does not receive instructions from the *client* within 28 days;
 - (c) where the *client* has not responded after the 28 days referred to in (b), attempting to communicate the information set out in (b) to the *client* on at least one further occasion by any means other than that used in (b) including by post, electronic mail, telephone or media advertisement;
 - (d) subject to (e) and (f), where the *client* has not responded within 28 days following the most recent communication, writing again to the *client* at the last known address either by post or by electronic mail to inform them that:
 - (i) as the *firm* did not receive a claim for the relevant *client money* balance, it will in 28 days pay the balance to a registered charity; and

- (ii) an undertaking will be provided by the *firm* or a member of its *group* to pay to the *client* concerned a sum equal to the balance paid away to charity in the event of the *client* seeking to claim the balance in future;
 - (e) if the *firm* has carried out the steps in (b) or (c) and in response has received positive confirmation in writing that the *client* is no longer at a particular address, the *firm* should not use that address for the purposes of (d);
 - (f) if, after carrying out the steps in (a), (b) and (c), the *firm* has obtained positive confirmation that none of the contact details it holds for the relevant *client* are accurate or, if utilised, the communication is unlikely to reach the *client*, the *firm* does not have to comply with (d); and
 - (g) waiting a further 28 *days* following the most recent communication under this *rule* before paying the balance to a registered charity.
- (2) Compliance with (1) may be relied on as tending to establish compliance with ■ CASS 7.11.50 R.
- (3) Contravention of (1) may be relied on as tending to establish contravention of ■ CASS 7.11.50 R.

7.11.53 G For the purpose of ■ CASS 7.11.52 E (1)(a), a *firm* may use any available means to determine the correct contact details for the relevant *client*, including telephoning the *client*, searching internal records, media advertising, searching public records, mortality screening, using credit reference agencies or tracing agents.

7.11.54 R

(1) Where a *firm* wishes to release a balance allocated to an individual *client* under ■ CASS 7.11.50 R it must comply with either (a) or (b) and, in either case, (2):

- (a) the *firm* must unconditionally undertake to pay to the *client* concerned a sum equal to the balance paid away to charity in the event of the *client* seeking to claim the balance in future;

or

- (b) the *firm* must ensure that an unconditional undertaking in the terms set out in (a) is made by a member of its *group* and there is suitable information available for relevant *clients* to identify the member of the *group* granting the undertaking.

(2) The undertakings in this *rule* must be:

- (a) authorised by the *firm's governing body* where (1)(a) applies or by the *governing body* of the *group* member where (1)(b) applies;
- (b) legally enforceable by any *person* who had a legally enforceable claim to the balance in question at the time it was released by the *firm*, or by an assign or successor in title to such claim; and
- (c) retained by the *firm*, and where (1)(b) applies, by the *group* member indefinitely.

- 7.11.55** **R**
- (1) If a *firm* pays away *client money* under ■ CASS 7.11.50 R (4) it must make and retain, or where the *firm* already has such records, retain:
 - (a) records of all balances released from *client bank* accounts under ■ CASS 7.11.50 R (including details of the amounts and the identity of the *client* to whom the *money* was allocated);
 - (b) all relevant documentation (including charity receipts); and
 - (c) details of the communications the *firm* had or attempted to make with the *client* concerned pursuant to ■ CASS 7.11.50 R (3).
 - (2) The records in (1) must be retained indefinitely.
 - (3) If a member of the *firm's group* has provided an undertaking under ■ CASS 7.11.54 R (2) then the records in (1) must be readily accessible to that *group* member.

De minimis amounts of unclaimed client money

7.11.56 **G** The purpose of ■ CASS 7.11.57 R is to allow a *firm* to pay away to charity *client money* balances of (i) £25 or less for *retail clients* or (ii) £100 or less for other *clients* when those balances remain unclaimed. If a *firm* follows this process, the *money* will cease to be *client money* (see ■ CASS 7.11.34 R (10)).

- 7.11.57** **R** A *firm* may pay away to a registered charity of its choice a *client money* balance which is allocated to a *client* and if it does so the released balance will cease to be *client money* under ■ CASS 7.11.34 R (10):
- (1) the balance in question is (i) for a *retail client*, in aggregate, £25 or less, or (ii) for a *professional client*, in aggregate, £100 or less;
 - (2) the *firm* held the balance concerned for at least six years following the last movement on the *client's* account (disregarding any payment or receipt of interest, charges or similar items);
 - (3) the *firm* has made at least one attempt to contact the *client* to return the balance using the most up-to-date contact details the *firm* has for the *client*, and the *client* has not responded to such communication within 28 days of the communication having been made; and
 - (4) the *firm* makes and/or retains records of all balances released from *client bank* accounts in according with this *rule*. Such records must include the information in ■ CASS 7.11.55 R (1)(a) and ■ CASS 7.11.55 R (1)(b).

Costs associated with paying away allocated but unclaimed client money

7.11.58 **G** Any costs associated with the *firm* ceasing to treat unclaimed *client money* balances as *client money* pursuant to ■ CASS 7.11.50 R to ■ CASS 7.11.57 R should be paid for from the *firm's* own funds, including:

- (1) any costs associated with the *firm* carrying out the steps in ■ CASS 7.11.50 R (3), ■ CASS 7.11.51 G or ■ CASS 7.11.57 R (3); and
- (2) the cost of any insurance purchased by a *firm* or the relevant member of its *group* to cover any legally enforceable claim in respect of the *client money* paid away.