

# 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 accordance 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.