



PROCESS OF BREACH REMEDIATION FOR INSURANCE INTERMEDIARIES (CASS)

GUIDE

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This guide considers some of the areas CASS auditors may wish to consider when assessing the process of breach remediation for insurance intermediaries with CASS 5 permissions.

LINKS TO REGULATIONS

Regulations and guidance
Key standards for this guide

- [FRC Standard November 2019: Providing Assurance on Client Assets to the Financial Conduct Authority](#)
[CASS Chapter 5 - FCA Handbook](#)
[Guide to Client Money for General Insurance Intermediaries](#)
[Dear CEO letter: Maintaining adequate client money arrangements - general insurance intermediaries](#)

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OVERVIEW

The FCA released communication in March 2023 (Dear CEO letter issued on 16 March 2023), to re-iterate that the firms must have adequate arrangements in place to ensure customers' money is safe. Firms with permission to hold or control client money should establish and maintain arrangements to ensure client money is adequately protected. Firms are required to design effective client money controls to reduce customer harm on an ongoing basis and in the event of firm failure.

Whilst firms performing insurance intermediary broking activities should design and maintain internal controls to mitigate risks of CASS non-compliance, it is extremely difficult to prevent CASS breaches from ever occurring and as a result firms should have adequate governance and appropriate oversight over their CASS breach management process. As such, firms are expected to self-identify breaches, especially common breaches which occur within the client money process. How breaches are identified and remediated by the firm can give insight into the effectiveness of a firm's controls and governance process.

Reliance must not be placed on the annual external CASS Assurance report to identify breaches as this does not form part of a firm's internal controls. Where breaches are identified by the CASS auditor, or by any other third party, the firm is responsible for both investigating why it was not identified through the systems and controls it had in place at that time, and for monitoring the breach through to remediation.

1. BREACH IDENTIFICATION AND ASSESSMENT

Whilst a firm's primary aim when developing its internal CASS control environment is to prevent CASS breaches from occurring, it's important that firms also design and maintain detective controls to identify instances where CASS breaches have occurred.

Firms should design preventative and detective controls which facilitate breach identification where it may occur. A breach can occur where either a preventative or detective control fails to work either due to poor design or due to failures in its operations.

Examples of preventative and detective controls within the CASS internal control environment:

- A preventative control is a control which aims to prevent the breach before it happens. An example would be an automated control where the broking application does not allow transactions to be entered for a client before a Terms of Business (TOBA) is attached to the client profile.
- A detective control is a control designed to promptly identify a breach which has occurred. For example, a review of the previous day's cheque banking to ensure that all cheques were banked within 24 hours of receipt.

In both examples above, the control is designed to operate in consideration of the client money rules and guidelines. In developing appropriate controls to identify breaches, firms should ensure the controls are mapped and aligned to each of the client money rules. This can best be represented within a CASS risk and control matrix. Whilst the CASS 5 rules do not make reference to such a specific document, the FCA expectations are that this is a critical element of a firm's organisational arrangements (the risk and controls matrix is included in the [CASS Governance for Insurance Intermediaries](#) helpsheet, referenced below in section 2).

To ensure an effective control environment which is responsive to potential breaches, there should be segregation of duties within the control environment.

When completing the CASS risk and control matrix, firms should identify controls which support the identification of breaches which are immediately reportable. Whilst all controls are important, the CASS handbook identifies certain rules where a breach requires immediate reporting to the FCA.

Controls which prevent or detect these breaches should be clearly identified to avoid the risk of failure to report by the firm. Breaches in these areas are considered to be of high importance by the FCA as they expose client money to greater risk of not being protected adequately (and/or easily traceable in the event of an insolvency).

Refer to section 3 for more details of these immediately reportable breaches.

There is no concept of materiality within the CASS rules and as such all breaches regardless of size should be identified and tracked by the firm.

It is important for firms to note that breaches can originate from actions other than those of the firm. The CASS rules seek to protect client money from both internal and external factors. For example, where money that is not client money or other money as part of a mixed remittance is paid into the client money account, this is a breach of the segregation rules even though this money may have been paid in by a third party in error.

Monitoring of controls

It is important for firms to ensure that all controls are monitored appropriately. As part of the firm's governance process, there should be adequate procedures to ensure controls are being operated as designed. Firms should make sure that checks of the control environment are done by appropriate individuals within the firm and failures are communicated to management and, where appropriate, those charged with governance over the CASS environment in a timely manner to ensure there is adequate assessment of the breaches and remediation.

2. THE BREACHES LOG

A firm should document guidance for those responsible for recording breaches, including thresholds for reporting breaches to the FCA (refer to section 3).

A clearly documented CASS breaches log with complete information is essential for the firm to evidence its breach management and evaluation process. It also allows a firm's auditor to understand the firm's assessment of any potential detriment to clients. Firms should maintain a full audit trail of each breach, including the following information:

- Breach description (ie, what happened).
- Specific business line where the breach occurred, if applicable.
- Date occurred and date identified (or frequency of instances if there are several similar instances).
- Number of clients affected and if there was a detrimental impact to them.
- Amount of client money impacted, if applicable.
- Specific CASS rule(s) breached.
- The root cause of the breach and whether systemic control failures caused it.
- Details of any escalation (including whether it is immediately notified to the FCA – see section 3).

- Remedial action taken (both to close the breach and to address the root cause), and the individual owner of the action. See section 4.
- Details of further investigation being undertaken where the breach hasn't been able to be resolved promptly (including details of funding provided by the firm if the client money account is subject to a shortfall resulting from the breach).
- Target date for resolution.
- Date closed.

Firms should have a documented understanding and assessment of each area of their business in which breaches of the CASS rules can occur. Details of how this can be achieved through the CASS risk and controls matrix and broader CASS 5 governance are included in the CASS 5 Governance help sheet located [here](#).

3. BREACH ESCALATION TO THE FCA

Under the CASS 5 rules, the FCA requires immediate notification of the following.

Failure of a bank, broker or settlement agent (CASS 5.5.61R)

When a firm becomes aware of the failure of any third party with which it holds client money, it must notify the FCA. It must include in this notification whether any client money shortfall has arisen because of the failure, and whether it intends to fund this shortfall from its own money.

Failure to perform client money calculations or reconciliations, or fund a client money shortfall (CASS 5.5.76-77R)

When a firm has not performed a client money calculation as required by CASS 5.5.63R(1), it must notify the FCA. If a firm cannot fund a shortfall identified by its client money calculation or reconciliation on the day that the calculation or reconciliation is performed, it must notify the FCA.

Firms may also consider immediately notifying the FCA if there are circumstances which indirectly link to the required immediate reporting, for example:

- Its internal records of client money held are materially out of date or inaccurate as this may restrict the ability to perform the client money calculations in accordance with CASS 5.5.63R.
- It is unable to, or materially fails to, identify and resolve any discrepancies after having carried out its reconciliation such that the client money calculation required by CASS 5.5.63R is based on incorrect data.
- It becomes aware that, at any time in the preceding 12 months, the amount of client money se.g.re.g.ated in its client bank accounts materially differed from the total amount of client money the firm was required to se.g.re.g.ate in client bank accounts, such that shortfalls may not have been appropriately identified and settled in accordance with CASS 5.5.77R.

Other considerations for reportable breaches

In addition to the explicit breaches which are reportable to the FCA as noted in the rules, firms should determine if there are breaches which have arisen that are systemic in nature and/or would have an individually or collectively significant impact on the operation of the client money rules. This determination is a matter of judgement which will require the firm to derive a threshold where they consider that there is a likelihood that the breach of the stated rule could result in a significant detriment to client money.

The firm should produce and maintain documented guidance on its threshold at which immediate notification is required from both a quantitative and qualitative perspective (i.e., the amount of client money impacted, the duration of the breach, and the number of business lines or clients impacted.)

The firm may also wish to consider the following:

- Whether the matter is isolated or a repeated incident.
- Whether the matter is systemic in nature.
- Whether the incident reflects weaknesses in the firm's overall systems and controls.
- Whether the incident reflects non-compliance with multiple rules or the conditions of an exemption.
- The impact of any potential loss to a client in a firm insolvency situation.

In each instance of a breach, a firm needs to conclude on and document whether the issue warrants immediate notification.

These considerations on reporting are with reference to the firm's responsibilities under PRIN 11, SYSC 13.4 and SUP 15.3.

4. REMEDIAL ACTION

Firms should develop systems and controls:

- to investigate breaches – which should include an adequately documented root cause analysis (eg, investigation of the underlying cause of the breach)
- to remediate breaches
 - reactive remedial action, to fix the breach as soon as possible
 - to ensure that in the event of client financial detriment, the client is put back into the position they would have been in if the breach had not occurred
- to mitigate the risk of further recurrence of breaches and take preventative remedial action, to stop the breach from happening again, for example:
 - working with your bank to ensure that fees are charged to the firm's corporate account rather than the client bank account, but where this is not possible, establishing a prudent segregation policy, so that bank charges taken from the client money account can be funded by the firm prior to them being debited.

Remedial action taken by a firm should be detailed in the Firm's Comment section of your FCA reasonable assurance report. The firm's comments should include in as much detail as possible:

- Relevant timings related to the remediation of breach, eg,
 - When the breach was identified vs when it occurred.
 - Upon identification, how long the breach took to remediate (if it was resolved as at the period end), or remediation progress up until the period end date.
 - For systemic matters, at what point were longer-term remedial actions put in place to prevent recurrence.
- Context around why the breach occurred, eg,
 - Failure by staff to follow procedures.
 - A system outage or limitation in place at the time.
 - Monies received incorrectly allocated.
 - Bank charge paid from the incorrect account.

- Action taken to remediate the breach, eg,
 - Client money shortfall funded.
 - Excess removed from the client money account.
 - Books and records updated.
 - Acknowledgement of trust correctly repapered.
 - System fixes.
- Action taken to prevent recurrence, eg,
 - Targeted reviews undertaken.
 - New or updated policies or procedures implemented (eg, checklists, escalation procedures).
 - Compensating controls implemented (eg, preventative or detective controls).
 - Automating systems.
 - Process improvements (eg, additional steps or checks).
 - Feedback, training and reminders given to the relevant staff.

5. GOVERNANCE

The firm's approach to breach management should be detailed in its CASS policy, including specific breaches that should be escalated and to whom.

The firm should maintain a central log for all CASS breaches and issues, regardless of whether they occurred internally at the firm or at a third party (eg, banks), and the electronic location of the log should be detailed in the CASS policy.

The CASS policy should also detail who is responsible for recording, reviewing, and managing breaches through to closure.

All breaches should be reviewed by the appropriate governance committee (eg, which in most cases will be the firm's CASS Committee) and tracked through to remediation. This can be done through reviewing CASS Management Information (MI). CASS breaches should also be discussed at Board meetings and discussion should be minuted, specifically actions being taken to remediate the breach.

All CASS breaches should be recorded in the external CASS assurance report which is prepared by an external auditor. This assurance report is required to be submitted by the external auditor to: (a) the firm, in the case of a qualified or unmodified opinion, within 4 months of the period end, or (b) the FCA in the case of an adverse opinion, in accordance with SUP 3.10.8B which requires CASS auditors to consider whether there are any matters that the auditor has a duty to report. This would be in the case of an adverse opinion.

It should be noted that if the firm has held a cumulative total of less than £30,000 in a CASS 5.3 statutory trust over the past 12 months, it is not required to obtain an external CASS assurance report.

Where a qualified or unmodified assurance report is prepared by the external auditor, firms should be mindful that although this report is not submitted to the FCA at the time of completion, it may be requested by the FCA for a period of up to 6 years in accordance with SUP 3.10.8A.

For further guidance on governance, please see the CASS Governance help sheet referenced in Section 1.

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