

RESIDUAL BALANCE PROJECT FLOWCHART

Assemble a project team to tackle your residual balances

Ideally, the project should be led by someone from the finance team. Consider also including a:

- risk/compliance team representative—to ensure SRA compliance
- known problem solver, eg fee earner/task-orientated person looking for a challenge
- long-serving member of staff who has the history of the firm at their fingertips

Set your criteria for identifying residual balances and identify all client balances that meet the criteria

Your criteria will depend on your client-base, work type and value, eg all matters with money on client account and no activity for *[three/six]* months

Draw up a list of all matters that meet those criteria—these are potential residual balances

Identify and record balances that can be dealt with or are held for a legitimate reason

Liaise with the relevant fee earner (if there is one) and identify:

- is there a legitimate reason for the balance, eg retention or an escrow (make sure this is SRA-compliant)
- does the balance belong to an existing client—if so, agree who will contact the client to return the funds
- does the balance represent money held on account where a bill may legitimately be delivered—exercise caution and comply with SRA requirements re billing and transfer of costs
- are there any outstanding bills on other matters for the same client—if so, agree who will contact the client for authority to apply the balance to the other bill (make sure this is SRA-compliant)
- should some balances be grouped together, eg where they arise from a group action or belong to companies in the same group—if so, consider whether they can be dealt with simultaneously

Ensure that balances that can be dealt with at this point are in fact dealt with, to stop them becoming residual balances later. You should be left with a list of true residual balances

Create a record of the residual balances you have identified

See template: *Residual balances register*, although you may have another way of recording these balances

Identify any residual balances where the rightful owner is a company registered in England and Wales

Check whether the company has been struck off or dissolved. If so:

- determine whether the balance is deemed bona vacantia, meaning it belongs to the Crown (or Duchy of Lancaster/Cornwall)
- follow relevant guidance at www.gov.uk/guidance/send-a-cash-balance-to-the-treasury-solicitor-cb1
- keep appropriate accounting and file records
- update your residual balances register (see template: *Residual balances register*)

You will need to make similar enquiries in relation to balances belonging to any company that is not registered in England and Wales.

Continue with flowchart in relation to the remaining residual balances on your register

Take reasonable steps to return each residual balance to the rightful owner (and keep a record)

A sensible starting point is to check the client/matter file and use all available contact details. As a minimum, you should attempt to telephone, email and write to the rightful owner (if you have relevant contact details).

In terms of how far you go to track down the rightful owner, what constitutes ‘reasonable steps’ depends on:

- the age and amount of the residual balance
- whether you have access to the most up-to-date contact details for the rightful owner
- if not, the costs associated with tracing them

More intensive effort is expected for larger/more recent residual balances or for balances where more details are held about the client.

Also be aware that SRA authorisation is required to pay any balance over £500 to charity. Consider isolating and dealing with these separately. Your register should enable you to identify matters where SRA authorisation is required (see also further down in this flowchart).

Having exhausted your available contact details for the rightful owner, other potential steps include:

- attempting to contact the rightful owner via third parties such as family members, employer or bank
- free internet searches
- social media
- search of Companies House and/or Probate Registry
- using of the Department of Work and Pensions’ letter forwarding service
- electoral role search against previous address and/or name (where search of electoral roll reveals only a small number of matching names in the appropriate region, consider writing to all of them)
- newspaper advert or tracing agent, taking into account the likelihood of tracing the client in the light of the information you hold

You do not have to take all (or any) of these steps in every case. The obligation is to take ‘reasonable steps’ only. Law Society guidance suggests newspaper adverts and/or tracing agents for larger residual balances

Keep a record of the steps taken to return each residual balance (see template: *Residual balance form*)

Unable to return balance

Able to return balance

Return balance to rightful owner

Keep appropriate accounting and file records
Update residual balances register
(See templates: *Residual balance form* and *Residual balances register*)

Determine whether SRA authorisation is required before paying the money to charity

You do not need SRA authorisation where all of the following conditions apply:

- residual balance is £500 or less on any one matter
- reasonable steps have been taken to return the money to the rightful owner—records must be made and kept, together with all relevant documentation, for at least six years
- you do not deduct any costs incurred in attempting to trace or communicate with the rightful owner

SRA authorisation not required

SRA authorisation required

Apply to SRA to pay the money to charity

Ensure steps taken to trace and return money enable you to complete SRA form “*Withdrawal of residual client balances*”

Comply with any instructions issued by the SRA. Do not pay to charity until authority granted

Pay money to a charity of your choice

Obtain receipt and indemnity from the charity that provides for reimbursement of the money if the rightful owner subsequently comes forward

(You can pay a residual balance to a charity that does not offer you an indemnity but you will be liable to pay the money if the rightful owner subsequently comes forward)

Pay money to charity in accordance with SRA authorisation

SRA authorisation will include a requirement to obtain an indemnity from the charity that:

- is not time limited
- provides for reimbursement of the money if the rightful owner subsequently comes forward

Update your residual balances register with:

- name of the recipient charity (and charity number)
 - amount paid, and
 - date of the payment
- (See template: *Residual balance form* and *Residual balances register*)

Retain records with all relevant documentation for at least six years

This should include:

- the entry on your residual balances register
- your record of the steps taken to return the money to the rightful owner and all associated documentation
- all receipts from the charity and confirmation of any indemnity provided