

21 June 2023

Final report by the Complaints Commissioner**Complaint number 202201689***The complaint*

1. On 24 December 2022 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

You are Unhappy the FCA approved a bank's acquisition of Firm Y without a legal compensation guarantee in place with their pensions subsidiary (X).

FCA readily accepted Y's assurances about funds being set aside as pension compensation and did not make this assurance a legal requirement before approving the sale.

What the regulator decided

3. The FCA did not uphold your complaint. It explained that 'a Change in Control application was made for X. This application sat alongside the bank's acquisition of Y, which did not include the X Business. As part of the Change in Control process a provision was made into X to be used towards potential liabilities. The provision was made using information available at that time. Subsequent to the Change in Control further professional advice was taken which concluded that the firm was not able to meet all future liabilities and therefore the decision was taken to place the firm X into administration'.

Why you are unhappy with the regulator's decision

4. You feel that the FCA did not do enough to ensure that X met its redress obligations instead of entering administration as it did not object to an insufficient provision for redress and you say 'The FCA has failed to ensure X's

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promises are delivered upon, ...forcing me to rely instead upon the lower compensation provided by the FSCS'.

My analysis

5. You were a client of X which was not sold with its parent company Y to a bank. Although this bank agreed to provide a provision for X's redress liabilities, subsequently it transpired X felt it was not able to meet its future liabilities and entered administration. This has affected you because you feel you will receive less in FSCS compensation than you would have otherwise. Understandably, you wish to know what went wrong and the FCA's role in all this.
6. I have carefully reviewed the FCA file on this matter. The foremost question in my mind is whether the FCA could have reasonably anticipated at the point of sale of Firm Y to the bank that the provision set aside for X would subsequently prove insufficient.
7. The FCA is correct to say that the provision was made using information available at the time. It is also correct to say that subsequently 'further professional advice concluded that the firm was not able to meet all future liabilities and therefore the decision was taken to place the firm X into administration'. However, although both statements are true, they do not portray a complete explanation of what happened, and at first glance may cause confusion as to why this further professional advice materialised only after the sale of Y and why it was not available before the sale and at the time the provision was made for X.
8. My investigation shows that there is one intermediate event which occurred after the provision was made for X and the sale of Y completed and before subsequent independent professional advice was sought which concluded the firm was de facto insolvent. This event significantly influenced the thinking about liability redress which could not have been foreseen at an earlier stage.
9. This event is listed on the FCA website but not referenced in the FCA decision letter. It is that the Financial Ombudsman Service upheld a complaint against X and its decision making prompted X to seek advice about the liabilities arising from existing and potential complaints based on the FOS outcome. It was this further professional advice which concluded that the firm was not able to meet

all future liabilities and therefore the decision was taken to place the firm X into administration, and the FCA could not have known about this at the point of sale.

My decision

10. I do not uphold your complaint. I note you are dissatisfied with my decision and your view is that the FCA should have done a better job of forecasting liabilities. In my view, however, the FCA's actions were not unreasonable given the circumstances.

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Complaints Commissioner
21 June 2023