

28 March 2025

Final report by the Complaints Commissioner**Complaint number 202400344***The complaint*

1. On 15 July 2024, you submitted a complaint about the FCA to my office.

Background

2. You and your wife hold self-invested personal pensions (“SIPPs”), managed by Firm Y. Firm X was a wholesale broker who provided custody services to Firm Y. Firm X hold and control the assets in your SIPP. The FCA began to have concerns about this firm and placed restrictions on its activities in September 2023. On 13 October 2023, Firm X was placed into Special Administration and Joint Special Administrators (‘the administrators’) were appointed. Since then, you and your wife have been unable to access your pension funds and, as a result, have suffered stress and financial hardship.
3. As soon as a firm, including those regulated by the FCA, enters administration, responsibility passes to the administrator and their actions are governed by separate legal regimes, overseen by the insolvency service. That said, I can see that the FCA has been in regular touch with the administrators. I believe they are acutely aware of the situation.

Your FCA complaint

4. On 13 May 2024, you submitted a complaint to the FCA, under the Complaints Scheme for failing to release your pension funds. The FCA did not uphold your complaint on the basis that it feels it acted reasonably in relation to Firm X and its consumers. It also explained that the administrators are now responsible.

Why you are unhappy with the regulator’s decision

5. Your Complaint to my office – you believe that the FCA has failed to consider the impact its actions against Firm X would have on retail consumers. In 202400344

particular, you feel that the FCA's investigation into the firm should have been concluded faster and that it ought not to have imposed restrictions on the firm as you believe that the firm did not do anything wrong. You, therefore, request that the FCA compensate you for the hardship you have faced. I have not upheld this complaint, and therefore I do not recommend that the FCA offer you any remedy.

6. Query - you also want to know who should be held responsible for your inability to withdraw your pension funds. The answer to this query is below.

Preliminary points (if any)

7. Like the FCA, I am required to respect confidentiality. This means that sometimes I cannot report fully on the confidential material to which I have access. However, as part of the Complaints Scheme, I have access to all the FCA's complaints papers, including confidential material. This is so that I, as an independent person, can see whether I am satisfied that the FCA has behaved reasonably. Sometimes this means that all I can say to complainants is that, having studied the confidential material, I am satisfied that the FCA has (or has not) behaved reasonably – but I am unable to give further details. This can be frustrating for complainants, but it is better that I am able to see the confidential material.

Our analysis

8. Your complaint and query to my office raises new matters which the FCA has not reviewed. However, your complaint is one which other complainants have raised and the FCA has reviewed, therefore I didn't consider it necessary to refer it back to the FCA and have addressed it below. I invited the FCA to answer your query and it has done so: please see below.

Complaint

9. With respect to the FCA's engagement with the firm, it says the following:
“In December 2022 the FCA started to have concerns with the firm and worked with the firm to resolve these issues. This resulted in the firm agreeing to voluntary restrictions which were imposed on 25 May 2023; this included not onboarding any new clients and paying connected parties. The firm were still

authorised to conduct regulated activities for existing clients which included providing trading and custody services.

As the FCA continued to work with the firm, additional concerns were discovered as the firm could not adequately demonstrate it had sufficient systems and controls in place to protect its clients' money and assets, and there were also concerns the firm was connected to financial crime.

This led to the FCA imposing additional restrictions on the firm, as set out in the First Supervisory Notice dated 15 September 2023, preventing them from dissipating assets. The firm subsequently entered Special Administration on 13 October 2023. The FCA webpage below contains several links and a frequently asked questions section to provide more information on the [https://www.fca.org.uk/news/news-stories/restrictions-placed-Firm X-marketslimited-and-firm-enters-special-administration#expandable1292191](https://www.fca.org.uk/news/news-stories/restrictions-placed-Firm-X-marketslimited-and-firm-enters-special-administration#expandable1292191)."

10. In your comments on the Preliminary Report, you requested more information regarding the nature of *"concerns the FCA had about Firm X in December 2022/September 2023 and whether these concerns were justified"*. For the confidentiality reasons mentioned above, I am unable to provide more information about the circumstances surrounding Firm X but I can reassure you that, in my view, the FCA gave a proper consideration to the potential ramifications its Supervisory Notice could have on the affected consumers, and, in particular, it has said, *"..the FCA has determined that it was appropriate in the interest of protecting consumers to stop the firm from carrying out regulated activities."* I agree. Had the FCA not taken this action, the impact on the consumers may have been far greater and resulted in significant financial losses.
11. In view of the above, I consider that the FCA has acted reasonably and took appropriate and timely action with respect to the firm. I do not consider that the FCA's actions have caused the detriment you have suffered. Had the FCA not intervened to impose restrictions on the firm, your assets may have been at greater risk than they already were. I sympathise with your situation and note that you are still unable to access your assets due to the administration of the firm, and you continue to incur additional financial costs and face tax

implications. However that is not the fault of the FCA. I understand you are of the view that the firm did nothing wrong, however, you have not provided any evidence to support your allegation whereas the FCA file and its communications to investors shows that there were serious concerns about the firm.

12. For these reasons, I do not uphold your complaint.

Query

13. I invited the FCA to answer your query and it has replied that the Firm's accounts have been frozen by the Courts and the funds cannot be released until such time as the administrators make a request to release the funds. The FCA has provided you with information about how to contact the administrators or to complain about their actions.

14. I understand that your and your wife's SIPP's are managed by Firm Y, a regulated entity. You may have a claim against Firm Y. The Complaints Scheme states that regulated firms have to have processes in place for resolving disputes with their customers. The Financial Ombudsman Service (FOS) can also consider complaints against firms and, where appropriate, recommend or provide compensation to eligible complainants. Therefore, you could approach your wealth management firm in the first instance and, if you are still unhappy with their decision, submit a claim to FOS.

15. Further, Firm X is also a regulated entity, which is in administration. Where your claim is in connection with regulated activities of a regulated firm that has gone out of business, you may be eligible to seek redress from the Financial Services Compensation Scheme (FSCS).

16. As per the 13 August 2024 update on the FSCS website, the Administrators *"of Firm X recently announced that their interim custody asset distribution has now been materially completed. The interim custody asset distribution returned 80% of eligible assets to the customers who have a relationship with Firm X via a wealth management firm and certain other customers. **Client money was not included in the interim distribution...** The [Administrators] will release the remaining custody assets (around 20%) upon a Distribution Plan being approved by the Clients' and Creditors' Committee and the Court. The*

*Distribution Plan will set out how customers' investments will be returned to them. **Client money is expected to be distributed under a parallel process. We understand that this may take a number of months, reflecting the challenges encountered by the [Administrators] in winding down the business.** The approval of the Distribution Plan will also enable FSCS to pay compensation to our Eligible Customers."*

17. Therefore, I would suggest contacting the Administrators and FSCS and making them aware of your circumstances, if you have not already done so. They will advise you further on your options.
18. Whilst the FCA does not regulate the administrators it regularly communicates with them to address any regulatory issues impacting the administration procedures managing harm and risk to the consumers. This interaction is very welcome but I am aware of a number of firms in financial difficulties where customers are prevented from accessing their assets. I regard this as a serious issue (as I know do the FCA) and I invited the FCA to comment whether it has any remit to comment on or influence the efficiency of the progress of the administration. After a considerable delay, the FCA has responded to this (please see the appendix).
19. Having reviewed the entire FCA response, I am satisfied that the FCA is working with the administrators appropriately in the circumstances. I have included a redacted FCA response in the appendix which provides more information which you may find useful. It contains as much information as I am able to divulge subject to s348 restrictions and other confidentiality considerations.

The Complaints Commissioner

Complaints Commissioner

28 March 2025

Appendix

FCA Response (redacted)

20. “In response to your queries on the FCA’s involvement and influence on the insolvency process, ...the FCA has regular engagement with HMG (both HMT and InsS) on a wide range of resolution policy and operational matters.
21. Once a firm enters administration it is subject to insolvency law and – however when a firm enters administration it is still subject to FSMA rules which grants the FCA some powers. The topic of exactly how the FCA is able to influence or expedite matters has been an ongoing topic of discussion in Supervision as part of the Investment Bank (Amendment of Definition) and Special Administration (Amendment) Regulations 2017 (“IBSAR”), following the statutory review conducted by Peter Bloxham (the Bloxham Review), which recommended the FCA and the Treasury to empower the FCA to operate a more effective regime to protect client assets in going concern mode and also on the failure of an investment firm.
22. The finalised guidance for insolvency practitioners on how to approach regulated firms was published in 2021 by the FCA, which sets out our expectations of insolvency practitioners when a firm enters administration. However the administration in this case is governed by the IBSAR framework, and it is not within the FCA’s remit to seek to amend or influence these regulations. The ownership of the insolvency legislation sits with the Insolvency Service, which is an executive agency of the Department for Business and Trade. In relation to the comments made about financial difficulties customers face as a resulting of the administration process, JSA’s will often consider applications for hardship payments, which are assessed on a case-by-case basis.

The FCA’s work with [the administrator]

23. When appointed as the administrators of Firm X in October 2023, one of their main objectives was the speedy return of client monies. However due to Firm X’s failure to maintain accurate books and records, [the administrator] had to perform a reconciliation of client assets and money, which involved ensuring that assets and money held by the firm match client records. During this time, it

would have been unclear whether or not there was a shortfall in client money. Consequently, no money could be released until [the administrator] concluded the reconciliation. As touched on above, during this time [the administrator] were considering applications to make hardship payments, which were assessed on a case-by-case basis.

[The administrator] has continued to proactively communicate updates to the FCA with regular progress reports, requesting feedback and comments prior to publication and has made regular SUP 15 updates where relevant.

24. As you will see from the supervisory documents relating to [the firm] and our wider supervision of the market (uploaded), we are satisfied that the administrators were not delaying the processing and distribution of assets, as the delays were due to challenges outside of their control. This has mainly been due to the state of affairs of the firm when it was first taken over by the administrators, which we appreciate can be typical of firms who have a requirement imposed on them and/or are placed in special administration. As of November 2024, 80% of client assets had been returned with 20% retained for contingencies – however issues remained with the reconciliation of client monies due to a third party claiming its Title Transfer Collateral Agreement (TTCA) money held with Firm X should be treated as client money – which has contributed to further unavoidable delays..... ..Despite this, the administrators aim to complete the special administration by mid-2025. The FSCS are also working closely with [the administrator] to establish their position in these matters and what they can offer affected consumers”.

28 March 2025