

10 August 2022

Final report by the Complaints Commissioner**Complaint number FCA001680***The complaint*

1. On 22 March 2022 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

The FCA should have prevented the appointment of broker Y or ensured the appointment of a more suitable firm during administration. You allege the FCA failed to do suitable audit checks to see if they were a suitable custodian. You do not understand why the FCA allowed broker Y to be selected as the preferred custodian and without consulting shareholders. The remedy you are seeking is for the transfer to take place on your holding to a platform of your choice and your missing dividends of £2,000 to be paid to your bank account.

What the regulator decided

3. The FCA did not uphold your complaint.
4. The board of Firm Z (an FCA authorised firm) resolved to place the company into Special Administration, subject to receiving the FCA's and the Bank of England's consent to this process. The High Court granted an order placing Firm Z into Special Administration in 2019. The FCA has explained to you the following:
5. 'The Joint Special Administrators (JSA) were appointed by the Court and did not act on the instruction of the FCA. As part of the Administration process the JSA were also required to prepare a Distribution Plan (the purpose of the administration is to realise the company's property to make a distribution to the

company's secured or preferential creditors including investors) which was approved by the Creditors' Committee and ultimately by the Court. The JSA concluded that the most appropriate strategy for the return of Client Assets was a coordinated transfer to a single regulated broker. The identified broker was Firm Y. The court approved the Distribution plan in 2020.

6. The FCA worked with the JSA to support their actions but were not responsible for the decisions made by the JSA. The selection of Firm X was made by the JSA of Firm Z during the special administration, approved by the Creditors' Committee, and confirmed by the High Court as part of its approval of the Distribution Plan. The FCA liaised and provided information to the JSA throughout the process as required / requested. The FCA provided information to the JSA for the JSA to consider when selecting a firm to take on the Firm Z book.
7. The FCA do not have a formal veto over the choice of broker to whom client assets are transferred as part of the special administration process. This is because the FCA do not have a formal role in the process: the FCA provided information to the JSA but were not the decision maker'.
8. The JSA decided to transfer the Firm Z book in line with their statutory objectives. The JSA chose Firm Y from the firms that applied to be part of the process. At the time the transfer to Firm Y was considered the best option proposed, and it was in clients' interests for a bulk transfer to occur. This was because it would have been significantly cheaper than individual transfers which would have taken a really significant period of time. Firm Y had, and still has, the appropriate permissions and answered the FCA's questions. The decision to enter into a contract with Firm Y was a commercial decision for the JSAs and was part of the distribution plan approved by the court.'

Why you are unhappy with the regulator's decision

9. You have told me that you were concerned about the broker Y as it had been fined in the past by the FCA; and you did not accept the FCA's decision.

My analysis

10. The FCA's explanation to you of its role in the matter is correct.

11. I have considered whether the FCA could or should have objected to the appointment of broker Y, given the circumstances at the time. I should make it clear that it is not my role to say what I would have decided had I been the regulator. My task is to assess whether or not the decisions were within the range of decisions which the regulator could reasonably have taken, in the light of its statutory duties and policies. In making this assessment, I have the benefit of reviewing all the regulator's records, including material which is confidential.
12. 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. In this case however, a simple statement from me that, having studied the papers, I have come to the view that the FCA's decision was not unreasonable – I do think the FCA could have been more transparent with you in its decision letter. I explain below some of the considerations which have informed my decision.
13. My review shows that the FCA had discussions with the JSA, attended the creditors committee meeting, and reviewed the distribution plan. In my opinion the FCA gave the matter at hand appropriate consideration. Some (but not all) of the factors considered, for illustrative purposes, were that it was deemed by all parties involved that it was in the clients' interest for a bulk transfer of assets to occur; Firm X had all the regulatory permissions necessary to accept the transfer, and it was chosen as a commercial decision made by JSA based on what they felt was the best option among firms interested in taking on Firm Z's book. I can see that the FCA gave feedback to JSA but it was felt there was no strong reason to object at the time, given all the circumstances in the round.
14. I consider that the decision not to intervene cannot be said to have been unreasonable, the decision having been reached after careful analysis of the factors involved in a way which is consistent with the FCA's regulatory approach. I recognise that a case could have been made for regulatory intervention, but it is not within my remit to rule on the relative merits of competing arguments in cases such as these. It is certainly the case that some of the issues which later arose after the High Court approved the Distribution Plan in 2020 which included the proposal to use Firm Y as the identified broker could not have been foreseen at the time.

15. Due to the reasons above, coupled with the explanation the FCA has already provided you with, I do not uphold your complaint.

My decision

16. I appreciate you remain unhappy with my decision, but my view remains as above, and I do not uphold your complaint.

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Complaints Commissioner

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