

10 August 2022

Final report by the Complaints Commissioner**Complaint number FCA001692***The complaint*

1. On 2 April 2022 you asked me to investigate a complaint about the FCA on behalf of a Trust of which you are one of the trustees.

What the complaint is about

2. The FCA summarised your complaint as follows:

The FCA should have prevented the appointment of Firm X or ensured the appointment of a more suitable firm during administration. You consider the [Administrators] and the FCA jointly responsible for the appointment of a broker that was clearly inappropriate.

You allege the FCA made mistakes, there was a lack of care, unreasonable delay, unprofessional behaviour, bias and a lack of integrity in the appointment of Firm X. The FCA should not have considered such a firm acceptable. The FCA and the administrator delayed the return of assets so that the company they had chosen (X) could ready itself to receive the assets. The FCA and [the Administrator] prioritised the small amount of money that the administrators received from Firm Y over the needs of the 18,000 or so clients.

The remedy you are seeking is payment in compensation for your time, distress, and financial disturbance. You are also seeking a change in regulation which protects people from inappropriate brokers and a change in regulation so that assets are returned to clients quickly.

What the regulator decided

3. The FCA did not uphold your complaint. It explained that ‘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.
4. 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.
5. 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.
6. 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’.

Why you are unhappy with the regulator’s decision

7. You have told me that you were concerned about the broker Y as it had been fined in the past by the FCA; that it couldn’t ‘handle the volume of assets coming from Firm Z.’ And that it had ‘shady connections with offshore entities’.

You did not think the FCA ought to have allowed the transfer of assets to broker Y. You subsequently experienced severe delays in obtaining your assets.

8. You have told me that you also complained about Broker Y to the Financial Ombudsman Service (FOS) which upheld your complaint and awarded you some redress.
9. The FCA eventually placed a restriction on Broker Y and required it to cease regulated activities for retail clients.
10. You are concerned about what you perceive to be a potential lacunae in the regulatory landscape. You say: 'The FCA denies responsibility for this scandal as they are not responsible for choosing the brokerThe Administrator says that they are not responsible because Firm X was approved by the FCA....my complaint centres on the fact that no one seems to be responsible for keeping UK retail client pensions/ISAs/investments out of the hands of incompetent and possibly criminal financial companies. I would like to see this changed'.
11. The remedy you seek is 'If the procedures that the FCA followed allowed assets to be transferred to a firm that was not able to provide adequate broking services, those procedures should be changed'.

My analysis

12. The FCA's explanation to you of its role in the matter is correct. However, it is not a full explanation of what happened, and what the FCA's powers are.
13. The FCA had the ability to stop the transfer of the book to Firm X, and it had the ability to not consent to the transfer due to the circumstances of the case, and it had the right to attend court when the distribution plan was considered.
14. I have considered whether the FCA could or should have objected, 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.

15. 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.
16. 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. You have asked a number of questions about why this firm was chosen by the Board and have pointed out your concerns about it, however, I am restricted by confidentiality reasons from going into any more details than I have in this report.
17. 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.
18. Due to the reasons above, coupled with the explanation the FCA has already provided you with, I do not uphold your complaint. I do, however, think that if the

FCA had been more forthcoming in its decision letter, some of your concerns about a lacunae in the regulatory system may have been alleviated.

My decision

19. 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. I am sorry that I cannot provide you with more information, however, in my view the actions of the FCA were not unreasonable. For this reason, I do not uphold your complaint.

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Complaints Commissioner

10 August 2022