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11 March 2025

Final report by the Complaints Commissioner

The FCA's handling of Safe Hands Plans Limited

What the complaint is about

1. I have received numerous complaints about the FCA's handling of Safe Hands Plans Limited ("Safe Hands" or "firm") since September 2023. Previous decisions in relation to Safe Hands complaints can be viewed on the Office of the Complaints Commissioner's website (https://frccommissioner.org.uk/wp-content/uploads/202300675-Issued-24-May-2024.-Published-20-June-2024.pdf and https://frccommissioner.org.uk/wp-content/uploads/202300742-Issued-31-May-2024.-Published-20-June-2024.pdf).

2. Complainants have raised a large number of allegations about failings on the part of the FCA in relation to Safe Hands. I have taken the decision to issue one report with a focus on the substantive issues raised. I have not addressed each granular complaint levelled at the FCA about this matter. The purpose of this decision is not to comment on every individual point or question asked by the parties, rather it's to set out my findings on the substantive issue of the complaint and reasons for reaching them.

3. This approach also means that the elements I have reviewed do not specifically align with the allegations that were investigated by the FCA.

4. I have summarised the numerous allegations about failings on the part of the FCA as falling broadly into the following two elements which will be covered in the analysis below.

Element One

5. ***The FCA failed to "design and implement" a regulatory framework for dealing with the funeral plan industry prior to 2022.***

Element Two

6. *The FCA failed to identify significant 'perimeter risks' in connection with the new owner of Safe Hands, its newly appointed trustees and fund managers in the period from 2020 onwards ("the relevant period").*

Decision

7. Element One: This complaint is excluded.

8. Element Two: I have found that the FCA failed to adequately monitor the perimeter with respect to Safe Hands. The FCA was on notice about issues with the firm including that it may have been operating inside the perimeter. The FCA did not follow up on these concerns in a timely manner despite the wider background and, in particular, HMT's public assurance that it would do so in such circumstances.

9. That said, I cannot say for certain what would have happened had the FCA followed up on these concerns in a timely manner, and whether consumer detriment could have been prevented.

Preliminary points

Background

10. I should make it clear that there are some difficulties in deciding what information can be released. This is partly because section 348 of the Financial Services and Markets Act 2000 (as amended) prohibits by law the disclosure of a wide range of information relating to the business affairs of those who are regulated, and also because of the FCA's confidentiality policy which is designed to encourage regulated firms to be open with the regulator, and to avoid prejudicing investigations. However, within those constraints it is clearly in the public interest that as much information as possible is shared with complainants and the public, since without that information it is hard for people to consider whether or not the regulators are performing their duties adequately and reasonably. For those reasons, I have concluded that I am able to disclose further (although not all) information about the FCA's actions in this case, in order that the complainants and, assuming that the decision is published, the wider public can consider the regulator's reasoning.

11. The FCA has provided the following background [1] : *"Safe Hands was incorporated on 30 January 2014 as a limited company with the purpose of providing pre-paid funeral plans to Plan Holders. Records show that at the time of going into administration, there were more than 46,000 Plan Holders.*

12. *Plan Holders would make payment for their chosen plan either by way of a lump sum payment or by way of instalments over a period of up to 25 years. Subject to the Plan Holder making the required payments under their plan contract, Safe Hands agreed to provide the Plan Holder with a funeral service at the time of their death.*

13. *Under the Safe Hands terms and conditions, funds paid by Plan Holders were to be ringfenced from the company's trading funds and placed into a Trust.*

14. *Regulatory Background: Safe Hands was set up to operate outside of the FCA's regulatory framework by virtue of its reliance on the exclusion at Article 60(1)(b) of the RAO [the instrument that describes which activities require authorisation]. This provision exempted funeral plan contracts from regulation where the provider undertook to secure that all funds paid by the customer under the contract would be held on trust for the purpose of providing the funeral, and that the following requirements are or will be met with respect to the trust:*

    (i) the trust must be established by a written instrument; (ii) more than half of the trustees must be unconnected with the provider; (iii) the trustees must appoint, or have appointed, an independent fund manager who is an authorised person who has permission to carry on an activity of the kind specified by article 37, and who is a person who is unconnected with the provider, to manage the assets of the trust; (iv) annual accounts must be prepared, and audited by a person who is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, with respect to the assets and liabilities of the trust; and (v) the assets and liabilities of the trust must, at least once every three years, be determined, calculated and verified by an actuary who is a Fellow of the Institute and Faculty of Actuaries.

15. *All trust-based funeral planning firms acting in accordance with Article 60(1)(b) criteria (i) – (v) were therefore excluded from FCA (or, before April 2013, FSA)*

[1] The FCA decision letter (4 September 2023)

authorisation. The exclusion criterion was introduced in 2001 because the Government at that time considered that plans which met the conditions afforded sufficient consumer protection such that their providers did not require authorisation. Due to the availability of this exclusion, no funeral plan providers operating in this space, including Safe Hands, had obtained authorisation from the FCA before 29 July 2022. The Government later issued a consultation on changing legislation to require all funeral plan providers to be authorised and regulated by the FCA. Following this, the legislation was made in January 2021.

16. *Prior to 29 July 2022, the industry had a self-regulating body, the FPA, which set its own prudential and conduct rules, however firms operating in this space were under no obligation to join the FPA, and Safe Hands did not become a member of this body until 16 July 2019.*

17. *As a self-regulating body, the FPA had no statutory powers to hold rogue or poorly run funeral plan companies to account. They instead could only attempt to influence the conduct of the firms operating in this space by educating or encouraging the management and trustees of such firms to improve. They could issue fines of up to £5,000 to its members, or strip offending firms of their FPA membership, but neither of these options would have had any impact on the non-FPA registered firms operating in the Article 60(1)(b) exclusion space. If the FPA struggled to engage with any firms that they suspected of breaching the terms of Article 60(1)(b) then they had the option to engage with the FCA. The FCA could get involved by engaging with the firm concerned to 'police the perimeter' between businesses that were FCA regulated, and those that were properly exempt from FCA regulation by reminding the offending firm of it of its full obligations under the RAO. The FCA engaged with Safe Hands during the period 2014-2016, and this is something that will be covered in more detail later on. Finally, if the FPA suspected fraud or theft occurring with any of the firms operating in their space, then they had the option of referring that firm to law enforcement. In preparation for regulatory change, Safe Hands made an application to the FCA for authorisation on 29 October 2021. All firms going through this process would need to meet the FCA's Threshold Conditions which are the minimum standards a firm would have to demonstrate that they could meet to become authorised. During our assessment of Safe Hands, the*

company withdrew its application, so on 15 February 2022 the FCA published a statement on its website to explain that Safe Hands had withdrawn its application and would not be taking on new customers. The FCA also recommended that potential customers should not purchase a funeral plan from this firm.

18. *After Safe Hands withdrew its application for FCA authorisation, it fell into administration….. The administrators have assessed that the value of the investments held in trust is not enough to meet the funeral plan obligations and that Safe Hands customers should not expect to receive more than* 20% of *their money back via the administration process.*

19. *Unfortunately, the customers of Safe Hands do not qualify for compensation under the Financial Services Compensation Scheme (FSCS) as the funeral plan industry did not become regulated by the FCA until 29 July 2022".*

Analysis

Element One: The FCA failed to "design and implement" a regulatory framework for dealing with the funeral plan industry prior to 2022

20. The FCA excluded this element of the complaint and I agree it was right to do so.

21. As the FCA explained: *"..the original legislation regarding the funeral plan industry introduced by the government at that time specifically exempted certain categories of funeral plan firm from FCA regulation. It was therefore not within the FCA's remit to treat each and every funeral plan firm as regulated under Article 59, when the overarching legislation provided all trust-based firms who claimed to be abiding by the criteria set out in Article 60(1)(b) with explicit exclusion from our regulation. The FCA was not responsible for introducing the legislative framework that governed the funeral plan industry at that time."*

22. The FCA does not have the power to pass laws – only Parliament can legislate. If Parliament, by virtue of the exemption in Article 60 of the Regulated Activities Order 2001 (RAO), decided to provide an exemption from the requirement to be authorised for funeral plan providers, the FCA could not override that piece of legislation. It neither had the power to require such firms to be authorised, nor to

prescribe rules with which they had to comply. Its powers were limited to policing the perimeter, which is dealt with in Element Two below.

23. Complainants have suggested that, under the conditions above, there was no direct regulatory oversight of firms who were relying on the exemption with a view to ensuring such firms adhered to the exemptions they were relying on, and therefore the FCA ought to have been monitoring the latter in a pro-active way. The FCA had determined an approach for monitoring the perimeter (see below). I understand this concern, however, it remains the case that this is how the legislation was introduced by the government, and the FCA's role within it was limited and did not give them any powers over the funeral plan industry other than in relation to the issue in Element Two.

24. This Element of the complaint, therefore, is excluded for the reasons above.

Element Two: The FCA failed to identify significant 'perimeter risks' in connection with the new owner of Safe Hands, its newly appointed trustees and fund manager X in the period from 2020 onwards ("the relevant period"), which has been the focus of our review.

25. The FCA did not investigate this complaint point. I disagree with the FCA's decision not to investigate the issues referred to it, (not least given that it accepted for investigation earlier complaints which alleged it had failed to identify significant perimeter risks in the period 2014-2016). Whilst it is standard practice for the FCA to have an opportunity to comment on any new points in the first instance, given the circumstances of the case, I did not deem it necessary to refer these points to the FCA for consideration. This is because although the FCA excluded complaint points under this heading, it had already included relevant information which I could access from the internal file. Based on this, I was initially minded not to uphold the complaint regarding the FCA's monitoring of the perimeter. This was, in particular, based on my understanding that Safe Hands had not actually been in breach of Article 60 of the RAO.

26. Complainants responded to my Preliminary Report claiming, amongst other things, that Safe Hands had indeed been in breach of Article 60 and that the FCA had received information about this and other serious risks connected to the company. Following this response, I re-reviewed the evidence and sent the

FCA a series of additional questions. This was necessary because, given that the FCA had not reviewed the complaint in the first instance, understandably the information in the file did not address all of the issues which the complainants raised in response to my Preliminary Report.

27. Before I provide any further information, 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 made by the FCA were within the range of decisions which the regulator could reasonably have taken, in light of its statutory duties and policies and the information it had at the time. In making this assessment, I have the benefit of reviewing all of the regulator's records, including material which is confidential.

28. My analysis below is based in the context of the regulatory environment in which the FCA operated at the time. As mentioned above, the FCA had a limited role in respect of funeral plan providers who operated on the basis of the exemption in Article 60 of the RAO. Its remit was to *"police the perimeter"* with respect to firms that failed to adhere to the criteria set out in Article 60 of the RAO. The FCA's normal practice was to do so primarily based on intelligence it received from other organisations or individuals regarding potential non-compliance of firms rather than to proactively investigate all firms relying on the exemption.

29. In response to the allegation of failing to identify significant 'perimeter risks' in connection with the new owner, the appointment of the new trustee and fund manager, the FCA stated, *"Safe Hands was not an authorised firm and it was not carrying out a regulated activity…" "… so we had no legal remit or requirement to monitor the actions or ownership structures of the business during this time... The identification of such risks in relation to the running of this firm would have been a matter for the independent trustees, the professional advisers appointed to the firm, and the industry's self-regulatory body (The Funeral Planning Authority)(FPA)."* Subject as set out below, I agree with this position.

30. The FCA has also stated that *"[t]here was no obligation on [it] to proactively monitor changes to funeral plan firms' trustee or IFM arrangements, when*

outside the perimeter", and it only became *"aware of [Fund Manager X's] association with Safe Hands"* in 2021. The FCA has also said that neither Article 60 of the RAO, nor any FCA Rules precluded the movement of funds of a trust-based funeral provider out of the UK.

31. However, in April 2021 I consider that the FCA was on notice that there may be issues with Safe Hands when it received anonymous intelligence and that, in addition, Safe Hands may have been operating inside the regulatory perimeter.

32. In general, the FCA maintains that it is not under an obligation to take action in each and every case when a firm is suspected of carrying out regulated activities without authorisation and it does so on the basis of its understanding of the risk a firm poses. In other words, it doesn't conduct checks on exempt firms. There is also no requirement for firms relying on an exemption to notify the FCA.

33. The FCA acknowledges that, in the first half of 2021 it did have relevant information about Safe Hands and, it "*could have conducted further enquiries to determine whether or not ….[there was information]..sufficient to evidence a breach of the RAO."* However, the decision it took was not to investigate whether or not Safe Hands was in breach of Article 60 for the reasons below.

34. The FCA's overall strategy for firms in the funeral plan sector at the time was not to *"distinguish a clear line between the Article 60 exemption and the threshold conditions"* and to use the gateway (provided by the change in the law to take away the exemption) to address any potential harm. *"The FCA's approach for dealing with funeral plan firms was to assess the unregulated firm's ability to meet threshold conditions when they applied through the gateway".*

35. *"The FCA's proposals to deal with 'bad actors' in the funeral plan market"* during this period, as set out in its correspondence to me was:

    a. *"To continue to investigate issues and log as useful intelligence to be flagged as and when firms applied for authorisation.*

    b. *Where firms don't apply for authorisation, this would inform the extent to which further enforcement action may be necessary.*

c. *Whether the FCA went further than this would depend upon the egregious nature of the issues identified".*

36. The FCA contends, in summary, that, although it received anonymous intelligence that Safe Hands might be operating unlawfully within the perimeter, it did not possess *"clear evidence"* or definitive proof that Safe Hands was in fact operating within the perimeter. The FCA has indicated in response to my questions that:

> *"No formal action was therefore taken in April 2021 because we did not have clear evidence of Safe Hands being in breach of Article 60. ". "We consider that it would have taken longer and been more burdensome to have sought to build and bring a case … against Safe Hands. A contested case would have added considerable time and additional resource. We also had no guarantee that such action would have been successful."*

37. As a result, the FCA did not actively progress consideration of the issues raised with respect to any breach of the perimeter. Instead, they focused on the future application for authorisation.

38. In summary, in preparation for regulatory change in early 2022, which took away the exemption on which Safe Hands had been relying and required it to be authorised, the FCA began corresponding with the firm around April 2021 (as it did with other firms in the funeral plan industry) focusing on whether it was able to satisfy the FCA's Threshold Conditions, which are the minimum standards a firm would have to meet in order to become authorised.

39. During this process, throughout the period from April to October 2021, the FCA came to form a view (based on a number of factors) that that there were potential issues with the firm, which would prejudice its ability to satisfy the Threshold Conditions and, therefore, to become authorised.

40. On 29 October 2021, Safe Hands submitted an application for authorisation to the FCA.

41. The FCA reviewed the application submitted on 29 October 2021 and, later, issued a 'minded to refuse' letter to the firm on 9 February 2022 because it was concerned that the firm did not meet Threshold Conditions to be authorised.

42. Safe Hands withdrew its application for FCA authorisation on 9 February 2022 and shortly afterwards went into administration.

43. I have carefully considered the FCA's position and associated issues above.

44. I acknowledge the FCA has discretion in general on how it follows up concerns about a firm. I also acknowledge it takes a risk-based approach in cases like this and relies heavily on information being provided to it. However, given the known issues in the funeral plan sector (including those behind the withdrawal of the exemption) and the fact it received anonymous intelligence in the first half of 2021 about issues with the firm, I think a different approach to the one taken in this case was necessary.

45. For example, specifically with respect to the funeral plan sector pre -2022, HMT identified there were "numerous failings in the [funeral planning] sector" and that there was therefore a need to bring the sector within the regulatory regime of the FCA. For example, on 4 July 2018 HMT published a "Call for Evidence 'Pre-paid funeral plans: call for evidence' ("the CfE")".

46. The CfE explains the FCA's role in dealing with information about potential breaches of Article 60 with respect to funeral plan providers:

> "When UBD receives information about an unauthorised funeral plan provider, it will make enquiries into the matter. This will typically entail sending a warning letter or engaging the provider in correspondence with a view to learning more about its business and assessing whether or not it is complying with the Article 60 exclusion. If the firm is found not to be complying with the Article 60 exclusion, UBD will consider what further action is necessary, depending on the level of seriousness and risk of consumer harm; this ranges from publishing a warning about the firm on the FCA's consumer webpages or commencing a full investigation with a view to civil or criminal proceedings against the firm".

47. The FCA did not follow the approach above.

48. Therefore, given that:

a) There was knowledge that the funeral sector industry in general posed significant risk of consumer harm and indeed HMT had concluded that such harm had already been identified;

b) HMT had publicly stated in the 'call-for-evidence' that potential Article 60 breaches would be investigated by the FCA and;

c) The FCA received anonymous intelligence that there was a risk that Safe Hands may be operating inside the perimeter,

In my view, the starting point ought to have been that the FCA conducted further enquiries of the firm with a view to establishing compliance with the exemption. In any event, its knowledge and conduct in relation to this issue may well have been relevant to any consideration of fitness of the firm to be authorised.

49. Despite its knowledge, and HMT publicly explaining that, given the context, (i.e that consumer harm had occurred), the FCA would make enquiries (and potentially take action) if it received information about Article 60 breaches, the FCA nevertheless adopted a different strategy. It decided not to focus on the Article 60 exemption but instead to look at the threshold conditions (except in potentially the most serious of cases). In other words, it decided not to make enquiries about potential breaches until authorisation talks began (which in the case of Safe Hands meant a delay of nearly a year). This approach despite the factors set out above is in contradiction to the HMT publication and appears to have left consumers open to the risk of harm.

50. Whilst I have reservations about the strategy in general, it is not necessary for the purposes of my investigation for me to comment on its general adequacy, only on how it was applied with respect to Safe Hands. The strategy is not a blanket ban on distinguishing Article 60 compliance from threshold conditions and therefore, following up on issues: It allows for exceptions if matters are deemed serious enough.

51. The FCA's position is that in some circumstances it might go further depending on *"the egregious nature of the issues identified"* in terms of investigating at the very least compliance with Article 60 by a firm.

52. However, the FCA's threshold for taking further action appears to have been in part the existence of credible and cogent evidence of actual breaches on the part of the firm having taken place. It appears to have wanted ''proof'' or 'certainty'' or something approaching that. I do not consider the FCA's application of this threshold reasonable. The likelihood of the FCA having full information which contains irrefutable proof of clear breaches without the need for the FCA to make further enquiries is unrealistic. It follows that I think these grounds (that there was no irrefutable proof of a breach) for the FCA not investigating further are not reasonable.

53. The FCA says it had *"limited options"* to compel the firm to provide information and that it "*would have taken longer and been more burdensome to have sought to build and bring a case for a breach of the Article 60 exemption against Safe Hands".* This statement does not address the legitimate question of why the FCA did not at least attempt to engage with the firm on these and other matters connected to conduct.

54. For example, in the FCA decision letter to complainants in 2023 it said in relation to an earlier period *"In February 2014, for example, the FCA wrote to the directors of Safe Hands to advise that they had concerns about the operation of the Safe Hands Trust, and to query whether the firm would be able to rely on the Article 60(1)(b) exclusion criteria. There followed a period of successful engagement with the firm, which prompted Safe Hands Directors to make a number of changes to the structure and running of their business that was eventually sufficient to provide reassurance to the FCA that the business was being run in accordance with Article 60(1)(b)".*

55. The FCA has said that it took 20 months to resolve matters with the firm previously. I note this and I cannot say what would have happened had the FCA investigated further in the first half of 2021. However, there is no compelling reason why the FCA did not at least ask the question.

56. I note, for example, that the FCA also approached Safe Hands with other questions such as requesting copies of Safe Hands' most recent trust valuation and management accounts on a voluntary basis around April 2021.

57. Given the background highlighted above and the fact that when the FCA began approaching the firm for information which it willingly supplied on a voluntary basis, the FCA has not made a compelling case for why it did not ask the firm for information to ascertain if the business was operating inside the regulatory perimeter.

58. I cannot say with certainty what would have happened if the FCA had requested this information from the firm, but it is a possibility the FCA may have obtained information and considered it appropriate to exercise its powers, which may have potentially led to better outcomes for investors.

59. The FCA has now said that it would not have taken the option of writing to the firm in 2021 about the Article 60 exclusion as it did in 2016, because *"we did not have concerns about potential fraud or mis-use of client funds at that time [2016]"*. It says that given the increased risk of this by 2021 it *"would want to avoid 'tipping-off' the firm about the FCA's interest, which may result in greater harm to consumers if, for example, it triggered the firm to dissipate any remaining consumer assets and/or destroy evidence.."*. The FCA applies this same reasoning (e.g. not wishing to tip off the firm) for not writing to the trust fund manager, which it did regulate. The FCA says *"writing directly to the firm is unlikely to be an effective way to investigate the allegations because we would have no evidence to counter the explanations provided by the firm".*

60. The FCA points out that it *"had no concerns about fraud at Safe Hands in 2016, whereas we are likely to have had such concerns in 2021... This is one of the reasons that different approaches were taken in these 2 scenarios (alongside the fact that there was no impending authorisation application gateway in 2016)'*. I understand the tipping-off point, but I don't accept that this is an excuse for doing nothing (at that point) given the known issues and risks of consumer harm. It has also said *"any other decision open to us in April 2021 would necessarily have taken time, and much longer in our view, than waiting to address the issues during the authorisation application gateway which opened in September 2021"*.

61. The FCA also says that asking Safe Hands questions with respect to Article 60 in April 2021 would likely not have yielded any results: *"Given that the directors had already changed, it is likely the firm would have relied upon this to evidence the fact they were compliant with the requirements in Article 60".*

62. I note the points the FCA makes, however, these are points it makes now as a result of my investigation, and I have not seen evidence that these were contemporaneous considerations I have about its actions in 2021.

63. In any event I am unable to conclude from the evidence available that there would have been no adverse information forthcoming from the firm or through other sources had the FCA investigated at least the potential Article 60 exemption.

64. It is also not sufficiently clear to me how the FCA proposed to ever establish the facts about the potential misconduct if it did not ask the firm or the fund manager, and I note eventually it did so in any event. Finally, there is no compelling reason the FCA makes as to why it did not even try to ask the firm the relevant questions (as per above).

Decision

65. For the reasons above, I consider that the FCA failed to adequately to monitor the perimeter with respect to Safe Hands. In my opinion, I have asked the FCA all relevant questions on the substantive questions, based on the material facts of the case; I have fully considered and balanced the answers that the FCA has provided in light of other evidence available to me. The FCA was on notice about issues with the firm including that it may have been operating inside the perimeter. The FCA did not follow up on these concerns (including concerns about fraud: see paragraph 60 above) in a timely manner despite the wider background and, in particular, HMT's public assurance that it would do so in such circumstances.

66. The FCA does not accept that it should have taken the option of writing to the firm in 2021 to express its concerns and I have outlined the reasons the FCA gives above. I do not agree that the FCA's reasons for not following up the

concerns it received in the anonymous intelligence in the first half of 2021 are appropriate and reasonable and I have explained why above.

67. I cannot say what would have happened had the FCA investigated the concerns it had in the first half of 2021 given that this is not something that either the FCA or I have considered as part of this investigation.

68. Whilst I have upheld this complaint element, I have not considered the issue of compensation. This is because under the Complaint Scheme it is standard practice[2] and preferable that issues that have not yet been considered by the FCA are left to the FCA to determine in the first instance, including whether compensation is payable, and if so on what basis. That is usually the best way to resolve matters, because in this case, in order to determine if compensation is payable would require engagement with a potentially significant number of consumers to establish the quantum of their loss – information not available to us – and the FCA is better resourced to undertake such an exercise. . In light of my decision to uphold this element, I now recommend that the FCA consider the issue of compensation and provide a response to both you and me on this point.

Complaints Commissioner

11 March 2025

[2] The Complaints Scheme: Complaints against the Regulators (The Financial Conduct Authority, the Prudential Regulation Authority and the Bank of England), page 18, paragraph 8.3