

CASS Considerations When Planning for ‘Day One’

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Our previous article focused on the [importance of CASS Resolution Packs](#) for firms that hold custody assets and/or client money (“CASS Firms”) to ensure they are prepared should they enter an insolvency process, in accordance with the Financial Conduct Authority’s (“FCA”) Client Asset Sourcebook (“CASS”) requirements.

This article focuses on the CASS-related issues and challenges that may arise in the period leading up to an insolvency event, with an emphasis on crisis management and engagement with the FCA.

Board Considerations

When a CASS Firm experiences distress, its directors must remain mindful of the firm’s legal and regulatory duties (for example, the Consumer Duty in relation to retail customers), as well as their own duties as directors. This ensures that the interests of all relevant stakeholders are appropriately considered in decision-making. The interests of creditors, customers and shareholders may not align. However, striking the right balance – for example, between creditor and shareholder interests pursuant to s172(3) of the Companies Act 2006, or between the interests of the company and its customers – will be essential if the board is to avoid later criticism and potentially significant fines, as demonstrated in the recent BHS judgments.¹ The board should therefore ensure its approach to managing the firm’s distress reflects all relevant considerations.

The failure of a CASS Firm presents unique challenges, and the actions taken in the days and hours preceding insolvency can have significant consequences. The board will also face difficult decisions. Early engagement with the FCA, supported by experienced insolvency professionals and legal advisers, will be key.

¹ Wright and others v Chappell, Henningson and Chandler [2024] EWHC 1417 (Ch), Wright and others v Chappell, Henningson and Chandler [2024] EWHC 2166 (Ch)

Effective Planning

The board should ensure that the CASS Resolution Pack is readily available so that, in the event of insolvency, any proposed insolvency practitioner ("IP") briefed to manage the firm can act swiftly to understand the business model, the firm's records and the mechanics of its client asset segregation arrangements.

Effective planning for an impending insolvency must also address several priorities, including:

- Understanding what steps are needed to avoid a disorderly unwinding of client positions
- Identifying where assets and funds are located, whether client assets are properly segregated and how current reconciliations align with regulatory records
- Assessing the quality of client records and their alignment with internal ledgers and third-party custodians
- Preparing an effective communications strategy
- Ensuring key systems remain operational, including outsourced functions²
- Assessing client eligibility under the Financial Services Compensation Scheme ("FSCS") and, where appropriate, engaging early with the FSCS to streamline claims handling

Engaging with the FCA: Transparency and Coordination

The FCA is a critical stakeholder both before and during the insolvency process. Pre-insolvency, senior management, alongside the proposed IP, should establish a clear and proactive engagement strategy with the regulator. Many of the FCA's expectations of both the CASS Firm and the proposed IP are outlined in its Guidance for Insolvency Practitioners.³ Required steps include:

- **Early notification:** The FCA expects to be notified as soon as a material risk to client money or custody assets is identified. CASS Firms should also comply with the notification obligations in SUP 15.3.21R, which require immediate notification of any formal steps listed in that rule (such as the application for an administrator or receiver). Dual-authorised firms must also notify the Prudential Regulation Authority. Notification delays can result in supervisory action against the firm and/or its senior managers.
- **Information sharing:** The CASS Firm should provide the FCA with relevant court or related documents, allowing the regulator to determine whether participation in any appointment proceedings is necessary.



² It should be noted that certain CASS Firms may have specific regulatory obligations to ensure the continuity of business functions, for example under the PRA's Operational Continuity in Resolution Requirements.

³ [FG25/2: Guidance for insolvency practitioners on how to approach regulated firms](#)

- **Asset return strategy:** The firm should share details of its asset return strategy, including any breaches and how they will be addressed.

Crucially, firms should not assume FCA cooperation. The regulator does not “approve” insolvency decisions; rather its priority is the protection of consumers and market integrity.

The Operations / Senior Manager's Perspective

Engaging with the FCA

As outlined above, a CASS Firm may come under intense FCA scrutiny in the lead-up to insolvency. The FCA will want to understand the firm's books and records and assess any risks to the return of client money and assets. This may involve urgent requests for documentation similar to that held in a CASS Resolution Pack. The FCA may also ask for a walkthrough of the internal and external client money and custody reconciliations.

IT Systems

During periods of distress, it is common for business-as-usual (BAU) systems – including IT platforms, trading desks and call centres – to become overwhelmed. The volume of client requests may increase significantly, making it critical that BAU protocols and workflows are maintained. The proposed IP will depend on data within the firm's IT systems, and any deficiencies could delay the return of client assets.

Client Money Held with an External Third Party

A CASS Firm's treasury or finance function monitors proprietary and client money accounts. Decisions about where client money is held may be influenced by impending insolvency or other factors such as sanctions.

The CASS oversight function must always remain aware that transferring funds out of a client money account in the lead-up to insolvency may create a shortfall in the client money pool. Controls should be in place to prevent transfers from client to house accounts without approval from the oversight function. It is essential that CASS oversight officers understand these controls and know who is authorised to approve such transfers.

Dealing with Client Requests

Clients may become aware of distress at the firm and seek to close trades or transfer funds or assets. CASS Firms must handle these requests carefully, as relevant legal and regulatory considerations may not always align. Legal advice should be sought where appropriate.

Depending on the services provided, contractual provisions may govern how client instructions should be handled. Firms should assess whether these provisions apply to the current situation and whether any carve-outs permit the firm to delay or refuse implementation. Firms should also be aware that refusing a client instruction without a contractual basis could lead to future claims.



Additionally, firms must comply with their regulatory obligations as authorised firms holding client money and providing custody services. CASS Firms serving retail clients must consider the Consumer Duty and whether their actions are in the client's best interests. Even wholesale-only firms must treat customers fairly. Refusing client instructions without proper justification—even if contractually permitted—may result in a breach of FCA Principles for Businesses, which can lead to regulatory action without a specific rule breach.

For the senior manager responsible for CASS compliance, it is essential to ensure that these considerations are balanced in a way that keeps the firm in regulatory compliance despite financial deterioration.

Contingency and insolvency planning for CASS Firms involves a complex interplay of legal, regulatory, operational and governance considerations. From early board-level decision-making and proactive FCA engagement to ensuring the integrity of IT systems and appropriately handling client requests, each step requires careful yet swift action. CASS Firms must balance competing duties and regulatory expectations while maintaining client trust and market integrity. Early, structured preparation—both operationally and legally—is essential to achieving a controlled and compliant outcome on and beyond 'day one' of the insolvency process.

CASS and IBSA Insights

This is the second article in a thought leadership series by Teneo and Hogan Lovells, covering the lifecycle of distress from contingency planning to special administration and the return of client assets. Drawing on real-world experience, the series brings together restructuring, operational and legal perspectives. The next article will address a specific issue that may arise in the lead-up to insolvency: TTCA to CASS transfer requests.

Teneo's Financial Advisory business and Hogan Lovells International LLP have significant restructuring, operational and legal experience in CASS-related matters, along with a deep understanding of the technical and practical implementation of the Investment Bank Special Administration ("IBSA") regime. Should you wish to discuss any of these matters, please do not hesitate to reach out.

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