

Telephone: 020 7066 9346

Email: enquiries@fs-cp.org.uk

18 July 2023

By email: cp23-12@fca.org.uk

Dear Sir / Madam,

Financial Services Consumer Panel response to the FCA CP 23/12 Expansion of the Dormant Assets Scheme – Second Phase

The Panel welcomes the opportunity to respond to the FCA's consultation on the second phase of expanding the Dormant Asset Scheme (DAS). The Panel would like to draw the FCA's attention to its previous response¹ on the first phase of the expansion of the DAS. The Panel also responded to a previous HMT led consultation on expanding the DAS; we expressed concerns on the expansion of the scheme. Our response is included in Annex B below and we would request you consider this alongside our response.

The Panel would encourage the FCA to consider the following general points in relation to the DAS:

Ensuring accurate record keeping

It is important that adequate records should be kept, allowing the identification of the customer whose assets have been transferred, so they can reclaim those assets if they wish to do so. It is therefore important that record keeping will be sufficient to not just identify the customer and the value of the assets at point of transfer, but the nature of those assets, as this will allow a calculation of any change in asset values since the transfer to DAS was made.

Transparency about protection and reclaim options

Customers should be made aware that they are entitled to make a claim at any time in the future for the sum transferred to the Authorised Reclaim Fund (ARF) and on their ability to refer a complaint about a dormant asset fund operator to the Financial Ombudsman.

¹ https://www.fs-cp.org.uk/sites/default/files/final_fscp_fca_dormant_asset_scheme_response.pdf

Signposting requirements

In the spirit of transparency and to reduce any potential harm to consumers, signposting to services such as the FOS and other organisations consumers can turn to for support is vital. The FCA should consider any signposting or communications sent to customers carefully as it should not be ignored that the prevalence of financial scams, and the widespread media coverage they generate, might easily discourage affected consumers from responding if and when they find their accounts emptied.

Ensuring the right to reclaim and take complaints to FOS is extended to the heirs of deceased customers

The Panel strongly believe that heirs of deceased customers should be able to access this scheme and the support provided. This highlights the importance of accurate record keeping should any family members of a deceased customer want to access funds.

Long-term nature of investments; discouragement to identifying/reporting dormant or missing assets

The Panel has an overriding concern in relation to the inclusion of investment assets in the DAS. Investments are, by their nature, long-term instruments and including such assets in the DAS poses a very real risk that affected consumers would suffer concern, worry and distress in the event their assets are removed under the scheme or in error. Furthermore, it would run contrary to the need to encourage consumers to save for the long term, undermine the (intended) stability of the instruments and contradict promotional material and investment guidance that consumers are given when making such investments that they should invest for the long term.

The prevalence of financial scams and widespread media coverage they generate may easily discourage affected consumers from responding to firms if and when they find their accounts are emptied. Consumers whose assets have been removed might easily assume they themselves have done something wrong and are to blame and/or worry that they may become victim to a scam if they *do* respond. Either because of the embarrassment at the perceived 'loss' of the assets or because of fear if increased exposure to fraud, they may keep quiet rather than consult their partner/children/carer/legal support or providers about the issue and ask how to reclaim the funds. This concern is particularly acute for older and more vulnerable investors/savers whose ability to pursue such claims might, in an event, be more limited.

An investment account in whatever form is designed for medium to long (sometimes very long) term saving. Pensions, ISAs and General

Investment Accounts can all be used to save for the long-term objectives of providing for retirement, passing wealth onto the next generation and even as provision for funeral costs. By design, therefore, they are intended for the very long term – decades, not years. Consumers are often advised not to ‘fiddle’ with their investment accounts, but to leave them to accumulate growth. Twelve-year periods of inactivity do **not** therefore make such accounts dormant.

For the reasons outlined above we are therefore not supportive of the dormant asset scheme being expanded to cover investment assets.

We have, however, continued to answer the questions raised in the consultation in the unwelcome event that the scheme expansion is pursued.

Our responses to the questions posed in the consultation are included at Annex A below.

Yours sincerely,

Helen Charlton

Chair, Financial Services Consumer Panel

Annex A – responses to questions

Q1. Do you agree that these proposals are necessary and proportionate to allow AFMs and depositaries to be participants in the DAS?

The Panel agrees that, where firms participate in the Dormant Asset Scheme (DAS) work, it is essential that adequate records should be kept, allowing the identification of the customer whose assets have been transferred, so they (or their estate) can reclaim those assets if they wish to do so.

A consumer who has invested in assets such as securities has a reasonable expectation that their money will remain invested. The Panel therefore considers that where a customer subsequently reclaims any assets that have been transferred to the DAS, the value of assets that they reclaim should be the value of that asset at the point they reclaim it had it have remained invested, not the value when it was transferred. This will allow customers to benefit from any market appreciation.

It is therefore important that record keeping will be sufficient to not just identify the customer and the value of the assets at point of transfer, but the nature of those assets, as this will allow a calculation of any change in asset values since the transfer to DAS was made.

Q2. In particular, do you have any comments on the proposal to treat changes to the instrument and prospectus of the fund as significant changes requiring prior written notice to unitholders?

No comment.

Q3. Are there any other steps we should take to enable participation, or to protect the rights of fund investors whose dormant assets are transferred to the ARF?

No comment.

Q4. Do you agree that the proposed amendments provide sufficient certainty that the requirement to hold the money as client money is extinguished for all relevant chapters of CASS? If not, what else should we consider?

Yes.

Q5. Do you agree that payment to the DAS should be given preference to paying away to charity where the firm is already a participant in the DAS?

Yes. This helps to deliver the 'key indicators of success' following expansion of the scheme, including the number of firms choosing to participate in the scheme and are accepted by RFL, and the value of dormant assets that are transferred to the scheme. It removes the contingent liability on firms that pay away dormant assets to charity under CASS rules to pay back the money from their own funds should the dormant client come forward to claim, and transfers the reclaim risk to the ARF, which should in theory provide more certainty for customers.

Q6. Do you agree that CASS rules should be amended to include tracing requirements in addition to firms' contractual obligations with the ARF?

Yes. This brings a natural alignment with and support for the associated requirement to keep adequate records, while increasing the opportunity and likelihood of identifying the customer and enabling them to reclaim their assets if they want to. It also contributes to delivering the FCA's objectives of securing an appropriate degree of consumer protection, promoting market integrity and promoting effective competition in the interests of consumers, giving certainty to firms and investors that the potentially complex process of reclaims will be carried out properly.

Q7. Do you agree the requirements are proportionate? If not, what should we consider?

The Panel would like to understand what the FCA means by 'reasonable steps' and would encourage the FCA to provide as much detail as possible within their evidential provisions as possible. Without this, there is a risk of misinterpretation of the wording 'reasonable steps' which may lead to different outcomes for consumers in similar positions.

Q8. Do you agree that firms holding dormant client money held under CASS 5, CASS 11 and CASS 13 must attempt to transfer the balance to the ARF?

Yes.

Q9. Do you agree that dormant client money held under CASS 7 should, where possible, be paid to the ARF in preference to applying it to any shortfall in the client money pool following a PPE?

The Panel would prefer to see the client money pool be the primary source of protecting consumer assets on the basis that clients who know the firm has failed while holding their assets should be protected and have first call, while 'dormant' or historically unclaimed client money would receive secondary protection.

The Panel therefore disagrees and does not support the above. The Panel would question why clients who know the firm has/had their money when it failed be required to accept a shortfall when there is 'dormant client money' available but this gets paid to the ARF in preference?

Q10. Do you agree with our proposal not to amend the Handbook Glossary definition of a regulated activity to include dealing with 'unwanted asset money'?

The Panel disagree with this proposal as it means that the Financial Ombudsman will not be able to consider a complaint against a dormant asset fund operator in relation to 'dealing with unwanted asset money'.

Should the FCA choose not to amend the glossary definition, the Panel would encourage close monitoring of this area to identify any harm that arises from a dormant asset fund operator's receipt of an unwanted asset. In the event that consumer harm does arise, then the Panel would expect the FCA to act accordingly.

Q11. Do you agree with our proposal to enable persons who were entitled to certain dormant investment assets owing to them, or client money held from them, to refer a complaint about the dormant asset fund operator to the Financial Ombudsman Service?

The Panel agree with this proposal.

Q12. Do you agree with the Financial Ombudsman's proposal not to mirror the changes we are making to the CJ in the VJ and not to expand the VJ to cover complaints against dormant asset fund operators relating to dealing with unwanted asset money?

The Panel agree with the FOS proposals excluding activities relating to the dormant asset scheme from the VJ however, the FCA should monitor the impact of any changes and intervene accordingly.

Q13. Do you agree with the proposal to remove obligations relating to the dormant asset fund operators from the FSCS?

Yes as long as the provision in the Dormant Assets Act for Treasury to make loans to the ARF where the fund is or is likely to become unable to meet its liabilities delivers the same or ideally an increased level of protection that consumers would have received from the FSCS protection.

Annex B - The Financial Services Consumer Panel (the Panel's) response to the DCMS Consultation on the Dormant Asset Scheme Expansion (June 2020)

Dear Sir / Madam,

The Financial Services Consumer Panel (the Panel's) response to the DCMS Consultation on the Dormant Asset Scheme Expansion

The Financial Services Consumer Panel is an independent body established by statute to advise the Financial Conduct Authority (FCA). We represent the interests of individual and small business consumers in the development of policy and regulation of financial services in the UK.

Our overriding concern relates to the move to include long-term savings and investments in the dormant assets scheme. Savings and investments in pensions, ISAs and General Investment Accounts are, by their nature, long-term instruments. Including such assets in the dormant scheme poses a very real risk that affected consumers would suffer concern, worry and distress in the event their assets are wrongly removed runs. Furthermore it would run contrary to the need to encourage for consumers to save for the long term, undermine the (intended) stability of the instruments and contradict the promotional material and investment guidance that consumers are given when making such investments.

It should not be ignored that the prevalence of financial scams and the widespread media coverage they generate might easily discourage affected consumers from responding if and when they find their accounts emptied. Consumers whose assets have been removed might easily assume they themselves have done something wrong and are to blame and or that they risk becoming victims of scam if they *do* respond. Either because of embarrassment at the perceived 'loss' of the assets or because of fear of increased exposure to fraud, they may keep quiet rather than consult their partner/children/carer/legal support or providers about the issue and ask how to reclaim the money. This concern is particularly acute for older and more vulnerable savers whose ability to pursue such claims might, in an event, be more limited.

'Investments' in pensions, ISAs and General Investment Accounts should be viewed very differently to savings in bank or building society accounts. Savings accounts are relatively short/medium term instruments, with even fixed rates only lasting a few years. Consumers view these savings as 'cash at hand' readily available and easy to access. We accept that if such savings accounts haven't been touched for 15 years there is a fair likelihood that they probably won't be.

An investment account in whatever form, however, is designed for medium to long (sometimes very long) term saving. Pensions, ISAs and General Investment Accounts can all be used to save for the long-term objectives of providing for retirement, passing wealth onto the next generation and even as provision for funeral costs. By design, therefore, they are intended

for the very long term – decades, not years. Consumers are often advised not to ‘fiddle’ with their investment accounts, but to leave them to accumulate growth. Twelve-year periods of inactivity do **not** therefore make such accounts dormant.

For the reasons outlined above we are therefore not supportive of the dormant asset scheme being expanded to cover investment assets.

We have, however, continued to answer the questions raised in the consultation in the event that the scheme expansion is pursued.

Yours faithfully

Wanda Goldwag
Chair, Financial Services Consumer Panel

Consultation on expanding the dormant assets scheme: response sheet

RESPONDENT INFORMATION

<p>Respondent(s) <i>When responding, please state whether you are responding as an individual, or on behalf of an organisation, multiple individuals or multiple organisations. Joint responses with like-minded stakeholders are encouraged. If responding on behalf of multiple individuals or organisations, please make it clear who you are representing and, if applicable, how their views were assembled.</i></p>	<p>Simone Shillingford (Secretariat) responding on behalf of the members of the Financial Services Consumer Panel.</p>
<p>Sector (if applicable)</p>	<p>Not applicable</p>
<p>Future contact <i>May we contact you to discuss your</i></p>	<p>Yes</p>

<i>response to this consultation, if necessary?</i>	If yes, please provide your contact details:
Date <i>Please ensure your response is received before 23:59 on 16 July 2020.</i>	enquiries@fs-cp.org.uk

RESPONSES

PLEASE NOTE: If you leave a response blank, we will take this to mean that you have no comment on that question.

1. Do you have any comments on the proposed scope of assets in an expanded scheme (subject to ensuring tax neutrality)?

Question	Response (delete as applicable)	Comments
1	YES	<p>We are generally concerned that, due to the time periods involved, a high percentage of consumers who identify that their savings/investments have been removed from their accounts (as they have been labelled as dormant) are likely to be elderly and potentially vulnerable.</p> <p>We accept that the consumer will be repaid any assets wrongly removed, however, we cannot adequately describe the level of concern, worry and distress that the initial discovery of the removal of the funds will cause these consumers. Moreover, at a time when financial scams are both on the increase and always in the media, we have a concern that some consumers upon finding their investment account empty, or even closed, may wrongly assume that they (the consumer) have done something wrong and are to blame and may therefore not consult their partner/children/carer/legal support or the provider about the issue, and how to reclaim the money, due to the embarrassment at the</p>

		<p>perceived 'loss' of the assets.</p> <p>We view 'investments' in pensions, ISAs and General Investment Accounts as very different to savings in bank or building society accounts. Savings accounts tend to be short/medium term, with even fixed rates only lasting a few years. Consumers view these savings as 'cash at hand' readily available and easy to access. We accept that if a savings account hasn't been touched for 15 years there is a fair likelihood that it probably won't be.</p> <p>An investment account, however, is designed for the medium to long (sometimes very long) term saving. Pensions, ISAs and General Investment Accounts all can be used to save for the long-term objectives of providing for retirement and passing wealth onto the next generation. Consumers are often advised not to 'fiddle' with their investment accounts, but to leave them to accumulate growth. Therefore a 12-year period of inactivity doesn't really make the account dormant, it is just maturing and growing as intended.</p> <p>We are therefore not supportive of the dormant asset scheme being expanded to cover investment assets.</p> <p>However, were this expansion to proceed we would also draw attention to the fact that many consumers use their ISA and then their General Investment Accounts as a form of long term savings for retirement alongside their pension. This may have been for a variety of reasons; it gives access to capital that otherwise would be 'locked away' in a pension, it may have been used at a time when the consumer had hit their pensions contribution limit for any given year, it may have been used to hold tax free cash withdrawn from a pension scheme when the consumer gained access at age 55.</p> <p>We would therefore suggest that some ISA and General Investment Accounts are indeed 'pension accounts' in the eyes of the consumer</p>
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		<p>as they are being used for retirement saving, just without the tax benefits.</p> <p>We would therefore propose that, where a consumer holds a pension and an investment account with the same provider (either a stocks and share ISA or a General Investment Account either of which may hold shares, investment trusts, ETFs, investment assets / funds etc.), that the investment accounts are regarded as being for pension/retirement saving and excluded from the scope of the scheme.</p>
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2. Do you have any comments on the proposed definitions of assets?

Question	Response (delete as applicable)	Comments
2	NO	

3. Are there alternative ways of defining the assets?

Question	Response (delete as applicable)	Comments
3	YES	<p>We are not generally supportive of the expansion of the scheme, however were this is to proceed we question if consumer assets could be better defined by the account type, such as ISA, General Investment Account, Pension, Life Insurance Contract/policy. This may give a better understanding of the reason a consumer was holding the investment.</p> <p>This perspective may reframe the thinking around which accounts are truly 'dormant' and</p>

		which have not been accessed due to the consumer viewing them as a long-term investment.
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4. Do you have any objections to excluding insurance products that do not crystallise to cash from an expanded scheme at this time?

Question	Response (delete as applicable)	Comments
4	NO	

5. Do you have any objections to excluding pensions from an expanded scheme at this time?

Question	Response (delete as applicable)	Comments
5	NO	We believe this is an important exclusion to make the scheme more reflective of consumer behaviour in relation to their pension savings. Indeed, we would add that there is a potential for all investment accounts to be used for retirement saving.

6. Are there any other assets that the government should consider for inclusion in an expanded scheme?

Question	Response (delete as applicable)	Comments

6	NO	
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7. Do you have any comments on the proposed definitions of dormancy?

Question	Response (delete as applicable)	Comments
7	YES	<p>We are not generally supportive of the expansion of the scheme, however, were this is to proceed we propose that as a consumer is very likely to have viewed an investment as a longer-term savings/investment product than a bank or building society account, that the required period of dormancy to be <i>at least the same as</i> that required on a bank or building society account, being 15 years - and then only after all efforts to re-connect with the client have been exhausted.</p> <p>On this basis, we feel the 12 years for shares and unit proceeds and other dormant security distributions and the six years for investment assets, to be too short and should be extended to at least 15 years.</p>

8. Do you have any comments on the proposed scope of participants in an expanded scheme?

Question	Response (delete as applicable)	Comments
8	NO	

9. Do you have any comments on the proposed reclaim values?

Question	Response (delete as applicable)	Comments
9	YES	<p>We are not generally supportive of the expansion of the scheme, however were this is to proceed we believe the consumer, if they reclaim the assets, should be put back into the cash position that they would have been in had the assets not have been (potentially liquidated and) classified as dormant and removed.</p> <p>This would therefore include the investment amount plus any interest, dividends or other distributions. Where a consumer has set their account to re-invest distributions back into the original asset (shares, investment trusts, funds etc.) we would expect the reinstatement calculation to proceed on this basis and 'roll-forward' the consumer's account from the point of removal to the date of reclaim.</p> <p>Where the assets have been removed from a Stocks and Shares ISA we would expect the consumer to be offered the option to have the reclaimed money placed into an ISA wrapper to allow the consumer to continue to enjoy the tax-free growth that they had intended for their investments.</p>

10. Do you agree that legislation should make reference to participants making proportionate and reasonable efforts, based on best practice within their relevant sector, to reunite the asset with its owner before it can be transferred into the scheme?

Please consider whether there are any other ways that suitable tracing, verification and reunification practices could be encouraged and enabled in participants.

Question	Response (delete as applicable)	Comments
10	YES	<p>We are not generally supportive of the expansion of the scheme, however were this is to proceed we would welcome legislation that made reference to proportionate and reasonable efforts and also specified the <i>minimum</i> effort required to find consumers and re-connect them with their savings.</p> <p>We recognise that developments in Open Finance, Pensions Dashboard, Pensions Tracing and State Pension Illustration Requests etc. might be a possible avenue to help locate and identify 'gone away' clients, however we are also mindful of the privacy issues associated with this. We would expect that if some form of data sharing is believed to be appropriate, that it is clearly defined and controlled in a way that it can only be used for the identification of, and contact with, the client, and for no other or further activities.</p>

11. Do you foresee any barriers to participation in the scheme or have any comments on its operation?

Please consider the feasibility of including eligible assets that are held within Stocks & Shares ISAs.

Question	Response (delete as applicable)	Comments
11	YES/NO	N/A

12. Do you agree that the existing practice in the event of a participant's insolvency should be extended to all assets in an expanded scheme?

Question	Response (delete as applicable)	Comments
12	YES	

13. How could legislation on trustee, director or agent duties be amended to enable the proposed participants, as set out in Table 3, to take part in an expanded scheme?

Question	Response (leave blank if no response)
13	

14. What protections might a trustee, director or agent need in such circumstances?

Question	Response (leave blank if no response)
14	

15. What do you think the set up and ongoing costs of the expansion would be for participants?

Question	Response (leave blank if no response)
15	

16. What do you think the initial and ongoing benefits of the expansion would be?

In particular, we welcome estimates from potential participants on the value, number and age of dormant assets that they currently hold and could transfer into an expanded scheme, as well as how these figures are expected to evolve over time.

Question	Response (leave blank if no response)
16	

17. Are there any other significant impacts of the expansion that the government should consider?

Question	Response (delete as applicable)	Comments
17	YES/NO	N/A