

**The FCA's response to the Complaints Commissioner's Final Report into the FCA's handling of Safe Hands Plans Limited
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We have carefully considered the Complaints Commissioner's (the Commissioner's) Final Report about the FCA's handling of Safe Hands Plans Limited (Safe Hands).

The collapse of Safe Hands meant significant losses for those who purchased plans and trusted this firm to cover the cost of funerals. We have the utmost sympathy for the losses they've suffered and the worrying period they've been through.

Our Response

We agree with the Commissioner's findings that the first element of the complaint about the design and implementation of a new regulatory framework prior to July 2022 is excluded from investigation under the Complaints Scheme.

We do not agree with the outcome the Commissioner has reached in relation to the second element of the complaint about how we handled a piece of anonymous intelligence received in late April 2021.

We believe the steps we took were reasonable based on the information we had at the time, the limited powers we had before we took over regulation of the sector and given that we would be assessing Safe Hands' application for authorisation later that year. Our resources were therefore focused on preparing for the new statutory regime for regulation of funeral plans.

We also consider our decision to tell Safe Hands we were minded to refuse their application for authorisation was correct.

We note the Commissioner concludes she cannot say what would have happened if the FCA had taken the course of action she considers we should have in April 2021. We set out in our response to her that it is also possible that the action she proposes we should have taken could in fact have led to a worse outcome for consumers.

We recognise that such a disagreement with the Commissioner will be of concern to complainants and parliamentarians who have raised concerns on their behalf. It is important we are accountable for the actions we have taken. We have therefore written to the Treasury Select Committee

to explain our position and the wider points cases such as this raise in the context of transitions of new products or activities into our remit and the current debate about risk and consumer protection in financial regulation.

Background

Before July 2022, funeral plan providers were exempt from regulation by the FCA if they met certain criteria. Therefore, our remit in relation to funeral plan firms was limited.

The Funeral Planning Authority (FPA) was a voluntary trade body at that time where members were required to abide by a code of conduct. Safe Hands became a registered member of the FPA in July 2019.

Parliament changed the law in January 2021 and brought funeral plan providers within the FCA's regulatory remit from July 2022. This meant that funeral plan providers, including Safe Hands, had to apply to be authorised in order to carry on business after July 2022. Once legislation was passed, we focussed our resources on preparing for the new statutory regime and making decisions about whether to authorise firms who wished to continue providing funeral plans.

Timeline of key events

- On 30 April 2021, we received one piece of anonymous intelligence which suggested that Safe Hands might have been in breach of the exemption that allowed it to operate without our authorisation. We logged this to follow up when Safe Hands was required to submit an application for FCA authorisation in the following months.
- Following the opening of applications for authorisation for funeral plan providers on 1 September 2021, we received Safe Hands' application on 29 October 2021.
- On 8 February 2022, we informed Safe Hands that we were minded to refuse their application. Shortly afterwards, Safe Hands withdrew its application and agreed to stop taking on new business.
- On 23 March 2022, Safe Hands entered administration.

Why we do not agree with the Commissioner's findings

We received one piece of anonymous intelligence suggesting Safe Hands may have been breaching our perimeter. To put this into context, in 2021, the FCA received over 34,000 reports relating to potential breaches of the regulatory perimeter – where firms or individuals may be performing regulated activities without our approval.

We must take resourcing and prioritisation decisions to direct our resources like other regulatory bodies. We consider, among other things, the clarity and quality of intelligence received, and whether we have other intelligence or have ways of substantiating the concerns raised with us.

We decided to log the April 2021 intelligence so it could be considered in the forthcoming decision a few months later, on whether to authorise Safe Hands.

The Commissioner says in her Final Report that we could have taken a different approach by, for example, trying to establish whether Safe Hands was in breach of the exemption from regulation immediately following receipt of one piece of intelligence in April 2021. However, this would inevitably have taken time, probably many months. We also needed to consider the best route to seek information so as to avoid a worse outcome, for example, if an unregulated firm is tipped off, potentially making protecting assets harder. Additionally, before July 2022, we had limited powers in relation to funeral plan providers. We could not, for example, compel Safe Hands to provide information about its activities.

Our assessment of Safe Hands' application for authorisation meant that by 8 February 2022 we had informed Safe Hands of our intention to refuse their application. Shortly afterwards the firm withdrew its application and agreed to stop taking on new business.

We believe our decision to engage with Safe Hands through the authorisations process was reasonable. There is no evidence that alternative action from us would have led to a different outcome for Safe Hands customers.

Finally, the Commissioner comments that our approach to dealing with Safe Hands post the receipt of the anonymous intelligence in April 2021 was inconsistent with the approach set out in HMT's Call for Evidence of 4 July 2018. The Call for Evidence explained that when the FCA received information about an unauthorised funeral plan provider, it would make enquiries into the matter. However, the call for evidence was a point in time explanation of our processes when funeral plan providers were not required to go through an authorisations process and therefore there was no other way that we could act on potential breaches. The legislation gave us an alternative approach which we chose to use given our resources.

Compensation

For the reasons set out above, we will not be offering a compensatory payment to the customers of Safe Hands above and beyond what has already been offered on an ex-gratia basis for the distress and inconvenience of our delayed response to complaints.