FINANCIAL CONDUCT AUTHORITY

Feedback Statement

FS25/3

Guidance for insolvency practitioners on how to approach regulated firms:

Feedback on GC24/1: proposed amendments to FG21/4

April 2025

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Chapter 1

Summary

Background

1.1 While we cannot stop firms failing, we aim to help minimise disorderly failures that cause serious harm to both consumers and markets. This involves working with insolvency practitioners (IPs) appointed over regulated firms to reduce such harm where possible.

1.2 In 2021 we published FG21/4: Guidance for insolvency practitioners on how to approach regulated firms (the Guidance) to help IPs comply with our rules and guidance and relevant legislation. Last year, in GC24/1 we consulted on proposed amendments to the Guidance. Given developments since its 2021 publication, including the introduction of the Consumer Duty, we felt an update to the Guidance was necessary.

Summary of feedback and our response

1.3 We received six responses, including from the insolvency trade body R3, the Insolvency Lawyers' Association and IP firms. These were broadly supportive of both the Guidance and the proposed amendments to it. Respondents did however comment on specific amendments and suggested adding more information, detail, or clarity in certain areas, including in relation to existing text. Descriptions of the feedback are included within the themed topics in this feedback statement and have shaped the final amendments to the Guidance.

1.4 We would like to thank all respondents for their feedback.

Cost benefit analysis

1.5 We did not receive any comments from respondents on our cost benefits analysis (CBA). We have however updated it to reflect small decreases in both the number of licensed IPs and appointment takers (from 1,542 and 1,273 respectively, to 1,508 and 1,257[1]).

1.6 We updated our cost estimates in line with changes to our standardised cost model assumptions, estimating total industry-wide one-off costs at £860,000, approximately £10,250 per large IP firm (11 firms) and £3,575 per smaller IP firm (209 firms).

1 The Insolvency Service, Annual Review of Insolvency Practitioner Regulation 2023.

Compatibility statement

1.7 The FCA is required to act compatibly with its strategic objective, advance its operational objectives, promote competition, and adhere to regulatory principles when exercising its functions. We are satisfied that the amended guidance is compatible with our general duties under section 1B of FSMA, having regard to the matters set out in section 1C(2) of FSMA and the regulatory principles in section 3B of FSMA.

1.8 By helping IPs to fulfil our expectations, our updated guidance furthers our consumer protection and market integrity objectives. We also consider that the amended and updated guidance advances our secondary objective. A more orderly insolvency process contributes to both market stability and consumer trust in UK financial services. This in turn helps to support economic growth and the UK's international competitiveness.

1.9 We have considered the principles in the Legislative and Regulatory Reform Act 2006 (LRRA) and to the Regulators' Compliance Code. Our proposals are balanced, offering suitable consumer protection while remaining proportionate to their impact on firms.

1.10 We considered His Majesty's Treasury recommendations under section 1JA of FSMA, focusing on economic policy and better outcomes for all consumers. The amended guidance sets out the FCA's approach to regulated firms in insolvency, urging IPs to follow it to ensure the best outcomes for clients and creditors.

Equality and diversity considerations

1.11 We do not think that the guidance materially affects any of the groups with protected characteristics under the Equality Act 2010.

Next steps

1.12 We have published the finalised updated guidance.

1.13 IPs appointed over regulated firms should follow the updated guidance to help them ensure regulated firms meet their ongoing regulatory obligations following appointment.

Chapter 2

Feedback and response summary

2.1 In this chapter, we summarise and respond to significant areas of feedback we received on the proposed guidance. We have grouped these by theme as set out below:

- Pre-appointment
- Early engagement
- Insolvency and regulatory processes
- Client assets
- Trading while in insolvency
- FSCS and redress
- Consumer Duty
- *Re Ipagoo*
- Hardship
- The Guidance
- Other matters

Feedback received:

Pre-appointment

2.2 Some respondents commented on the Guidance relating to the period before an IP has been appointed over a regulated firm. Some of these comments related to existing text rather than amendments we had proposed.

2.3 One respondent suggested clarifying the process for obtaining the FCA's consent to appoint an administrator when using an out-of-court route. They noted that in practice there may be some doubt as to whether consent should be filed with the notice of intention to appoint or with the administrator's notice of appointment.

2.4 Three respondents raised different points relating to the FCA Register. One emphasised the need for careful attention to punctuation and parentheses when searching for entries to avoid the risk of invalid administrator appointments.

2.5 One respondent noted that IPs may be subject to confidentiality requirements, restricting them from engaging with us pre-appointment.

Our response

Early engagement is crucial for managing firm failures and reducing risks to consumers and market integrity. In line with FSMA, we expect our consent to be sought as early as possible and filed with the notice of intention to appoint administrators.

A firm's name appears on the FCA Register exactly as registered at Companies House, including punctuation, parentheses, and numbers. To improve search results, we suggest using a root term (a distinctive part of the firm's name) to extract all possible matches. Boolean search functionality is supported. We have made some additions to the Guidance to help users improve search outcomes when using the FCA Register.

We have also updated the Guidance to clarify an IP's position as an advisor to a firm before any subsequent appointment as a statutory insolvency officeholder.

Early engagement

2.6 Four respondents raised points about existing text on early engagement.

2.7 Two noted the importance of working with relevant regulators, including the Prudential Regulation Authority and Financial Services Compensation Scheme (FSCS).

2.8 Two requested clarity on when to first engage with us, noting firm management often struggles to understand when we should be notified.

2.9 One commented on proposed amendments to our expectations for documents liquidators should send to us after their appointment, adding there is no statutory obligation for certain submissions.

Our response

The Guidance refers to SUP 15, which contains detailed rules on when firms must notify us of events, including insolvency-related ones like meetings to consider a resolution for winding up the firm or the making of, or any proposals for the making of, a composition or arrangement with any of its creditors. Earlier notification under SUP 15 may often be required, such as when a firm anticipates failing to satisfy any of the threshold conditions, including the requirement to maintain adequate financial resources for regulated activities.

We have updated guidance to remind firms and IPs to notify us of certain upstream events that may signal insolvency. Annex 2 now includes similar amendments, highlighting the notice requirements in Regulation 37 of the PSRs and EMRs. This includes when there is a change in a regulated firm's ability to meet capital requirements or the prospect of that happening.

While not required by law, we expect key documents like winding-up orders to be sent to us. Therefore, we have kept our proposed amendments unchanged.

We have also clarified the information we find it helpful to include in notices required under Regulation 11 of the Payments and Electronic Money Special Administration Regime (PESAR). This follows some recent engagement with the insolvency profession which highlighted uncertainty over how this process works.

Insolvency and regulatory processes

2.10 One respondent queried our proposed amendment relating to the claims process, specifically the use of a web portal. They raised concerns about costs if all customers, particularly elderly ones, needed to be contacted by post.

2.11 Another respondent asked about our expectations for firms' ongoing obligations to submit regulatory returns and whether an IP could unilaterally determine a return to be non-applicable.

2.12 A third respondent sought clarification on several aspects of existing text relating to creditors' committees. They questioned the meaning of 'reasonable steps' regarding creditor or customer representation on committees. Additionally, they suggested amending the text on IP fees, noting that, in some cases, fees are fixed and approved by secured or secured and preferential creditors, not by other parties, when no creditors' committee has been formed.

2.13 Finally, two respondents proposed adding steps required to cancel a firm's permissions, including obtaining confirmation from the Ombudsman Service that all claims are resolved.

Our response

When designing a claims process, we expect IPs to consider the characteristics of the customer base, as required under the Consumer Duty for firms with retail customers. What is appropriate will vary case-by-case. A web portal alone may not suffice in some situations, potentially preventing certain individuals from claiming their entitlements. IPs should evaluate the circumstances and, where necessary, use an alternative process. We have kept our proposed amendment.

As outlined in the Guidance, our rules apply to firms in insolvency procedures as long as they remain authorised. This includes the obligation to submit regulatory returns, which an IP cannot unilaterally declare to be non-applicable.

Our expectations for appropriate representation on a creditors' committee depend on individual case circumstances, so we have not changed the existing text. However, we made a minor adjustment regarding IP fees, acknowledging that secured or secured and preferential creditors may, in some cases, approve these fees when no creditors' committee exists.

Regarding the cancellation of permissions, the Guidance already includes a link to detailed application steps. We have added a reminder for IPs to obtain confirmation from the Ombudsman Service that all claims are closed, which we found to be a helpful suggestion.

Client assets

2.14 All respondents commented on the Guidance regarding client assets, addressing both proposed amendments and existing text. Topics included distribution plans under the Investment Bank Special Administration Regime (IBSAR), shortfalls in client assets, and Title Transfer Collateral Arrangements (TTCA).

2.15 We consulted on amendments clarifying that it is inappropriate for clients to bear the costs of directions applications when CASS rules set out applicable requirements. This attracted significant, largely critical, feedback. Five respondents expressed concerns about lingering uncertainty on matters covered by CASS, including the interaction between CASS and insolvency law, arguing that directions may remain necessary.

2.16 Three respondents commented on existing content relating to shortfalls in client money in IBSAR cases and the obligation to 'top-up' the client bank account using the firm's own funds, where available (i.e. where a transfer is required under Regulation 10H(3)). Two raised questions about where the 'top-up' fits in the creditor hierarchy of the general estate, which IBSAR legislation does not specify. Another asked if IPs should seek legal advice before complying and queried the frequency of 'top-ups.'

2.17 Three respondents made comments relating to different tax-related issues, including suggesting content on the implications of transferring client assets, tax wrappers, contingent liability assessments, and HM Revenue & Customs' decision to stop providing tax clearance in insolvency cases.

2.18 Two respondents suggested adding content on IBSAR distribution plans. Another two recommended covering interest on client money balances and whether it constitutes part of client claims. Further suggestions were made to include content on TTCAs.

2.19 One respondent highlighted the limitations of the Dormant Asset Scheme (DAS), noting that firms must already participate in the scheme before insolvency and that indemnities must be provided to the authorised reclaim fund.

Our response

In certain cases, seeking directions from the Court may be appropriate. Our amendment aims to ensure IPs are aware of and apply the CASS rules where relevant, without requiring Court sanction. It does not imply that seeking directions on matters covered by CASS is always inappropriate. To clarify, we added text advising IPs that, where they have considered the CASS rules and concluded directions are necessary, to discuss their prospective application with us before proceeding.

This would allow us to assess the proposed action and, where relevant, raise any concerns to the IP.

Respondents noted that IBSAR legislation does not address the obligation to make a transfer under Regulation 10H(3) (the 'top-up obligation') in the creditor hierarchy of the general estate. To our knowledge, this matter has not been directly addressed in case law, so we believe IPs may appropriately seek directions from the Court on this issue. We think the question about needing legal advice is connected to this point. This decision is for IPs using their professional judgement, to decide when legal advice is necessary. The IBSAR legislation and the Guidance is clear that the 'top-up' should be performed immediately after appointment, not repeatedly. We would also remind IPs that the obligation to make a transfer under Regulation 10H(4) may instead apply, depending on the outcome of the client money reconciliation carried out in accordance with Regulation 10H(2).

We added a note reminding IPs to engage with HM Revenue & Customs about tax implications when transferring client assets, including the impact on clients' use of tax wrappers. However, we made no additions on firms' tax liabilities, as this falls outside the Guidance's scope.

We have added content describing distribution plans and their link to bar dates in IBSAR and PESAR cases. Regarding client money, we have reminded IPs that retail clients should receive interest unless notified otherwise in writing. Firms' interest terms will vary so IPs should review contracts to determine entitlement to interest.

We have added content on TTCAs, advising IPs to check if a firm has used these agreements to determine the nature of a client's claim – either a proprietary claim to client assets or a claim against the general estate.

Finally, the DAS is a statutory scheme. Our rules facilitate participation in the DAS, but participation is voluntary. It is for authorised reclaim funds to decide on requirements for participants, whether solvent or insolvent, in accordance with DAS legislation.

Trading while in insolvency

2.20 Two respondents made a few comments about trading during insolvency, unrelated to any proposed changes. Both suggested emphasising the importance of considering Objective 1 of the IBSAR – returning client assets as soon as is reasonably practicable – when trading.

2.21 One respondent asked if we should be informed if a regulated firm withdrew supply in breach of the continuity of supply provisions in insolvency legislation, causing potential consumer harm.

Our response

We believe it is unnecessary to amend the text on trading in relation to Objective 1 in IBSAR cases, as this should be self-evident. However, we remind IPs that special administrators in IBSAR or PESAR cases must determine which special objectives to prioritise.

We confirm that IPs should inform us if regulated firms providing goods or services to a failed regulated firm breach continuity of supply provisions in insolvency legislation, potentially worsening consumer outcomes. Text has been added to reflect this.

FSCS and redress

2.22 Three respondents commented on matters relating to the Financial Services Compensation Scheme (FSCS) and redress, covering both proposed amendments and existing text.

2.23 One respondent requested more detail on compliance with a redress methodology that extends beyond adjudicating unsecured claims in insolvency proceedings. They also noted that the FSCS may cover redress and commented that, while this is briefly noted already in relation to the Ombudsman Service, it would be helpful to include a reference to this in the text focused on the FSCS as not all complaints are referred to the latter.

2.24 Another respondent questioned the existing use of 'super-preferred' to describe the FSCS's claim for deposits, asking where this sat in the order of priority and creditor decision-making. They also raised concerns that the proposed amendment deleting reference to dormant accounts from the list of FSCS coverage may cause confusion, as not all asset types may be covered by the DAS. Their comments did however refer to dormant assets, rather than dormant accounts.

2.25 Respondents proposed additional content, including standardised FSCS coverage wording for customer communications and highlighting the FSCS's ability to request information under IBSAR legislation (Regulation 10A).

Our response

Our expectations depend on the circumstances of each case, including the prospect of funds being available for redress claims. We amended the Guidance to clarify that IP compliance hinges on this prospect. Where funds are available, we expect IPs to act competently, diligently, and impartially in assessing claims. We also included a reminder for IPs to engage with the FSCS to confirm whether compensation is available for redress claims.

Additionally, we added a note in the FSCS section highlighting that FSCS protection may cover redress claims.

The existing use of the term 'super-preferred' comes from the Bank of England's Approach to Resolution publication. While our proposed amendments reference Schedule 6 of the Insolvency Act 1986, we have added a further reference to section 175, which details the treatment of different categories of preferential debts. We refrained from commenting on the role of preferential creditors in the decision-making processes of insolvency proceedings, as this is a matter for insolvency law.

Regarding dormant accounts (rather than dormant assets as suggested by the respondent), we retained the deletion from the FSCS coverage, as the Prudential Regulation Authority no longer has the power to provide FSCS protection on repayment claims under the Dormant Account Scheme, and the scheme rules have been revoked.

We declined suggestions for additional FSCS-related content, as these matters may be better addressed by the FSCS. However, we improved the wording in our proposed amendments to clarify the availability of FSCS depositor protection where a credit institution holding safeguarded funds for an electronic money institution or payments institution fails. This aims to enhance clarity.

Consumer Duty

2.26 Four respondents commented on proposed amendments relating to the Consumer Duty (the Duty), focusing on the relationship between an IP's duty to act in the best interests of creditors and the Duty's requirements. Some raised concerns about potential tension between the two and the need to find the right balance. One respondent referenced our Consumer Duty guidance, noting our message that our expectations under the Duty will be interpreted considering what is reasonable, given the circumstances, and highlighted that insolvency would influence this interpretation.

Our response

IPs must act in the interests of creditors, and ensuring a regulated firm complies with the Duty does not conflict with this obligation. For example, clear communication and good customer service can reduce the number of queries an IP needs to address.

As outlined in PRIN 2A.7.1R and the Consumer Duty guidance, the Duty is underpinned by reasonableness and interpreted based on the specific circumstances. While firm failure may influence this interpretation, the assessment of reasonableness will depend on factors such as the firm's financial position, whether it continues to trade during insolvency, the characteristics/vulnerability of its customers, and the firm's influence on retail customer outcomes.

We have retained the proposed amendments in the form consulted upon but added text clarifying that the Duty does not have retrospective effect.

Re Ipagoo

2.27 One respondent commented on the proposed amendments relating to the Court of Appeal's judgment in the Ipagoo case. They acknowledged that the case imposes a top-up obligation where there is a shortfall in relevant funds but pointed out that the Court of Appeal technically stated that such shortfalls are to be paid in priority to other creditors. To avoid confusion, they suggested aligning the language with the Court's decision. The respondent also noted our ongoing work on revising the safeguarding regime for payments and e-money firms, which could influence these matters in the future.

Our response

Our proposed amendments largely align with the language in the Court of Appeal's decision, and the respondent appeared to agree that it can be characterised as requiring the asset pool to be topped-up. Our proposed amendments clarify that the top-up must follow the Court of Appeal's judgment. We have retained the amendments as consulted upon with minor changes to address the relationship between the Court's two key determinations and specify that the Ipagoo top-up does not apply to distribution costs. We have also made some minor changes in other parts of Annex 2 that are consequential to the Ipagoo judgment.

As the respondent referenced, we are progressing proposals related to the safeguarding regime for payments and e-money firms. We published CP24/20: Changes to the safeguarding regime for payments and e-money firms in September 2024. Feedback on responses and a Policy Statement will be issued in due course, and we will assess how any changes affect the Guidance.

Hardship

2.28 Two respondents commented on the proposed amendments relating to hardship which included IPs, in certain circumstances, exploring the need to make an early interim distribution from client money, in a prudent manner. One argued the amendment is overly specific, as IPs are already obligated to distribute funds promptly.

2.29 The other highlighted the need to better balance IPs' obligations to creditors and customers. They suggested that proactive handling of hardship should produce better outcomes than reactive measures. Additionally, they recommended distinguishing between financial and non-financial hardship and including guidance on notifying us about extreme cases, such as homelessness or self-harm.

Our response

The Guidance emphasises that IPs should engage with us as early as possible in cases of firm failure. Hardship, whether financial or non-financial, should be a key focus in cases involving consumers. We agree with the respondent's suggestion that proactive approaches generally lead to better outcomes. Early client communication about hardship can benefit both customers and creditors by potentially reducing the work IPs will need to undertake later on and minimising the risk of disruptions to their planned strategies. Consequently, we believe the amendments are justified and have retained them in the form consulted upon.

The Guidance

2.30 We received comments from two respondents on the Guidance itself. One suggested clarifying that it applies to regulated firms and is separate from the responsibility of maintaining the Mutuals Public Register.

2.31 The other criticised the structure of the Guidance, proposing that the content be divided into separate IBSAR, PESAR, and other proceedings papers. They also suggested creating a dedicated resolution webpage to house the Guidance alongside other resolution-related materials.

Our response

The Guidance clearly outlines its scope, specifying that it applies to firms authorised under the Financial Services and Markets Act 2000, as well as those authorised or registered under the Payment Services Regulations 2017 or Electronic Money Regulations 2011.

Given the generally positive feedback, we do not plan to revise the structure of the Guidance. However, we see merit in the suggestion of a resolution-themed webpage and will explore this as part of our ongoing engagement with the insolvency profession

Other matters

2.32 Two respondents commented on wind-down plans, detailing their practical experiences, highlighting shortcomings, and suggesting additional content on the topic.

2.33 One respondent addressed equitable set-off, linked to both our proposed amendment and existing text. They provided detailed comments on how different types of set-off interact across various types of insolvency proceedings.

2.34 The same respondent also commented on our proposed amendment regarding updates from IPs. They suggested IPs should report not only potential fraud or financial crime involving the firm but also instances where the firm is the victim of such conduct. They raised concerns about whether IPs would always be able or allowed to share such information with us, suggesting it might not be feasible or appropriate in all cases.

Our response

The Guidance already includes a link to our Wind-down Planning Guide, which IPs can use to help firms' management understand the process. We have also added a link to our Thematic Review: TR22/1 Observations on wind-down planning: liquidity, triggers & intragroup dependencies, which IPs and firms may find useful.

We have decided not to make any changes in response to the other comments received. The section on equitable set-off is intended to remind IPs to consider it when appropriate, especially regarding redress, and we do not find it necessary to cover other forms of set-off, which IPs are expected to know. When following the Guidance, IPs should also consider any other applicable law including any restrictions on disclosing information relating to criminal conduct, and act accordingly.

Additionally, we have made minor edits throughout the Guidance to improve clarity, accuracy, and correct grammatical errors. A tracked change version of the Guidance is available on request by contacting: gc24-1@fca.org.uk

Annex 1

List of non-confidential respondents

Evelyn Partners

Insolvency Lawyers' Association

Interpath

R3, Association of Business Recovery Professionals

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