



# 7th Annual CASS Conference

09:00 - 13:45 | 19<sup>th</sup> October

---



# Client Assets – FCA View

## Client Assets Protection Forum

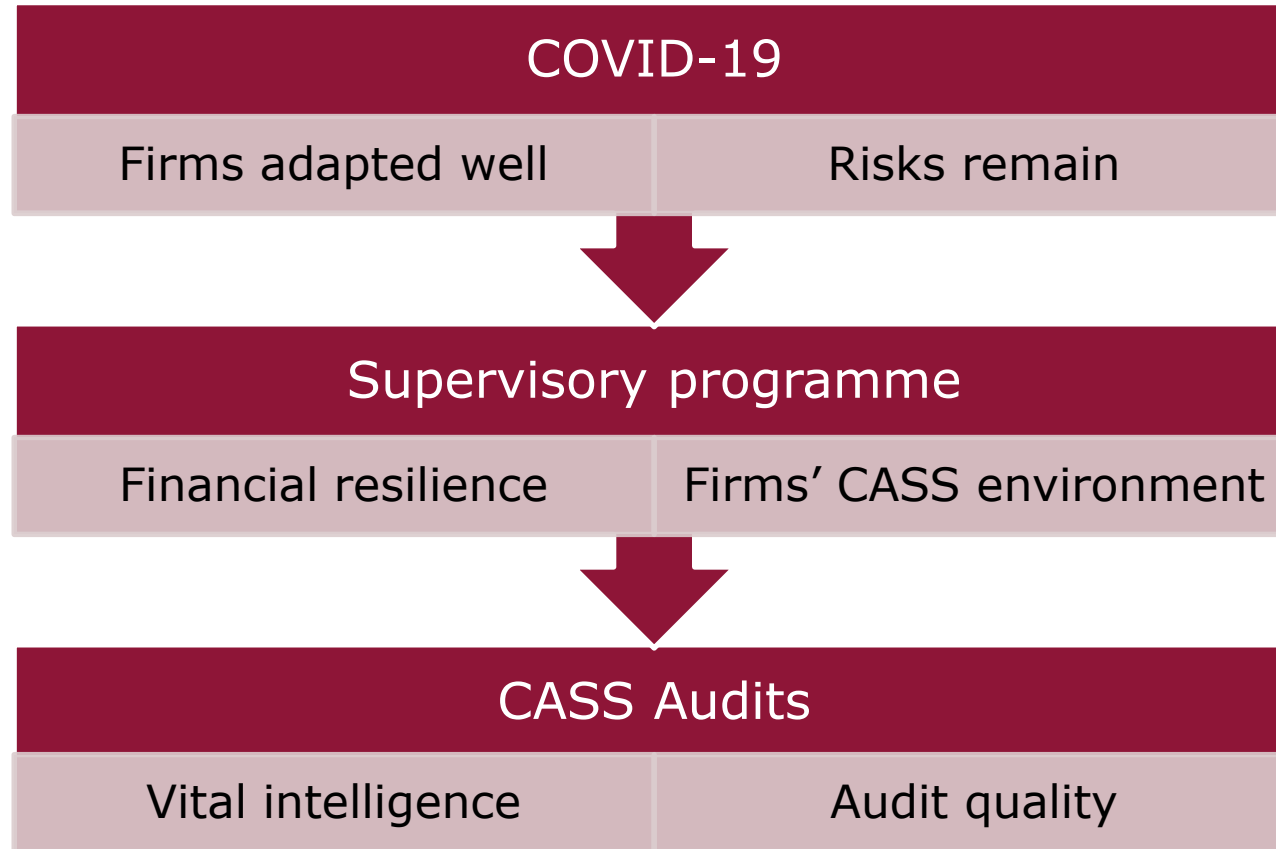
**Jim Feasby**

Interim Head of Resolution Strategy,  
Operations & Client Assets Department

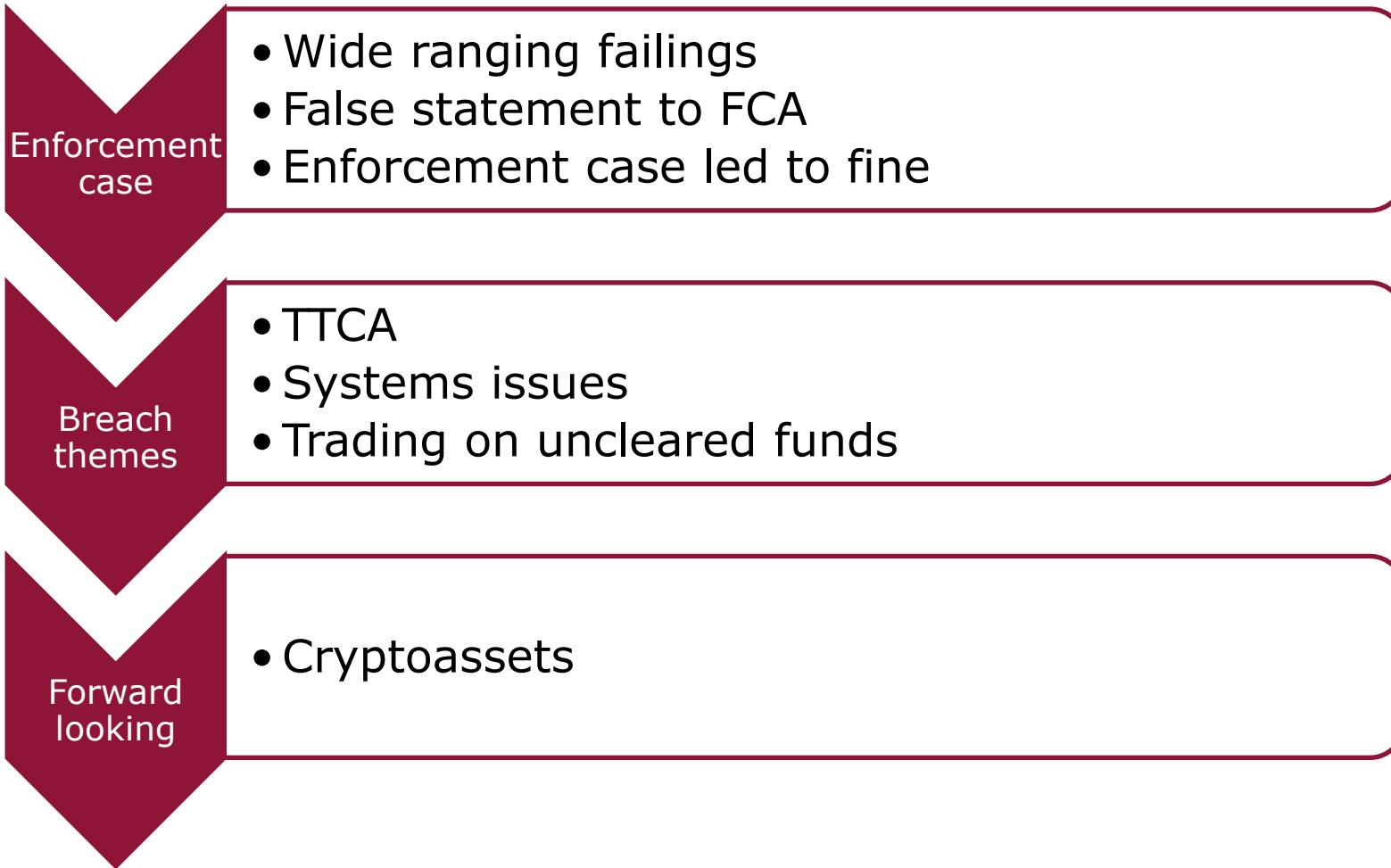
# Agenda



# Our Approach



# Client Assets – FCA Priorities



# Wider FCA priorities

Operational Resilience

Diversity and Inclusion

# Key messages

- CASS remains a priority for the FCA;
- We expect proactive engagement and will take action where conduct falls short;
- Continue to focus on Operational Resilience and Diversity and Inclusion



---

FCA Head Office  
12 Endeavour Square  
London  
E20 1JN

[www.fca.org.uk](http://www.fca.org.uk)



# TISA 7<sup>th</sup> Annual CASS Conference 2021

## Legal perspective

**Ash Saluja**

Partner | CMS



## Transfers of Business



# Transfers of business – background

- **Sale of business (asset sale) – in whole or part**
- **Group reorganisations – rationalisation of entities**
- **Change of business model – moving from Model A to Model B, closing business lines**
- **Distressed situations (but not under the Special Administration regime where firm has failed)**

**All may involve transfers of client money and/or assets from one firm (transferor) to another (transferee)**

# Transfers of business – scoping (1)

- **What clients and business lines are affected?**
- **What money and/or assets need to be transferred?**
- **What do your contracts/terms of business say about transfers?**
- **What do the product/asset terms say (if anything)?**
- **What format are the client records in? Are these easily transferable? Are there any gaps in data (e.g. KYC/AML records)?**

## Transfers of business – scoping (2)

- **Need to think about contractual terms between transferor and transferee**
- **Need to scope and identify the client, third party and/or regulatory consents that need to be sought and/or obtained**
- **Need to think about overall customer journey and communications strategy – both initial milestones and process to develop the detailed step by step plan**
- **Consider role of independent challenge/customer champions or similar – TCF issues remain paramount**

# Transfers of business – FCA rules (1)

- **Transfers of safe custody assets - CASS 6.7.8R**
  - **Get specific client consent/instructions to the transfer**
  - **Transferor may only effect transfer otherwise if, in advance of the transfer, it has obtained a contractual undertaking from transferee that:**
    - **Transferee will return the safe custody asset to the client at the client's request**
    - **Transferee will notify the client within 14 days of the transfer:**
      - **of the applicable regulatory regime**
      - **of the relevant compensation scheme limits/arrangements (or fact there are none)**
      - **that the client has the option of having its safe custody asset returned to it**

# Transfers of business – FCA rules (2)

- **Transfers of client money – discharge of fiduciary duty**
  - **CASS 7.11.32 (a) – client money paid to third party on the instruction, or with the specific consent, of the client**
  - **CASS 7.11.44 - transferred as part of a transfer of business where the client money relates to the business being transferred, but note conditions:**
    - **other person must transfer sums back to the client as soon as practicable at the client's request**
    - **written agreement in place with the client provides for such transfer (beware of the FCA warning on this!)**
    - **transferee will hold monies held in accordance with client money rules or equivalent**
    - **transferor needs to notify FCA at least 7 days before the transfer and the client within 7 days after transfer**

# Transfers of business – FCA rules (3)

- **COBS 8.1.2 (non MiFID) and 8A.1.4 (MiFID) – firms must enter into a written basic agreement with the client setting out the essential rights and obligations of the firm and the client**
  
- **How does the transferee evidence that?**
  - **Explicit transfer /novation rights in existing client contract?**
  - **Notify clients of transfer and/or seek their consent?**
  
- **Problems with non-responsive clients and “gone aways”**
  - **What efforts have been made to contact and engage clients?**
  - **Adequate procedures on ‘gone aways’ on an ongoing basis?**
  - **FCA waiver/modification/forbearance might be appropriate**



# Transfers of business – process

- **Initial communications with customers and third party providers**
- **Client and third party provider notification and consent process**
  - **Multiple stage process**
  - **Think about information needs of clients vs simplicity of process to gather consents**
  - **Clients will almost invariably have the right to opt-out/transfer elsewhere**
- **Applying for FCA waivers/modifications/regulatory forbearance (if necessary) – transferee (COBS 8.1.2 and/or 8A.1.4) and transferor (CASS 7.11.46)**

# Transfers of business – some problem areas

- **Gone aways**
- **Deceased accounts**
- **Low value accounts (de minimis sums)**
- **Overseas clients (including expatriates)**
- **Data quality/format**

# Transfers of business – special situations

- **Individual Savings Accounts (ISAs) – change of ISA manager involves HMRC process**
- **Personal pensions (SIPPs) – will the SIPP provider/trustee remain the same or is this changing?**
- **Fund unit share class issues (e.g. bundled/unbundled service)**

# Transfers of business – smoothing the process

- **Ongoing “hygiene” with contracts/terms of business, record keeping and client contact - work firms should be doing anyway!**
- **Being clear on the customer journey and overall process**
- **Early engagement with regulators**
- **Role of SMFs**



**Q&A**



# Contacts



**Ash Saluja**

**T** +44 (0)20 7367 2734

**E** [ash.saluja@cms-cmno.com](mailto:ash.saluja@cms-cmno.com)

Ash Saluja is head of the UK Financial Services team, and has over 25 years' experience advising clients on regulatory and commercial matters. Clients include banks, broker-dealers, funds, investment managers and advisers, exchanges, platforms and trading facilities, insurers and insurance intermediaries, as well as the large corporate/pension fund clients and suppliers of such institutions.

Ash advises on authorisation and conduct of business requirements, corporate governance, regulatory capital, client money and assets, product design and distribution, cross border business, insider dealing and market abuse, anti-money laundering requirements, as well as the regulatory aspects of mergers and acquisitions, restructurings, joint ventures and outsourcings.



**Your free online legal information service.**

A subscription service for legal articles  
on a variety of topics delivered by email.  
**cms-lawnow.com**

The information held in this publication is for general purposes and guidance only and does not purport to constitute legal or professional advice.

CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices.

**CMS locations:**

Aberdeen, Abu Dhabi, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Beirut, Belgrade, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Johannesburg, Kyiv, Leipzig, Lima, Lisbon, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Mexico City, Milan, Mombasa, Monaco, Moscow, Munich, Muscat, Nairobi, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Rome, Santiago de Chile, Sarajevo, Seville, Shanghai, Sheffield, Singapore, Skopje, Sofia, Strasbourg, Stuttgart, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.

**cms.law**



# Panel discussion

## Industry perspective

---



**Shaid Moughal,**  
Head of CASS &  
Finance  
Operations,  
**abrdn**



**Christian Thrussell,**  
Head of CASS & Risk,  
**Walker Crips**



**James Wharton,**  
Head of Custody  
Operations,  
**Winterflood  
Securities**





# Panel discussion

## Auditors' perspective



**Alison Allen,**  
Head of CASS  
Centre of  
Excellence,  
KPMG LLP



**Kiran Thaliwal,**  
Director, Investment  
Management &  
Private Equity,  
Deloitte LLP



**Shermeen Kazmi,**  
Partner, Grant  
Thornton UK LLP



**Amarjit Singh,**  
Partner, EY

# TISA

[www.tisa.uk.com](http://www.tisa.uk.com)

---

