

What Happens in a Client Money Investigation?

Paul Grainger writes about client money rules and investigations the FCA carries out.

How do you undergo an investigation when instructed on a case?

An Expert Witness assignment will always begin with an enquiry from a law firm or in-house legal counsel representing either the complainant or the respondent/defendant. At the enquiry stage, the instructing legal counsel will clarify the nature of the case, the expertise required, the scope of the report required, the timetable for the report and whether the instruction will be to report to one party or whether it is to act as a Single Joint Expert.

We will then carry out an internal check to see whether the firm or anyone in the firm has previously acted for or provided services to either the complainant or defendant (a conflict of interest assessment). Assuming there is no conflict of interest, we will confirm the same to instructing legal counsel and prepare a cost estimate. Based upon this legal counsel will normally then issue formal instruction and provide relevant documents to us (known as an evidence bundle).

In my experience, most cases have been resolved before they get to trial.

The letter of instruction will normally set out exactly what the Court has agreed it requires the Expert Witness to investigate and report on. This will normally be quite specific and is designed to assist the parties and the Court to resolve the case.

The Expert will then read the evidence bundle and analyse the evidence it contains in the light of the specific matters and issues that the Expert has been instructed to report upon. This can be quite time consuming.

Once the evidence has been analysed and taken into account, the Expert can then form a view relating to the specific matters and issues as requested in the instruction letter. The Expert will then prepare a report setting out his or her opinion.

Unless the Court has appointed a Single Joint Expert, it is normally the case that both the complainant and the defendant will have instructed Expert Witnesses. Where this is the case, the Expert Reports are exchanged between the complainant's and the defendant's legal teams. The relevant experts are then required to review the other expert's report and identify areas of agreement and disagreement.

The experts will then normally hold a meeting to formally devise a statement of agreement and

disagreement. This is a formal written report setting out the points in each other's reports where they agree and those points on which they do not agree. This Statement of Agreement and Disagreement is also provided as evidence to the parties and the Court.

The rules and procedures set out how client money and client assets should be accounted for and kept separate from an investment firm's own money or assets.

If a case proceeds as far as a trial, it is possible that the expert witness will be called upon to give evidence in Court and to be subject to cross-examination by legal counsel acting for either the complainant or the defendant.

In my experience, most cases have been resolved before they get to trial. The expert witness reports are often helpful in reaching an agreement between the parties on areas of dispute, thus enabling settlement of the case without the need for a lengthy and expensive trial.

What are client money rules?

The client money rules are a part of the rules (Handbook) in which the Financial Conduct Authority (FCA) sets out how firms that it regulates should keep safe the client money and client assets that they may hold. These detailed rules and procedures are set out in the FCA Client Assets (CASS) sourcebook.

The rules and procedures set out how client money and client assets should be accounted for and kept separate from an investment firm's own money or assets. The rules are also designed to ensure the speedy return to clients of the client money and/or client assets in the event of the failure of an investment firm.

If the information provided to the FCA does not clearly demonstrate compliance with the rules, then the FCA may require the firm to take remedial action.

What usually occurs during an FCA visit and how should firms prepare for it?

The FCA normally only carries out supervisory visits to the vast majority of regulated firms as part of a thematic review of a part of the financial services sector or in response to regulatory concerns raised via desk based monitoring or similar information that has come to the attention of the FCA. The FCA will already have a lot of information about the firm and its senior managers because of the regular regulatory

and financial reporting that FCA regulated firms have to make during each year.

When it carries out a Supervisory Review Visit, the FCA will normally request information and documents from the firm concerned. This could include details of clients, advice provided (where relevant) transactions carried out or other records relating to the firm for the time period under investigation. The FCA will normally also interview relevant people including a firm's directors, senior managers and advisers or investment managers.

The best way for a firm to prepare for an FCA visit is for it to have a robust risk assessment and risk control framework within the firm.

If the information provided to the FCA does not clearly demonstrate compliance with the rules, then the FCA may require the firm to take remedial action. Where the FCA identifies actual or suspected breaches of their rules, it may refer the firm to the Enforcement Department who may then undertake an enforcement investigation and take disciplinary action against the firm and/or its directors.

The best way for a firm to prepare for an FCA visit is for it to have a robust risk assessment and risk control framework within the firm. This will include having detailed and robust compliance policies and procedures. It will also include having a robust and up to date system of accurate and timely record keeping and of regular and frequent compliance monitoring checks to make sure the firm complies fully with FCA rules requirements at all times.

Where do you come in, once the firm has been subjected to legal proceedings?

Where a firm is subject to legal proceedings, it may well be the case that the firm and its directors or employees or their legal advisers may lack the necessary expertise or experience to progress key aspects of a claim or to defend key aspects of a claim. It is at this point that they may seek an expert witness to provide expert opinion on key aspects of the case.

A firm's legal advisers will agree with the Court what the key issues are for which expert opinion is required and whether each party will appoint its own expert or whether a Single Joint Expert will be appointed. At that stage, the legal advisers will select and instruct an appropriate expert.

Always remember that in a dispute, in regulatory investigations or in litigation, the other party will often take the view that if it isn't written down, it didn't happen.

What would you say are top three things your clients should acknowledge in order to avoid disputes?

Keep accurate and timely written records of meetings or phone calls that involve a client or that relate to a client.



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Keep a record of all correspondence or e-mails that relate to a client.

Keep accurate and timely records of all aspects of the governance, risk assessment, financials, operational monitoring and compliance monitoring within the firm.

Always remember that in a dispute, in regulatory investigations or in litigation, the other party will often take the view that if it isn't written down, it didn't happen.

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I am Paul Grainger. I am Chief Executive Officer of Complyport Limited, which is a Governance, Risk and Compliance (GRC) consulting firm in the financial services sector. We provide advice, guidance and hands-on assistance to firms regarding financial services regulation in the UK and overseas.

I lead the firm and manage it on a day to day basis. We have a team of 17 people based mainly in London with some colleagues based in Manchester or working remotely.

I regularly act as an Expert Witness mostly in civil cases but occasionally criminal cases too. I have acted as a Single Joint Expert when required. I lead

Complyport's Expert Witness team and my work in this area can cover regulatory and compliance matters or the suitability of financial advice and transactions.

I have over 35 years' experience in both retail financial services and wholesale financial services, including investment banking, insurance, corporate finance, private equity, funds and financial planning and wealth management.

I am the former Chairperson of the Financial Planning Standards Board (UK). I sit on the Examinations Board of the Chartered Institute for Securities and Investment (CISI) and I also sit on the CISI Advanced Financial Planning Examination panel.

I Chair the Brexit Working Group for the Association of Professional Compliance Consultants (APCC) and I also sit on other APCC Working Groups.

I have led several Section 166 Skilled Persons investigations for the Financial Conduct Authority (FCA) and for its predecessor the Financial Services Authority (FSA). I have also carried out investigations commissioned by firms or their legal advisers.

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