

CASS: An Introduction to Contingency Planning

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Like all businesses, firms that hold custody assets and/or client money (“CASS Firms”) hope that insolvency is something that will never happen to them. Yet, given the vital role CASS Firms play for their clients—and the associated compliance burden—it is particularly crucial that they plan appropriately. Proper preparation ensures they are ready in the event of insolvency and potential placement into special administration under the Investment Bank Special Administration regime (“IBSA”).

This article will:

- Summarise the key legal obligations CASS Firms should be aware of with respect to planning for special administration (with a focus on the role of such firms as custodians of custody assets and client money)
- Explain why it is important from a legal perspective to comply with those obligations
- Provide insight from a former FCA-approved senior manager and Head of CASS on the preparation and deployment of a CASS Firm's plans for special administration
- Set out a special administrator's view of the consequences of both good and bad practice when it comes to planning for special administration

The Legal Obligations and Why They Are Important

The key legal obligations that CASS Firms have with respect to insolvency planning are those contained in Chapter 10 of the Financial Conduct Authority's ("FCA") Client Assets Sourcebook ("CASS"). The rules in CASS 10 are largely centred around the requirement for CASS Firms to maintain—and be able to retrieve—a CASS Resolution Pack.

The CASS Resolution Pack is a concept that will be familiar to many personnel working as part of the custody function of a CASS Firm. In short, it comprises a collection of key documents and information intended to assist an insolvency practitioner in distributing custody assets and client money held by the CASS Firm in a timely manner, in the event that the CASS Firm becomes insolvent. Given that insolvency can occur with little or no preparation time, the CASS Resolution Pack must be ready for use at any time. This means it must be kept up to date and treated as a "living document."

The primary reason for maintaining a CASS Resolution Pack is to maximise the likelihood of a timely return of client money and custody assets after a CASS Firm's insolvency. However, firms should also bear in mind that breaches of the rules in CASS 10 could result in sanctions—including public censure and/or financial penalties—particularly where such rule breaches result in detriment to clients. For example, three multinational firms were fined in excess of £143m for, among other things, failing to maintain an adequate CASS Resolution Pack.

Compliance is also especially important for senior personnel as the Senior Managers and Certification Regime ("SMCR") requires CASS Firms to assign one or more senior managers the prescribed responsibility of ensuring the CASS Firm complies with CASS rules. Under the statutory "Duty of Responsibility," senior managers can be held personally liable if the FCA can prove they did not take reasonable steps to prevent a breach in their area of responsibility. In other words, failing to adequately plan for insolvency could result in senior managers incurring personal liability in the form of regulatory fines.

CASS: The Operations Perspective

Are you responsible for your firm's CASS Resolution Pack? Have you ever considered what would happen if your firm failed and insolvency practitioners requested the CASS Resolution Pack?

The necessity of having a robust CASS Resolution Pack is well documented. However, in the day-to-day CASS environment, its importance can be overlooked—often reduced to a weekly "tick-box" exercise.

In one notable case, a firm with a strong balance sheet and smooth operations was placed into special administration after just ten days of liquidity issues. When the English Court appointed special administrators at midday, the firm's business activities came to an abrupt halt. Initially, for the CASS team, the day continued as usual—reconciliations were performed and the daily client money move was processed. The following business day, however, presented a very different scenario.



The special administrators' first priority, under Objective 1 of the IBSA regime ("return client assets as soon as is reasonably practicable"), was to understand the firm's CASS framework and how client money arose in the business. The Head of CASS was asked to explain the framework, identify third parties holding client money and custody assets, address jurisdictional legal issues due to the firm's international links, explain the business model and trade flows and present the latest reconciliation. That reconciliation was reviewed for shortfalls, and the FCA was contacted to confirm compliance from a CASS perspective.

Thanks to well-maintained books and records, the transfer of client money and assets back to clients began quickly. Without such organisation, the process could have been delayed for months.

In this instance, the insolvency practitioners relied heavily on internal knowledge of the client asset framework—particularly because the CASS Resolution Pack had been authored by someone closely familiar with the firm's operations. This highlights a critical consideration: "When does an insolvency practitioner require a CASS Resolution Pack?"

In this case, the pack was in place but ultimately not used due to strong governance and the availability of experienced personnel. However, if the CASS team had been unavailable—or if the firm's failure had been tied to CASS operations—significant risks could have emerged: overreliance on individuals, delays, misallocations, inaccurate instructions and increased administration fees.

The CASS Resolution Pack should therefore serve as the first point of reference for insolvency practitioners.

Insolvency practitioners have noted that many CASS Resolution Packs they review are not fit for purpose. Common issues include excessive or insufficient content, outdated or incorrect documents—or, in some cases, complete absence of the pack. This highlights the need to not only maintain a CASS Resolution Pack, but to regularly test its accessibility and usability under real-world conditions.

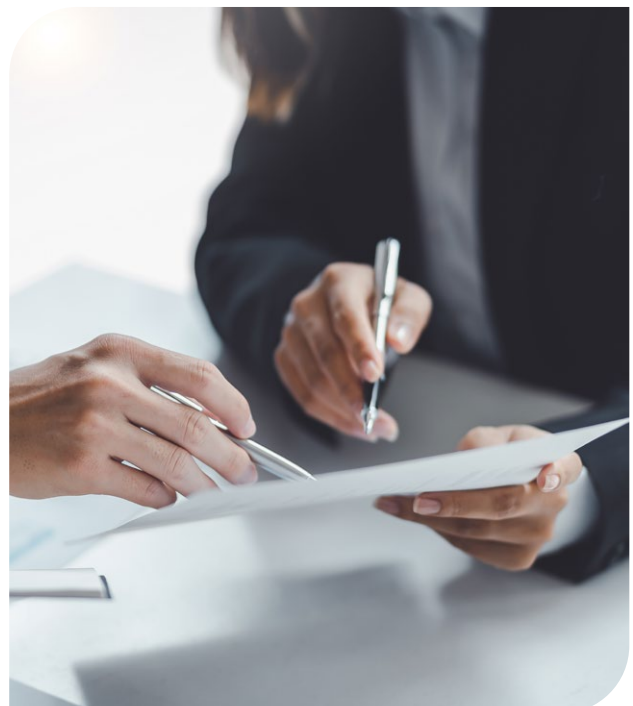
The Insolvency Practitioner Perspective

Experience shows there is a broad range in the quality of CASS Resolution Packs. The best packs go beyond containing the prescribed content—they are written with practicality in mind, based on a worst-case scenario.

Many packs we've seen meet the letter of the requirement but not the spirit. They have perhaps been prepared on a tick-box basis rather than with the question "How would this work in a distressed scenario?" The best packs are created with that mindset—and that makes all the difference when swift, informed decisions are needed in insolvency.

A well-prepared pack is also a signal of a strong control environment. In the firms that have "war-gamed" their CASS plan, implementation in a distressed situation becomes second nature. The people involved already know what to do because they've considered how the worst might unfold.

Conversely, packs prepared as mere formalities are just as noticeable. While technically compliant, they lack the depth needed for real-time application, and even those are better than having no pack at all. In cases with no usable pack, practitioners must rebuild records from scratch—delaying the return of client money and significantly increasing the cost of administration.



So, why does the CASS Resolution Pack matter? In our experience, it is often the main driver behind how quickly the special administrator can begin returning client assets. In optimal scenarios, we've begun distributions within two months of appointment, with 90% returned within six months. In less prepared scenarios, it can take years to even begin.

While we've developed ways to mitigate risks and expedite returns in challenging cases, the outcome for clients is far better when the CASS team and Resolution Pack are strong.

In summary, maintaining a high-quality CASS Resolution Pack—and, by extension, a high-quality control environment—has a direct impact on client outcomes. It should be reviewed regularly and developed with worst-case scenarios in mind.

CASS and ISBA Insights

This article is the first in a series of thought leadership content by Teneo and Hogan Lovells. The series will cover the lifecycle of distress, from contingency planning through special administration and the return of client assets. The series will draw on real-world experience and cover combined restructuring, operational and legal perspectives. The next instalment will cover contingency planning and explore the theme of conflict between the CASS Regulations and the ISBA regime.

Teneo's Financial Advisory business and Hogan Lovells International LLP have significant restructuring, operational and legal experience in CASS related matters, along with a deep understanding of the technical and practical implementation of the ISBA regime. Should you wish to discuss any of these matters, please do not hesitate to reach out.



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