



Neutral Citation Number: [2023] EWHC 2690 (Ch)

Case No: CR-2022-000596

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY & COMPANIES COURT LIST (ChD)

7 Rolls Buildings,
Fetter Lane,
London,
EC4A 1NL

Date: 3rd October 2023

Before:

MR. JUSTICE MILES

Between:

**IN THE MATTER OF SOVA CAPITAL LIMITED
(IN SPECIAL ADMINISTRATION)**

On the application of:
**DAVID PHILIP SODEN, IAN COLIN
WORMLEIGHTON, AND STEPHEN BROWNE
(as joint special administrators of Sova Capital Limited)**

MR. WILLIAM WILLSON (instructed by **Hogan Lovells International LLP**) for the
Applicants

APPROVED JUDGMENT

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MR. JUSTICE MILES:

1. The joint special administrators (**JSAs**) of Sova Capital Limited (**Sova** or **the Company**) apply for the following relief. First, pursuant to Regulation 12C(3) of the Investment Bank Special Administration Regulations 2011 (**the Regulations**), for the court's approval of a hard bar date for the submission of claims for the return of client money held by Sova and, second, an order under Regulation 12D(1)(c) of the Regulations, alternatively para.63 of Schedule B1 of the Insolvency Act 1986 or, alternatively, the inherent jurisdiction of the court, for the court's approval of an adjudication procedure in relation to client money claims and other non-client money custody asset claims.
2. The application, dated 8 June 2023, is supported by two witness statements, namely, the eleventh witness statement of Mr. Soden dated 8 June 2023, and the twelfth witness statement of Mr. Soden dated 28 September 2023, both of which I have read carefully. I have also been assisted by a detailed skeleton prepared by counsel on behalf of the Applicants, Mr. Willson. It is unnecessary for the purposes of this judgment to set out the background contained in Mr. Soden's witness statements in detail. I shall just summarise the main points.
3. Sova was incorporated in 2002 and is an FCA regulated and authorised investment firm with its headquarters in London. Before the commencement of its special administration it had 320 employees across its London and Moscow branches with 248 in Moscow. Before the special administration, its primary business involved offering corporate and institutional clients investment brokerage services, including securities trading, execution and capital markets financing. It operated globally but its primary trading corridor was the Russian market. Sova was not a deposit taker, but it held and continues to hold client money and other non-client money custody assets. These are collectively referred to as **client assets**. Sova also had its own proprietary trading operation where it employed its own capital in its transactions.
4. Sova had two primary types of client relationships which were conducted under two main sets of legal agreements. The first concerned Sova's customers who held CASS accounts with Sova. They are known as the **CASS clients**, for whom Sova held client assets in accordance with the rules in the FCA's client asset sourcebook. Second there were **TTCA accounts**, where customers held accounts pursuant to a title transfer collateral arrangement. Cash and securities recorded in the TTCA accounts are not necessarily held by Sova and, if they are held by Sova, they are the property of Sova with the relevant client being an unsecured creditor for such sums.
5. The clients of Sova under both kinds of account were comprised of a combination of corporate and institutional investors and elected professional clients and were therefore sophisticated investors for the purposes of the relevant legislation. Sova is an investment bank for the purposes of s.232 of the Banking Act 2009, as well as the Regulations and the Investment Bank Special Administration Rules 2011 (**the Rules**).
6. In late 2022, as a result of the market turmoil which followed the invasion of Ukraine by Russia, Sova began to suffer serious liquidity problems which rendered it cashflow insolvent in early March 2022. On 3 March 2022, Leech J made a special administration order in respect of Sova.

7. At close of business on 2 March 2022, client assets held in the client accounts, which were not the property of Sova, were approximately \$250 million of client money and custody assets of about \$1.85 billion.
8. Under Regulation 10, the objectives of the special administration are (1) to ensure the return of client assets as soon as is reasonably practicable, (2) to ensure timely engagement with market infrastructure bodies and the relevant authorities pursuant to Regulation 13, and (3) to either (a) rescue the company as a going concern or (b) wind the company up in the best interests of the creditors. Under Regulation 10, the JSAs are empowered to prioritise the order of work on each objective to obtain the best result overall for the company's clients and creditors. The JSAs have pursued all three objectives equally without prioritising one or other of them.
9. As to Objective 1, which is the one which is principally relevant for present purposes, on their appointment the JSAs undertook a reconciliation of client assets in the CASS accounts to identify whether the company held sufficient positions to be able to meet its obligations to CASS clients. The JSAs found no shortfall in the CASS accounts as a result of this reconciliation, save for the impact of foreign exchange movements.
10. As part of that reconciliation, the JSAs established that Sova held some \$1.85 billion of custody assets and some \$250 million of client money in the CASS Accounts on the appointment date, as I have already mentioned. As at that date, there were a total of 196 clients comprising 140 clients with client money claims, 8 clients in respect of custody assets only and 48 clients in respect of both client money and custody assets.
11. Under Regulation 10(2), the JSAs are entitled to deal with and return client assets in whatever order they think best achieves Objective 1.
12. After their appointment, the JSAs took a number of steps to notify CASS clients in relation to client money and custody assets held by Sova. On 23 March 2023, the JSAs sent each CASS client a statement setting out the JSAs' understanding of the client money and custody assets held by Sova on behalf of such clients. CASS clients were invited to confirm within 21 days of receiving such a statement whether it correctly reflected their client money and/or custody asset position. The statement was accompanied by a document that provided an outline of the process for the return of client assets. Where the relevant clients signed and agreed the statement, it became what is known as the **agreed CASS client statement**.
13. As at the date of the current application, the JSAs had returned some 89.98 per cent of all custody assets. An additional amount has been returned since the date of the application so that now something in the order of 90.11 per cent of all custody assets have been returned.
14. In relation to client money, as at the date of the application, some \$219 million had been returned. No further distributions have been made since the date of the application. The returns have taken place in the following way. On 18 May 2022, the JSAs declared a first interim cash distribution amounting to 50 per cent of the total client money pool held at the appointment date. Under Regulation 12A(1), the JSAs are entitled to set what is known as a soft bar date. The JSAs did that by notice given on 5 August 2022, setting a soft bar date of 16 September 2022 in relation to client

money claims. The date was advertised in The Gazette and the Financial Times, as well as by notice to the relevant clients. On 15 December 2022, pursuant to that process, the JSAs declared a second interim cash dividend to eligible CASS clients who were not subject to sanctions and who had returned their agreed CASS client statements.

15. The JSAs have retained about ten pence in the pound as an allowance for unknown purposes who have neither made a client money claim nor received any payment under the previous distribution of client monies.
16. The evidence explains the steps taken in relation to Objectives 2 and 3 but I do not need to go into those for present purposes.
17. Against this background, I turn to the hard bar date application. It is anticipated that if the court approves a hard bar date process, the JSAs will, by notice, set a hard bar date which will expire 28 days following such notice. The notice will, in accordance with Regulation 12B(1), be given to all clients of whose claim for the return of client money the JSAs are aware, and all persons whom the JSAs believe have a right to assert a security interest or other entitlement over the client money and the FCA. The hard bar date notice will also, in accordance with Regulation 12E(3), be advertised once in The Gazette, as well as being advertised in the Financial Times and placed on Sova's website.
18. Regulation 12C provides for a hard bar date regime in circumstances where, after setting a soft bar date under Regulation 12A, the administrator wishes to close the client money pool. Regulation 12C states that:
 - “(1) This regulation applies where the administrator, after setting a bar date under regulation 12A, thinks it is appropriate, in order to achieve Objective 1, to close the client money pool and treat any further claim for the return of client money as an unsecured claim.
 - (2) The administrator may by a hard bar date notice set a hard bar date.
 - (3) The administrator may not set a hard bar date without the approval of the court given on application by the administrator.”
19. Under Regulation 12C, the effect of a hard bar date is (a) that the administrator may not meet any final money claim received after the hard bar date and (b) that a final money claim received after the hard bar date ranks as an unsecured claim under Regulation 12C(5).
20. Regulation 12D provides for the powers of the court on an application by the special administrator to set a hard bar date. On such an application, the court may make an order approving the setting of a hard bar date, adjourn the hearing of the application conditionally or unconditionally or make any other order that the court thinks appropriate.

21. Under Regulation 12D(2), the court may only make an order approving the setting of a hard bar date if:
 - “(a) it is satisfied that the administrator has taken all reasonable measures to identify and contact persons who may be entitled to the return of client assets; and
 - (b) it considers that if a hard bar date is set there is no reasonable prospect—
 - (i) that the administrator will receive claims for the return of client assets after that date”.
22. I was taken to the decision of Leech J in *Re Xpress Money Services Limited (In Special Administration)* [2023] EWHC 1120 (Ch), which concerned another set of regulations which are essentially in the same form as the Regulations (namely regulations made under the Payment and Electronic Money Institution Insolvency (England and Wales) Regulations 2021). In *Re Xpress Money Services Limited*, Leech J noted that those regulations provided no real guidance as to the proper interpretation of the phrase “reasonable prospect”. He did not think it necessary on that case to express any general views as to the threshold that needed to be reached as he decided that it was reached on the facts of that case.
23. I was taken to various other statutory and procedural rules where a phrase such as “no reasonable prospect” is used. However I do not think that they cast any useful light on the interpretation or application of Regulation 12D(2). It seems to me that the court must read the phrase “no reasonable prospect” in the light of the policy behind the hard bar regime, namely the expedition of and assistance of the closure of the client money pool, and that the test should be applied or interpreted in a manner which makes these goals sensibly achievable.
24. As to the JSAs’ efforts to notify and contact clients, as at the appointment date, Sova had some 196 CASS clients. Of those, 52 were classified by it as active clients and 144 were classified as dormant clients.
25. The dormant class of clients was so classified under a process set out in Sova’s own CASS policy document. Under that document, Sova was required to undertake a monthly review of CASS clients to ascertain whether any CASS clients had been inactive for a year or more. If a CASS client was so inactive, then Sova would contact them to ascertain their intentions. If the CASS client did not respond, Sova would follow this up with a termination letter, requesting the client to provide instructions to withdraw their funds or assets within seven business days, and if the CASS client failed to do this, they were classified as dormant. At that point, the client money or the custody assets were placed into an omnibus CASS dormant account with the client details recorded internally. This procedure was carried out for both CASS clients and TTCA clients with CASS claims. So, at the time of the appointment, about 75 per cent of the CASS clients had already been inactive for a year or more, received termination letters and had their funds placed into omnibus accounts.
26. Mr. Soden has explained in detail the steps that have been taken by the JSAs to engage with clients who have failed to submit claims for client money or otherwise

disagreed with their individual client money statements. A summary will suffice here, but I am satisfied that a thorough and comprehensive process has been undertaken by the JSAs:

- i) On 23 March 2022, the JSAs emailed all 196 CASS clients the documents that I have already described. This included the client money claim statement and an explanation of the process.
 - ii) On 25 March 2022, in respect of clients from whom the JSAs had received a response indicating that the JSAs' email of 23 March 2022 had been undelivered, the JSAs sent the relevant documents to the addresses maintained on Sova's files.
 - iii) On 12 May 2022 the JSAs instructed a specialist tracing agency called Find UK People to conduct a tracing exercise to obtain updated addresses for the 61 CASS clients who, at this time, had not responded and for whom it had been confirmed that the address details held by the company were no longer valid.
 - iv) On 27 May 2022 the JSAs sent the relevant documents to unresponsive clients by post to the address held by Sova and the address returned by Find UK People where it differed, with a letter including the deadline to submit their client statements within 28 days.
 - v) On 1 July 2022 the JSAs placed an advertisement in the Financial Times, also posted on Sova's website stating that client statements should be returned by no later than 29 July 2022.
27. By the date of the application, the JSAs had received 52 client money claims in relation to which 50 claims matched their individual client money statements and were therefore agreed client statements. These constituted 99.3 per cent in value and 27.66 per cent by number of anticipated client money claims. Two of the claims did not match the individual client money statements.
28. The current position is that 136 client money claims out of a total of 188 client money claims constituting 0.06 per cent in value and 72.34 percent by number have failed to submit a claim. The aggregate value of these client monies is \$155,000 odd. The JSAs have carried out a breakdown of these unclaimed client monies. All of the 136 clients who have not submitted a claim are ones who were already classified as unresponsive or dormant under Sova's CASS policy.
29. Of these clients, 16 are known to be dissolved companies and some \$109,000 are held for such clients. These include one company with a claim of over \$70,000. Eighty-one clients have balances of less than \$100; 27 have balances of between \$100 and \$1,000; and 12 balances of between \$1,000 and \$10,000, amounting to a total of some \$33,000 odd.
30. In a further attempt to contact non-responsive clients, the JSAs have notified the issue of this application to all CASS clients by notice on Sova's website, a notice in the Financial Times, notice to non-responsive clients via email and post. The JSAs have not received any further responses from CASS clients who had hitherto been unresponsive.

31. I should mention that in response to the notification of the application, the JSAs received some correspondence from solicitors acting on behalf of CJSC Alfa-Bank (**Alfa-Bank**) which I shall return to below.
32. In relation to the jurisdictional requirements under Regulation 12C, I am satisfied on the evidence that the JSAs have adopted reasonable measures to identify and contact eligible claimants. I am satisfied, in particular, that the evidence shows that in seeking to identify and contact eligible claimants, the JSAs have taken comprehensive and diligent steps. They have also acted in accordance with the guidelines set out in the FCA's guidance for insolvency practitioners on how to approach regulated firms.
33. I am satisfied second that there is no reasonable prospect of a claim for relevant funds being received after the proposed hard bar date. In particular, the 136 claimants who have still not made claims were all on Sova's dormant list at the time of the appointment date and, accordingly, have been inactive for several years. All communication channels available to the JSAs have been reasonably exhausted and entitlement to funds either relate to dissolved companies or are relatively small in most cases. Of the twelve clients with entitlements to more than \$1,000, eight of those are for \$3,000 or less. Since the soft bar date in August 2022, no more claims have been received. In all these circumstances, it is very unlikely that any more claims will be received and I am satisfied that the statutory threshold has been passed.
34. As to discretion, it appears to me to be desirable to impose a hard bar date. The relevant statutory objective is to return client assets as soon as reasonably practicable. Imposing the hard bar date will assist in bringing finality to the client monies date. It seems to me it would be preferable to have finality to remove the possibility of claims coming out of the woodwork very late in the day. It would also allow the JSAs to release the ten per cent of client money that they have held back in the sum of some \$24.9 million-odd, which would benefit those clients whose funds are still being held.
35. As just mentioned, the notice of the application led to correspondence with solicitors acting for Alfa-Bank, who expressed their concerns about the hard bar date on client money and custody assets recorded in Alfa-Bank's account. The JSAs have frozen this account pursuant to Regulation 11 of the Russia (Sanctions) (EU Exit) Regulations 2019. The solicitors for the JSAs have explained that, because Alfa-Bank has already submitted its claim for client money and custody assets, the hard bar date process does not and will not pose a concern for Alfa-Bank. There have been no representations made to this court by Alfa-Bank on this application.
36. In all the circumstances, I am satisfied that the requirements of Regulation 12D(2) have been satisfied and that it is appropriate in the exercise of the court's discretion to impose a hard bar date in order to allow the JSAs to close the client money pool and treat the remaining balance as money of the firm.
37. I turn to the application for the imposition of a claims adjudication process. In the case of unsecured claims, Rule 156 of The Rules provides a method by which proof submitted in a special administration can be adjudicated. There is no such mechanism in relation to CASS claims set out in the CASS rules or in the Rules or the Regulations.

38. Sova has agreed the client money position with 99.93 per cent of its known client money clients by value and has agreed the custody asset position with 99.83 per cent of its known custody asset clients by value.
39. At the time of the application, there were two entities in respect of which Sova did not hold client money or custody assets and which were asserting CASS claims. The larger of these was a claim of Probusinessbank, a Russian incorporated entity which has been in administration since 13 August 2015. It has asserted, by the submission of a signed client money and client asset statement, a client money claim and a custody asset claim of some \$284 million odd. The JSAs, in their evidence, refer to historical dealings which took place well before the start of the special administration including the exercise of rights of set-off by Sova against the claims of Probusinessbank. The upshot of those events was that on 16 June 2019, Sova closed Probusinessbank's account and transferred the unpaid balance of some \$14,000 to a CASS account.
40. Following the appointment date, the JSAs sent Probusinessbank a client money form with that amount shown as held under the CASS account. A representative of the administrator of Probusinessbank indicated that it did not agree the JSAs' calculations and instead made the claim of \$284 million-odd. The JSAs have written to Probusinessbank to request it resubmit its CASS account form as an unsecured claim but have, to date, received no response. It appears that the latest correspondence was in about September 2022. Probusinessbank has been notified also of this application but there has been no response.
41. The second claim at the time of the application was by MeritKapital Limited. The JSAs' records show that Sova held a negligible sum of client money on Merit's behalf. Merit originally asserted a client money claim of over £1.4 million-odd relating to dividend and (inaudible) payments received by Sova on securities transferred to Sova pursuant to a contract described by a GMRA, as well as margin payments made by Merit pursuant to that agreement.
42. At the time of issuing the application, the dispute in relation to this claim was still outstanding, however, on 13 June 2023, Merit confirmed through its solicitors that it was no longer asserting a client money claim or custody asset claim other than in respect of the £7 odd but that it continued to assert that it has an unsecured claim against Sova in the amount of £1.4 million-odd.
43. The JSAs are aware of a further 18 creditors who have contracted with Sova on similar terms to those of Merit that could potentially seek to make similar arguments advanced by Merit. The JSAs say in their evidence that they believe that these arguments would be misconceived.
44. The JSAs seek an order which would, in essence, put in place a claim adjudication procedure which, in broad terms, reflects the proof of debt procedure for unsecured claims. The procedure would require the person claiming to have a client asset entitlement and wishing to recover it to submit, or have submitted, their claim in writing to the special administrators. There is then a procedure for the administrators to consider such claims and either admit them or reject them in whole or in part. There is then a process for an application by a dissatisfied client asset claimant to make an application to the court in a particular form within 42 days of receiving

notice from the joint administrators. Where that takes place, the court will fix a venue for the application to be heard as if it was dealing with a contested proof of debt.

45. There are no provisions in either CASS or the Regulations or the Rules which set out a procedure whereby client money or custody asset claims can be adjudicated. The JSAs rely on a number of jurisdictional grounds under which they seek the order for the court to fill that lacuna. The one which was pressed in argument was the inherent jurisdiction of the court. The joint administrators rely on the authority of *Re MF Global* [2013] EWHC 1655 (Ch), which has also been applied in other cases, where a procedure for the adjudication of client money claims was imposed by the court.
46. A question arises whether it is, in the present circumstances, really necessary for a process of the kind envisaged to be imposed as the only extant disputed claim appears to be that of Probusinessbank. In the other cases where such a procedure has been instituted, it was anticipated that there would be multiple claims. On balance, I am persuaded that it is worth imposing such a procedure for two main reasons. First, it seems to me that it may well assist in having the court approve a procedure when seeking to bring matters to a head with Probusinessbank. That bank is apparently in administration in Russia and it seems to me that having a formal procedure of the kind proposed may well crystallise and bring to a head whether Probusinessbank wishes to proceed with its alleged claims. Secondly, the evidence shows that while the dispute with Merit has now been resolved, there are other potential claimants in the same position who may seek to run the same argument. Again, it seems to me, on balance, that it would be helpful to have a formal procedure for crystallising matters and bringing any such claimants out of the woodwork.
47. In relation to the proposed claim adjudication procedure, Alfa-Bank expressed concerns through its solicitors. The JSAs responded in a letter of 28 September 2023 to confirm that the claims adjudication procedure would not pose a concern for Alfa-Bank because Alfa-Bank had already made a claim. No further complaints were made by Alfa-Bank.
48. In the circumstances, I shall make the orders sought under both limbs of the application.

(This Judgment has been approved by Mr. Justice Miles.)