

# Woodford: what is Link really up to - and is it fair?

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Mark Bishop, 21 September , 2023

# Overview

- Invited Therese Chambers (Executive Director for Enforcement) to attend this evening's event or send a colleague
- Executive Casework replied on her behalf declining the invite; offered to answer any questions we might have before the meeting
- We submitted 13 questions
- FCA most recently confirmed it would provide responses today at 12:43
- 16:33pm this afternoon, received this:

# FCA response

Dear Mark,

Thank you for your email.

In the limited time available, it has not been possible to provide detailed responses to each of your questions. Some questions, such as those concerning the operation and rules of the Scheme, are better directed to Link Fund Solutions Ltd (LFSL) or the Investor Advocate. Additionally, a number of your questions would be difficult for us to answer because of the statutory confidentiality requirements placed on us by the Financial Services and Markets Act 2000.

However, we are keen to be as helpful as possible in the time available. As a result, we have set out our position, which I hope addresses the substance of your queries.

We have been in regular communication with Link Fund Solutions Ltd (LFSL), since the Scheme was announced. That engagement has included on the design of the Scheme and its communication to investors.

It's important to set out that the Scheme on which Woodford investors are being asked to vote, however, is proposed by LFSL. LFSL is responsible for designing it in a manner that is fair to all investors.

Nonetheless, there are safeguards in place. The Scheme will be subject to the oversight of the court to ensure that it is fair. We recognise investors must receive clear communications to understand the potential consequences of the Scheme and, when deciding how to vote, to consider what may be the best option for them. For that reason, the FCA is supportive of the steps LFSL has taken, including the formation of an Investors' Committee, the appointment of an independent Investors' Advocate and the provision of information on a bespoke website (<https://lfwoodfordfundscheme.com/>). The FCA considers that these arrangements are appropriate and would encourage investors to take advantage of them. We will remain closely involved throughout the process.

The FCA is not able to provide advice to individual investors. However, we continue to believe the Scheme – which includes a voluntary contribution from Link Group – is the quickest and best way to return as much money to investors as possible. If it were to go ahead, the Scheme would be likely to pay out in 2024. If the Scheme does not receive approval, the alternative would be litigation, which Link has said it would fight, and, potentially, claims to the Financial Services Compensation Scheme. The outcome of both would be uncertain, neither is likely to be quick and significant costs are likely to be incurred in any legal claim. This scheme offers payments as soon as early 2024, if it goes ahead. We think that better serves consumers interests and we encourage consumers to consider it very carefully.

The reserve fund held will allow LFSL to meet reasonable costs associated with the Scheme. Holding this fund will allow investors to be paid the rest of the money as quickly as possible in the first quarter of 2024. Any leftover in the reserve will also ultimately be distributed to investors.

We recognise that this is a difficult decision for Woodford investors, who have waited for greater certainty for a number of years. We believe it is important they get the best and clearest information on the proposed Scheme. We have worked with LFSL to ensure this is the case. It is also important to be clear that the Scheme offers investors greater certainty of payment shortly versus or the possibility of an uncertain sum at some point many years from now.

I hope the meeting goes well this evening and is productive for the victims of this investment.

With thanks,

# QUESTION:

1. Was the FCA given sight of the letter from Link Fund Solutions to investors dated 7 September 2023 prior to its publication?

ANSWER:

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# QUESTION:

2. Is the FCA comfortable that this letter fairly represents the facts of the case and the options available to consumers for achieving redress?

ANSWER:

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# QUESTION:

3. It has been widely claimed that Link Group will contribute 'up to £60m' to the proposed settlement. In fact, the small print of the letter indicates that £50m will be retained to meet the liabilities of Link Fund Solutions, cover sale-related costs and fight any litigation from investors who exited the Fund before it was gated. On that basis, the contribution from Link Group may be as little as £10m. Does the FCA consider this to be a good deal for investors?

ANSWER:

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# QUESTION:

4. Does the FCA agree that one of the routes by which investors might be compensated is the FCA obtaining a restitution order against Link Fund Solutions, which would then go into default, with the shortfall passing to the FSCS for payment, subject to the statutory limit of £85,000 per eligible consumer; and if so, is it concerned that this option is not spelt out and its merits considered in the letter?

ANSWER:

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# QUESTION:

5. Does the FCA accept that a restitution order honoured by the FSCS offers the potential to deliver materially greater financial redress to Woodford investors, and that the probability of such an order being granted is extremely high given the evidence against Link Fund Solutions?

ANSWER:

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# QUESTION:

6. There are suggestions that the letter may not have been passed on to consumers by some platforms and IFAs. Was the FCA consulted by Link Fund Solutions on its plans for distributing the letter, and has it expressed any concerns either prior to or subsequent to the letter's publication?

ANSWER:

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# QUESTION:

7. To what extent is the FCA engaged in dialogue with Link Fund Solutions about the proposed structure of any Scheme of Arrangement vote? In particular, will all classes of investor be treated identically or will institutional shareholders vote separately to private ones (which we believe is essential because the former are unlikely to be FSCS-eligible, so have different economic interests to the latter)?

ANSWER:

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# QUESTION:

8. Is the FCA aware that many private investors in the Woodford Equity Income Fund in fact hold 'institutional' units in the Fund, because certain platforms were allocated their own, institutional-class units for customers at launch? Will the FCA ensure that any separation of voting by class of holding reflects the actuality of the type of investor as opposed to the nominal class of holding?

ANSWER:

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# QUESTION:

9. Does the FCA believe that its permission is required for a change of ownership of Link Fund Solutions? If so, does it intend to grant such permission while the issue of redress for Woodford investors (whether through the proposed Scheme of Arrangement, a restitution order obtained by the FCA, litigation or any other means) has been resolved?

(Currently, according to the letter, the intention is for the sale to complete before the matter is resolved; we cannot see how a firm can undergo a change of ownership while it is at material risk of enforcement action and insolvency.)

ANSWER:

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# QUESTION:

10. Was the FCA consulted on the arrangements for representing investors' interests set up by Link Fund Solutions communicated to date (the Investors' Advocate, Investors' Committee, and choices of post-holders for these roles). If so, was it happy with them, or did it make representations that were not actioned? If so, what were they?

ANSWER:

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# QUESTION:

11. Was the FCA consulted on any arrangements for representing investors' interests set up by Link Fund Solutions that have not yet been made public (including, but not limited to, any arrangements for investors to attend and participate in the 10 October court hearing and any subsequent ones)? If so, what are those arrangements, is it happy with them, or has it made representations that Link Fund Solutions has declined to action? If so, what were they?

ANSWER:

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# QUESTION:

12. If concerns crystallise about whether the process is being run fairly and transparently and in the interests of investors, will the FCA agree to work with investors to resolve those concerns?

ANSWER:

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# QUESTION:

13. Does the FCA plan (i) to attend and (ii) to be legally represented at the hearing on 10 October?

ANSWER:

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# Next steps

- Seeking replies from FCA in due course
- Will distribute them, if permitted to do so
- Will give FCA the video of this event, asking them to intervene in consumers' interest in respect of concerns identified

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