

26 October 2020

Final report by the Complaints Commissioner**Complaint number FCA00817***The complaint*

1. On 25 August 2020 you asked me to consider your complaint about the FCA. My preliminary report was issued on 15 October 2020 and both you and the FCA have had the opportunity to comment.

What the complaint is about

2. You are a professional spread better and have been in business for 30 years. You complained to the FCA on 16 June 2020 that due to a change in its rules on conduct of business in 2018, firms you deal with are no longer classifying you as a professional trader but as a retail trader. This has affected your livelihood.

What the regulator decided

3. The FCA declined to investigate your complaint on the basis that it is excluded from [the Complaints Scheme](#) (the Scheme) because:
 - a. you had known about this matter for more than 12 months and there were no reasonable grounds for delay (Scheme paragraph 3.3)
 - and
 - b. your complaint is about the FCA's rules (3.4.c)
4. Although it did not uphold your complaint, the FCA did explain to you the effect of the rules, and the reasons for them.

Why you are unhappy with the regulator's decision

5. You have told my office that you consider spread betting falls outside the remit of the European Securities and Markets Authority (ESMA), that the FCA should not be applying these rules to spread betting, and that in any event the UK has now

FCA00817

left the European Union so the rules should not apply. You want the FCA to disapply the ESMA rules so that you can carry on your business as before.

My analysis

6. The FCA's files show that when making your complaint in June 2020 you said that you first became aware of this issue in August 2018 when revised guidelines came into effect. You have explained to a member of my staff that the reason for the delay in submitting your complaint was that you waited to see if the rule change would adversely affect you. When you found that it did you initially left trading. You returned to the market in early 2020 and have found a temporary way around the rules but this is likely to change next year.
7. I accept the reasons for your delay; however, the complaint you have made to my office is clearly about the way in which the FCA has made and applied rules. Such complaints, about the performance of the regulators' legislative functions as defined in the Financial Services Act 2012, are excluded from the Scheme. The wording specifically excludes rule-making and guidance.
8. You have explained to a member of my staff why you consider that the regulations are not fit for purpose, namely that the FCA has adopted European rules that are inappropriate for the unique UK spread-betting market, that the rules do not protect retail investors, and have unintended and restrictive consequences for legitimate traders like you who have the required skill-set. I am very sorry to learn of the difficulties that you have experienced but for the reasons given the FCA was correct to exclude your complaint from the Scheme.
9. I am therefore unable to uphold your complaint. You have asked what you can do to change these rules. I can only suggest that you contact your MP or the House of Commons Treasury Select Committee to point out the issues that you have raised.

My decision

10. I have not upheld your complaint for the reasons stated above.

Antony Townsend

Complaints Commissioner

26 October 2020