



Complaints Commissioner

Office of the Complaints Commissioner
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5 March 2025

Addendum

This final report was issued on 30 May 2024. The final report sets out a recommendation that the FCA pay compensation to the amount of the tax paid by the complainant, which was not refunded as part of the redress scheme. The final report provides a recommendation that a specific sum of compensation is paid, which had been calculated by the complainant. However, reasonable questions have been raised by the FCA as to the calculation of this figure. So engagement should take place between the parties, to confirm the basis of this calculation before any payment is made. To confirm, the recommendation made is compensation to the sum of the tax paid by the complainant.

30 May 2024

Final report by the Complaints Commissioner**Complaint number 202201587***Your FCA complaint*

1. The FCA summarised your complaint in its decision letter dated 26 August 2022 (Appendix 1) as follows:

“Your complaint was made on 22 April 2022 in an email to the FCA’s Chief Executive, Nikhil Rath, following the Complaints Commissioner’s (“the Commissioner”) Final Report dated 17 March 2022. On 16 May 2022, we wrote to you with a summary of our understanding of your complaint. You provided comments on our summary in your email dated 25 May 2022, which I have taken into account in my investigation.

You believe you should receive an ex-gratia compensatory payment from the FCA due to its failings in regulating the parties connected to the Connaught Income Fund Series 1. In your email of 22 April 2022, you stated that, following receipt of compensation payable under the Capita redress scheme, you had outstanding capital losses of £25,230.86”.

What the regulator decided

2. In its decision letter the FCA concluded its decision:

“The FCA has accepted that errors were made during the regulation of Connaught and we accepted the five lessons from the Connaught report. However, the FCA took action against the operators of the Fund (CFM and BGC) and achieved £66m in redress for the benefit of investors in the Fund. The redress

agreed with CFM provided for investors to receive the original amount invested, placing investors as closely as possible back into the position they would have been in had they never invested in the fund.

Although we accept our regulation of the Fund and its operators could have been better, we remain of the view that the losses you claim were not directly attributable to the FSA's or FCA's failings, but to the companies connected to the Fund. The FCA also has legal immunity to pay damages (compensation) which is set out at paragraph 25 of schedule 1ZA of FSMA.

As a result of the above, I am not upholding your request for the FCA to pay you compensation”.

Why you are unhappy with the regulator's decision

3. You previously submitted a complaint against the FCA which my predecessor investigated and issued in a final report on 17 March 2022 (see: <https://frccommissioner.org.uk/wp-content/uploads/FCA001404-Issued-17-March-2022.-Published-07-April-20221.pdf>) . In that report the Commissioner noted that the FCA had not had the opportunity to consider your complaint that the FCA should pay you a sum compensating you for the losses you incurred as a result of the FCA's regulatory failings in relation to your Connaught Income Fund Series 1. They suggested that you should take this complaint element to the FCA to consider.
4. You did this and the FCA issued its decision letter to you on 26 August 2022. You have set out in your complaint to my office (Appendix 2), that the FCA has declined to make good your losses, instead offering you a 'derisory £150 for having failed to respond appropriately to your initial complaint and offering and even more insulting £50 for the delay' in replying to your subsequent one. You have set out that you are escalating the matter to me in the hope that I will recommend that the FCA should now pay you the redress that you have been asking for since March 2021.
5. You have set out that you believe that the FCA has misapplied paragraph 7.14 of the Complaint Scheme to determine what remedy is appropriate in your case:

you point out the latter paragraph provides guidelines intended to shape the FCA's response to 'a report from the Complaints Commissioner'. You feel the FCA should have dealt with your complaint according to paragraph 6.6 of the Complaint Scheme which says which states:

"Where it is concluded that a complaint is well founded, the relevant regulator(s) will tell the complainant what they propose to do to remedy the matters complained of. This may include offering the complainant an apology, taking steps to rectify an error or, if appropriate, the offer of a compensatory payment on an basis."

6. Your view is that:

"The FCA appears to have accepted that my complaint is well founded, in that it has admitted that there has been extensive regulatory failure. It is therefore required to consider a range of measures, which include 'if appropriate, the offer of a compensatory payment.'

As you know, I have consistently set out the basis on which I have calculated the loss I have suffered, and at no stage has the FCA disputed that figure. Likewise, I have always alleged that this loss was caused by regulatory failure, and again, the FCA has never sought to deny this. And there is no remedy other than a compensatory payment that would 'remedy the matters complained of.' Therefore, the appropriate course of action is for the FCA to offer me a compensatory figure equal to the sum that I have asked it to pay me".

7. You have set out that you believe you should receive an compensatory payment from the FCA due to its failings in regulating the parties connected to the Connaught Income Fund Series 1.
8. For clarity, the sum you are claiming is £25,230.86, which represents the amount of taxation you paid on income received and which deduction was not taken into account when calculating your loss.

Preliminary points (if any)

9. Like the FCA, I consider that the Connaught Report was extensive and included a detailed analysis of the FSA's and FCA's internal documents, meetings and

interviews with numerous stakeholders and current and former employees. As such I have not replicated that during the investigation of your complaint. I agree with the view of the FCA that it is not an appropriate use of my office's resources to review the same materials again for the purpose of this response given that this exercise has already been completed thoroughly by an independent reviewer.

10. As such the findings of the Connaught Report are not in dispute here and my report is based on that presumption.
11. The FCA introduced a new Complaint Scheme in November 2023 which only applies to complaints submitted after this date. I have, therefore, reviewed your complaint under the 2016 Complaint Scheme.

My analysis

12. In its decision letter the FCA set out that "as the point regarding our errors in handling the Connaught Income Fund Series 1 and connected companies is not in dispute, I have carried out an assessment of the relevant factors at 7.14 of the Complaint Scheme to determine what remedy is appropriate in your case".
13. I agree that the focus of this complaint is not to review the supervisory failings of the FCA in relation to the Connaught Fund, but to determine what compensation, if any, is appropriate in your case.
14. You have set out in your complaint email that you consider that the FCA has misapplied paragraph 7.14 of the Complaints Scheme. You consider that this paragraph is a guideline for the FCA to respond to a report from the Complaints Commissioner and it is not a means of evaluating a complaint from a member of the public.
15. I agree with your point that paragraph 7.14 lists factors which the FCA ought to take into consideration with respect to any remedy I recommend, after I have issued a final report. Further I note that, these are not factors which I am bound by.
16. According to the Financial Services and Markets Act 2012 (as amended by the Financial Services and Markets Act 2023) I must only have regard to paragraph 87 (5) which provides that:

“The complaints scheme must confer on the investigator the power to recommend, if the investigator thinks it appropriate, that the regulator to which a complaint relates takes either or both of the following steps—

(a)makes a compensatory payment to the complainant, or

(b)remedies the matter complained of”¹.

17. However, I appreciate that the FCA considered that applying the four factors detailed in paragraph 7.14 would assist with setting out its position in its decision letter, which remained as set out in its online statement, <https://www.fca.org.uk/news/statements/fca-sets-out-approach-assessing-connaught-complaints> being that an apology was a suitable redress under the Complaints Scheme.
18. The FCA provided reasons for its decision (see Appendix 1) which included its view that there were many contributors to your loss including:
 - a) it made errors;
 - b) the Connaught related firms were responsible for their own actions
 - c) investors must take responsibility for their own actions; and finally
 - d) that in terms of consequences investors have suffered, it must be noted that they recouped a considerable amount of their losses.
19. The FCA has also said in its Decision Letter that: “We are not persuaded that the errors made by the FCA in the handling of the Fund are the primary cause of investor loss.”
20. In relying on this principle which has to be satisfied (i.e. the Regulator must be “the sole or primary cause of the loss”) in relation to compensation for financial loss, the FCA creates the effect of rendering any meaningful compensatory payments for financial loss in respect of complaints under the Scheme practically unavailable.
21. A better approach, in my view, is to ask the question ‘how culpable is the FCA’ and to determine if a compensatory payment is appropriate and, if so, what the amount of such payment should be, by reference to the degree of culpability.

¹ <https://www.legislation.gov.uk/ukpga/2012/21/part/6>

Although the FCA has admitted to mistakes, it has not evaluated in any meaningful way its own culpability with respect to its supervisory failings.

22. You have said that “The gravity of the misconduct is extremely severe. Connaught is one of only two consumer investment schemes in recent years in which the extent of regulatory failure is so serious that an independent review had to be commissioned. It found that regulation was ‘neither appropriate nor effective’; the FCA accepted the report’s findings.”
23. I agree with you that the gravity of misconduct on the part of the FCA was high based on the Parker report. I also agree with the FCA when it says that it ‘is clear that we made operational errors in our regulation of the Connaught Income Series 1 Fund’. In this case, my view is that a series of operational errors on the part of the FCA led to supervisory failings which were significant and for which it bears responsibility.
24. The FCA has a contributory role with respect to the failure of the Connaught Fund and your related losses, and in my view it ought to offer compensation to you for the losses you claim by reference to the proportion reflecting its contribution to your losses.
25. I consider I also have to take into account a number of relevant factors in determining the appropriate level of payment to recommend in relation to the contributory role of the FCA:

Whether what the regulator has done or not done has made the problem worse, or whether it has acted in a way to reduce the problem

26. I have already expressed agreement with you that the gravity of misconduct on the part of the FCA was high.
27. On the other hand, the FCA has clearly taken proactive steps in facilitating the redress scheme which ensured investors recouped a considerable amount of their losses. In my view the FCA has acted in a way to reduce the problem.

Whether the complainant or another person has done anything which contributed to the problem

28. You invested in a UCIS which is considered a higher risk investment than in regulated products, and you relied on the services of an IFA. The causative factors relative to your alleged losses include but are not limited to:
- a. CAM, BGC, CFM
 - b. The FSA through its regulatory oversight of the Fund
 - c. Your IFA
 - d. Your own decision to invest in a higher risk, unregulated product.
29. The FCA is right to say that The Financial Services and Markets Act 2000 (FSMA) states that in securing an appropriate degree of protection for consumers, the FCA must have regard (amongst other things) to the general principle that consumers should take responsibility for their decisions. You have also acknowledged this point.
30. I consider that liability should be allocated to parties set out above and should not all be borne by the FCA.

My decision

31. Taking all of the factors of which I am aware into account in relation to an appropriate remedy, my initial view is that on the one hand:
- a) Your relationship with the FCA is remote;
 - b) You have accepted that you should bear some responsibility for your choice of investment;
 - c) There are other parties which bear responsibility for how your investment turned out, including those identified above;
 - d) You have recouped a considerable amount of your investment: 75% of £99,000. This is significant mitigation on the impact on you.
 - e) The FCA has taken steps to ensure consumer protection through its involvement in the redress scheme.
32. On the other hand, it is the case that:
- a. The FCA's gravity of misconduct is high;

- b. The FCA has a contributory role with respect to the failure of the Connaught Fund and your related losses.
33. The FCA ought to take responsibility for its contributory role with respect to the failure of the Connaught Fund and your related losses. I disagree with you that the FCA is solely responsible and that they should therefore pay the full amount. **I recommend** it offer an compensation payment to you of the relevant proportion of your losses of £25, 230.86 reflecting its contributory role taking the above factors above into consideration. I note your view that you are also entitled to contractual interest and would ask the FCA to consider this.
34. The FCA does not share this view as can be seen in its decision letter, and its comments to the preliminary report. A high level summary of its position is that it accepts it made errors in the regulation of Connaught, but that given it took action against the operators of the fund and helped achieve redress for investors, coupled with the fact it does not consider itself the primary cause for the loss of investors, it is not upholding your request to pay you compensation.
35. In my view, the consequence of the approach that has been adopted by the FCA (first as a matter of policy, and subsequently incorporated expressly in the 2023 Scheme) is that it will rarely, if ever, make any compensatory payment for financial loss in cases where there has been supervisory failure. This view was shared by my predecessors.
36. This situation seems to have arisen principally as a result of the fact that the Regulators and the Commissioner are each applying different factors when making their respective decisions under the Scheme and neither is required to have regard to the factors taken into account by the other.
37. I will therefore likely be making recommendations for compensatory payments for financial loss, where “appropriate”, in the knowledge that such an outcome is not consistent with the factors set out in the Scheme which apply to the Regulator.
38. My statutory function as Commissioner, when investigating complaints that fall outside the very narrow set of circumstances where the Regulators might be minded to make compensatory payments, is to recommend compensation that I consider appropriate irrespective of the constraints that the Regulators have

adopted for themselves. In practice, it appears from the experience of my predecessors that I will be doing so in the expectation that they will (in almost all cases) not be followed and that I will need to report this fact to HM Treasury in my annual report.

39. I am concerned that this will, in many cases, result in me being required to make recommendations as to what is in my view the appropriate outcome in a given cases, thereby raising the hopes of consumers that they might receive a compensatory payment, only for the regulator subsequently to decide not to follow the recommendation, in accordance with their established practice.
40. In my view such an outcome is likely to add to the distress and confusion for consumers who bring complaints under the Scheme – and risks undermining confidence in the function of the Commissioner and the Scheme - rather than improving due process and transparency of the regulators' complaints handling processes.
41. I will continue to liaise with both the Regulators and relevant government bodies as appropriate on this matter. In the meantime, I recommend that the FCA offer you a payment for its contributory role in relation to your losses, which it should calculate taking into account the mitigating factors above, however, I remind you that my recommendations are not binding on the FCA, and I have outlined my concerns above to manage your expectations.

Rachel Kent

Complaints Commissioner

30 May 2024

APPENDIX 1

Helpline: 020 7066 9870
Email: complaints.scheme@fca.org.uk
Website: www.fca.org.uk/about/complain-about-regulators



FINANCIAL
CONDUCT
AUTHORITY

Sent by email

[REDACTED]
[REDACTED]

12 Endeavour Square
London
E20 1JN

Tel. +44 (0)20 7066 1000
Fax +44 (0)20 70661099
www.fca.org.uk

26 August 2022

Our Ref: 208256991

Dear [REDACTED]

Further to our email of 17 August 2022, I am writing to let you know I have now completed my investigation into your complaint.

Your complaint

Your complaint was made on 22 April 2022 in an email to the FCA's Chief Executive, Nikhil Rathi, following the Complaints Commissioner's ("the Commissioner") Final Report dated 17 March 2022. On 16 May 2022, we wrote to you with a summary of our understanding of your complaint. You provided comments on our summary in your email dated 25 May 2022, which I have taken into account in my investigation.

You believe you should receive an ex-gratia compensatory payment from the FCA due to its failings in regulating the parties connected to the Connaught Income Fund Series 1. In your email of 22 April 2022, you stated that, following receipt of compensation payable under the Capita redress scheme, you had outstanding capital losses of £25,230.86.

Decision

My letter explains, below, that I have not upheld your complaint.

Background

You expressed your original concerns about the FCA in an email to Nikhil Rathi on 25 March 2021.

We understood your complaint to be about the methodology used to determine the redress you received under the [Capital Financial Managers](#) scheme. You have told us you were left with a shortfall of £25,230.86, which you want to recover from the FCA. My colleague wrote to you with her findings on 4 June 2021. Within her letter, my colleague said that she felt you were treated fairly and the methodology was applied correctly when calculating the redress awarded to you - for this reason, your complaint was not upheld.

You referred your complaint to the Complaints Commissioner on 29 August 2021 who completed her review and issued her [Final Report{ref: FCA001404}](#) on 17 March 2022. Within her response, the Commissioner says, "My office wrote to you on 12 January 2021 to say neither I nor the FCA has considered your complaint in terms of asking for an ex gratia payment for the FCA's regulatory failings. However, your comments to the preliminary report

make it unequivocally clear that this is what you would now like to be considered." She went on to suggest that you refer this matter back to the FCA for a response.

You again wrote to Nikhil Rathi on 22 April 2022 raising the matters I have considered within this investigation.

Findings

Within your response to our 16 May 2022 letter, you provided additional comments around what you wanted us to consider when investigating this complaint. Namely comments within Raj Parker's Report¹ ("the Connaught Report" or "the Report") around the appropriateness and effectiveness of the FSA/FCA's regulation of Tiuta and Connaught; and also, all emails and meeting notes in which Connaught was discussed by the FSA/FCA and with Raj Parker directly. My understanding is that you feel that as the FSA/FCA was shown to have failed in its regulation, we should award ex gratia compensation for any consequential losses, loss of income or opportunity costs which were not paid by the redress scheme.

The Connaught Report was extensive and included a detailed analysis of the FSA's and FCA's internal documents, meetings and interviews with numerous stakeholders and current and former employees. We have not replicated that during our investigation of your complaint. In my view, it would not be an appropriate use of our resources to review the same materials again for the purpose of this response, when this exercise was completed thoroughly by an Independent Reviewer.

It is also in the public domain that the FCA has accepted the errors it (and its predecessor, the FSA) made in its handling of the Connaught Income Fund Series 1 and connected companies. I have based this on the FCA's response to the Connaught Report where we say at paragraph 1.1 *'We are sorry for the errors we made in this case. We accept and will implement all the Connaught Review's recommendations.'*²

Therefore, as the point regarding our errors in handling of the Connaught Income Fund Series 1 and connected companies is not in dispute, I have carried out an assessment of the relevant factors at 7.14 of the Complaints Scheme to determine what remedy is appropriate in your case.

I would like to highlight paragraph 14 of the Commissioner's Final Report where it says *'I explained to you that although the FCA had not written to you on this point specifically, it had, in fact, made a decision about this issue already, published on its website here:*

<https://www.fca.org.uk/news/statements/fca-sets-out-approach-assessingconnaught-complaints>.³

I have taken into consideration our approach when deciding what remedy is appropriate in your case. I have set out my assessment below:

1. Factor (a): the gravity of the misconduct and its consequences for the complainant.
 - a. In our [response](#) to the Connaught Report, which was published in December 2020, we accepted that errors were made and we agreed to the five recommendations contained within the report. We explained what lessons have been learned since the Connaught events and how changes are being implemented over the years and through our Transformation programme.

¹ <https://www.fca.org.uk/publication/corporate/connaught-independent-review.pdf>

² <https://www.fca.org.uk/publication/corporate/connaught-independent-review-response.pdf>

³ <https://frccommissioner.org.uk/wp-content/uploads/FCA001404-Issued-17-March-2022.-Published-07-April-20221.pdf>

- b. Investing in unregulated collective investments schemes (UCIS) is high-risk and whilst the FCA and FSA made errors, Connaught Asset Management (CAM), Capita Financial Managers (CFM) and Blue Gate Capital (BGC) were responsible for their own actions. The final notices for [CFM](#) and [BGC](#) demonstrate that CFM and BGC breached their regulatory requirements in relation to Principles 2 (skill, care and diligence) and 7 (communications with clients).
 - c. The Financial Services and Markets Act 2000 (FSMA) states that in securing an appropriate degree of protection for consumers, the FCA must have regard (amongst other things) to the general principle that consumers should take responsibility for their decisions.
 - d. In terms of the consequences complainants have suffered, it is important to note that the Connaught Report states at paragraph 16 *'Fund investors recouped a considerable proportion of their investment through a combination of a payment of £18.5m arising from the settlement of civil litigation with the Fund's operators in January 2016, and a payment of up to £66m following the Capita Final Notice. This was a positive outcome for Fund investors which the Regulator's actions from around 2015 onwards were instrumental in achieving and for which it deserves credit.'*⁴ The aim of this payment was to return the amount originally invested, placing investors as closely as possible back into the position they would have been in if they had never invested in the Fund. Consequential losses, loss of income or opportunity costs were never intended to be repaid by the FCA.
2. Factor (b): the nature of the relevant regulator(s)' relationship with the complainant and the extent to which the complainant has been adversely affected in the course of their direct dealings with the relevant regulator(s).
- a. Having reviewed your case and contact history with the Regulator, I cannot see that you have had direct contact with the FCA where guidance or incorrect information regarding an investment in the Fund was provided to you.
3. Factor (c): whether what has gone wrong is at the operational or administrative level.
- a. The Connaught Report found that *"... the Regulator's approach may not have been at material variance from the regulatory orthodoxy at the time in some respects, but overall it remains my view that it could have acted in a more effective way to protect investors in the Fund."*⁵
 - b. It is clear that we made operational errors in our regulation of the Connaught Income Series 1 Fund.
 - c. However, it is worth bearing in mind that our regulation of Connaught happened during the time of the financial crisis where, as the Connaught Report says, *'From 2008 onwards, the overall approach to regulation was shaped to a considerable extent by the response of the government and international regulatory bodies to the issues which led to the financial crisis, and focussed on the regulation and supervision of large firms. This focus led to various significant conduct related scandals being identified, such as missold PPI, and manipulation*

⁴ The Connaught Report, paragraph 16, page 6.

⁵ The Connaught Report, paragraph 16, page 6.

*of the LIBOR and FX trading.*⁶

4. Factor (d): the impact of the cost of compensatory payments on firms, issuers of listed securities and, indirectly, consumers.
 - a. Although the Connaught report criticised the actions of the Regulator, it does not follow that the Regulator must make an ex gratia award covering any consequential losses, loss of income or opportunity costs which were not paid by the redress scheme.
 - b. Our approach to assessing Connaught complaints was published on our website on 19 April 2021.⁷ We confirmed that we reconsidered the remedies available once the Independent Review was published but we considered that an apology is the most appropriate remedy in the circumstances.
 - c. We are not persuaded that the errors made by the FCA in the handling of the Fund are the primary cause of investor loss. It would not be right to expect regulated firms (and ultimately the consumers of those regulatory firms) to provide redress over and above the redress scheme which has ensured investors received the amount originally invested, placing investors as closely as possible into the position that they would have been in if they had never invested in the Fund.

Conclusions

The FCA has accepted that errors were made during the regulation of Connaught and we accepted the five lessons from the Connaught report. However, the FCA took action against the operators of the Fund (CFM and BGC) and achieved £66m in redress for the benefit of investors in the Fund. The redress agreed with CFM provided for investors to receive the original amount invested, placing investors as closely as possible back into the position they would have been in had they never invested in the fund.

Although we accept our regulation of the Fund and its operators could have been better, we remain of the view that the losses you claim were not directly attributable to the FSA's or FCA's failings, but to the companies connected to the Fund. The FCA also has legal immunity to pay damages (compensation) which is set out at paragraph 25 of schedule 1ZA of FSMA.

As a result of the above, I am not upholding your request for the FCA to pay you compensation.

⁶ The Connaught Report, paragraph 19, page 12.

⁷ <https://www.fca.org.uk/news/statements/fca-sets-out-approach-assessing-connaught-complaints>

Our handling of your complaint

As mentioned in the background section, you originally made your complaint to us on 25 March 2021. Within your email to our Chief Executive, Nikhil Rathi, you said '*In the circumstances, I believe the FCA should take responsibility and decide to make good my losses, which I believe I have sustained on account of regulatory failure.*' Having reviewed our response to your complaint (ref: 207383222), I do not consider that we provided an answer to the crux of your allegation.

In light of that fact, and that the Commissioner required us to review your complaint to answer this point, I would like to offer you an ex gratia compensatory payment of £150. Our service fell below our standards, and I am sorry for any inconvenience this caused you.

I would also like to offer you an additional ex gratia compensatory payment of £50 for the time it has taken for us to respond to this complaint (ref: 208256991) since referring it to FCA on 22 April 2022, following the Commissioner's Final Report.

If you would like to accept my total offer of £200, I would be grateful if you could provide your bank details (including the sort code, account number and name on the account) by 9 September 2022 so I can arrange the payment to you.

The role of the Complaints Commissioner

The Complaints Commissioner is an independent person appointed by the Regulators to be responsible for the conduct of investigations in accordance with the Scheme. If you are dissatisfied with how we have dealt with your complaint, you can contact the Complaints Commissioner requesting a review of my decision. You must contact the Complaints Commissioner within three months of the date of this letter. If you contact the Complaints Commissioner later than three months, the Commissioner will decide whether there is good reason to consider your complaint.

The contact details for referring your complaint to the Complaints Commissioner are:

Office of the Complaints Commissioner
Tower 42
25 Old Broad Street
London
EC2N 1HN
Telephone: 020 7877 0019
Email: complaints@frccommissioner.org.uk

If contacting the Commissioner please let them know your FCA complaints reference number, which is add 208256991.

Yours sincerely


Senior Investigator / Complaints Department
Risk & Compliance Oversight Division

From: [REDACTED]
Email: [REDACTED]

To: The Financial Regulators Complaints Commissioner
Email: complaints@frccommissioner.org.uk

Date: 8 September, 2022

Re: Complaint ref. 208256991

Dear Ms Somal,

You will recall you previously considered a complaint of mine in relation to the FCA's handling of the regulation of The Connaught Income Fund Series 1 ([FCA001404](#)). You suggested (paragraph 15) that I should submit a fresh complaint to the FCA explicitly asking it to pay me an *ex gratia* sum compensating me for the losses I have incurred as a result of the regulatory failings that have occurred in relation to that investment.

I did so on 22 April 2022 and received the FCA's decision on 2 September. The FCA has declined to make good my losses, instead offering me a derisory £150 for having failed to respond appropriately to my initial complaint and an even more insulting £50 for the delay in replying to my subsequent one. I am therefore escalating matters to you, in the hope that you will recommend that the FCA now pays me the redress I have been asking for since March 2021.

The FCA's position in respect of my second complaint (ref. 208256991) is that 'the point regarding our errors in handling of the Connaught Income Fund Series 1 and connected companies is not in dispute' but that it is entitled to consider the factors set out in Section 7.14 of the [Complaints Scheme](#) 'to determine what remedy is appropriate in your case.'

As I'm sure you will appreciate, this is a misapplication of Section 7.14, which is a set of guidelines intended to shape the FCA's response to 'a report from the Complaints Commissioner'; it is not described as a means of evaluating a complaint from a member of the public. The Complaints Scheme requires the FCA to deal with my complaint according to Section 6.6, which states:

'Where it is concluded that a complaint is well founded, the relevant regulator(s) will tell the complainant what they propose to do to remedy the matters complained of. This may include offering the complainant an apology, taking steps to rectify an error or, if appropriate, the offer of a compensatory payment on an ex gratia basis.'

The FCA appears to have accepted that my complaint is well founded, in that it has admitted that there has been extensive regulatory failure. It is therefore required to consider a range

of measures, which include 'if appropriate, the offer of a compensatory payment on an ex gratia basis.'

As you know, I have consistently set out the basis on which I have calculated the loss I have suffered, and at no stage has the FCA disputed that figure. Likewise, I have always alleged that this loss was caused by regulatory failure, and again, the FCA has never sought to deny this. And there is no remedy other than a compensatory payment that would 'remedy the matters complained of.' Therefore, the appropriate course of action is for the FCA to offer me a compensatory figure equal to the sum that I have asked it to pay me.

I hope you will agree with me on this point, and that you will accordingly recommend that the FCA pays me the sum I have requested. However, in case you are minded to consider the tests applied by the FCA under Section 7.14, or in case the FCA subsequently declines to accept your recommendation having itself applied those tests, I believe it might be helpful for me to address the issues raised by that Section.

While I stress that I am not a lawyer, it seems to me as a layperson that Section 7.14 at best impedes the implementation of the law, and at worst that it is unlawful. Section 87(5) of the [Financial Services Act 2012](#) states that:

'The complaints scheme must confer on the investigator the power to recommend, if the investigator thinks it appropriate, that the regulator to which a complaint relates takes either or both of the following steps—

- (a) makes a compensatory payment to the complainant, or*
- (b) remedies the matter complained of'*

In creating Section 7.14 of the Complaints Scheme, the regulators have sought to fetter or constrain your power to recommend, and the power of your recommendations, by creating an onerous set of tests, never envisaged by Parliament, which they apply before deciding whether and how to act on your verdicts. The effect is, potentially, to confer on the regulators extensive discretion, never intended under the Act, to evade taking responsibility for the consequences of regulatory failure - even in cases, such as mine, when it readily admits to such shortcomings.

While I accept that you cannot change the wording of the Complaint Scheme, I would ask you to consider wording your decision in respect of my complaint in a way that indicates that you have considered the tests contained in 7.14 and decided that you do not consider that they give grounds for the FCA to decline to pay me the compensation I have requested.

I hope that it is possible to do this without having to engage with the detail of the tests set out in 7.14 and how the FCA has used them in respect of my specific complaint, but in the event that you disagree, I have set out below some arguments that I believe apply. I have used the same numbering system as the FCA's decision letter:

1(a). The gravity of the misconduct is extremely severe. Connaught is one of only two consumer investment schemes in recent years in which the extent of regulatory failure is so serious that an independent review had to be commissioned. It found that regulation was 'neither appropriate nor effective'; the FCA accepted the report's findings, and a large-scale

Transformation Project was undertaken to remedy flaws persisting in the organisation more than eight years after the Fund was suspended;

1(b). I dispute that investing in UCIS is 'high risk'. *Some* UCIS *may* be high risk, others medium or low. The Information Memorandums described Connaught as 'low risk' and 'guaranteed', and made comparisons with Government bonds and deposit accounts offered by High Street banks and building societies. The regulator made no attempt to stop them being used during the life of the Fund, and there have been no Enforcement sanctions subsequently, which indicates either that it did not disagree with the content or that it failed to act to protect consumers. The firms involved are indeed responsible for their own actions, and the one company that had the financial means to do so (CFM) has already made a contribution toward investors' losses. It is surely appropriate that the FCA, which also has the resources needed to provide redress and is at least as culpable as CFM, makes good the shortfall;

1(c). This is true, and I am happy to be accountable for my actions. I invested in Connaught based on a financial promotion issued by an authorised firm, and through an Independent Financial Adviser also authorised by that regulator. If the financial promotion had been truthful, and if the Fund had operated as described, I would not have suffered financial loss. A major causative factor of that loss is regulatory failure, which has been demonstrated by an independent review and accepted as fact by the regulator. I find it offensive that the FCA is trying to blame me and other consumers, and not accepting liability itself;

1(d). It is true that investors have benefited from some recoveries, albeit that we suffered a loss of income and liquidity for many years (the Fund was suspended in March 2012, the Capita redress distributed in late 2018, more than six and a half years later). Moreover, while the *aim* of the Capita redress may have been 'to return the amount originally invested, placing investors as closely as possible back into the position they would have been in if they had never invested in the Fund', this was not the *consequence*. I set out in both of my complaints the basis on which I have calculated my losses; the FCA has never disputed that calculation, because it is correct. Finally, the FCA claims that, 'Consequential losses, loss of income or opportunity costs were never intended to be repaid by the FCA.' It provides no evidence for this statement, so I propose it should be disregarded. It seems clear to me that neither Part 6 of the Financial Services Act 2012 nor the Complaints Scheme imposes any restrictions on the types of losses that the FCA should repay;

2(a). The FCA does not address the nature of my relationship with it, only the very limited question of whether I 'have had direct contact with the FCA where guidance or incorrect information regarding an investment in the Fund was provided to you.' The regulator appears to be implying that it should not compensate me because I did not contact it and receive flawed information direct from its employees. It seems to me that this is irrelevant. My relationship with the regulator was and still is that of a retired UK citizen who sought to make a 'low risk, guaranteed' investment, promoted and operated by the financial services arm of what was then a FTSE100 company, through an authorised financial adviser. As such, I had a reasonable expectation that the regulator would provide me with 'an appropriate degree of protection'; Raj Parker's review found that this did not happen, concluding that regulation was 'neither appropriate nor effective';

3(a). It is unclear from Section 7.14 of the Complaints Scheme what the regulators set as the distinction between 'operational' and 'administrative'; surely, administrative errors lead to operational failures. Likewise, there is no clarity as to which of these two supposedly distinct categories of failure should result in its exculpation, and which its liability; cynically, I question whether this test exists simply to provide ambiguity around which it can construct a defence against any one particular complaint. In any event, the quote from Parker is helpful in that it asserts that standards of regulation were systemically poor, implying that both operational and administrative flaws were widespread ('may not have been at material variance from the regulatory orthodoxy at the time') and that it could have acted more effectively;

3(b). It is good to see this admission, but surely administrative errors were made too. To name just one, it was surely an administrative error that Tiuta plc was authorised despite one of its principals having a history of misconduct in relation to HMRC;

3(c). Again, helpful to my case that the FCA is admitting that the supposedly independent regulator made a strategic (administrative?) decision to bow to Governmental pressure and focus its resources on large firms at the time, and that the consequences of this included numerous misconduct cases, of which Connaught is one. While it presents this as an excuse, in fact it is evidence for there being extensive shortcomings in regulation at the time, irrespective of type;

4(a). While it *does not follow*, it also *is not precluded*. I am asking for approximately £25,000 plus contractual interest. Relative to the [FCA's income](#) (page 89) of £675.1 million in 2021/22, making this payment to me would have no material impact on 'firms, issuers of listed securities and, indirectly, consumers.' Moreover, the making of compensatory payments to consumers such as myself in situations where they have suffered financial loss resulting from acknowledged regulatory failures may, in the medium and long term, materially benefit both industry and consumers, by improving consumers' confidence in the industry (which is necessarily dented by the many regulatory failure cases now coming to light) and by incentivising the industry to join with consumers in pushing for greater transparency and accountability and improved performance at the regulator, so such losses are prevented in the future;

4(b). Irrelevant. The FCA considered that 'an apology is the most appropriate remedy in the circumstances;' I considered that compensation is more suitable. Whose view should prevail? As set out in 4(a), above, my view has the best grounding under test 7.14(d) in that the cost of compensating me is not material to the industry and all consumers, whereas it *is* very material to me (I am in my late 70s, long ago retired, and not in the best of health);

4(c). Here, the FCA has introduced a test which is not found in the Complaints Scheme, whether Section 7.14 or elsewhere, and certainly isn't in the legislation, namely whether 'the errors made by the FCA in the handling of the Fund are the primary cause of investor loss.' There is absolutely no basis for applying this test, I hope you will ignore it. I would refer you to your own [testimony](#) (Q42) to the Treasury Committee, in which you concluded that:

'Essentially, as I see it, ex gratia compensation payments due to supervisory or regulatory failures on the part of the FCA will, in practice, never be available to complainants, despite

the FCA saying that there are exceptional circumstances where they might be, as long as the FCA relies on this—in my view—self-devised test of sole or primary cause in its remedy statement, which, as I say, was never put out for consultation, and its binary interpretation of direct dealings in the complaints scheme... In my view, the approach that the FCA is taking to ex gratia compensation is not consistent with the statute or with the existing published complaints scheme, because it draws no distinction and simply refers to ex gratia compensation. It draws no distinction between compensation for financial loss, supervisory or regulatory failures, distress and inconvenience, or complaint handling delay. In practice, I do not think that financial compensation will be available on an ex gratia basis if the FCA goes down this line'

Clearly, the imposition by the FCA of this test is *ultra vires*, incompatible with the statute, and the consequence of accepting it would be that, in effect, consumers would not be able to access compensation for regulatory failure. I therefore hope you will reject the FCA's deployment of the 'primary cause' test out of hand.

In the unlikely event that you do choose to consider it, however briefly, I ask you to conclude that, as set out in my complaint, regulatory failure *is* in fact the primary causative factor in my case. I say this because while we can point to numerous shortcomings relating the individuals and firms (to cite just a few examples from Parker: Tiuta being authorised despite one of its principals having previously defrauded HMRC and its inadequate balance sheet and insurance provisions; BGL's inadequate balance sheet and insurance provisions; CFM's and BGC's lack of due diligence into the financial promotions and defective Fund operation; CAM performing regulated functions without authorisation and its principal having got away with a previous investment scam), what all these flaws have in common is that they were enabled by lax and even absent regulation, and that once they came to light, the regulatory response to them was either non-existent or slow and inadequate.

Thus, the underlying, principal and primary cause of my losses is regulatory failure, because that is the common theme in creating the conditions necessary for the Fund to come into existence, to be promoted misleadingly, to operate defectively, for the wrongdoing to continue until the money had run out and for the lack of swift and decisive regulatory action once problems were identified and after the Fund's inevitable suspension.

Parker does not position the problems he identifies as isolated examples, surrounded by otherwise good practice; rather, he concludes 'that the Regulator's regulation of the relevant entities and individuals connected to the Fund was not appropriate or effective.' In other words, he shares my view that the overall standard of regulation was deficient; indeed, he even implies that this formed part of a wider, systemic and cultural problem with the regulator at the time ('the Regulator's approach may not have been at material variance from the regulatory orthodoxy at the time in some respects').

In considering whether the 'primary cause' test is met, it may be helpful to reflect on the counterfactual: if regulation had been both appropriate and effective, might my losses have been prevented? The reasonable supposition must be affirmative. This is true at a theoretical level (if regulation is appropriate and effective, then it can be expected to have the effects intended for it, namely 'securing an appropriate degree of protection for consumers', to quote the FCA's [consumer protection objective](#)), at an operational one (if, for

instance, the existence of acknowledged evidence of fraud against HMRC had prevented Tiuta from being authorised, or if the FSA had prosecuted Nigel Walter for his role in the UKLI boilerroom fraud, then there is no way the Fund could have come into being, let alone that I could have invested in it) and at an evidential level (Parker found that the FSA 'could have acted in a more effective way to protect investors in the Fund', thereby confirming that the shortfall in protection of investors in the Fund was caused by the regulatory flaws).

In conclusion, the 'primary cause' test has no legitimacy in law and the effect of implementing it could be to deny consumers the redress that Parliamentarians envisaged that they would be entitled to; for these reasons, I hope you will ignore it. If, however, you *do* decide to apply it, then in my specific case, I hope you will accept that the extensive and perhaps systemic failure to provide appropriate and effective regulation is the primary cause of the losses I have suffered, because it is the enabling factor in the shortcomings exhibited by the firms and individuals involved with the Fund, and in the slow and inadequate regulatory response to problems as they came to light.

Conclusions

I see this as a simple case, made complex by a desperate regulator throwing out flack to distract from the central truth. There was extensive regulatory failure, which the regulator admits. It created an environment in which the Fund was able to come into existence, in the hands of some individuals and firms that should not have been in such a position, to be promoted misleadingly and operated defectively; it also resulted in the regulatory response to problems coming to light being slow and inadequate. The result is that I suffered a loss, the quantum of which the FCA has not challenged. The law, and the Complaints Scheme, empower you to commend a compensatory payment and the regulator to pay it. That's the simple bit.

The complex bit starts here. *Once you've issued your recommendation*, and only then, the regulators have set out some tests in the Complaints Scheme, which were not envisaged by Parliamentarians, that in its view give it grounds for considering whether or not to honour a recommendation by you to make a compensatory payment. I don't believe you should consider these in reaching your determination, though of course it would be helpful to me if you would state that you do not believe they apply. In case you are considering doing that, and in anticipation of the FCA trying to wriggle out of paying up, I have set out why I don't believe the criteria for non-payment apply to my complaint. Finally, the FCA has created an additional hurdle - that regulatory failure must be the 'primary' cause of loss - which does not appear in the law *or* in the Complaints Scheme. I have set out why I consider that test inapplicable but also, in case you decide nonetheless to address it, why I believe that regulatory failure *is* the principal causation of my losses.

As a result of all the foregoing, I hope you will agree that the FCA should compensate me, and that you will therefore issue an unambiguous finding in my favour.