

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