

27 February 2023

Final report by the Complaints Commissioner**Complaint number 202201591***The complaint*

1. On 12 September 2022 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

You have invested in Blackmore Bonds Plc (Blackmore) and have suffered a financial loss. I have reviewed the information you have provided against the Scheme. In summary your complaint is:

Part One

The FCA was first warned about Blackmore's activities in March 2017, and again subsequently, but failed to take action and investors have suffered loss.

Part Two

The FCA failed to take action over Blackmore's misleading marketing to prevent people investing.

Part Three

You also allege that the FCA has said that it is powerless to protect investors because investors ticked a box to say they were sophisticated investors. You say this is incorrect as 'box ticking' is outlawed.

What the regulator decided

3. The FCA deferred the review of your complaint because your complaint is connected with, or arises from, ongoing regulatory action by the FCA.

Why you are unhappy with the regulator's decision

4. You have said that:

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- a. 'The FCA's complaints team is a different group of people than the Enforcement division, so the argument that investigating my complaint would divert resource from the Enforcement investigation is invalid. Likewise, you and your team are separate from the FCA, so you can investigate now without compromising the Enforcement work;

- b. The FCA has been widely criticised for its failings in relation to Blackmore Bond. If it is allowed to defer dealing with complaints from those affected until its Enforcement investigation is completed, there is a risk that this could provide an incentive for the regulator to string out that investigation as long as possible, in order to defer having to deal with your criticism, and calls from me and others for compensation;

- c. None of the parties being investigated by the FCA's Enforcement team has material amounts of money with which to compensate investors. There is therefore no realistic prospect that waiting for the investigation to conclude will result in the amounts of money I and others are owed reducing, and thus the scale of the compensation demanded from the FCA falling. On the contrary, the longer it takes for us to be compensated, the greater the sum needed to do so. The FCA is required to be mindful of the source of its funding (the industry). The firms that pay the FCA levy would be better served by redress being paid out quickly than it being delayed for years'.

My analysis

5. As you are aware, this topic was raised in the FCA's Annual Public Meeting (APM) this year. The Executive Director of Enforcement and Market Oversight, Mark Steward, is quoted in a Financial Times article as saying: 'Discussing the FCA's role, he said the area in which the FCA is focused is whether the FCA authorised firms promoting the bonds carried out the relevant checks. The way in which the legislation operates Blackboard Bonds, an unregulated firm which is able to issue many bonds without being regulated, is outside the FCA's perimeter. "But the marketing and promotion of those bonds could only happen through the agency of FCA authorised firms who approved those financial

promotions that were issued by Blackmore Bonds,” he explained. Steward said it looked into whether the two FCA authorised firms undertake correct due diligence and check out what was being offered. “Did they make sure that what was being provided to consumers the information has been provided to consumers in those promotions, did they make sure that information was accurate, was clear, not misleading,” he said. “Our work in relation to this is virtually complete. But at this stage, it does look as though those financial promotions were largely accurate in what they set out and contained very relevant risk warnings for consumers.” Steward said the FCA is doing additional work around this as the proposition for Blackmore could not be given to any retail consumer. The consumer would have to be a qualifying consumer to buy Blackmore bonds largely because of the higher risks involved in dealing with this kind of investment’

6. The statement above describes the FCA’s official position with respect to Blackmore. The FCA has highlighted to me that ‘the comment about work being ‘virtually complete’ was made in respect of one aspect of the investigation, namely the analysis of the accuracy of the financial promotions themselves. Mr Steward went on to describe some of the other ongoing work’. My recent review shows that the FCA is continuing with its investigation into these matters and there is insufficient evidence for me to be able to conclude that the FCA’s work in relation to this matter is virtually complete: it does not appear to be nearing completion nor is there any indication when it might be complete. The work being undertaken encompasses many different aspects and not just matters connected to whether the proposition was correctly given to qualifying consumers only. I have raised the query with the FCA about whether it considers that the area dealing with these matters is adequately resourced to progress the investigations in the timeliest manner. The FCA has written to me and assures me that its investigation work is adequately resourced and is progressing in an efficient, timely manner.

My decision

7. On balance, given the FCA’s assurance, I consider that it is better for the FCA to complete its investigation and therefore I agree that the deferral of the complaint for another six months of the complaint should remain in place. The

FCA Enforcement investigation is active. It seems to me likely that that investigation will produce material which is relevant to the consideration complaints about the FCA in connection to authorised firms approving the Blackmore promotions. I also consider that it would be unhelpful if the FCA Complaints Team or I were to undertake a parallel investigation into these matters. To that extent, I think that the FCA's deferral decision is reasonable.

8. I will review the matter again in six months. Unless the deferral has been lifted before then, and I urge the FCA to provide the necessary attention to this matter to bring its investigation to a close in a timely and efficient manner.
9. I would like to assure you that this deferral will not have any impact on you with respect to any remedy available to you under the Complaints Scheme. You have raised the issue of compensation: one remedy is the provision of an ex gratia compensatory payment which I will be able to recommend if I feel it is appropriate once the complaint has been investigated (however, I do not have the power to direct under the Scheme: the FCA will be able to decline my recommendation if it disagrees with me).
10. In response to my preliminary report you have written to me on a number of issues, such as: to challenge Mr Steward's assertion that the 'financial promotions were largely accurate'; that the FCA's remit goes beyond checking marketing material and other matters related to the substance of the investigation. I would like to clarify that my report is concerned only with whether the FCA is right to defer your complaint, and not its merit.

Amerdeep Somal
Complaints Commissioner
27 February 2023