

14 December 2022

**Final report by the Complaints Commissioner****Complaint number 202201637***The complaint*

1. Your complaint relates to the evidence Martin Wheatley, a former Chief Executive of the FCA, gave at a Treasury Select Committee (TSC) hearing on 10 September 2013.

*What the complaint is about*

2. The FCA summarised your complaint as follows:

‘You allege that Martin Wheatley provided evidence that was untrue and that the FCA was aware (or became) aware at the time that its responses to the TSC were untrue. You have said that the FCA’s responses to questions 23, 24, 25, 28, 31 and 34 at the TSC hearing are contradicted by the findings in John Swift KC’s Lessons Learned Review into the FSA and FCA’s supervisory intervention on Interest Rate Hedging Products (IRHPs). To resolve your complaint you are seeking:

- a. A public apology from the FCA
- b. For the FCA to correct the record by writing to the TSC and to put that correspondence in the public domain
- c. Explain how it intends to deal with prima facie evidence of poor FCA Senior Management conduct in relation to misleading Parliament and the public’.

*What the regulator decided*

3. The FCA said it would not investigate your complaint. It gave the following reasons:

4. 'After carefully considering the information you have provided, I have concluded that this is not a complaint we could investigate under the Complaints Scheme.
5. Paragraph 3.2 of the Complaints Scheme explains that a complaint *"can be made by anyone who is directly affected by the way in which the regulators have carried out their functions, or anyone acting directly on such a person's behalf provided that the complaint meets the requirements of the Scheme. To be eligible to make a complaint under the Scheme, a person must be seeking a remedy (which for this purpose may include an apology) in respect of some inconvenience, distress or loss which the person has suffered as a result of being directly affected by the regulators' action or inaction"*.
6. On review of the information you have provided, for the purposes of the Scheme, I do not consider that you have been directly affected by the actions or inactions of the FCA. It also does not appear that you have suffered *"some inconvenience, distress or loss"* as a direct effect of our actions or inactions.
7. I note in your email of 17 October 2022 that you have explained that *"my family like any investor reasonably relied on, amongst other things, public statements from the UK regulator regarding the banks with regards to buy/hold/sell decisions."*
8. You go onto state *"The exchanges at the Treasury Committee in September 2013 were directly relevant to any investor in the UK banks, including RBS and Lloyds, as it informed the public's understanding of the principal shareholder's (the UK Government) control, influence and financial view of those banks. For example, the question of whether the UK Government was concerned about the financial impact of the IRHP redress scheme on the banks and sought to pressure the FCA to change the scheme (regardless of whether the FCA bowed to that pressure) was a matter of significant interest to investors at the time, and in this regards the FCA's untruthful responses to Treasury Committee intentionally misled the public."*
9. You have not stated which equities were specifically impacted, nor which specific equities you invested in, or were intending to invest in. You have also not clearly outlined how you suffered *"some inconvenience, distress or loss"*. It also appears that you did not hold an Interest Rate Hedging Product.

10. Therefore, based on the above, I do not consider your complaint is eligible to be investigated under the Complaints Scheme’.

*Why you are unhappy with the regulator’s decision*

11. You say that ‘As investors in equities, including shares in UK banks or relevant tracker funds, my family like any investor reasonably relied on, amongst other things, public statements from the UK regulator regarding the banks with regards to buy/hold/sell decisions.’. However, you have also confirmed that neither you nor your family have incurred a loss resulting from the statements made by Martin Wheatley.

*My analysis*

You have pointed out that:

12. ‘This complaint primarily relates to the following transcript of the FCA’s 10 September 2013 evidence to the Treasury Committee.

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/financial-conduct-authority-hearings/oral/6598.html>

Q23 Mark Garnier: Have you come under any pressure from the Government, the PRA or the Bank of England to go easy on the banks, given the financial stability issues?

Martin Wheatley: No. The only process that we have gone through as part of the capital planning exercise that the FPC and the PRA did was to provide input into that as to how much capital the banks might need to get to the end of this process. But that is not pressure in the sense of minimising it, it is simply information so that they can form a judgment from a prudential perspective on the banks.

Q24 Mark Garnier: Nobody has asked you to come up with a process that is any easier than perhaps you would otherwise have done?

Martin Wheatley: No.

Q25 Chair: Just to clarify that, you are saying the pressure that some have reported, which has come through on prudential grounds, to be careful about the size of the payments that may result, not only from interest rate hedging

products, but PPI, has not in any way affected the decisions that you have taken? That seems to be what you are saying.

Martin Wheatley: No, that is right. That is the nature of two regulators with different objectives.

Q26 Chair: Has the Treasury been in touch with you to discuss these issues?

Martin Wheatley: In the lead-up to the agreement, yes, we had numerous conversations with the Treasury, who clearly wanted to understand what the impact might be.

Q27 Chair: So, they were seeking information?

Martin Wheatley: Yes.

Q28 Chair: Did they offer a view?

Martin Wheatley: Not a view as such, not a pressured view, but they offered a view that they have a large stake in a number of these banks, but not a view beyond that.

Q29 Chair: Okay. Just elaborate on what that means.

Martin Wheatley: As we all know, the Government have a stake in two of the banks that are involved in this process. They would like to know insofar as it is appropriate what the potential impact would be of our actions.

Q30 Chair: They were seeking information about what the effect might be on the value of the organisations they own as a result of the decisions that you take?

Martin Wheatley: It is not for me to impute their motivation, but you can assume that that would be, not in very specific terms, but in general terms, information about what we are doing with particular banks, yes.

Q31 Chair: They at no stage offered a view about or discussed with you the effect on the bottom line of particular decisions that you might take?

Martin Wheatley: No.

Q32 Chair: You will understand that it is our duty obviously to ensure that the independence that you have in statute is reflected in practice.

Martin Wheatley: Yes.

Q33 Chair: You are giving me a cast-iron assurance that there has been no pressure that could in any way prejudice that independence?

Martin Wheatley: That is right. There is nothing that I would describe as inappropriate in terms of the relationship or the desire for information.

Q34 Chair: That has been true at both official and ministerial level?

Martin Wheatley: Yes.

13. You also say that:

In relation to this, the Swift report<sup>1</sup> notes:

Page 188-189, para. 116-119

14. 116. In light of the CSRC's action point that HMT should be kept informed about the FSA's current position, Clive Adamson and a team of other FSA staff met with HMT officials H and U on 24 January 2013. The FSA's minutes of that meeting record HMT official H stating that "the Treasury had been lobbied hard by the CEOs of the banks, particularly the two state-owned institutions (LBG and RBS). As a result, the Chancellor had come to the opinion that the total redress costs needed to be reduced, and that the purpose of the meeting was for HMT to understand the FSA's proposals in order to find ways to cut the cost".
15. 117. HMT official H is recorded acknowledging this may be seen as a "volte face", given HMT's previously adopted position: "i.e. that HMT fully supported small businesses and that the FSA needed to build a robust review and redress exercise". However, "the desire of ministers to limit the cost of this exercise over-rode HMT's previous position". HMT also considered that "the 31 January deadline was optimistic and should be put back". In response, Clive Adamson "explained that the FSA is an independent regulator and not a political body. As the CBU, we are focused on achieving fair and reasonable outcomes for consumers. We find it inappropriate for HMT to intervene in this manner given the nature of its involvement in the issue". The FSA appears to have resisted pressure to use the meeting to look at "the issues where the banks are lobbying

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<sup>1</sup> <https://www.fca.org.uk/publication/corporate/independent-review-of-interest-rate-hedging-products-final-report.pdf>

hardest and try to find ways to cut the cost". FCA employee G explained that while the FSA was prepared to explain its position more fully it would not engage in such an exercise. Nonetheless, the meeting then covered several issues of detail, including the proposed Sophisticated Customer Criteria, break costs disclosure, and redress, with HMT setting out its views on how these might be used to reduce the overall cost of the Scheme to the banks. The FCA emphasised that it was "not willing to compromise getting the right outcome for small businesses".

16. 118. Reflecting on this meeting, Clive Adamson stated in evidence to this Review that: "The financial crisis... was still continuing and there was still pressure on the financial position of banks including in relation to one in particular which had a large government ownership. So, it wouldn't be unusual that there would be lobbying by the banks. ... what was unusual here was a view clearly expressed about [the] desire of ministers to ... question what we were doing and I think it's fair to say that we were disappointed in that".
17. 119. In an internal email written on 24 October 2013, Martin Wheatley also recalled "the pressure we received from FST to go easy on the banks in reaching the agreement".
18. Your conclusion from the above is that the evidence given at the hearing is untrue.
19. In considering your complaint, I am mindful that you have not provided any evidence that you or your family have been directly affected by the evidence given at the hearing. Therefore, the FCA is right not to investigate your complaint, and I too will not investigate your complaint.
20. You have made some serious allegations about evidence given by the FCA to the TSC, which I suggest you bring to the attention of the TSC as the more appropriate body to deal with the substance of your complaint. I would like to highlight that the TSC held a hearing with John Swift KC regarding his report into Interest Rate Hedging Products (IRHP) on 16 March 2022. A link to the transcript can be found here (<https://committees.parliament.uk/oralevidence/9956/pdf/>) Question 32 onwards is related to the allegations you raise.

*My decision*

21. For the reason given above I have not investigated your complaint. You have asked me to include your comments to my report which are:

I understand the conclusions of the FCA Complaints Team and the Commissioner. In my view this must point to a glaring gap in the remit of Complaints Scheme. There is no other public body in the UK that could be presented with cast iron evidence that it misled the public and rely on the small print in its complaints rules to simply decline to investigate it, decline to correct the public record and decline to hold anyone accountable.

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Complaints Commissioner  
14 December 2022