

03 May 2023

Final report by the Complaints Commissioner**Complaint number 202201724 and 202201725***The complaint*

1. On 14 February 2023 you asked me to investigate a complaint about the FCA (202201724) and the BoE (202201725) as you had submitted a complaint to both about the same issue.

What the complaint is about

2. The FCA had summarised your complaint in three parts:
3. Part one states that *“You are unhappy with the FCA as you feel it failed to regulate the market, the firm and protect investors from abuse of power by the government. You believe that the FCA should have regulated [Firm X] and that it should have been covered under the FSCS.*

You state that as a result your family has suffered a financial loss of £5576.75.”
4. In Part two, you set out that *“You are unhappy that despite accepting they have caused “unintended consequences” the Foreign Office are refusing to look at the facts and repeatedly evade liability. You are unhappy that they are attributing your loss to individual risk. You are unhappy that the government collected stamp duty from [Firm X] for over 20 years before forcing divestment on UK shareholders overnight. You state that though your local MP supports your compensation claim, you have been unable to achieve any resolution through the Ombudsman and Foreign Office.”*
5. Finally, in Part three of your complaint you set out that *“You are unhappy with the sanctions that have been implemented. You state that there are huge variances in sanctions implementation across companies, industries and assets, which violate human rights. The purpose of the sanctions you state were to*

affect Russia and its economy, however it has affected UK shareholders, you feel this amounts to discrimination and is a breach of the Equality Act.

You feel that the government has not met its obligations and believe the removal of property rights leading to financial distress is an “indirect mechanism for forced labour and enslavement”. You are unhappy with this as slavery was supposed to have been abolished. You have explained that the sanctions have impacted your finances and your health.

To resolve your complaint, you are seeking:

- compensation for your loss*
- for gold producers to be covered under the FSCS*
- for the FCA to develop improvements to the regulatory framework to protect investors from loss and abuse of power*
- for FTSE250 firms to have some level of regulatory oversight”.*

What the regulator decided

- 6. The FCA decided to exclude all three parts of your complaint because “the Complaints Scheme covers the investigation of complaints that arise in connection with the exercise of, or failure to exercise, any of the FCA’s relevant functions.*
- 7. The ‘relevant functions’ of the FCA are defined in the Complaints Scheme and Part 6 of the Financial Services Act 2012, and broadly speaking cover the FCA’s regulatory functions that arise under the Financial Services and Markets Act 2000, or such other functions as may be ordered by HM Treasury.”*
- 8. Overall, the FCA’s view was that “In accordance with paragraph 3.6 of the (Complaints) Scheme, this is a matter that would be more appropriately dealt with in another way, e.g. through legal proceedings.”*
- 9. The BoE had also excluded your complaint on the basis that it does not fall within the remit of the Complaint Scheme.*

Why you are unhappy with the regulator’s decision

- 10. In your correspondence to me, you stated the following things: “Unfortunately both the BOE and FCA have overlooked the overwhelming evidence requiring*

deeper investigation and review by focusing on the central fact they do not currently regulate gold mining or cover it within the FSCS (despite gold clearly representing a significant financial monetary asset relevant to banks and an insurance to governments and institutions around the world).

The FCA failed to act independently and protect investors by not regulating both industry and market, this led to abuse of the core functioning of the market leading to price instability, market irregularities and misconduct on a widespread scale.

The FCA advised us that the FSCS covers finance and insurance, given that gold is a strategically important monetary asset and insurance it is an oversight to not regulate or cover gold mining within the FSCS since the trading with banks is of financial significance to accounting, taxation, insurance, and could be subject to market abuse including false reporting.”

Preliminary Points

11. Your complaint arose as a result of your family losing £5576.75 in FTSE250 listed Firm X, which had operated gold mines in Russia. In addition to the financial losses, you told me that your health had been affected.
12. You stated in your email of 14 February 2023 that following the invasion of Ukraine by Russia, once the UK government announced sanctions against Russia, the *“Sanctions were immediately implemented the shares suffered 80%+ losses in 2 days and UK shareholders became trapped in an illiquid market and forced administration due to lack of regulatory framework and no market suspension or guidance to protect UK investors/economy”*.
13. You also explained that *“We have provided significant evidence [to the Regulators] of gold mining needing better regulation due to the interconnected relationships within the banking and financial markets ecosystem; gold producers build into the supply and demand for gold and affect price, market data, and market drivers; whilst the [offtaker] relationship by banks and institutions together with potential government intervention risk loss of trust in the market and breach of property rights and human rights. Due to the extreme catastrophic losses UK investors have suffered on [Firm C] we would like the BOE/FCA to look at any special considerations that could be made with the*

FSCS or via [liaising] with the treasury select committee chair MP Harriet Baldwin (xxx xxx xxxx), who has been made aware of this situation.”

14. In addition to the points raised in your email, you also provided several attachments with information you believe is relevant and support your position.

My analysis

15. Just like the Regulators, I am also limited by the Complaints Scheme (the Scheme) in what complaints I am able to investigate. The issues you are raising do not fall within the remit of the Scheme as they are not about the relevant functions of the Regulators, as set out in Paragraph 1.1 and 1.2.
16. Complaints about the actions or inactions of the Financial Services Compensation Scheme (FSCS) are also excluded from the Scheme under Paragraph 3.4 e). Whilst not explicitly stated, this exclusion also extends to the remit of the FSCS.
17. You acknowledge in your complaint email that these issues do not currently fall under the remit of the Regulators and suggest that they should. You have also made several comments and suggestions in your response to my preliminary report, explaining why the financial regulatory system needs to change to include mining and the “metals market”, in your view. I appreciate the effort taken to set out your position and your arguments in such a detailed manner both originally and in response to my preliminary report.
18. However, as no doubt you are aware, laws are enacted by Parliament and reflect how Parliament had intended the Regulators and the Complaints Scheme to operate, including limitations on our respective remits. As such, your comments about the remit of the Regulators and whether investing in gold should be added to the regulated activities they oversee is not something I or the Regulators could address.
19. Whilst I note your comments in your email response to my preliminary report, I must reiterate that these are matters which do not fall within the remit of the Regulators or the Complaint Scheme as it stands, and it is not possible for me to create or apply a “discretionary policy” in these circumstances or at all, as that power was not conveyed to me or to my Office by Parliament when it set out the rules and remit of the Complaints Scheme. As previously advised, your

views and concerns should be brought to the attention of Parliament, through the assistance of your MP. (I note your MP is already engaged with you in relation to your situation and I can confirm that you are able to share a copy of this final report with her once it is issued).

My decision

20. Whilst I sympathise with the difficulties you and your family have experienced, I agree with the Regulators that the issues you are complaining about do not fall within the remit of the Scheme and as such, I cannot investigate your complaint as it is excluded.

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Complaints Commissioner

03 May 2023