

16 September 2024

**Final report by the Complaints Commissioner****Complaint number 202300426 and 202300562***The complaint*

1. Complainant X and firm X (representing its clients) each submitted complaints to me about the FCA's involvement in matters connected to BetIndex Limited ("BetIndex") and its product, online platform Football Index ("Football Index").
2. The FCA issued a decision letter to complainant X on 14 August 2023 in which it did not uphold any of the complaint allegations. The FCA declined to investigate firm X's complaint as it was deemed to be submitted out of time.
3. I agree that firm X's complaint was submitted out of time, however, the firm has made the point that their complaint ought to be accepted in the Complaint Scheme (the Scheme) due to the public interest nature of the allegations. I agree, and for this reason, I have decided to accept the complaint for review under the Scheme.
4. I have taken the decision to issue one preliminary report addressing the substance of the allegations within both complaints. I have not addressed each granular complaint levelled at the FCA about this matter. However, in providing this overarching report I hope to create a fuller picture of relevant matters which should provide useful context.
5. This approach also means that the elements I have reviewed do not specifically align with the allegations that were investigated by the FCA, although there is cross over with allegations that were investigated.
6. The events relating to this complaint were also some of the relevant events covered in the [Independent Review of the Regulation of BetIndex Limited](#) by Malcolm Sheehan K.C. dated 13 September 2021 (the Sheehan Review).

202300426 and 202300562

7. The Sheehan Review's primary focus was on the role of the Gambling Commission (the "Commission") in relation to BetIndex, however, it also commented on the FCA's involvement. Therefore, in determining the Complaint I have relied on the facts and matters detailed therein. Although I am not bound by the findings of the Sheehan Review, I consider that I must strike a balance between a proper consideration of the Complaint and not undertaking an exhaustive review of the kind already undertaken by the Sheehan Review unless there is good reason to do so.
8. My review focuses on the FCA's involvement in this matter and how it dealt with the referral it received from the Commission in May 2019 about BetIndex (and its Football Index) and subsequent communications.
9. The complaints I have received have raised numerous allegations about failings on the part of the FCA which I have summarised as falling broadly into the following elements which I will cover in my analysis below:
  - *Element One – Delay. How the FCA dealt with the Commission's referral of BetIndex in the period 2019-2021;*
  - *Element Two - FCA 'preference' and 'priority' in deciding whether to take further action in relation to the regulation of BetIndex;*
  - *Element Three - The FCA's changing position on whether Football index fell within its regulatory remit;*
  - *Element Four – The regulatory remit of the product.*

#### *Preliminary Issue*

10. I acknowledge that the FCA's current view, supported by a KC's opinion, is that BetIndex were not engaging in regulated activities and, on this basis did not need to be regulated by the FCA. It follows that, neither Financial Ombudsman Service (FOS) nor Financial Services Compensation Scheme (FSCS) protection is available in these circumstances. I also understand that there are other legal opinions which come to a different conclusion. This is a complex area of law with scope for ambiguity and disagreement. Indeed, the FCA also had a

different view throughout most of the period under consideration when it took the decision not to prioritise taking action towards BetIndex even though it believed BetIndex's product may have been a specified investment (Art 85 instrument) under FSMA which meant the firm was conducting regulated activities without appropriate authorisation. In the absence of a review by a court I do not see how these issues can be resolved. I therefore appreciate the FCA raising the issues with HM Treasury in the hope that these issues can be resolved going forward. Whilst I acknowledge the FCA's right to, and practice of, taking a risk-based approach to policing the perimeter, it is equally important that consumers understand the risk-based approach and that they have confidence in the basis on which these decisions are made. I do not think it is appropriate for the criteria to be published but it is important that the FCA has robust policies in place especially where there is a perceived risk of harm to so many consumers. I should make it clear at the outset that, given the FCA's current view (supported by the KC's opinion) that BetIndex's activities did not amount to regulated activities, the FCA had very limited powers. Most of my recommendations are therefore about improving the situation for the future. It does not seem appropriate to me to recommend compensation.

#### *Summary of my decision*

##### *Element One – Delay: How the FCA dealt with the Commission's referral of BetIndex in the period 2019-2021 (the "relevant period").*

11. In 2019 the Commission, being worried about potential consumer harm, referred BetIndex (an unregulated firm) to the FCA. The Commission were concerned that they had limited powers to intervene and wanted to understand whether the FCA had jurisdiction such that they could take more effective action to protect consumers. In my view, the way the FCA dealt with the referral was characterised by unreasonable delay in its communications with the Commission. Had the FCA reached a definitive conclusion that neither BetIndex nor its products were within its regulatory remit sooner, the Commission could have potentially taken different or earlier action against the firm. (and this may have resulted in less harm to consumers). I say this because although BetIndex was subject to oversight from the Commission, it does not appear unreasonable that the Commission sought to establish the extent of the FCA's appetite for

involvement for the purposes of coordinating activity and establishing a joint approach before taking unilateral action. Given the FCA delays, this may in turn have delayed the Commission's actions.

12. The FCA has disagreed that their actions (or inactions) may have added to the detriment of BetIndex's customers. It is difficult to be certain about what would have happened if the FCA had acted decisively. For example, had the FCA (and, therefore, the Commission) taken earlier action potentially fewer clients of BetIndex may have been onboarded and existing clients may not have extended their positions. That said, it is not known to me the extent of the Commission's powers. It may be that the only action open to it was to withdraw BetIndex's license (as it ultimately did). It is not clear what would have happened, but it may have crystallised the losses sooner. It was always open to the Commission to take that action. If, conversely, the FCA had taken action on its (then) view that BetIndex should be regulated and taken action to bring the firm into the regulatory fold, this may potentially have triggered FSCS and FOS protection for consumers. This seems unlikely, given BetIndex's legal advice to the contrary and the ultimate position of the FCA.

*Element Two - FCA 'preference' and 'priority' in deciding whether to take further action in relation to the regulation of BetIndex.*

13. I am critical of the FCA's approach to determining its regulatory responsibility with respect to BetIndex seemingly based on its priorities in light of its resources available and its 'preference' not to regulate betting products rather than carry out robust legal analysis of whether BetIndex fell within its ambit. Faced with a product/activity which was arguably (and in the then view of the FCA) within its regulatory scope, the FCA did not take the opportunity to, for example, take robust legal advice and any consequential action because of its 'other priorities and resources'. The issue of whether this approach is lawful has been raised by complainants and I invited the FCA to comment before I reached a final decision (further details follow below). The FCA has now made changes to its approach and resources in this area.

*Element Three - The FCA's changing position on whether Football index fell within its regulatory remit.*

14. I am critical of the FCA's changing approach which led to confusion on the part of the Commission in that it was either not certain about or misinterpreted the FCA's position. This in turn may have led to the Commission delaying taking action against BetIndex possibly resulting in greater harm than may otherwise have been the case. It is difficult to be certain what would have happened in this situation.

*Element Four -The regulatory remit of the product.*

15. After the Commission had suspended BetIndex's license and after Betindex had gone into administration, the FCA concluded BetIndex and its Football Index were not within its regulatory remit after obtaining its own external legal advice. I do not believe this goes far enough in addressing the wider points that:
  - a. Given the difference in opinion expressed by counsel acting for the Commission, BetIndex, and finally the FCA, it is evident that the legislation is unclear. I recommend the FCA to raise this matter with HM Treasury with a view to obtaining clarity so that a potential lacuna in the regulatory environment is addressed. The FCA has accepted this recommendation and has confirmed that the point has been raised with HM Treasury.
  - b. Regardless of whether Football Index meets strict technical criteria for regulated products, it seems that the product includes sufficient features akin to financial investments (for example "shares" and dividends") such that many BetIndex customers thought it was an investment product. I therefore recommend that the FCA address the misleading representation of this type of product to future investors in the gambling industry in order to avoid a repeat of the situation which arose in the BetIndex case. The FCA has said "Given the regulatory landscape of these products is complex spanning other regulatory partners, there is unlikely to be a solution solely within our remit. Nevertheless, we now have regular engagement with relevant stakeholders, such as HM Treasury and the Gambling Commission and we can commit to working with them to consider what actions might be possible". I accept the FCA's response to this recommendation and this approach is welcome.

*Background*

16. BetIndex was incorporated in July 2015. It was granted a gambling license by the Commission in September 2015. In October 2015, BetIndex launched a new online gambling platform called Football Index, which “was developed over time and was presented with features that resembled investing on a stock market. Much of the terminology used on the website mirrored terminology used in financial markets<sup>1</sup>.”
17. Commencing in May 2019 there was interaction between the Commission and the FCA as to whether all or part of the Football Index should be regulated by the FCA in addition to the Commission. The Commission raised its concerns that there was a risk of consumer harm. These discussions remained unresolved when BetIndex’s license was suspended by the Commission on 11 March 2021. Shortly afterwards, the English High Court made an order placing BetIndex into administration, pursuant to a letter of request dated 18 March 2021 from the Royal Court of Jersey. During this period, the FCA reached differing views as to whether BetIndex fell within the FCA’s remit. Even when the FCA had first concluded that BetIndex fell within its remit, it initially decided to take action but then failed to do so and, subsequently, decided it was not a priority to take action.
18. The FCA subsequently concluded, on that basis of legal advice, that no part of BetIndex’s product fell within the FCA’s remit. This was not until after BetIndex went into administration and its licence had been suspended.

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<sup>1</sup> Sheehan Review, page 4 paragraph 4

## *Analysis*

### *Element One and Two*

19. A key criticism in the Sheehan Review about the events that occurred in relation to interactions between the FCA and the Commission related to the delays in communications between the two regulators.
20. Complainants have asked me to investigate the reason for the delay on the part of the FCA. The FCA has not specifically investigated this point, nor has it explicitly accepted, in its decision letter, that there has been delay in its communications with the Commission. However, the FCA states the following:  
“The FCA stated in its response to the Review that there was a consistent pattern of the Commission not providing the FCA with crucial pieces of information concerning possible regulatory breaches. Had this been provided, the FCA’s risk assessment of BetIndex might have been different and may have led to prompter responses and an earlier formulation of the FCA’s concluded view that no part of the BetIndex product would require regulation by the FCA<sup>2</sup>”.
21. The FCA has now acknowledged that there were delays in responding to the Commission.
22. I have reviewed the FCA’s chronology of the communication exchanges with the Commission and I do not accept the view that the FCA did not have enough information about the BetIndex product to reach a view. I believe the FCA was sufficiently aware of the product features to alert it to the salient issues, and that it was incumbent on it to ask for more information if required. In my opinion, the difficulty was due to the fact that the legislation was complex and insufficiently transparent for a clear cut determination of regulatory remit.
23. I have also seen from my reading of the file that the FCA states that it was not made aware by the Commission until very late that BetIndex was experiencing financial difficulties, and that had it been aware of this it would have prioritised its responses and review of the matter. Whilst this may be the case, it does not in itself provide a reason for the excessive delay on the part of the FCA in

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<sup>2</sup> FCA Decision Letter 14 August 2023

dealing with the Commission, which had outlined that there was risk of harm to clients of the firm, irrespective of the financial position of Betindex.

24. In its decision letter the FCA refers to the fact that “The [Sheehan] Review also details UBD’s decision making at the time, in terms of how it assesses harm and prioritises FCA resource”. What this means in practice is that the FCA considered, despite believing that BetIndex was likely to be conducting regulated activities, that it had other regulatory priorities at the time and therefore concentrated its efforts and resources on dealing with those.
25. The Sheehan Review concluded that “The FCA’s approach to deciding whether to take further action in relation to the regulation of BetIndex appears, at times at least, to have been led by its assessment of relative priorities in light of the resources available rather than by a legal analysis of whether the BetIndex product fell within the legal ambit of FCA’s regulatory responsibility<sup>3</sup>”.
26. The FCA took a decision to prioritise other matters because:

“our approach historically to sports betting indices like this is that, while these products can and do technically breach FSMA as above, UBD’s approach has been to try to avoid getting involved in sports betting / gambling activity, even when there have arguably been aspects of FSMA in play. The rationale for this has generally been that consumers get involved in such schemes for entertainment rather than investment purposes. Given our very substantial workload at the moment, this would not be an area that we would now prioritise which is why our preference is to refer such cases back to the Gambling Commission or Action Fraud if there are allegations of criminality.”<sup>4</sup>

27. Complainants who are aware of these reasons have said that the position adopted by the FCA at this time:

“(that BetIndex fell within its regulatory remit in legal terms, but that it would not regulate it in light of a ‘preference’ not to regulate betting products) was inadequate, and may have been unlawful, for the following reasons:

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<sup>3</sup> Sheehan review, page 13

<sup>4</sup> Sheehan Review, p135-6, para 37

- a. It arguably breached the FCA's consumer protection objective under s1B(3)(a) and s1C of the Financial Services and Markets Act 2000 ("FSMA") and its integrity objective under s1D FSMA. The FCA took this position despite being aware of the 'investment'-type language that was used by BetIndex in marketing Football Index and the resulting need for regulatory protection.
  - b. It represented an acceptance by the FCA of an ongoing breach of the general prohibition under s19 FSMA, in that it was aware that an organisation was carrying on regulated activity in the UK and that a significant (and fast-growing) number of consumers were affected.
  - c. If this approach continues to be adopted by the FCA, we consider it gives rise to a significant risk of further instances akin to the collapse of Football Index, causing significant harm to consumers."
28. The FCA does not accept the view of complainants that it has acted unlawfully or breached its consumer protection objective. It says that it is not under an obligation to investigate each and every case where an unauthorised firm may have breached the perimeter and that it is free to adopt a risk-based approach in targeting those cases which present the greatest risk of harm given the limitation on its resources. It has quoted *R (on the application of Grout) v Financial Conduct Authority* in support of this. It says it is required to use its limited resources efficiently.
29. I accept the FCA's position in paragraph 27 above in general terms. More specifically, the FCA maintains that it was not unreasonable for it to prioritise other work at the time given what it knew about BetIndex and has asked me to justify why I would think otherwise.
30. I find it concerning that the FCA did not decide to prioritise the BetIndex case for the following reasons:
  - a. I do not find it appropriate that the FCA should rely on the view that clients of betting firms were engaging in entertainment activities rather than for investment purposes (as the evidence suggests they did);

- b. The terms of the products used investment terms which the evidence suggests may have misled consumers and the FCA was aware that the products used such terms;
- c. Another regulator, the Commission, had expressed serious concerns to the FCA about the potential harm to consumers of BetIndex;

BetIndex had 278,585 consumers when it entered administration and the value of open bets (based on the price paid by the customer) was £124,264,610.27. Significant losses were crystallized when the firm went into administration.

- 31. Based on the above, it is unclear why the FCA did not consider the degree of potential risk, including the number of consumers and the potential losses, sufficiently high to prioritise this case. Given the complexity of the case, the identified potential consumer harm and the competing views, advice could have been sought sooner to try to resolve the situation. I note again that, at this point, the FCA were of the view that BetIndex's product may have been a specified investment (Art 85 instrument) under FSMA which meant the firm was conducting regulated activities without appropriate authorisation.
- 32. Given the above, I **recommend** the FCA reviews its procedures for determining prioritisation and updates me when it has done so.

*Element Three - The FCA's changing position on whether Football Index fell within its regulatory remit.*

- 33. Complainants have expressed concern that the FCA's position could change so markedly with respect to whether it considered Football index to be within its regulatory remit and have asked why this happened. They said: "During the period between May 2019 and mid 2021 the FCA has held and/or expressed to the Commission and BetIndex different and inconsistent positions about whether any or all elements of the BetIndex product fell or were likely to fall within its regulatory remit". The inconsistency in the FCA's position happened several times and there did not appear to be a desire to reach a firm conclusion and agree on the best way forward with the Commission in the interests of consumers.

34. The Sheehan Review also concluded: “In the face of the need to consider the regulatory position of an undoubtedly novel product, the legal interpretation of which was nuanced and open to different conclusions, the FCA did not obtain external legal advice from leading counsel until after BetIndex’s gambling licence had been suspended”. Complainants add to this that during the relevant period the FCA received at least one complaint from a member of the public who highlighted product features which potentially made the product eligible for regulation which may not have been considered properly, and that at times, the FCA appears not to have challenged BetIndex which presented its own counsel opinion that it should not be regulated.
35. The FCA has not reviewed, nor answered in its decision letter, the issue of why its position changed. However, in my view the chronology of correspondence between the two regulators provides evidence that reaching a definitive conclusion was difficult given the legislation was not sufficiently clear and that the FCA ‘s priorities lay elsewhere, which undoubtedly contributed to its delay in reaching conclusive determination. The FCA has pointed out that a legal analysis in this context was both difficult and time consuming. These issues could probably have been mitigated by obtaining counsels opinion at the beginning of the process rather than after BetIndex went into administration.
36. Whilst I think there is a plausible explanation for why the FCA considered competing views about the product’s regulatory remit, in my view this should have formed part of a timely, considered, robust internal debate taking all of the facts into consideration, rather than the disjointed, delayed, inconsistent piece-meal approach which the FCA used in dealing with the Commission and at times BetIndex in the public arena. The FCA’s approach led to confusion in that the Commission was either not certain or misinterpreted the FCA’s position, which in turn led to it making decisions which it may not have otherwise made: such as the delay in taking action against the firm, which may have led to greater consumer harm than might have been the case.
37. The FCA has said it does not accept my view above on the basis, amongst other things, that it made clear to the Commission in February 2020 that it would not be taking the matter forward and that the Commission “were not solely reliant on the FCA to take action against BetIndex; and even if BetIndex should

have been regulated by the FCA, it would have remained authorised and subject to the GC's requirements." It also said that "The Sheehan report did not seek to apportion blame or give views on legal liability".

38. I do not agree with the FCA position for the following reasons:

- a. With respect to the FCA's assertion that it had made its position clear in February 2020, paragraph 55 of the Sheehan Review says: "Certainly it would appear that the Commission does not appear to have understood that the FCA would not be taking the BetIndex case forward at all". In addition, paragraph 71 says: "On 10 November 2020 in a call between the Commission's Enforcement Division and the FCA Supervision Hub, the FCA repeated its view that the product should be regulated by the FCA. The FCA advised the Commission that the application process for FCA regulation, including responses from BetIndex and the possibility of the need for a wider FCA review, might take between 6 months and a year to process". Therefore it does not appear to be the case that the FCA made its position clear in February 2020.
- b. Although BetIndex was subject to oversight from the Commission, it does not appear unreasonable that the Commission sought to establish the extent of the FCA's appetite for involvement for the purposes of coordinating activity and establishing a joint approach before taking unilateral action. As mentioned in paragraph 11 above, fewer clients would potentially have been onboarded and existing clients would potentially not have extended their positions. If, conversely, the FCA had decided BetIndex was to be regulated sooner and taken action to bring the firm into the regulatory fold, this could potentially have triggered FSCS and FOS protection for consumers in relation to any wrongdoing or subsequent insolvency.

39. The Sheehan Review was commissioned to review the role of the Commission and it did not have a remit to review the FCA's role. It follows that the Sheehan Review would not be in a position to "apportion blame" to the FCA: therefore, the Sheehan Review's findings against the Commission is not evidence that the FCA did not do anything wrong. The issue of whether the FCA acted

appropriately has been the focus of my investigation which is based on all of the information available and not solely on the Sheehan Review.

40. I do not agree that the FCA dealt appropriately with the referral from the Commission for the reasons above and I find that the FCA should identify what lessons it has learned and explain how delay, priority and a changing position on regulatory remit requiring legal interpretation will not be repeated in the future.
41. The FCA has accepted “there are areas of improvement for the FCA in how it handled this case, which include the speed of response to requests from the Commission and in consistency of messaging on regulatory responsibilities”.
42. The FCA has said that in October 2021 it restructured relevant departments internally, increased staff and is now using an enhanced IT tool which will enable it to deal with cases more quickly, “meaning that the Perimeter Team can use its resources more efficiently to tackle breaches of the perimeter, escalate matters where appropriate and refer cases to other agencies where it considers it is not best placed to take them forward.” This is a welcome development.

#### *Element Four - The regulatory remit of the product*

43. The FCA says in its decision letter that in the “FCA’s concluded view, it appears that BetIndex was not carrying out a regulated activity and therefore did not require to be authorised by the FCA. The FCA position on BetIndex is that it remained a form of sports spread betting which is a gambling activity undertaken for leisure purposes.” It also said “As with any investment (whether regulated or not regulated) any individual engaging in the activities of BetIndex should complete their own due diligence and ascertain if their funds are at risk before investing funds. I consider that such due diligence would also have identified that BetIndex was not authorised by the FCA and as such all activities undertaken by BetIndex were unregulated and without protection from the FSCS and the Financial Ombudsman.”
44. Complainants have said they disagree with the FCA’s view that Football Index did not fall within its regulatory remit (a view apparently supported by the Commission’s legal advice), and say that they thought they were making an investment. This reflects the point raised in the Sheehan Review that “The FCA’s decision making around the question of where regulatory responsibility for BetIndex fell was influenced by its view that the Football Index product was understood by consumers to be a gambling product rather than an investment. Responses following the suspension of BetIndex’s licence suggest that this was not the case for at least some of BetIndex’s customers and it is not clear to the Review how far the FCA gave detailed consideration to the effect on consumer understanding of the extensive use of the language of finance and investments in connection with the Football Index product”.
45. The FCA has not addressed this point in its decision letter. Further, it seems to me that the FCA itself continues to use contradictory language as to the nature of the product, expressing the view that Football Index was, on the one hand, “a form of spread betting for activity for leisure purposes” and on the other hand “an investment” which is not covered by FSCS and FOS and requires due diligence before ‘investing’ in BetIndex.

46. I appreciate that the FCA belatedly obtained a legal opinion and that its concluded position is that the BetIndex activity product does not fall within its regulatory remit, however, the FCA has not, as far as I am aware, publicly shared its rationale for concluding that BetIndex was not performing a regulated activity and Football Index did not need to be regulated. The opinion obtained by the Commission came to the opposite conclusion. Complainants have written to me with detailed representations on why they consider that the Football Index product is in fact within the FCA's regulatory remit, and have asked me to make a determination. The FCA, as I have mentioned above, has not disclosed why it disagrees. The Commission and BetIndex have, in the past, obtained their own counsel advice. It is clear that there is a difference of opinions.
47. What the difference in opinions highlights to me, is that this is a complex and novel product that the regulators and their counsel have failed to settle given the lack of clarity in legislation.
48. The FCA itself set out in a letter to the DCMS in 2021, that the product offered by BetIndex was "complex" and that the "statutory dividing lines between the two regimes can give rise to legal uncertainty."
49. Consequently, it concerns me that there appears to still very much be a grey area which potentially leaves the door open to future players to enter the market and take advantage of the lacuna and establish a business that could result in further consumer harm and needs to be addressed.
50. I do not think it is appropriate for me to offer yet another opinion in what is now a sea of opinions on a complex matter which is not helped by unclear legislation.
51. I also do not believe the FCA's proposed solution in its decision letter "that if there was still disagreement with its concluded view about its perimeter position for this product that this could be challenged in the Courts", presumably by consumers is the most appropriate way forward. It is, of course, also open to the

FCA to initiate court proceedings to obtain a declaratory judgement on the interpretation of these provisions.

52. In my view the best course of action is for the FCA to refer this matter to HM Treasury with a view to clarifying legislation which is relevant for consumer protection and I recommend it do so. The FCA has responded that it has:

“already discussed issues surrounding these types of products with HMT and will continue to do so, including seeking clarification on the relevant legislation.

One example of such meeting happened in July 2023. The minutes from this meeting between the Chief Executive of the FCA, Nikhil Rathi and the Economic Secretary to the Treasury Andrew Griffith MP state:

11) The CEO noted that there are a range of products which use financial terminology but are fundamentally gambling products, often based on sport or celebrity performance. He noted that the FCA has clarified that these products are not financial instruments and therefore they are not within its regulatory perimeter. Additionally, the Gambling Commission clarified that products using financial terms would not normally be granted a gambling license. The CEO suggested there should be consideration of how it may be made clearer to customers who buy such products sitting beyond the FCA perimeter that they are not eligible for financial compensation schemes or other financial regulatory protections.

12) The EST noted these points, and agreed to consider all of the issues raised, as part of HM Treasury’s ongoing work in these areas”.

53. Again, this is a welcome development.

#### *Compensation*

54. One of the complainants has asked that I recommend the FCA pay compensation to him to cover the losses he incurred through the collapse of BetIndex. I am sorry that complainants have experienced financial loss through their dealings with BetIndex, however, the FCA has a KC’s opinion to the effect that BetIndex was not conducting regulated activities and unless this matter is brought to the courts, it is reasonable for the FCA to rely on this opinion.

55. Therefore, I am unable to make a determination on whether compensation is payable under the Scheme.
56. I should further point out that I have accepted, as I have said above, that there are competing legal opinions and I acknowledge that this is an unsatisfactory position.
57. I note that I accepted this complaint under the Scheme (as did the FCA in the on the basis that the FCA has an obligation to monitor the regulatory perimeter, and my review has focused on how the FCA handled its responsibilities to do so with respect to BetIndex). This obligation is part of the FCA's "Relevant Functions" and therefore clearly within the scope of the Scheme. Although it is within the scope of the Scheme to recommend compensation, it is not sufficiently clear in this case that the FCA's actions caused the loss suffered by consumers therefore I am unable to determine in this case that compensation is payable under the Scheme.

Complaints Commissioner

16 September 2024