

05 July 2024

Final report by the Complaints Commissioner**Complaint number 202300826***The complaint*

1. You are concerned that the FCA did not inform you and other victims of the collapsed Woodford Equity Income Fund (WEIF) that voting for the Scheme of Arrangement proposed by the FCA might potentially lead to many people losing a large percentage of their compensation if they took action of their own and instructed litigation specialists in parallel to the work undertaken by the FCA to secure a resolution for investors.
2. These additional costs might be levied on some investors as a result of the terms and conditions of the firms instructed by individuals. You believe the FCA should have warned people to be mindful of the potential additional costs when considering whether to vote for the proposed scheme of arrangement, which the FCA considers to be *“the quickest and best way to return as much money to investors as possible compared to other means.”*
3. Having reviewed this complaint, I find that the complaint you are raising does relate to a relevant function of the FCA and so it is not excluded from the Complaints Scheme. However, it is not the role of the FCA to comment on contractual agreements it is not a party to and for this reason, I do not uphold your complaint.
4. More information about WEIF, the Settlement Scheme and the judgement approving it can be found [here](#).

Your FCA complaint

5. You submitted a complaint to the FCA on 30 November 2023 to raise concerns about the lack of warning that the proposed Settlement Scheme, which

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investors were expected to vote on, would result in some still having to pay fees to the litigation specialists they instructed to assist with recovering some of their losses arising from the collapse of WEIF.

6. You believe the FCA, as it was recommending the Settlement Scheme to investors had a responsibility to make it clear that some would be incurring extra costs, a 25% fee in your case, which would further reduce the redress available to affected investors.
7. As a resolution to your complaint, you wanted the FCA to be clear when setting out the view that the Settlement Scheme is the best solution available to investors that it has “strings attached”.

What the regulator decided

8. The FCA did not investigate your complaint stating that it *“relates to investors not being told that they would have to pay a percentage of the Scheme of Arrangement to any Litigation Specialists they had engaged with. The FCA is not party to individual arrangements investors have made with Litigation Specialists and does not set or control the fees they charge for their services. Individual investors will need to consider their own individual circumstances before deciding how to vote on the Scheme of Arrangement. Although the FCA has commented that we consider the Scheme of Arrangement to maximise the available redress and is the fastest way for redress to be paid in comparison to other means, the FCA cannot provide advice on how investors should vote.”*

Why you are unhappy with the regulator’s decision

9. You say in your complaint to my office that *“the FCA recommended that investors in WEIF accept the Link scheme of arrangement because in the view of the FCA this was the best offer they would get.”* You went on to say that *“They [the FCA] clearly were successful in the financial advice they gave from their point of view because of the number of votes to accept the scheme. The advice they gave me and other investors was however flawed and will result in a significant loss for all WEIF investors. I believe a significant number of investors blindly followed the FCA advice and either did not bother to vote or voted for the scheme of arrangement even though it may not have been in their best interest.*

The FCA did not provide any caveat's when they presented this financial advice to warn that there were ways in which investors could lose out if they happened to engage a litigation specialist to pursue a case against Link for compensation the lawyers would seek compensation for the work already carried out. Also, it is possible they could have been entitled to several times the sum of money on offer from [Y] should a case against Link or the FSCS (if Link not have the funds to pay adequate compensation) be successful."

Preliminary points

10. I note that the complaint you submitted to my office is broader than the complaint made to the FCA and which its Decision Letter addressed. In your letter to me, you make allegations including that the FCA gave financial advice to affected investors by and that the FCA proposed this Scheme of Arrangements for its own convenience and not for the benefit of investors, as, in your view, the resulting payout is less than what investors could have recovered through the Financial Services Compensation Scheme (FSCS).
11. Because the Scheme of Arrangements was voted for by a vast majority of those who did vote, *"investors [will] have no recourse to the FSCS in relation to claims released by the Scheme."* I also note your comments in response to my Preliminary Report about your expectation that the FSCS *"protects me should a financial services organisation go out of business"*. The FSCS had been set up by legislation to be a recourse of last resort when a regulated financial services firm fails, to be relied on after all other options had been exhausted. It is my understanding that as the Settlement Scheme had been approved by the vast majority of those who voted on it, the matter was settled without needing to fall back on the FSCS.
12. It is my view that any complaint points not raised with the FCA should be referred to it in the first instance for investigation. This is the preferred course of action under the rules of the Complaints Scheme because it gives the FCA the opportunity to fully address all concerns raised and if you are not satisfied with its response, you still have the opportunity to refer the FCA's decision to my office for consideration. As such, I suggested in my Preliminary Report that, should you wish for the additional points to be investigated, you should contact

the FCA's Complaints Team to lodge a new complaint. You told me in your response that you do not wish to raise another complaint.

My analysis

13. I am very sorry about the situation you have been thrust into through the failure of WIEF, it is clear that the loss of your investment has had a significant impact on you. The comments in this report are only related to the allegation investigated by the FCA, which is that the FCA should have warned investors that they may have to pay fees to litigation specialists, if they engaged such services.
14. Having carefully considered the concerns you raised; it is my view that the complaint about the FCA's actions connected to the setting up of and alleged recommendations in favour of the Settlement Scheme is a relevant function of the FCA, therefore your complaint does fall under the Complaints Scheme.
15. However, the FCA was not party to the contractual relationships between you (and potentially others) and the litigation specialists (with the agreements being signed prior to the setting up of the Settlement Scheme), and it was entirely your decision to instruct them. Other affected investors did not do so. As the FCA has no knowledge of the contractual terms you and other investors agreed to with third parties, it cannot opine on the potential impact of these or give warnings to individuals affected. For these reasons, I **do not uphold** your complaint.

My decision

16. Having considered the points you raised and your comments on my Preliminary Report, I am unable to uphold your complaint for the reasons set out above.

Rachel Kent

Complaints Commissioner

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