

Complaint number 202400493

1. On 29 October 2024, you submitted to my office a complaint about the FCA, which can broadly summarised as follows – you object to the FCA’s exclusion of your complaint and state that there would be no need to create additional rules and there would be no additional cost, hence the FCA is wrong to suggest otherwise.
2. To remedy your complaint, you want the FCA to *“[i]mplement the suggestion set out in the complaint, to prevent mule accounts in the UK laundering billions of pounds each year of UK victim's money and harming hundreds of thousands, or possibly millions, of UK residents annually.”*

Background

3. This complaint pertains to the issue you previously raised with the FCA in October 2023. At the time, you explained that the FCA is mandated under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs) to *“take necessary measures’ to prevent mass money laundering.”* You suggested that one such measure is to require *“..banks to instruct their customers that receiving payment into their bank account for a 3rd-party may be money laundering and lead the customer to a fine or prison sentence.”* You alleged that by failing to communicate this requirement to the banks, the FCA had been *“grossly negligent”* in complying with its obligations under that legislation in relation to ‘account mules’.
4. The FCA ultimately decided it could not investigate your complaint as it did not fall within its relevant functions...it also said *“the regulations do not create the customer notification requirements outlined by the complainant.”*
5. I agree that complaints about rule making are excluded from the Complaint Scheme but in my Final Report issued 8 May 2024, I asked the FCA to consider your suggestion as its usual practice is has been to do so when members of the

public provide suggestions: <https://frccommissioner.org.uk/wp-content/uploads/202300608-Issued-08-May-2024.-Published-20-June-2024.pdf>

6. In June 2024, the FCA published its response to my Final Report, where it considered your suggestion and its responsibilities under the MLRs and the Financial Services and Markets Act 2000 (FSMA).

<https://www.fca.org.uk/publication/corporate/response-complaints-commissioner-report-202300608.pdf> In it, the FCA stated that:

“As currently drafted, Regulations 17 and 46 of the MLRs do not contain an explicit requirement for banks to tell customers about the risks of money mules, nor do they require the FCA to make rules requiring firms to do this, or to supervise that firms are doing this.

We have considered if meeting our supervisory duties under Regulation 17 or Regulation 46 of the MLRs would allow the FCA to introduce such an explicit requirement for firms to follow. Our view is that this is not what was intended by regulations 17 and 46.”

7. On 24 June 2024, you submitted a new complaint about the FCA alleging that the FCA’s response to your suggestion was *“incorrect on multiple counts”*. You agree that requiring banks to inform customers is not prescribed explicitly. However, you argue that the FCA does not need to make new rules in order to require banks to inform customers because such a requirement is captured within the regulations already. You also state that it costs the FCA nothing to write to banks and tell them to do so, given it will likely prevent fraud, which is the intention of reg 17 (i.e. the FCA is required to take action to prevent money laundering) and that the FCA would not be compliant with spirit of regulations if it does not do so. You therefore asked *“for a re-evaluation of the FCA’s response.”*
8. On 22 October 2024, the FCA issued its decision. The FCA apologised for the delay in dealing with your complaint and concluded that it could not investigate it because it had *“already responded adequately to the same or a substantially similar complaint from you on a previous occasion.”*
9. The FCA further advised that your suggestion *“..would require, in the interests of fairness and transparency, significant intervention by the FCA...possibly ...by*

making a rule. The creation of new rules can have significant costs attached, both for the FCA and for regulated firms. The FCA is under a legal obligation to carry out a Cost Benefit Analysis of all of our proposed rule changes.. In this instance not all firms are carrying out the suggested action, which would mean all of those firms would incur a cost to implement. We are obliged to assess that likely cost.”

10. You were not happy with the response and referred your complaint to me, reiterating your original view in complaint 202300608 that “banks to instruct their customers that receiving payment into their bank account for a 3rd-party may be money laundering and lead the customer to a fine or prison sentence.”

Decision

11. In report 202300608 I recommended the FCA review your suggestion in order to be helpful (the FCA is under no obligation under the complaints Scheme to do so as your suggestion relates to rule making, which is excluded under the complaints Scheme). The FCA reviewed your suggestion its conclusion was that it considered if meeting its supervisory duties under Regulation 17 or regulation 46 of the MLRs would allow the FCA to introduce such an explicit requirement for firms to follow. Its view is that this is not what was intended by regulations 17 and 46.
12. However, you do not agree with this view. You are effectively asking me to determine if the FCA’s decision about how to deal with your suggestion connected to legislative functions and rule making is appropriate: however, that is excluded under the Scheme. The most I can do is ask the FCA to consider your suggestion in order to be helpful, rather than because it is obliged to under the Complaints Scheme. I did so, and the FCA has considered it. That is as far as I can go under the Complaints Scheme.
13. I note the FCA also mentioned costs: this was in reply to your points that such measures would not carry cost, rather than as a reason not to implement your suggestion.
14. I also note that although the FCA has not accepted to implement your suggestion directly, it has a comprehensive programme in place for ensuring banks comply with AML rules.

15. For the reasons above, your complaint is excluded. And there is no further help that can be offered to you under the Complaints Scheme.

The Complaints Commissioner

Complaints Commissioner

17 December 2024