

27 October 2025

Final Report by the Complaints Commissioner**Complaint number 202500356***The complaint*

1. On 8 July 2025, you submitted a complaint to my office about the FCA's stance towards exchange traded products ("ETPs").
2. I have summarised your complaint as follows:

Element One – The FCA fails to recognise that leveraged products are complex and should be included in FCA Handbook COBS 10.1.2R. The FCA should update the definition of 'complex' financial instruments.

Outcome: Excluded. The Complaints Scheme does not cover complaints about the FCA's legislative function, which includes rule-making within the FCA Handbook.

Element Two – The FCA is permitting regulatory ambiguity by leaving firms to interpret unclear rules on their own, and is failing to monitor those interpretations. The FCA should provide clear guidance on appropriateness tests and enhance its supervisory oversight.

Outcome: Not upheld. Although a complaint that a firm has breached FCA Handbook rules would come under the Complaints Scheme, you have not provided any evidence to show that a firm is in breach to suggest the FCA has failed in its supervision.

3. You assert that the FCA should conduct a thematic review of all firms offering ETPs to ensure they are consistently implementing appropriateness testing. You also assert that it should compensate you and other retail investors who have suffered financial loss because they were not required to take appropriateness tests.

4. However, because none of these elements have been upheld, I cannot recommend a thematic review, and I do not recommend compensation.

Background

5. In January 2021 you invested in ETPs in two companies through Firm X, but you were not required to take an appropriateness test in advance.
6. On 28 April 2023 both your positions were closed and subsequently delisted. You assert that Firm X did not tell you that your positions would be closed, causing you to suffer financial loss of over £50,000 after having to sell the investments at a reduced value.
7. You complained to Firm X and it responded that:
 - a. Firm X is an execution-only broker, and so only acts on the instruction of the investor. It does not provide information to the customer about investments and so it would not have been able to warn you about the delisting.
 - b. The onus was on you to be informed about, and manage, your investments.
 - c. You were aware of the risks associated with ETPs and that you could suffer financial loss after investing in them.
 - d. Firm X did not have to conduct an appropriateness test as the investments were not complex enough to require this.
8. You complained to the FOS that Firm X did not tell you that your ETP trading positions would be closed on 28 April 2023, and that when they were delisted you made a significant loss, having to sell the investments at a lower value.
9. The FOS issued its final report in April 2024 and did not uphold your complaint for the following reasons:
 - a. ETPs are regularly traded and readily realisable, as they are traded on a UK stock exchange. They are not illiquid securities, derivatives or warrants, and so are not 'complex' products under FCA Handbook COBS 10.1.2, and do not require firms to conduct appropriateness on potential investors.

- b. You may assert that ETPs are complex and use leverage or other financial instruments, but ETPs themselves are not leveraged or derived from another asset, and can be bought and sold on an exchange like you could with shares.
 - c. Even if Firm X were to ask you now to complete an appropriateness test, this may be because it considers this good business practice, not that it had been acting wrongly and outside regulations.
 - d. The information Firm X has provided about its platforms and the risks in investing is reasonable and would have allowed you to make a decision about risk.
 - e. Firm X had no input into your decision to invest so it should not have to compensate you for your losses.
10. On 6 February 2025 you complained to the FCA, stating:
- a. You were not required to take an appropriateness test in 2021 for ETPs which led to *“immense financial losses.”*
 - b. The FCA does not provide clear guidance to firms on the need for appropriateness tests for complex financial instruments.
 - c. The FCA’s *“vague and inconsistently enforced rules”* allow firms like Firm X to exploit uncertainty and prioritise profit over retail investors protection.
 - d. The FOS has been unable to establish that leveraged products are inherently complex due to vague FCA rules and a lack of clear guidance, and has not held Firm X accountable for your losses.
11. You assert that the FCA should:
- a. Clarify and strengthen the rules on appropriateness testing for complex financial instruments, setting out when and how they should be administered. These tests must be mandatory and come before a retail investor is allowed to trade such products.
 - b. Clearly define what constitutes ‘complex’ financial instruments and include leveraged products in the definition.

- c. Enforce stricter oversight and accountability, enhancing monitoring and imposing penalties on firms that do not conduct the test or mis-sell complex products to retail investors.
 - d. Require firms to compensate retail investors for their losses due to a *“failure to adhere to the spirit of investor protection,”* even if the rules were not explicitly clear.
 - e. Improve communication with retail investors so they are fully informed about the risks of complex products and the importance of an appropriateness test.
 - f. Review past cases where retail investors suffered significant losses due to a lack of appropriateness testing, particularly involving leveraged products.
12. On 18 February 2025 the FCA issued Decision Letter 1, holding that you did not notify the FCA of your complaint within 12 months of becoming aware of the issues you were complaining about, and that it could not investigate under the Complaints Scheme.
 13. On 19 February 2025 you explained that you had not complained earlier as you were still engaging with the FOS and only received its final report in April 2024.
 14. On 24 February 2025 the FCA agreed that you had a valid reason for not raising your complaint within 12 months.
 15. On 6 March 2025 the FCA issued Decision Letter 2 and did not uphold your complaint, stating:
 - a. The Complaints Scheme covers investigating complaints concerning the FCA’s exercise or failure to exercise any of its relevant functions. These functions exclude matters arising from its legislative functions or standards review functions, which include making rules and issuing general guidance.
 - b. The FCA does not investigate complaints against firms. This is for the FOS, which is operationally independent from the FCA, although the FCA has limited oversight responsibility.
 - c. Complainants dissatisfied with FOS conclusions should refer their complaint to the Independent Assessor.

16. On 10 March 2025 you asserted that your complaint had been mischaracterised – you were not complaining about the content of COBS 10.1.2R, rather the FCA’s failure to enforce compliance with it or to supervise Firm X adequately while it was in breach of that rule or to detect the breach before you notified the FCA.
17. In subsequent correspondence the FCA referred to the FOS conclusion that ETPs are not ‘complex’ under COBS 10.1.2R and so firms are not required to conduct appropriateness tests on retail investors. It has stated that you should address any queries about Firm X to that firm itself.
18. On 8 July 2025 you complained to my office.

My Analysis

Element One - The FCA fails to recognise that leveraged products are complex and should be included in FCA Handbook COBS 10.1.2R. The FCA should update the definition of ‘complex’ financial instruments.

Your position

19. You hold that ETPs “possess derivative-like features, including embedded leverage, non-linear risk profiles, and heightened sensitivity to market volatility... making such products inherently complex and potentially unsuitable for retail investors lacking a comprehensive understanding of the associated risks.” The FCA should accordingly broaden the definition of ‘complex’ in FCA Handbook COBS 10/1/2R in order to capture products such as ETPs.

The FCA position

20. The FCA holds that your complaint falls outside the scope of the Complaints Scheme as it relates to its legislative function.

My analysis of the issues

21. Part 6 of the Financial Services Act 2012 details the relevant functions of the FCA that could form the subject of an investigation under the Complaints Scheme. This specifically excludes anything concerning the FCA’s legislative functions, and this would cover making any changes to the FCA Handbook, such as broadening the definition of ‘complex’ financial instruments.

22. Therefore, regardless of how complex you consider ETPs to be, the Complaints Scheme cannot cover your complaint that the FCA should broaden the definition of 'complex' in FCA Handbook COBS 10/1/2R.
23. For the reasons above Element One of your complaint is excluded.
24. You raised concerns with my Office about what you believe to be the FCA limiting the possibility of its decisions being scrutinised by creating this limitation within the Complaint Scheme. Although this allegation was not originally raised with the FCA, I am able to consider it here without referring the matter back to the FCA for investigation in the first instance, which would normally be the procedure under the Complaints Scheme to which both the regulators and I are subject.
25. The addition of the exclusion was not a discretionary decision made by the FCA. The scope of the Complaints Scheme is defined by Parliament through legislation, which determines that complaints about legislative functions, including the making of rules, fall outside the Scheme. Both the FCA and my Office are bound by this statutory framework, and neither can extend the Complaints Scheme to cover areas Parliament has expressly excluded.
26. Having said that, I noted in my Annual Report for the 2024/25 financial year, that I recognise that the exclusion of the FCA's legislative functions from the Complaints Scheme is required by statute, but I remain concerned that this limitation can be deeply frustrating for complainants. Many of the issues raised with me stem directly from the FCA's rule-making or guidance, and while I am unable to investigate such matters at present, it is my view that this restriction narrows the scope of the Scheme and leaves some complainants without a clear route to redress.

Element Two - The FCA is permitting regulatory ambiguity by leaving firms to interpret unclear rules on their own, and is failing to monitor those interpretations. The FCA should provide clear guidance on appropriateness tests and enhance its supervisory oversight.

27. FCA Handbook COBS 10.1.2R defines four categories of 'complex' financial instruments which require firms to conduct appropriateness tests on potential

investors - non-readily realisable security, speculative illiquid security, derivative or warrant.

28. The FCA supervises firms' compliance with the FCA Handbook rules, and the rules do not require firms to conduct appropriateness tests on potential investors in non-complex financial instruments. In your case, the FOS determined that you had not invested in a complex product in 2021 and therefore the firm had not breached any rules by not conducting an appropriateness test on you.
29. You say that you believe the firm may be conducting appropriateness testing on investors in the same or similar products to the ones you invested in 2021. Even if Firm X has now instituted appropriateness testing, this need not be because it has interpreted FCA Handbook COBS 10.1.2R independently. Firm X may have made a business decision to institute appropriateness tests for potential investors in ETPs, but was entitled not to conduct these tests in 2021 when you invested in ETPs, and so there is no evidence it has broken any rules.
30. Some firms may now require potential investors in ETPs to take an appropriateness test as part of ensuring consumer understanding, as set out in the FCA Consumer Duty rules. However, these rules first came into force in 2023, after you invested in ETPs.
31. Whether a firm is implementing rules would fall under the Complaints Scheme, but you have provided no evidence to the FCA that a firm has breached the rules. As such, the FCA cannot have failed in supervising the rules that have been followed by the firm.
32. For the above reasons I do not uphold Element Two of your complaint.
33. In your comments on the Preliminary Report, you have asked me to conduct a detailed investigation to assess whether FCA supervision adequately addresses how firms interpret unclear rules and whether the FCA allowed a period when it failed to supervise firms and protect consumers.
34. However, it is precisely because regulations requiring an appropriateness test were not in place in 2021 when you invested in ETPs, that Firm X was free not to conduct those tests. I do not see how the absence of rules can equate to unclear rules, and now rules are in place.

35. The FCA does not actively supervise every firm, and instead mainly takes a reactive approach to supervision of smaller firms, making decisions on whether to investigate a firm based on the evidence it receives, sometimes from consumers.
36. It may be that between 2021 and 2023 the FCA received no information to justify investigating the ETP market. Equally, it may have received information, a consequence of which was precisely the introduction of regulations requiring firms offering ETPs to conduct appropriateness tests on consumers.
37. No evidence has been provided to suggest that an investigation should be conducted into whether the FCA failed in its supervision or the regulatory environment regarding ETPs prior to 2023.

The Complaints Commissioner

Complaints Commissioner

27 October 2025