

24 November 2025

Final report by the Complaints Commissioner

Complaint number 202500428

The complaint

1. On 19 August 2025, you submitted a complaint to my office about the Financial Conduct Authority (FCA).
2. In your complaint, you set out your objections to the FCA's ban of 6 January 2021, prohibiting the marketing, distribution and sale in or from the UK to all retail clients, of derivatives and ETNs that reference certain types of unregulated, transferable cryptoassets. You claim the ban disproportionately harmed small investors such as yourself by removing access to regulated products and creating a vacuum filled by offshore riskier platforms. You invested through such a platform, and you allege you incurred losses because of that. You note that the FCA will lift the prohibition on 08 October 2025, which in your view demonstrates that the products could have been regulated safely from the outset, undermining the justification for the prohibition.
3. Finally, you raise a concern about a lack of accountability by the FCA. You assert that by excluding "legislative functions" from its Complaints Scheme, the FCA leaves its most significant decisions outside scrutiny, even when they allegedly cause consumer harm. You argue this prevents consumers from seeking redress for regulatory overreach.
4. To resolve the complaint, you request acknowledgment of the harm caused by the 2021 ban, a formal apology, and consideration of an ex-gratia payment.

Outcome: Your complaint is excluded from the Complaints Scheme.

Background

5. In January 2021, the FCA introduced a ban prohibiting the marketing, distribution and sale in or from the UK to all retail clients, of derivatives and ETNs that reference certain types of unregulated, transferable cryptoassets. The restriction was imposed because the FCA considered these products to pose a high risk of harm to retail consumers.
6. Before the FCA's ban, you invested £20 per month into a Bitcoin-linked ETN through a regulated broker.
7. You considered the ETN a safe, transparent, regulated way to gain long-term exposure to crypto assets while spreading risk. After the FCA ban, you could not continue this strategy and instead used offshore platforms, where you allege you lost your funds.
8. When you learned that the FCA would lift the ban on 8 October 2025, you submitted a complaint to the FCA, stating that this decision acknowledges the market can be effectively managed through regulation rather than by maintaining a ban.
9. The FCA excluded the complaint under the Complaints Scheme, which expressly excludes matters arising from the FCA's legislative functions, including the making of rules and issuing of general guidance, as set out under Part 6 of the Financial Services Act 2012.
10. However, in its Decision Letter, the FCA provided you with explanation about its actions. Whilst it considered other regulatory avenues, it ultimately decided to introduce the ban on the sale of cryptoasset derivatives and ETNs on 06 January 2021, due to the lack of a reliable basis for valuing cryptoassets, the prevalence of market abuse and financial crime, extreme price volatility, inadequate consumer understanding, and the absence of legitimate investment need for retail consumers. The FCA estimated that the ban would reduce consumer harm by £19m–£101m annually. The ban did not apply to professional investors as the FCA deemed they were better placed to evaluate the risks and bear any potential losses.
11. The FCA went on to explain that in June 2025, the FCA launched a consultation on lifting the retail ban on crypto ETNs. Following this consultation, on 1 August

2025 the FCA announced that retail investors would once again be permitted to access crypto ETNs from 8 October 2025. This retail access is conditional upon the products being traded on FCA-approved UK-based exchanges and on certain safeguards being put in place.

12. This change has come about because new rules have been introduced, the market has evolved, and products have become more mainstream and better understood. You have said that you consider that “The subsequent decision to lift the ban in October 2025 is a tacit admission that retail access can be safely managed within a regulated framework”. Your point that the subsequent lifting of the ban indicates retail access can be safely managed is understandable, but it does not necessarily follow that such access could have been safely permitted in 2021. The FCA’s decision in 2021 reflected the conditions at that time, when crypto markets were less mature and regulatory safeguards were limited. The subsequent decision to lift the ban was taken in the context of a significantly changed market and enhanced regulatory framework, as the FCA has explained. In any event, the decision to impose or remove such a ban constitutes a legislative or rule-making function, rather than the implementation of a rule, as you assert. The former is excluded from the Complaints Scheme and cannot be reviewed under it.

Analysis

13. Having considered your complaint carefully, it is my view that the FCA was correct to exclude your complaint about the FCA’s 2021 ban on cryptoasset derivatives and ETNs, and its decision to lift that ban from 8 October 2025, as these decisions fall within its legislative functions, namely the making of rules and the issuing of general guidance. Under the Complaints Scheme, matters arising from the exercise of legislative functions are expressly excluded from investigation. The statutory framework underpinning the Scheme, set out in Part 6 of the Financial Services Act 2012, provides that such rule-making functions cannot be the subject of complaints. Therefore, the FCA’s decision that the complaint could not be considered under the Scheme was correct.
14. The FCA has nonetheless provided you with a detailed explanation of the reasoning behind these decisions, which I hope you have found helpful.

Other matters

15. 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.
16. 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.
17. 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. You have asked me to record your view that the exclusion "appears outdated and inconsistent with modern standards of administrative fairness, transparency", and I do so.

Decision

18. I have not investigated your complaint as it relates to matters outside of the remit of the Complaint Scheme.

The Complaints Commissioner

Complaints Commissioner

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