

15 October 2021

Final report by the Complaints Commissioner**Complaint number FCA001346***The complaint*

1. On 28 July 2021, you complained to me about the FCA's investigation of your complaint. Your complaint was in relation to a matter which you had been communicating with the FCA about on behalf of your client. I have carefully reviewed the information that you and the FCA have provided to me. My preliminary report was issued on 2 September 2021 and both you and the FCA have had the opportunity to comment.

What the complaint is about

2. In its decision letter to you dated 28 April 2021, the FCA described your complaint as follows:

My understanding of your complaint is you are unhappy due to the FCA failing to give an explanation of the definition of the term 'other debtors' when making a return under IPRU-INV 5.8.2R Note 7f. You state you spoke with the FCA regarding the definition who accepted there is no definition in the FCA Handbook. You say that 'other debtors' is an accounting term clearly defined under UK GAAP and specifically excludes trade debtors. You feel the explanation given by the FCA is not satisfactory and the issue needs to be referred to a person with the appropriate accounting experience.

What the regulator decided

3. The FCA set out that under paragraph 3.5 of the Scheme it would not investigate a complaint that amounts to no more than a dissatisfaction with the FCA's

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general policies or with the exercise of, or failure to exercise discretion where no unreasonable, unprofessional or other misconduct is alleged.

4. The FCA set out that it had consulted with the most relevant areas who were closely connected to your complaint to enable it to provide you with a response to the matters you had raised.

Why you are unhappy with the regulator's decision

5. You feel the decision of the FCA is wrong. In your complaint to me you set out the following:

The dispute is in the definition of other debtors as stated in note 10 (f) of the IPRU-INV calculation of capital adequacy. We have stated that the guidance has been clearly drawn up using accountancy terms such as share premium account, reserves and intangible assets. As such the definition of 'other debtors' as stated in the guidance should follow generally accepted accounting terms (UK GAAP). In GAAP, there are two accepted terms used being 'trade debtors' and 'other debtors'. By definition 'trade debtors' are not 'other debtors'.

The FCA's interpretation of the rules is that 'other debtors' includes 'trade debtors'. This may be how the FCA originally intended but it is not what is stated in the current rules.

My analysis

6. Your complaint stems from your clients lodging Aged Debtor Analysis with the FCA which it in turn then questioned. The FCA said that your client was required to report 'trade debtors' as illiquid assets but you and your client disagree and think that the definition of 'other debtors' should not include 'trade debtors'.
7. I have reviewed the FCA file which included the numerous emails between yourself and the FCA discussing your understandings of the definition of 'other debtors' in the Interim Prudential sourcebook: Investment Business (IPRU-INV) section in the FCA handbook and in general accounting terms. It is clear from these communications and from your complaint to me that your complaint is a dissatisfaction and fundamental disagreement with the FCA, which has confirmed that the handbook does not provide a definition of 'other debtors' but

has decided on an interpretation that in the context of the phrase 'loans, other debtors and accruals', 'other debtors' means all debtors other than loans and accruals. And 'other debtors' includes 'trade debtors'. You feel that the definition of other debtors should be aligned to meet what you believe is the appropriate UK Generally Accepted Accounting Practice (UK GAAP) definition.

8. You have told me that this distinction in interpretation can have a significant effect on the calculation of the capital adequacy of FCA registered firms, with potential financial implications for the firm you are advising. I appreciate you are concerned about this matter, however, I cannot make a 'ruling' on the interpretation of FCA rules under the complaints scheme – that is a matter for the courts.
9. For this reason, I must agree with the FCA's decision that it would not be able to investigate your complaint under Paragraph 3.5 of the Scheme, because it relates to a dissatisfaction with its general policies and its failure to exercise its discretion to change the handbook.
10. Although the complaints team did not investigate your complaint, it did provide you with a summary of its response to the matters you raised. I do not see any value in repeating this summary in full, however I do want to touch on one aspect. The FCA set out that 'the IPRU-INV was put in place using rule making powers contained in the Financial Services and Markets Act 2000 (FSMA 2000).'
11. Under Paragraph 3.4(c) of the Complaints Scheme, I am unable to investigate issues connected to the FCA's legislative functions, this includes the FCA's rule making under FSMA 2000. Consequently, because your complaint relates to the FCA's rule making under the FSMA it falls outside the scope of the Complaints Scheme and this means that I am unable to investigate your complaint for this reason as well.
12. You have set out clearly that you consider that the definitions in the FCA's handbook should consistently align with UK GAAP definitions. I noted in the correspondence between your office and the FCA that it provided you with the details to raise your issues about the definition with the FCA Handbook Feedback Team. This is one action that you can take to try and achieve your desired outcome for the future, however as the FCA set out to you, it would not

advise you individually whether any action resulted from any submission but provided an assurance that your submission would be considered.

My decision

13. I am sorry to disappoint you, but for the reasons given above I uphold the FCA's decision not to investigate your complaint. I understand that it is frustrating when complaints are not investigated or are excluded under the Complaints Scheme, and while I recognise that you would like the FCA to align its definition of 'other debtors' with what you believe they are in the generally accepted accounting terms, this goes beyond the scope of the Scheme.

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Complaints Commissioner

15 October 2021