

17 March 2022

## Final report by the Complaints Commissioner

### Complaint number FCA001404

#### *The complaint*

1. On 29 August you asked me to review your complaint against the FCA in connection with the Connaught Income Fund Series 1

#### *What the complaint is about*

2. The FCA summarised your complaint as follows:

You allege that due to the FCA's failure in regulating Connaught you have suffered a loss for which you have not been compensated for under the Capita Financial Managers (CFM) Limited Redress Scheme announced in the Final Notice of 10 November 2017.

#### *What the regulator decided*

3. The FCA did not uphold your complaint. The FCA decision letter stated that it understood your complaint to be that the correct methodology for redress was not applied.

#### *Why you are unhappy with the regulator's decision*

4. You have said to me that you are 'not complaining about how the Capita redress was calculated or distributed, nor about the way that income investors were treated by the redress scheme relative to accumulation ones; rather, I am asserting that my losses were not wholly remedied by that scheme and that I now require the shortfall to be made good by the FCA.'

#### *My analysis*

5. You have provided the background to your complaint as follows:

At the date of the Fund's liquidation, my loss was £99,020.47 (being the sum of my capital invested plus outstanding interest at that date).

Following receipt of compensation payable under the Capita redress scheme announced in the FCA's Final Notice dated 10 November 2017, I am still harbouring capital losses of £25,230.86.

Pertinent to the manner in which that compensation was calculated are the following: I invested in the income, rather an accumulation, option; As such, I received material amounts of income prior to the suspension of the Fund (which was deducted from compensation otherwise payable); I invested outside of any pension or other wrapper, and so paid income tax on those receipts (no account of which was taken in the compensation paid).

In the circumstances, I believe the FCA should take responsibility and decide to make good my losses, which I believe I have sustained on account of regulatory failure. For these purposes, I am willing to confine my claim to the shortfall in capital, plus the contractual interest rate due on the outstanding balances throughout the period from the Fund's liquidation to the date on which such redress is paid. If the FCA intends to deny liability, I would be grateful to learn its detailed reasoning.

6. You are of the view that you have sustained a loss which has not been covered by the compensation scheme and it seems to me your main argument is that you believe that the redress methodology should not include the income you received from the fund prior to suspension, and that your tax position should be taken into consideration when calculating the redress.
7. If that had been the case, it may be possible the shortfall may not have arisen. However due to the way the methodology was applied, you feel you have incurred a loss which you are looking to recover from the FCA.
8. The FCA describes the methodology in the Annex to the Final Notice (<https://www.fca.org.uk/publication/final-notices/capita-financial-managers-limited-2017.pdf>) and further explained to you that its aim was to put investors as closely as possible back in the position they would have been in if they had never invested in the fund. The redress scheme does not treat investors

differently based on their specific cases. All investors received a payment on the same basis, as described above.

9. You were treated in the same way as all other investors. The adopted redress methodology is within the discretion of the FCA. A different methodology may have resulted in a higher pay out for you, however, it is not my role to say what I would have decided had I been the regulator. My task is to assess whether the decisions were within the range of decisions which the regulator could reasonably have taken, in the light of its statutory duties and policies.
10. It is my view that the redress methodology the FCA agreed with Capita and CFM is not unreasonable. I am sorry to hear that you are unhappy with the redress you have received, however, I do not think it is reasonable to expect the FCA to top up any alleged losses.
11. In response to my preliminary report you made the following comment on 3 December 2021: 'Raj Parker's independent review indicates that there were extensive and grave failures in how the parties connected to the Fund were overseen by the FSA, from the granting of authorisations to ongoing supervision to the lack of appropriate response to credible evidence that there were problems with the Fund that were likely to lead or had already led to consumer detriment. I have suffered losses as a result of those failings, which have not been fully remedied by the redress scheme negotiated by the FCA. I am not challenging its right to enter into the agreement that led to the creation of that scheme; but I am insisting that it pays me the shortfall between my losses and the sums paid to me to date under the liquidation and redress scheme together'.
12. You have now clarified that you are not disputing the redress methodology but rather you feel you ought to receive an ex gratia compensatory payment from the FCA due to its failings in regulating the parties connected to the fund.
13. My office wrote to you on 12 January 2021 to say neither I nor the FCA has considered your complaint in terms of asking for an ex gratia payment for the FCA's regulatory failings. However, your comments to the preliminary report make it unequivocally clear that this is what you would now like to be considered.

14. I explained to you that although the FCA had not written to you on this point specifically, it had, in fact, made a decision about this issue already, published on its website here:

<https://www.fca.org.uk/news/statements/fca-sets-out-approach-assessing-connaught-complaints>

15. I have discretion to review this decision. However, given this is not a complaint which the FCA has reviewed, the FCA has not had an opportunity to respond formally to this point. Under the Scheme to which both the regulators and I operate to, it is preferable for the FCA to conduct its own investigation first, as that is usually the best way of resolving matters. For this reason, I suggest you refer this point back to the FCA for a reply. You may refer the issue to me for an independent review if you are not satisfied with the outcome provided by the FCA.

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Complaints Commissioner  
17 March 2022