

31 March 2022

Final report by the Complaints Commissioner**Complaint number FCA001581***The complaint*

1. You asked me to review a complaint about the FCA in connection with London Capital & Finance (LCF).

What the complaint is about

2. The FCA summarised your complaint as follows:

You say 'This statement subsequently did not mean what it stated according to the FCA and obviously was misleading. An ISA which turned out not to be an ISA but 'mini bonds' which I had never heard of and only wanted an ISA which was written on LC&F's literature'

What the regulator decided

3. The FCA did not uphold your complaint. It said that it appreciated the term "mini-bond" was not used by LCF to describe the products it was marketing to consumers, but that it was of the view that LCF's bonds business (the issuing of debt securities) fell within the meaning of the term "mini-bond".
4. The FCA explained that the term 'mini bonds', although not defined in legislation, has been used in the market for several years, and it believes it usually refers to illiquid debt securities, marketed to retail investors, which is what LCF was doing.
5. The FCA went on to explain that

An Individual Savings Account (ISA) is a tax 'wrapper' and does not refer to the financial product which qualifies for tax-free saving or investing. According to the Government's website, there are currently four types of ISAs: Cash, Stocks and Shares, Innovative Finance and Lifetime ISAs.

This website provides examples of what qualifies for ISA status. For example, Cash ISAs can include savings in bank and building society accounts. Stocks and Shares ISAs can include shares in companies, unit trusts and investments funds, corporate bonds and government bonds. Lifetime ISAs, introduced in April 2017, may include either cash or stocks and shares. Innovative Finance ISAs, introduced in April 2016, can include peer-to-peer- loans and crowdfunding debentures.

In the case of LCF, LCF used the Innovative Finance ISA structure to promote its bonds. Her Majesty's Revenue and Customs (HMRC) ruled that an investment in LCF's Innovative Finance ISAs did not meet the qualifying criteria for ISA status because the investments were non-transferable.

Why you are unhappy with the regulator's decision

6. You have told me you bought an LCF ISA and that

LC&F's literature stated, "Fixed Rate ISAs and Bonds " and had "LC&F is authorised and regulated by the FCA with FRN 722603" written all over it. There was no mention of the word 'mini bond'! the FCA stated "In our view this Term (Mini Bond) accurately described the activity LCF was carrying out". They went on to say about mini bonds because I had stated I had never heard of them trying to make out I am a stupid OAP having not heard of them.

My analysis

7. It seems to me there are two distinct issues which need to be addressed as part of your complaint. The first is that you feel the FCA's reference to LCF investments ought not to be 'mini - bonds'. You have not directly provided an alternative reference which would distinguish the LCF bonds as non-transferable debt securities.

8. The second issue is your allegation that the FCA 'loaded the term' (mini - bonds) in such a way to 'negatively affect public perception of LC&F investors'. You say the FCA made you feel 'stupid' for not having heard of mini bonds.

9. I will address these two issues in turn.

10. The FCA has used the term 'mini-bonds' prior to the collapse of LCF to describe high risk, illiquid debt securities: for example, this definition features in its 2015 thematic review of the regulatory regime for crowdfunding and the promotion of NRRS by other media.
11. I take your point that LCF investments were not marketed as 'mini-bonds', however, they were not also marketed as 'non-transferable debt securities' either, although it has been established that this is what they were.
12. It is the case that some sort of terminology has to be used to differentiate the term 'bonds' as transferable debt securities and the type of bonds which LCF issued, which are non-transferable debt securities.
13. There is a difference of opinion between you and the FCA as to the terminology that should be used. The FCA's position is that it will refer to non-transferable debt securities as mini-bonds. You are of the opinion that it should not.
14. With respect to the terminology used, I am mindful of a judgment handed down on 29 March 2021 in the Judicial Review case of R (on the application of Donegan) v Financial Services Compensation Scheme Ltd) which I will refer to as the Bourne J judgment.
15. Mr Justice Bourne concluded 'it does not matter whether the right term is "bond" or "mini-bond". What matters is the precise nature of the instruments sold and the meaning of the legal provisions applicable to them' (R (Donegan and others) v Financial Services Compensation Scheme at 43).
16. Under the Complaints Scheme to which I operate, I am bound by the findings and decisions of a court.
17. Paragraph 6.15 of the Complaints Scheme provides that
In the investigation of a complaint by either the relevant regulator(s) or the Complaints Commissioner, any finding of fact of:
 - a) a court of competent jurisdiction (whether in the UK or elsewhere);
 - b) the Upper Tribunal; or
 - c) any other tribunal established by legislative authority (whether in the United Kingdom or elsewhere);

d) any independent tribunal charged with responsibility for hearing a final appeal from the regulatory decisions of the regulators;

which has not been set aside on appeal or otherwise, shall be conclusive evidence of the facts so found, and any decision of that court or tribunal shall be conclusive.

18. Paragraph 6.16 of the Complaints Scheme says 'Any findings of fact or decisions of courts or tribunals not covered by paragraph 6.15 will carry such weight as the regulators or the Complaints Commissioner considers appropriate in the circumstances'.
19. The Bourne J judgment conclusion does not ascribe any adverse or unlawful reference to the use of mini-bond as a term to describe the 'precise nature of the instruments sold and the meaning of the legal provisions applicable to them'.
20. The Bourne J findings, as well as the evidence of the FCA's usage of the term - mini-bonds' to describe non-transferable debt securities well before the collapse of LCF, leads me unable to conclude that the FCA's usage of the term 'mini - bonds' to describe non-transferable debt securities is inappropriate or unreasonable.
21. It seems to me, however, that your primary objection to FCA's usage of the term 'mini-bonds' is because you believe the FCA has 'loaded' the term in such a way as to negatively affect public perception, and that you were made to feel 'stupid'.
22. This is not an allegation which you raised in your original complaint to the FCA, and therefore 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.

My decision

23. For the reasons outlined above, I cannot uphold your complaint.

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Complaints Commissioner

31 March 2022