

8 November 2018

Final report by the Complaints Commissioner**Complaint number FCA00508***The complaint*

1. On 19 September 2018 you asked me to investigate a complaint about the FCA. I have carefully reviewed the papers sent to me by you and by the regulator. My preliminary report was issued on 11 October 2018 and both you and the FCA have had the opportunity to comment.

What the complaint is about

2. You complained that regulations imposed on your investments by the FCA have prevented you from pursuing a strategy that has worked for you successfully for ten years, and have created a risk of 'total loss'. You said that in enacting this legislation, supposedly to protect investors, the FCA had acted without due consideration of the potential impact on significant numbers of the general public. You said that this was at least incompetence and at worst malfeasance.

What the regulator decided

3. The FCA took the view that it was unable to investigate your complaint under the Complaints Scheme because it did not relate to the exercise of or failure to exercise any of the FCA's relevant functions, but was about EU law. The FCA's complaint response dated 17 September 2018 gave you further information about two notices issued by the European Securities and Markets Authority (ESMA) on binary options and contracts for difference (CFDs), and said that these temporary *intervention measures have a direct effect on UK firms and requires the FCA to supervise and enforce against the measures under EU law.*

Why you are unhappy with the regulator's decision

4. You have told me that your complaint was related to CFDs only, and not binaries or spread betting, and that you are not at all happy with the FCA's decision.

FCA00508

My analysis

5. The Complaints Scheme (the Scheme) was established by Part 6 of the Financial Services Act 2012 and is available on my website: <http://frccommissioner.org.uk/complaints-scheme/>. It requires the financial services regulators *to maintain a complaints scheme for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of their relevant functions* (paragraph 1.1). Relevant functions are defined as *functions other than their legislative functions* (paragraph 1.2). Complaints in relation to the performance of the regulators' legislative functions as defined in the 2012 Act are specifically excluded from the Scheme in paragraph 3.4.c.
6. I think that the FCA was correct in saying that it could not investigate your complaint under the Scheme as it related to compliance with the law. The additional information provided to you in the FCA's complaint response was intended to assist you. The FCA's internal files show that it considered you had referred to both *'financial spreadbets (a subset of CFDs) and binary options'* and tailored its response to you accordingly. I note that you say you did not frame your concerns in this way but in any event I am satisfied that it was appropriate for the FCA to give you more information rather than less. Even if your complaint is about CFDs in general, it would not be covered by the Scheme.
7. I also note that the FCA informed you that it *plans to consult in due course on proposals to implement permanent measures in the UK in relation to both binary options and contracts for difference (CFD) products following ESMA's temporary interventions. At that stage, you could provide feedback to the FCA's proposals and raise any concerns you may have*. It seems to me that this would be the most appropriate route for you to take since your concerns cannot be addressed under this Complaints Scheme.

My decision

8. I am sorry to disappoint you but for the reasons stated I am unable to uphold your complaint.

Antony Townsend

Complaints Commissioner

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