

18 January 2021

Final report by the Complaints Commissioner**Complaint number FCA00849***The complaint*

1. On 23 October 2020 you asked me to review a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

'You state that the FCA has not performed its statutory duties to the required standard, in protecting consumers and enhancing market integrity. You say that the (FCA's) rules allows firms to procure/produce complicated financial products that do not have any realistic expectation of providing the returns quoted. The rules also allow firms to blame markets for any shortfalls in the returns and that as long as a caveat is included stating that investments may go up or down, the production and marketing of these products are unchallenged by the FCA. You have also complained about the FCA's supervision of firms in general.'

What the regulator decided

3. The FCA did not investigate your complaint as it applied paragraph 3.5 of the Scheme which *'states that we will not investigate complaints which amount to no more than dissatisfaction with the FCA's general policies or with the exercise of, or failure to exercise, discretion where no unreasonable, unprofessional or other misconduct is alleged.'*
4. The FCA did, however, provide you with further information on its objectives and how it monitors firms.

Why you are unhappy with the regulator's decision

5. You are not happy that '*the FCA has a complaints scheme that allows it to dictate which complaints will or will not be investigated.*' (Element One)
6. You wish to know '*what proactive regular data analysis is undertaken [by the FCA] to spot early warning signs that there may be an issue.*' (Element Two)
7. You wish to know '*who is overseeing the FCA and ensuring that it is doing its job properly?*'(Element Three)
8. You wish to know how you can complain that the FCA '*is not fulfilling its statutory responsibilities even in general terms?*' (Element Four)

My analysis

9. Element One :You are not happy that '*the FCA has a complaints scheme that allows it to dictate which complaints will or will not be investigated.*'
10. The background to the Complaints Scheme to which both the regulators and I operate to is that the Financial Services Act 2012 (the Act) requires the Regulators to have in place arrangements to investigate complaints against them, as opposed to complaints against the businesses they regulate. The Complaint Scheme explains how the regulators and I will deal with complaints, and it is based on the provisions of the Act, which defines which complaints will and will not be investigated. There may be a case for extending the FCA's remit in such matters; but the responsibility for that lies with Government and Parliament.
11. There are, however, other aspects of the Complaints Scheme which are not informed by the Act. The regulators occasionally review the Complaints Scheme subject to public consultation. In the most recent consultation, (<https://www.fca.org.uk/news/news-stories/fca-pra-and-bank-england-launch-complaints-scheme-consultation>) , the regulators sought to make it more accessible to consumers and to clarify the policy on making ex-gratia compensatory payments.
12. For the reasons above, I am, unfortunately, not able to investigate your complaint about the remit of the Complaints Scheme.

Element Two You wish to know ‘what proactive regular data analysis is undertaken [by the FCA] to spot early warning signs that there may be an issue’.

13. Your query is not one which the FCA has addressed. Under the Complaints Scheme (see <http://frccommissioner.org.uk/complaints-scheme/> for further details), the FCA usually do their own investigation first, as that is usually the best way of resolving matters. For that reason, the FCA has agreed to prepare a response for you. Once the FCA has provided you with a response, you can ask me for an independent investigation if you are not satisfied with the FCA’s decision.

Element Three: You wish to know ‘*who is overseeing the FCA and ensuring that it is doing its job properly?*’

and

Element Four : You wish to know how you can complain that the FCA ‘*is not fulfilling its statutory responsibilities even in general terms?*’

14. Your complaint to the FCA was that it was not performing its statutory duties ‘to the required standard’. The FCA declined to investigate your complaint under paragraph 3.5 as it felt it amounted to general dissatisfaction with its policies and use of discretion.
15. I do not think the FCA is right to say that your complaint is a dissatisfaction with its policies. It is clearly a dissatisfaction with its performance in discharging its functions with respect to its objectives. Therefore, I do not think that paragraph 3.5 of the complaint Scheme applies.
16. The answer to your query is that the FCA is accountable to Parliament via the Treasury with respect to its statutory objectives. More information can be found here: <https://www.fca.org.uk/about/reporting-treasury-parliament>. The FCA has also provided the following information : *The FCA is subject to a range of broad oversight mechanisms such as but not limited to: the need to publicly consult on new rules and guidance; the need to consult on the impact of our work with four independent statutory panels, which represent the interests of consumers and practitioners, including smaller regulated firms and financial market participants; the Regulatory Decisions Committee, which takes certain decisions on behalf of the FCA relating to enforcement and supervisory actions, as well as applications*

by firms for authorisation and by individuals for approval; the Upper Tribunal to which those directly affected by our regulatory decisions can refer their case; and the National Audit Office. You have asked me if your complaint will be investigated further if paragraph 3.5 of the Scheme does not apply. In my view, element three and four constitute queries rather than complaints. You have now been provided with an answer, which I hope is helpful to you. For the avoidance of doubt, there will be no further investigation into element three and four of your complaint to me.

17. You have also asked me if there is an organisation which deals with complaints about the FCA. Under the Complaints Scheme to which both the regulators and I operate to, that is my role. However, there is a limit to the issues I can review (please see [www. https://frccommissioner.org.uk/complaints-scheme/](https://frccommissioner.org.uk/complaints-scheme/) for further information).

My decision

18. You continue to have general concerns about the integrity of the system because of alleged failings by the FCA. In so far as your general misgiving about the FCA is concerned, I hope the information provided in paragraph 16 assures you that there is broad oversight of the FCA to ensure the integrity of the system.

Amerdeep Somal
Complaints Commissioner
18 January 2021