

Rt Hon Mel Stride MP
Chair
Treasury Committee
House of Commons
London
SW1A 0AA

27 November 2020

Our Ref: SA201113B

Dear Mr Stride

RE: The Work of the Financial Conduct Authority – additional questions on the Complaints Scheme Consultation

Thank you for your letter of 13 November with a number of additional questions that the Committee did not have time to raise during our recent evidence session. I have set out below responses to your questions on the Complaints Scheme consultation.

How did you make sure that everyone who might have a legitimate interest in the Complaint Scheme consultation got to see it? For example, did you ensure that users of the Scheme were contacted for comments?

The Consultation Paper was published in response to the views of those with a legitimate interest in the Scheme. Through previous feedback, including from the Complaints Commissioner, we identified that more could be done to improve its clarity and to better manage users' expectations.

Both the FCA and PRA issued press releases about the consultation and the FCA tweeted about it to its 57 thousand followers to ensure that it received widespread coverage. Where we have been in correspondence with current complainants we have been alerting them to the consultation, what it covers, and how to respond. This began in late August for the FCA and the PRA began prior to that, noting their significantly smaller volume of complaints. There have been over 700 users that have been alerted by the FCA in this manner.

We engaged and met with representatives of the Financial Services Consumer Panel (FSCP) and the Smaller Business Practitioner Panel (SBPP), as representatives of the communities who generally use the Complaints Scheme, in parallel with the consultation publication. We also alerted our Consumer Network, which includes around 25 consumer organisations including Which?, MoneySavingExpert, Age UK, Citizens Advice, as well as the Consumer Council of Northern Ireland, Money Advice Scotland and Citizens Advice Cymru. We met with MoneySavingExpert on 9 September to talk through their feedback.

The Complaints Commissioner's response to your consultation notes his concern that you do not expect compensatory payments to cover the full loss caused by regulators. Why wouldn't you fully compensate people for any harm you have done?

The purpose of the Complaints Scheme is to ensure that complaints about the actions or inactions of the regulators are acknowledged and that steps are taken to put things right.

Although, under the Financial Services Act, the Commissioner has the power to make a recommendation to the Regulators that a compensatory payment should be made, the Scheme is neither a compensation scheme for losses arising from the actions of firms or individuals nor an alternative means of insurance for products not covered by the Financial Ombudsman Scheme (FOS) or the Financial Services Compensation Scheme (FSCS).

The FCA is exempt from liability in damages, save for in cases of bad faith or a breach of human rights. Compensatory payments made under the Scheme should not undermine the statutory immunity and the Scheme is not the correct forum for considering complex questions of causation as a court would do.

Where payments are made they are on an *ex gratia* basis and typically modest. As outlined in the consultation, between 1 January 2017 and 31 December 2019 most of the payments were for amounts of £250 or less, with the most common payment being £50. There were 9 payments in total for amounts greater than £1,000, with only 3 payments being for amounts greater than £10,000. Neither the PRA nor the Bank of England have so far made any compensatory payments under the Scheme. Under our proposals we do not expect the outcomes of complaints to materially change for most complainants. Under the proposed revised Scheme there remains the possibility that a payment could be in excess of £10,000 in exceptional circumstances (where there is a clear and significant failure by the FCA, and we are the sole or primary cause of the loss). Our intention is to set out in detail our approach to remedies under the Scheme, including to compensatory payments, in order to provide transparency and clarity to Scheme users. Our approach to remedies is set out in a statement¹ on our website.

Your Complaints Scheme consultation pre-empts the outcome of reviews into LC&F, Connaught and Interest Rate Hedging Products. Is that a worry?

We recognise that there are concerns that complaints made in relation to the same issue, including those being considered by the independent reviews, might be treated in different ways if the FCA applied a different approach to some of them based on the time of submission of the complaint.

Without pre-empting the Regulators' decision on this particular issue, which will be taken after due consideration of all the consultation responses, the FCA Board is giving careful thought to this issue in deciding next steps. As explained above, we do not think the proposals in the consultation will result in materially different outcomes for most complainants.

I hope that this is helpful.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Charles Randell', is positioned above the printed name.

Charles Randell
Chair

¹ <https://www.fca.org.uk/news/statements/complaints-scheme-our-approach-remedies>