BY EMAIL ONLY

Open Letter to the Treasury Select Committee

CC:
Mel Stride – Chair of the Treasury Select Committee
John Glen - Minister of State (Economic Secretary)
Amerdeep Somal - Complaints Commissioner

21 February 2022

Dear Members of the Treasury Select Committee

Re: The FCA Board's Approval of a New Complaints Scheme, Now Confirmed by the FRCC To Be Contrary To Law

We wish to bring to the Committee's attention the Complaints Commissioner's final report into the Financial Conduct Authority's oversight of London Capital & Finance[1] which proves the FCA has been acting both illegally and illicitly and appeared to have misled the Treasury Select Committee – an issue we wrote to you about on 8 September 2020[2]. The most pertinent conclusions are that:

a) The FCA operated a Complaints Scheme that was contrary to law – the Report finds that the *"sole or primary cause" test contained in the Remedies Statement frustrates the object and purpose of s.87(5) of the FSA 2012' and 'The test as currently adopted by the FCA thus appears on the face of it to frustrate the statutory object and purpose underpinning the Complaints Scheme: see Padfield v Minister of Agriculture [1968] AC 997.'*

b) The FCA introduced the '*sole or primary cause'* test without consultation – the Report finds that '*the FCA initially sought to introduce the "sole or primarily responsible" test by way of amendment to the Complaints Scheme and decided to introduce it without the benefit of public consultation.*' This test was found to make '*it inevitable that almost no claimant could ever again be monetarily compensated for the contributing factor of the FCA's own regulatory failures. It makes the whole scheme 100% worthless in practise*.'

[1] https://frccommissioner.org.uk/wp-content/uploads/The-Complaints-Commissioner-Final-Report-LCF-15.02.2022.pdf
[2] https://trueandfaircampaign.com/wp-content/uploads/2021/03/report-letter-to-the-TSC-in-respect-of-the-FCA-consultation-CP20-11-8-sep-20.pdf

c) The FCA via its former Chair appears to have misled the TSC as regards the Complaints Scheme – on 23 March 2021[3] the former FCA Chair wrote to the TSC stating that '*Our "Approach to Remedies" statement explains that we aim to apply a consistent and fair approach to ensure remedies are appropriate and proportionate, based on the individual features of the complaint and what went wrong*.' However, the Report found that '*if the FCA will only make payments to consumers in exceptional circumstances which are outside the terms of the policy which is intended to provide consistency, then the policy itself can provide no consistency at all for that group. It therefore does not even meet its own stated aim*.'

The Complaints Scheme involves an Independent Complaints Commissioner who, despite being appointed by the FCA, frequently has their recommendations ignored by the FCA as these are non-binding on the FCA.

The real reason for the FCA's decision to act illegally is exposed within the Report – '*The FCA has asked me to have regard to the wider implications of an approach to ex gratia compensation which would generally lead to the FCA paying compensation when it is not the primary cause of the loss*.'

The FCA therefore appears to have deliberately sought to make the Scheme worthless and anti-consumer by applying an illegal test, even though the amounts actually paid by the FCA are derisory anyway.

The sum paid by the FCA over a recent 18-month period in connection with the Complaints Scheme amounted to just £13,475 – equivalent to just £7 per complaint.[4] This compares with the costs of running the Office of the Complaints Commissioner alone which totalled £516,119 last year - equivalent to £1,313 per enquiry or complaint.[5] If the Government wishes to pass legislation to abandon the Complaints Scheme that is their prerogative, but it is not for the FCA to effectively do the same in this underhand, illegal and illicit manner. The actions of the FCA illustrates complete contempt for the law.

In the face of a report and findings that the FCA sought to frustrate the law, we believe the Committee should call on Mr Rathi and the interim Chair, Mr Lloyd to appear before the committee as a matter of urgency, as both were in post when the new illegal scheme proposed by the ex-Chair Mr Randell was being approved.

It is our view that they need to answer these charges and to explain to the Committee how the Board approved such changes and if they are going to act on the FRCC's recommendations. And if not, why not.

[3] https://committees.parliament.uk/publications/5318/documents/52976/default/
[4] https://citywire.com/new-model-adviser/news/revealed-fca-paid-13000-in-complaints-redress-in-last-18-months/a1392104?sectorID=2749
[5] https://frccommissioner.org.uk/wp-content/uploads/OCC-Annual-Report-2020-2021.pdf

We are of the firm belief that the mountain of evidence indicating that the FCA is not fit for purpose, should now result in the Committee backing the call for Kingman style independent review of the FCA, mandated by the Treasury.

Your sincerely,

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