



Nusrat Ghani MP
Chair of the Public Bill Committee
House of Commons
London, SW1A 0AA

OPEN LETTER Tuesday June 22nd 2021, by Email only.

Re: Has the FCA given contradictory evidence to two Parliamentary Committees?

Dear Chair of the Public Bill Committee, members of the Public Bill Committee and other relevant Parliamentarians and stakeholders,

I am writing to you in my capacity as Founder of the Transparency Task Force; a Certified Social Enterprise.

This Open Letter relates to the **Compensation (London Capital & Finance plc and Fraud Compensation Fund) Bill**:

Thank you for inviting my colleague Mark Bishop and me to give evidence to your [debate](#) on the above proposed legislation last Tuesday (15 June).

An event has come to my attention since the session that I consider it my responsibility to bring to your attention.

At 3.30pm on Monday 14 June, the FCA's Executive Director for Enforcement and Market Oversight gave evidence to the Treasury Committee's ongoing inquiry into the issue of Economic Crime. Challenged by [Dame Angela Eagle MP](#) on the [fragmented nature of the regulatory system](#) and the difficulties this presents for consumers (Q177), Mark Steward replies thus:

'I will say one thing about the legislation that the FCA administers. It is commonly thought that we have a significant role to play in prosecuting fraud. In fact, the Financial Services and Markets Act does not contain any provision that gives us a function in relation to fraud, and the offences that we are authorised to prosecute do not include any offences under the Fraud Act. For a start, one of the things that create expectations around what we can do is, in fact, something that we are not authorised by the statute to do.'

In short: the FCA does not see it as its job to prosecute those who market fraudulent financial services products. This is significant for a reason I will go on to explain.

On 6 January 2021 the Work and Pensions Committee held an [evidence session](#) as part of its pension scams inquiry in which Shaun Bailey MP challenged Mark Steward for the fact that the FCA has failed to bring a single prosecution for issuing or approving misleading financial promotions between 2013 and 2019 inclusive. This question was based on a Freedom of Information request made by Mark Bishop (who gave evidence with me last Tuesday) and supplied to the Committee clerk ahead of the session, together with an article published by the [Times](#) based on that data. Mark Steward replied thus:

'There have been a very large number of prosecutions involving scams and unauthorised business where the charge that has been laid is, in fact, a fraud charge rather than a charge under the Financial Services and Markets Act, where the instigation of the scam is, in fact, a misleading financial promotion of some kind or other.'

In other words, it seems to me that Mark Steward's defence for an absence of prosecutions for misleading financial promotions (known as Section 21 offences) was that the regulator prefers to prosecute for fraud, and that it does so frequently - a very different position to that set out to Dame Angela last week.

In a subsequent [Fol request](#), Mark Bishop learned that the numbers of convictions for fraud obtained by the FCA has been in single figures in all but one of the past six years, and that the most commonplace annual figure has been zero. He relayed that information to the Work and Pensions Committee. Unsurprisingly, its [final report](#) was highly critical (page 5) of the FCA, both for its lack of activity and for the chasm between its claims and the actuality:

'The FCA told us that there have been a very large number of prosecutions involving scams and unauthorised business. We do not agree with this assessment. Its own figures — revealed only through Freedom of Information requests — show that there were just 25 convictions. We have heard numerous criticisms that the FCA is not effective in stopping scams, punishing scammers or retrieving scam proceeds. There is a compelling case for a much more ambitious approach. We recommend that the FCA publish a costed plan to raise its game in tackling scams.'

Thus, in the first six months of 2021 alone, it would seem that a single senior executive at the FCA has presented Members of Parliament with two contradictory statements, which can be characterised as follows:

- We seldom prosecute for misleading financial promotions because we prefer prosecuting for fraud, something we do a lot; and
- We seldom prosecute for fraud, because it's not really our job to do so.

Of course, my comments are not meant to be personal in nature, they are not about Mark Steward per se, but about how difficult it is for onlookers like myself who are genuinely very concerned about the extremely high levels of consumer detriment that is taking place, at least in part because of the ineffectiveness of our regulatory framework, to get to the bottom of what is causing the regulatory framework to be so ineffective.

Furthermore, I respectfully acknowledge that I may have simply misunderstood what has been said, in which case I would welcome being put right.

However, it is my understanding that while the FCA does not have an obligation to prosecute for fraud under the three pieces of legislation that govern it - the [Financial Services and Markets Act 2000](#), the [Financial Services Act 2012](#) and the [Financial Services Act 2021](#) - it does have a statutory duty under [Chapter 1](#) of the second of these Acts to secure 'an appropriate degree of protection for consumers.' It is difficult to see how this requirement can be discharged unless it prosecutes suspected offenders, whether for S21 offences or under the Fraud Act. Moreover, the FCA *has* prosecuted fraudsters for offences under the Fraud Act 2006, as the previously mentioned Freedom of Information Act response (FOI7929) confirms. So it clearly has the right to use that Act if it wishes to do so.

At last week's Committee we expressed concern that [Sentient Capital London Limited](#) and its principals had not been prosecuted, or otherwise disciplined; and is not even under investigation (there would be a marker on its register entry) for its part in the London Capital & Finance scandal (approving the initial financial promotions before LCF became FCA authorised in its own right). Dame Elizabeth Gloster [found](#) (page 56 onward) that the FCA had been alerted to concerns about those promotions from January 2016 onward. We noted that this leaves the firm in the marketplace able to perform the same function for other potentially fraudulent products for other unauthorised firms.

Clearly, it seems to us that the contradictory positions set out by Mark Steward in January to the Work and Pensions Committee and last week to the Treasury Committees respectively suggest that this is far from being an isolated example of regulatory inaction.

I believe that there has been a systemic failure to prosecute or otherwise deter those who dishonestly or negligently cause consumers to lose money through fraudulent financial services

schemes which has at its heart a combination of cultural problems and a lack of transparency and accountability at the FCA.

Given how long standing and widespread these problems are - in our view, they start at the top - we reiterate our view that the Bill must be amended to incorporate two key points:

- Compensation should be paid to *all* consumers who've lost money as a result of regulatory failure by the FCA (either accepted by the Treasury or demonstrated by an independent review), not just LCF victims;
- The redress should put them in the financial position they could reasonably expect to have been in had they not been affected by the aforesaid regulatory failure - there can be no suggestion of consumers sharing in the losses due to alleged greed, naivety or other contributory negligence.

In closing I would like to repeat that my comments are not meant to be personal in nature, they are not about Mark Steward per se; and that I respectfully acknowledge that I may have simply misunderstood what has been said, in which case I would welcome being put right.

And please understand that my motivation is simply to help to try to bring about reforms to better-protect the public from scammers; I frequently speak to very upset people who have suffered life-changing financial losses and are in a state of emotional shock – when you engage with people on that basis quite frequently you naturally want to do all you can to help, which to my mind means improving the way our financial regulations work in practice, which must mean ensuring there are no grey areas around the FCA's remit and responsibilities, hence this note to you.

Your thoughts, please, Chair.

Yours sincerely,

A.P. Agathangelou

Andy Agathangelou FRSA

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