

**The FCA's response to the
Complaints Commissioner's Report
FCA001533
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We have considered the Final Report of the Complaints Commissioner on complaint FCA001533.

The FCA welcomes the Commissioner's recommendation highlighting the current risk to consumers relating to the current rules and requirements for s.21 FSMA approvers.

A number of measures are already in place to protect consumers. Under existing FCA rules, the use of our logo by firms is generally prohibited. Firms also have a duty not to imply that they are authorised, regulated or supervised for something for which they are not. In addition, a firm needs to ensure that any financial promotion which names the FCA (or PRA) as its regulator makes clear that any unregulated matters are clearly identified as such. However, the FCA recognises that further clarity is needed.

Chapter 5 of our recent Consultation Paper CP22/2 '*Strengthening our financial promotion rules for high risk investments, including cryptoassets*' outlines our proposed changes to authorised firms' roles and responsibilities when communicating financial promotions or approving them for unauthorised persons.

These proposals will apply to authorised firms communicating or approving financial promotions for investment business and subject to the financial promotion rules in Chapter 4 of the Conduct of Business Sourcebook (COBS 4). The changes are designed to improve the quality and content of financial promotions to enable retail investors to make informed investment decisions about any given product, and how much to invest. The subsequent Policy Statement will be published in summer 2022.

In addition to this, HM Treasury have set out their plans to introduce a gateway for s21 approvers. The forthcoming legislation is intended to address concerns about the lack of relevant approver firm expertise; lack of approver firm due diligence; and challenges in exercising appropriate regulatory oversight. Once this legislation has been introduced, we will consult on related FCA rules and guidance and we will continue to consider whether further rule changes are required in order to prevent consumers from getting a misleading impression about the regulatory protections that they are entitled to.

Importantly, alongside the policy proposals, the FCA has continued to carry out supervisory work to reduce harm in this area over the last two years. Due to this work, we are aware that there are currently very few s21 approvals for unregulated entity financial promotions taking place. For those firms that are undertaking s21 approvals we already place expectations on them to carry out adequate due diligence, supported by our guidance for s21 approvers.

The feedback and recommendation from the Commissioner have been forwarded to the relevant team for inclusion in the FCA strategy going forward.

21 April 2022