

## Question Set A

### For victims of alleged pension and investment scams

#### **Please note all of these points before answering:**

- If you have any questions please contact Andy Agathangelou, Chair of the APPG's Secretariat, at [Email](#)
- Only reply to this question set if it applies to you.
- This Call for Evidence is being handled by the APPG's [Secretariat](#) and support staff, who will collate the evidence and provide it to [the APPG's members](#).
- Respondents' information will only be shared as necessary to enable the successful completion of the exercise and it will not be shared beyond the scope of this Call for Evidence.
- Please note that we ask respondents to only give evidence that they are free to provide. It is entirely the responsibility of the respondent to ensure they take into account any agreement(s) they may have entered into.
- Respondents may choose to skip answering any of the questions if they wish.
- It is for each respondent to decide whether their name and/or their responses are put into the public domain.

#### **The process to follow**

- Select the question set that relates to you. You may respond to more than one question set if you have different experiences of contact with the FCA.
- Download it, as a Word document, and save it on your computer.
- Provide your answers after each question.
- Please leave blank any questions that don't apply to you or that you do not wish to answer.
- Save the completed document on your computer.
- Please email it to Andy Agathangelou, **by 5pm on Monday 10<sup>th</sup> January**, at [Email](#)

#### **Other important points to note**

- This exercise is about gathering evidence on what people think about the FCA; it is not about providing any assistance, guidance or advice on any case a respondent may have against the FCA, or any other entity.
- Respondents are asked to only provide answers to the questions given.
- Respondents are asked to not provide any supplementary evidence or documentation.

## Question Set A

### For victims of alleged pension and investment scams

#### Your Details

Name: R2i Valle de Uco Investor Group

Company/Business (if applicable): N/A

Address including postcode: REDACTED

Email address: REDACTED

Mobile telephone number: REDACTED

#### Permissions

- Do you give permission that your name is put into the public domain?
- Please enter Yes or No. .... Yes
- Do you give permission that your response is put into the public domain?
  - Please enter Yes or No. .... Yes.
  - (With Email address, phone number and postal address redacted).

## Questions

1. Please tell us about yourself and outline, just briefly to begin with, how you came to interact with the Financial Conduct Authority?

We are the R2i (Ready2Invest Limited) Valle de Uco investor group and victims of a serious alleged investment fraud. Our group includes around 85 investors who continue to seek justice for the significant financial and completely avoidable loss we have suffered in connection with a five star 310 hectare development near Mendoza, Argentina. The investment scheme was promoted to retail consumers between August 2008 and February 2013. Around US\$13m was raised during that time. By way of background, R2i was set up by two directors in October 2003 as a UK-based property company specialising in marketing and managing overseas property opportunities to largely British retail consumers. In 2004, R2i expanded into Eastern Europe (via Jersey based property funds) followed by overseas off-plan property sales activity in Spain and Bulgaria. The bulk of the overseas investment schemes failed leaving investors facing significant financial loss. In May 2013, R2i was placed into liquidation.

We are aware that there was interaction with the FCA by the R2i Investor Action Liaison Group from 2010 onwards when detailed submissions (including supporting evidence) were sent to the FCA Enforcement and Financial Crime Division regarding a EUR 100m alleged fraud relating to the R2i Jersey Property Funds and linked vehicles. However, the FCA first became aware of R2i's promotional activities and serious fraud allegations back in 2006/2007 (i.e., before the Valle de Uco investment was marketed). A formal complaint was sent to the then FSA CEO, Martin Wheatley, in May 2014 for failure to take action against R2i for over 4 years or longer. We do not have any record of the FCA addressing this complaint.

The R2i Valle de Uco investor group received bank statement evidence that investor funds relating to the Valle de Uco project had been misappropriated in 2017. The FCA, R2i liquidators and the Insolvency Service were informed of the serious irregularities. We also filed complaints against the two banks that had been involved in the facilitation of the serious economic crime and alerted the FCA accordingly. Further complaints were filed about R2i carrying out regulated activities without FCA authorisation. In 2020, a number of the R2i Valle de Uco investor group investors filed a complaint against the FCA for regulatory failure.

2. What did you invest in; and when; and what went wrong?

Retail consumers (most are British nationals and largely UK-based) invested in an overseas development project near Mendoza, Argentina which was represented as a safe hands-off development and R2i's flagship project. The land was to be developed into a five star gated resort with an 18 hole championship golf course, villas, a boutique hotel, a country club and many other features.

Unfortunately, the investment was falsely represented and R2i obtained investor funds by deception. There was an alleged fraud by false representation regarding the land valuation and security and an alleged fraud by failure to disclose critical information about upfront commissions and the land. In fact, we discovered that the land had been double-pledged and that there were serious misrepresentations about the potential returns and the underlying land security which had been described as strong. The investment was promoted with glossy marketing brochures and emails that contained false representations. Persuasive sales staff provided regulated advice (unlawfully) which was misleading at best. There was a failure to ring-fence client accounts and the bank statements contained highly suspicious transactions. Investor funds remain unaccounted for or have simply disappeared. Funds went off to the Directors and associates to fund their lifestyles with little or no justification and large volumes

of funds were transferred across numerous R2i accounts so that the audit trail was disguised. The bank statements prove that our funds were largely misappropriated. In addition, there was a Ponzi style replacement scheme for investors in other failed investment schemes where these investors were offered land for a large discount or in some cases, they were offered land for US\$1.

Furthermore, there was a failure by R2i to comply with the financial promotion rules under FSMA 2000 by conducting appropriate rigour to establish the potential eligibility of the Valle de Uco investors. This was a serious FSMA breach which the FCA failed to identify because they decided to ignore the warnings regarding serious fraud allegations.

In conclusion, there is little to show for the US\$13m investment except a badly maintained piece of land which is unlawfully occupied by a former employee. To add insult to injury, we inherited serious legacy issues which have taken a huge amount of time and cost (in excess of £0.2m to date) to resolve. In May 2013, R2i was placed into a liquidation but all the funds had been dissipated by the R2i Directors which compromised the investigation into R2i's activities and the conduct of the Directors. The original liquidators were removed in February 2018 so that a full and proper investigation could take place. The replacement R2i liquidators were also hampered by the lack of funding but concluded there was a commercial justification to explore the case with a law firm on a contingency fee arrangement. However, the law firm declined the instruction for reasons such as the underlying asset position, the complexity of the case and potential limitation issues.

In summary, R2i promoted and marketed many overseas developments from 2003 until 2013 which have resulted in significant retail consumer loss. Although we accept R2i was not regulated, it clearly should have been as it appeared that R2i was actively engaged in regulated activities such as offering regulated advice, offering financial promotions in breach of the financial promotion rules and establishing and operating a UCIS (Unregulated Collective Investment Scheme). The FCA had received much intelligence from 2006/2007 onwards about serious fraud allegations that posed a serious risk to retail consumers but failed to take any tangible action to protect retail consumers and stop the financial crime. The loss faced by the R2i Valle de Uco investor group was completely avoidable.

### 3. If you're happy to mention it, how much money did you invest, and how much of that money do you have left?

See responses to Questions 1 and 2. The total US\$13m Valle de Uco investment was raised from around 100 investors. All the money has gone. All we have left is a badly maintained piece of land which is unlawfully occupied by a former employee. Furthermore, we have incurred over £0.2m and numerous hours in trying to resolve serious legacy issues. Our suffering would have been avoided had the FCA and others taken action when warned of serious legacy issues and complied with their regulatory responsibilities.

### 4. What was supposed to happen, and what actually happened, as far as you know?

As in Question 1 above, we know that the FCA had knowledge of serious fraud allegations (property fraud and investor fund misappropriation) back in 2006/2007 or earlier and at least 12 months before R2i started to market the R2i Valle de Uco Investment Scheme. As above, the FCA were provided with detailed submissions and evidence from 2010 onwards by the R2i Investor Liaison Action Group. The knowledge the FCA obtained in around 2007 (and before the Valle de Uco investment scheme was even marketed) should have been the catalyst for investigation and should have been referred to the FCA Enforcement and Financial Crime Team and the FCA Unauthorised Business Department as the allegations were so egregious. Given the numerous red flags known to the FCA, they should have considered that it was highly likely that R2i was carrying out regulated activities without FCA authorisation in breach of FSMA and the potential risk of harm to future retail consumers.

However, the FCA failed to engage with the R2i Investor Liaison Action Group and investigate the entity (i.e., R2i) that was behind the promotion and marketing of the R2i investment schemes. Instead, the FCA just took very delayed action against the two IFA's involved in the promotion and marketing of the Jersey Fund investments<sup>1</sup>.

We have heard arguments from an official source which states that the FCA does not have the power to investigate an unauthorised firm that is not carrying out regulated activities even if there is suspected fraud. This type of defence is of serious concern as the FCA's role and its powers have been misunderstood (deliberately or otherwise). To ignore or dismiss warnings of serious fraud allegations which then results in avoidable retail consumer loss results in a failure to both protect retail consumers and reduce financial crime. The message to fraudsters is that the FCA will not investigate and that fraud pays. This stance helps to support financial crime which is the complete opposite of the FCA's statutory duties.

Furthermore, it is not possible for Treasury or the FCA to state that an unauthorised firm is not carrying out regulated activities unless it investigates the entity to understand the underlying business model and establish whether the entity is engaged in unlawful regulated activities or otherwise. If there is evidence of serious wrongdoing and potential fraud, then it is highly likely the entity is engaged in carrying out unlawful regulated activities such as providing regulated advice or failing to establish the eligibility of the retail investors.

Under Financial Services and Markets Act 2000 (FSMA 2000), the FSA / FCA's general duties were to act in a way that was compatible with the regulatory objectives. The regulatory objectives were market confidence, public awareness, consumer protection and the reduction of financial crime (FSMA 2000 S2(2)). Under the Financial Services Act 2012 (FSA 2012), the FCA must act in a way which is compatible with its strategic objective, and advances one or more of its operational objectives. The FCA's strategic objective is ensuring that the relevant markets function well. The FCA's operational objectives are: -

- (a) the consumer protection objective
- (b) the integrity objective
- (c) the competition objective

Under the consumer protection objective, S1C 2(a) it states that the FCA should have regard to the differing degrees of risk involved in different kinds of investment or other transaction.

Under the integrity objective, S1D (1) defines the integrity objective as protecting and enhancing the integrity of the UK financial system. S1D (2)(b) states that the "integrity" of the UK financial system includes it not being used for a purpose connected with financial crime.

Under both FSMA 2000 and FSA 2012 (both apply in the R2i Valle de Uco case), the FCA should have been taking action when warned of serious fraud allegations. Dismissing or ignoring them represents a failure of the FCA's statutory duties. If the failure resulted in avoidable retail consumer loss, then the FCA should be held accountable as happened in the LCF case.

If a legal entity is suspected of serious alleged investment fraud, retail consumers are almost certainly at risk so the FCA should be taking some action. It is highly probable that the entity is carrying out regulated activities without FCA authorisation (so they are acting illegally) so the FCA does need to investigate the fraud allegations. Firms that are operating near or outside the perimeter represent the biggest risk to retail consumers so the FCA should have prioritised these types of investigations. The FCA has a statutory duty to investigate any entities that may be carrying out regulated activities without FCA authorisation as these entities pose a risk to retail consumers. The FCA should also be investigating entities when warned of serious fraud allegations as they have a statutory responsibility to reduce financial crime. The FCA should be working with fraud agencies in an effective way so that they comply with their statutory duties.

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<sup>1</sup> Final Notices against Craig Cameron (Aug 2014) <https://www.fca.org.uk/publication/final-notices/craig-stuart-cameron.pdf> and John Leslie (Jul 2013) <https://www.fca.org.uk/publication/final-notices/john-leslie.pdf> for their involvement in the Jersey Property Funds (Croatia, Bulgaria and Montenegro).

If the FCA had not been put on notice or not been aware of the serious fraud allegations, their argument may have some merit but that was not the case. The FCA had knowledge and their failure to take action put retail consumers at risk of potential harm.

5. Have you ever witnessed any actions or conduct that, in your reasonable belief, breached any law, regulatory code or applicable or relevant policy? If so, please explain which law, code or policy you believe was breached.

Yes, we have to conclude that the FCA is in serious breach of their statutory duties of protecting retail consumers and reducing financial crime under FSMA 2000 and later under FSA 2012. The FCA failed to take action when they had knowledge of serious fraud allegations involving R2i and its Directors in 2007 and when investors sent detailed submissions from 2010 onwards. They failed to identify the red flags and ensure the fraud allegations were properly followed up by fraud agencies. We believe that they may have failed to provide sufficient information to the R2i liquidators relating to their knowledge of the Jersey Fund scandal (although that would require further investigation and an FOI request).

6. What, if anything, do you believe the FCA could have done that may have prevented you from allegedly being scammed in the first place?

As above, the FCA should have taken action and investigated R2i and its activities when it received detailed knowledge of the serious fraud allegations (property fraud and investor fund misappropriation) in 2007 or earlier as R2i and its directors represented a risk to retail consumers. The FCA repeatedly turned a blind eye and tried to resile from any responsibility on the basis that fraud allegations were a matter for the fraud agencies (once they had referred the matter, they felt they had complied with their responsibilities), but if an entity is engaged in alleged investment fraud, there is a very high probability that same entity is also carrying out regulated activities in breach of FSMA.

We consider that serious regulatory failure has taken place and that there should be an appropriate financial redress scheme as with the LCF scheme. R2i shares similar characteristics (primarily ignoring serious fraud allegations provided by a credible third party) but there are also concerns of a cover-up. We believe that an independent investigation is required albeit on a much smaller scale than the LCF case or preferably some acceptance of responsibility by the FCA that there has been regulatory failure and resolution with an appropriate financial redress scheme to provide closure for the victims. There are also stark similarities between R2i and the Blackmore bond scandal which was exposed in a recent Panorama programme.

These forms of regulatory failure were also present in the LCF case. The bulk of LCF's revenue related to the non-regulated bond business. Dame Gloster QC in her report noted the FCA had a flawed approach to the perimeter and failed to consider the LCF business holistically (para 2.4-2.5 pg 33).

7. What interaction have you had with the FCA about what happened?

A significant number of R2i Valle de Uco investors filed complaints against the FCA for serious regulatory failure in connection with the R2i case. A large number of complaints were filed in September 2020 when it became clear there was an endemic problem at the FCA for failing to take action when warned of serious fraud allegations in the light of the London Capital & Finance (LCF) case.

However, as noted above, the FCA had knowledge of serious fraud allegations and other irregularities in 2006/2007 before the Valle de Uco investment scheme was marketed and attracted investor funds from August 2008 onwards. During 2010 and while R2i was still actively marketing the Valle de Uco investment scheme, other investors were sending detailed submissions with supporting evidence about serious alleged fraudulent activity involving R2i.

The R2i Valle de Uco investor group and several individual investors raised ongoing concerns with the FCA from 2017 onwards as more evidence of impropriety emerged from the woodwork. These included letters raising concerns about the financial crime facilitation by the Banks that offered services to the R2i Valle de Uco UK entities and the operation of several UCIS without FCA authorisation including a EUR 1.4m alleged Luxembourg fraud involving an IFA. The FCA informed us that our concerns were being referred to the Unauthorised Business Department but we received no further updates. We do not believe any tangible action was taken.

The R2i Valle de Uco investors had indirect interaction with the FCA by filing complaints with their MPs. Several MPs received a generic response from Mark Steward, Executive Director in the Enforcement and Market Oversight Team towards the end of 2020. Mr Steward stated they did have concerns that R2i was operating an Unregulated Collective Investment Scheme (UCIS) without FCA authorisation but failed to conduct a holistic review of R2i's business activities (a similar failure identified by Dame Gloster QC in the LCF case). Mr Steward also states that the FCA had concerns that R2i may have engaged in fraud and referred them to some law enforcement agencies who may have been interested. However, the FCA took no tangible action and failed to consider the FCA's statutory duties to protect retail consumers and reduce financial crime.

## 8. How well or badly do you think the FCA have performed in your case?

Overall, we have to conclude the FCA has performed very badly. Our biggest concern is the failure of the FCA to take action when they had knowledge of very serious fraud allegations which represented an ongoing risk to retail consumers. The consequence was that retail consumers who invested after the FCA had this knowledge now face significant financial loss which could have been completely avoided had the FCA taken action in an expedient fashion.

The FCA should be able to accept that there was a significant delay in their investigation of the two IFA's involved in the Jersey Fund scandal and that they should have looked at the underlying source of the dishonesty when they had knowledge of the serious fraud allegations.

In dealing with complaints and concerns raised by numerous investors, the FCA appear to have turned a blind eye and acted in a defensive way. They have tried to resile away from their statutory duties of protecting retail consumers and reducing financial crime by arguing the products were not regulated by the FCA (in fact the same applied in LCF's case) and that the complaint is out of time. We would argue the breach of statutory duty is so egregious that the case should be independently investigated regardless of the elapse of time, that the 12 month reporting requirement is not aligned with the standard legal principles of a 3 year discovery window under the Limitations Act 1980, that due to the confidentiality of the FCA's investigations under s348 FSMA 2000 it is more challenging to determine if the FCA have or have not taken appropriate action and that the Complaints Scheme and retail consumers rights are not well understood by retail consumers.

Furthermore, it is unfair to retail consumers as the FCA repeatedly ignored concerns (which arguably should be described as complaints) raised from 2010 onwards and failed to respond to the complaint submitted to the FCA CEO in May 2014. The awareness and knowledge that the FCA had an endemic problem of failing to take action when warned about serious fraud allegations emerged during Dame Gloster's investigation into the way the FCA regulated LCF and other cases that came to light when we investigated the matter in further depth.

The FCA have been trying to argue that we should have had an awareness that we had a complaint against the FCA for serious regulatory failure at least 12 months before we filed the complaint. That argument makes no logical sense. Why would we choose not to file a complaint for 12 months? The fact is we had essentially raised other complaints about failing to take action far earlier but these concerns were simply

ignored. To some extent this is irrelevant as the May 2014 letter could be considered to be the date when the complaint was first filed. The underlying complaint is identical being that the FCA failed to take tangible and effective action when they had knowledge of detailed fraud allegations.

By way of balance, we should add that the FCA referred our complaint to the Complaints Commissioner who provided a comprehensive response and expressed sympathy for our loss but also advised us to raise ongoing concerns with our MPs.

#### 9. What do you believe the FCA could have done better once they were aware that there was a problem?

As above, the FCA should have taken the fraud allegations seriously and understood their statutory duties of retail consumer protection and financial crime reduction. However, it is clear from Dame Gloster's report, this responsibility was not well understood by the FCA Contact Centre and that concerns were frequently not referred to other departments or fraud agencies.

The matter should have been referred to the Unauthorised Business Department (if that did not happen). If the matter had been referred to the Unauthorised Business Department, the follow up was ineffective as no action was taken to investigate R2i and understand its business model and activities. If the FCA had taken appropriate action, they would have identified numerous red flags and established that R2i was engaged in regulated activities without FCA authorisation and in breach of FSMA (very similar to the failures identified in the LCF regulatory scandal). In fact, if the FCA had taken action on R2i and identified some internal policy gaps and weaknesses, it is possible that the LCF scandal could have been completely avoided. We also understand this would have been the case with Connaught but the FCA acted in a defensive way and was not receptive to open and constructive discussion about flaws in the FCA business model. We believe that was due to reputation being placed above retail consumer protection and an element of arrogance.

#### 10. What would you say about the FCA's effectiveness and timeliness in taking action to protect consumers?

The lack of action by the FCA following the receipt of evidence relating to serious fraud allegations or other irregularities shared by IFA's, finance professionals and others have resulted in avoidable losses being suffered by retail consumers on numerous occasions.

The FCA has an overarching statutory duty to protect retail consumers and reduce financial crime. In conclusion the FCA has not been effective and timely in taking any action to protect consumers.

The significant delays by the FCA in failing to respond to serious fraud allegations resulted in retail consumers facing significant but avoidable financial loss. We can quantify the R2i Valle de Uco Investment scheme as approximately US\$13m but the figure will be higher when other investment schemes from the FCA's date of knowledge (2007 or earlier) are taken into account. It is worth noting that the losses from the date of knowledge are a fraction of the LCF losses.

The only appropriate remedy is to set up a financial redress scheme where the FCA failed to act when warned about serious fraud allegations which then allowed the unlawful and fraudulent activities to continue. By failing to take action when warned about serious fraud allegations, the FCA became complicit in the wrongdoing.



### 11. How helpful has the FCA been to you and others affected in securing redress from the alleged guilty parties, and in prosecuting or banning them so they can't do it again?

The FCA have not taken any action in securing financial redress from the alleged guilty parties so they have been no help in this regard. The FCA has been defensive, tried to pass the buck and resiled away from taking any responsibility. They have simply informed us they were sorry to hear about our distress and the significant financial loss we face (which would have been completely avoided had the FCA taken action when warned of the serious fraud allegations back in 2007).

### 12. What are your thoughts on whether the FCA lacks the powers that it needs; or conversely, that it doesn't make good use of the powers it already has?

As set out in Dame Gloster's report, we believe it is more a case that the FCA does not make good use of its existing powers. There have been significant failures in the Enforcement and Oversight Division and the Unauthorised Business Department (where many fraudulent entities operate around the perimeter so represent a significant risk to retail consumers). The FCA have not adopted an appropriate risk-based approach to the perimeter as this is where there is the highest concentration of financial crime risk and risk to retail consumers.

### 13. In general terms, how would you describe what it's been like dealing with the FCA?

We have found the FCA Consumer Centre to be slow, defensive (where they place their own reputation above retail consumer protection), opaque and uncollaborative (as they hide behind a cloak of confidentiality). They have also failed to address our primary concerns.

The FCA Complaints Commissioner did show some empathy although we did not agree with the conclusions for the reasons set out. We believe there needs to be proper financial redress when the FCA turn a blind eye to fraud allegations as this represents a breach of their statutory duties towards consumer protection and financial crime reduction.

### 14. What is your perception of the culture of the FCA, and what do you think about it?

Our perception is that the FCA puts its own reputation ahead of retail consumer protection and the reduction of financial crime. Consequently, we see a defensive and opaque organisation which fails to communicate effectively between departments and take action when warned of serious fraud allegations which can pose a serious risk to retail consumers. The FCA fails to take a holistic approach to regulation and its wider remit towards retail consumer protection. If there are strong suspicions of investment fraud, then it is likely that outfit is probably engaged in unlawful regulated activities in breach of FSMA and consequently poses a risk to retail consumers. The FCA is not collaborative and has been dismissive and disrespectful of retail consumers and professionals who provide evidence of serious irregularities for free. To improve the situation, Non-Disclosure Agreements (NDA's) could be signed so that there can be better collaboration as that would make the FCA far more effective and cost efficient.

The defensive nature of the FCA has resulted in a failure to accept responsibility when things have gone wrong and a failure to prevent a recurrence. The biggest recurring failure we have identified (although that is limited to our narrow experiences on this economic crime) is the failure to take action on a timely basis when warned about investment fraud that posed a risk to retail consumers. That failure to act has resulted in retail consumer loss which should have been prevented as the FCA had prior knowledge of the risks. This is common to LCF (the unregulated bond element of the business), R2i and Blackmore but there are several other examples as well.

A good example of the FCA's defensive approach and being in denial was the FCA's reaction to another case where the FCA had delayed taking action for over 6 months.

[https://www.ftadviser.com/regulation/2018/04/03/fca-under-fire-from-watchdog-for-failing-to-police-firms/?fbclid=IwAR3hW8s4lw7FBOs\\_5Wnn-erUx7Ru5shWfpgUdOovD4gfg3V1DljgnANp-Pg](https://www.ftadviser.com/regulation/2018/04/03/fca-under-fire-from-watchdog-for-failing-to-police-firms/?fbclid=IwAR3hW8s4lw7FBOs_5Wnn-erUx7Ru5shWfpgUdOovD4gfg3V1DljgnANp-Pg)

The Complaints Commissioner Antony Townsend upheld a complaint against the FCA and said it was a matter of "considerable concern" that the regulator had intelligence about the unnamed firm from several sources for more than six months without taking action. In a damning ruling, Mr Townsend said he believed the case represented wider problems in the FCA's supervision of firms being carried out with a "lack of curiosity or sense of urgency", claims the regulator denied.

- The FCA received intelligence about the firm in January 2017 but it was not assessed until around 2 June 2017 when a caseworker in training was assigned. In June the FCA decided to use its powers under section 165 of the Financial Services & Markets Act to obtain information from the firm, but it was not until November 2017 that the regulator actually took steps to act on these powers.
- This led to a complaint against the FCA that it had failed to supervise the firm effectively and had failed to identify financial problems the firm was experiencing, and had not addressed misleading advertising produced by the firm when it launched an investment platform.
- The FCA had said this was an "isolated incident" but Mr Townsend said the evidence he had seen suggested this was not the case and there were "wider problems" in the team.

## 15. What do you think about the possibility of conflict of interest issues at the FCA?

There appear to be many conflicts of interest such as a revolving door issue between the Treasury, Bank of England, FSCS, the FCA and other regulated entities. Staff frequently move from a regulatory role to a senior position in a regulated entity without a sufficient lapse of time. This creates a cultural lack of independence between the regulator and the regulated entities.

We also have to conclude that self-regulation does not work. The regulator's main role appears to be the protection of the firms it regulates and this takes precedence over their statutory duties around retail consumer protection and financial crime reduction.

## 16. Have you ever complained officially about the FCA; if so to whom? What happened, and how do you feel about what happened? What feedback, if any, have you had about your complaint? How helpful was the feedback? How long has it taken for your complaint to be processed?

Yes. Please see our responses to Question 7.

In summary, a formal complaint was filed in May 2014 to the then CEO, Martin Wheatley. As far as we know, there has been no feedback or response to that complaint so it remains outstanding. To date, it has taken over 8 years for a response to be received. We are still waiting.

The R2i Valle de Uco investor group raised a further complaint against the FCA for regulatory failure in September / October 2020 when it became clear that the FCA had failed to take action when warned of serious fraud allegations from 2007 onwards. The FCA responded around five months later although they apologised for the delays. There were then further delays. A final response letter from the FCA Complaints Commissioner arrived in January 2022 so the entire complaint process took 16 months. However, we would prefer a substantive response that took a bit longer to a dismissive and inadequate response that was provided in a shorter timeframe. However, the process was very slow and frustrating.

The 2014 complaint raised the same concerns as the complaint that was filed in 2020. The R2i Valle de Uco investor group only became aware of the FCA's state of knowledge more recently. The Jersey Fund scandal was promoted in 2003 while the Valle de Uco investment scheme was promoted in 2008.

The FCA argued that the R2i Valle de Uco investors should have complained earlier but they are not considering the challenges faced by the retail consumers who were not familiar with the Jersey Funds at the time, the FCA's involvement and the FCA complaint scheme for regulatory failure. The FCA also appeared to conflate an awareness that we had a complaint against the individuals involved in promoting the alleged fraud with an awareness that we had a complaint against the FCA for serious regulatory failure. If the FCA was aware of the regulatory failure why did the FCA not carry out their own internal investigation?

Further evidence of potential serious regulatory failure emerged while investigating a claim in negligence against the Banks that operated the R2i Valle de Uco bank accounts. These conclusions were reinforced as the LCF investigation progressed. We became aware that the failure of the FCA to respond to serious fraudulent allegations was an endemic issue and therefore it was likely that there were similar failures in the R2i case. Due to FCA's confidentiality, the investors had no transparency as to whether the FCA had taken action, a limited form of action or no action.

#### 17. Overall, what have been the consequences to you (and if relevant to your family) as a result of what happened?

Our group face a nightmare which is stressful and has caused adverse effects to our physical health and emotional wellbeing as well as the significant financial loss we face, the time and frustration we have suffered and the lost opportunity cost of those funds. Yet, this potential loss should have been completely avoided as the FCA already had knowledge of serious fraud allegations and integrity issues involving R2i and its associates before the Valle de Uco scheme was even marketed. This entity posed a serious risk to retail consumers. There were many red flags which would have been easier for the FCA to identify earlier than us given the intelligence the FCA had received. R2i should have been considered a high risk to retail consumers. An investigation would have revealed that R2i was carrying out regulated activities without FCA authorisation. The FCA should consider the potential consequences and risk to retail consumers of not carrying out an investigation when warned of serious fraud allegations.

#### 18. If you could change three things about the FCA, what would they be?

Responsive and collaborative approach when warned about serious fraud allegations so that the FCA can provide retail consumer protection and reduce financial crime. If the FCA receives serious fraud allegations from a credible third party, the FCA should investigate with some urgency and should consider if retail consumers could be at risk of potential harm as a matter of priority.

Improved transparency (being less opaque) and a more collaborative and respectful approach to investors and other professionals who have intelligence on investment frauds. This will improve the FCA's effectiveness in complying with its statutory duties, its reputation with retail consumers and also be cost efficient. The FCA can achieve far better outcomes with existing resources if they leverage off intelligence provided by other finance professionals, expert witnesses or IFA's. The effectiveness and overall reputation of the FCA would also be additional benefits.

Take responsibility when things go wrong (being less defensive) and ensure there is a fair financial redress scheme in place when the FCA had knowledge about serious fraud allegations but turned a blind eye. The FCA should adopt a more empathetic rather than defensive approach to the victims of serious financial crime. It is important the FCA is a regulator that is professional, acts with integrity and is accountable when things go wrong<sup>2</sup>.

#### 19. What positives are there about the FCA that you would like to comment on?

The FCA principles and the FCA handbook are well structured. The FCA has sufficient powers to protect retail consumers and reduce financial crime. The FCA has taken action on some cases and been successful where unregulated entities have been carrying out regulated activities without FCA authorisation such as the Asset Land scheme where an Unregulated Collective Investment Scheme (UCIS) was operating without FCA authorisation. The FCA probably compares well with regulatory regimes in other countries where there is little democracy.

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<sup>2</sup> The FCA Handbook, SUP 1A.3.1 states: - In addition, when consumer detriment does actually occur, the FCA will robustly seek redress for consumers. This approach will be delivered through a risk-based and proportionate supervisory approach

The FCA or the individuals who agreed on the appointment of Dame Gloster QC for the LCF independent investigation should receive some credit. Dame Gloster QC proved to be fiercely independent and conducted a robust and fair assessment of the flaws in the FCA regulatory regime in respect of the way the FCA managed serious fraud allegations that had been received from third parties. This report can and should form the catalyst for positive change but it is only right and fair that there is some justice for others who have suffered similar regulatory failure.

#### 20. Do you believe there should be spot checks by the FCA on regulated and/or unregulated entities, perhaps similar to the spot-checks by VAT inspectors

Yes. We believe the FCA should adopt a risk-based approach and act on intelligence provided by IFA's, witnesses or other finance professionals to understand the holistic nature of an entity's business and establish whether they are in breach of their regulatory responsibilities or involved in regulated activities without FCA authorisation. If the FCA receives serious fraud allegations about an entity whether it is regulated or not, we believe it is critical the FCA takes urgent action to assess the risk to retail consumers rather than turning a blind-eye and simply referring the matter to a fraud agency.

Clearly entities operating on or around the perimeter pose a far greater risk to retail consumers so there should be a focus on high risk entities and investigations carried out to understand the holistic business model and the integrity of the directors (i.e. they should have a checklist of red flags so they can assess the risk posed by an entity to retail consumers).

#### 21. The FCA is undertaking a Transformation Project. Do you have any comments to make about that?

We are supportive of the FCA implementing the recommendations in Dame Gloster QC's report. We also support the proposed amendments by the TTF to the Financial Services and Markets Bill. In summary, we believe a historic redress scheme should be set up for the victims of regulatory failure defined where the FCA was warned of serious fraud allegations and its failure to take action resulted in retail consumer loss which could have been avoided had the FCA investigated on a timely basis. The historic redress scheme should be financed from those who committed the economic fraud and any regulated companies that facilitated or were complicit in the fraud (through failure to conduct appropriate due diligence as required by their regulatory bodies).

#### 22. Are there any other comments that you would like to make?

The victims of the R2i Valle de Uco scheme have been badly let down by Regulators, Government Agencies and Regulated Entities who turned a blind eye to the alleged fraud where c £100m of investor funds have disappeared. We believe there are various explanations as to why that happened. The only thing that matters now is that previous failures are now put right to provide the Ri Valle de Uco investors and others in scope with peace of mind and closure and that the regulatory framework is improved to reduce or preferably eliminate the risk of future recurrence.

We hope that there will be open, honest and collaborative discussion with Treasury officials and the FCA on these serious concerns to improve the regulatory framework such that it enhances retail consumer protection and reduces financial crime. This would embrace the APPG mission where regulation is improved by all stakeholders working together to resolve past and present shortcomings, and to bring about positive changes.

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Thank you