

Final report by the Complaints Commissioner, 17th October 2017

Complaint number FCA00379

The complaint

1. On 9th August 2017 you asked me to investigate a complaint about the Financial Conduct Authority (FCA). I have carefully reviewed the papers sent to me by you and by the FCA.

What the complaint is about

2. In its letter of 1st August 2017, the FCA described your complaint as follows:

You allege the FCA failed to work together with investors and the police in its enforcement action against [Investment Firm A] and [Investment Firm B]. You feel there was enough evidence to raise suspicion of fraudulent activities and that the FCA should have involved the police during its investigations.

What the regulator decided

3. The FCA partially upheld your complaint on the grounds that there had been a record-keeping failure by the FSA (the FCA's predecessor) which meant that it was unable to establish "the extent to which police were engaged early in the investigation", although it did not consider that that would have affected the outcome for investors. It accepts that that failure was unacceptable.
4. The FCA's Complaints Team recommended that the FCA's Enforcement Team should "ensure they have clear guidance on referring and recording decisions in respect of suspected fraud cases."

Why the complainant is unhappy with the regulator's decision

5. In your letter to me of 9th August 2017 you raise three points:

Point 1

As requested by investors and by [Firm A] when FCA stopped the land schemes being run by [Firm A] why did the FCA not allow [Firm A] to prove that they could complete the existing land schemes but not start any more?

The FCA were aware monies had been collected by [Firm A] from investors to pay for architects and for accountants so let [Firm A] prove that they could complete their work and show that despite our suspicions that it was not fraud.

Point 2

Given all the funds collected for the purchase of land, redevelopment, payments to architects and accountants from investors how exactly do FCA believe the money was lost/misused if it was not by fraud?

The FCA had the skill and the power that investors mainly do not have and they used it in their investigation of [Firm A].

What did your investigations exactly tell you about the use of the funds?

Point 3

The FCA can and have referred to their public roles on an [sic] number of occasions but there have in my eyes a very important mandatory public duty to automatically report suspicions of fraud to the police so that the police can pursue the role of investigating fraud and deciding if there was a case to answer.

The mixed message of the report does not give me the confidence that this happened at all and as I understand it in its place the FCA decided to pursue civil proceedings and not to pursue criminal investigations /proceedings

Preliminary points

6. Your first two points to me are not ones which you raised with the FCA. Under the Scheme, the FCA is generally given the opportunity to consider complaints before I do, since that is usually the quickest way of resolving them. Therefore, if you want to complain about points 1 and 2, I think you should ask the FCA to consider them. I can, however, consider point 3.

My analysis

7. The concern you raise in your third point is that you continue to lack confidence that the FSA (and now the FCA) refer cases of suspected fraud to the police, as you believe that they should do.
8. In its decision letter, the FCA reveals that the records kept by the FSA were inadequate, and it is therefore impossible to be certain when the FSA first referred the matter to the police. The FCA have already agreed that this is unacceptable, and have made a recommendation to the Enforcement Team to prevent a recurrence.
9. This is not the first time that doubts have been raised about the regulator's procedures for promptly reporting suspect fraud to the police. In a report published last year (see <http://frccommissioner.org.uk/wp-content/uploads/FCA00084-Nettleship-Adam-Stage-2-Final-Decision-24-11-16.pdf>), I described a case in which the FSA did not involve the police at a sufficiently early stage.
10. In response to my preliminary decision, in which I recommended that the FCA should ensure that its enforcement team has clear guidance on when to report matters to the police, the FCA said:

Enforcement confirms that its Unauthorised Business Department ("UBD"), of which the relevant Enforcement team is a part, has a detailed written process guide. Enforcement further confirms that that guide requires consideration whether matters should be referred to the police, both when they are initially considered by UBD and then once a UBD enquiry or investigation into the matter has identified that litigation (whether by the FCA or otherwise) is necessary. Enforcement also confirms that it regularly refers to the police suspicions of fraud resulting or partly resulting from consideration, enquiries and/or investigations by UBD. Lastly, Enforcement confirms that decisions as to whether or not to so refer are recorded

My decision

11. I agree with the FCA's decision to partially uphold your original complaint. The poor record keeping of the FSA was not acceptable, and makes it impossible to be certain at what point the allegations of fraud were referred to the police.

My recommendations

12. If you wish points 1 and 2 in your email of 9th August to be followed up, I recommend that you ask the FCA to do so.
13. I am pleased to have received confirmation that the FCA's Enforcement Team now has clear guidance on when to report suspicions of fraud to the police, and I recommend that the FCA keeps the matter under periodic review to ensure that the guidance is being followed. I hope that this will provide you with some reassurance that the matters which you have raised have been taken seriously.

Antony Townsend

17th October 2017