

29 August 2018

Final report by the Complaints Commissioner**Complaint number FCA00469***The complaint*

1. You wrote to me on 30 May to complain about the FCA's alleged failure to oversee firm P properly.

What the complaint is about

2. You invested in firm P, an unauthorised firm which was not permitted to offer regulated financial services. The FCA began investigating the firm in 2015 and later decided that the best option for the firm's investors was to allow the firm to remedy its breach. Consequently the firm offered two options to its investors, which the FCA considered an improvement on the original position for investors. However, you felt that neither option was satisfactory, and that the FCA should have started criminal proceedings against the firm.

What the regulator decided

3. The FCA did not uphold your complaint. It gave the following reasons:
 - a. It had considered criminal proceedings against the firm, but reached the conclusion that the best outcome for consumers was to allow firm P to remedy its breach; and
 - b. Firm P had revised one of its options (A) to make it even more safe for investors, and this had been advertised on the firm's website recently; the other option (B) was an improvement on the original investment, as this option was now lawful whereas the original investment was not.

Why you are unhappy with the regulator's decision

4. You referred the complaint to me as you considered that:

Element One

FCA00469

The complaint response from the FCA was from an individual who works for the same body the complaint is about and whose qualifications and judgment were questionable.

Element Two

The explanations given for not starting criminal proceedings were not transparent and full disclosure was not made; and

Element Three

You had not been aware that option A had been revised as although the firm had updated its website, it had not written to investors individually. As a result, you chose option B and you blame the FCA for this.

My analysis

Element One

5. You are unhappy that the FCA has reviewed a complaint against itself. However, that is how the Complaints Scheme works. The Complaints Scheme was established by Act of Parliament – the Financial Services Act 2012 – which sets out the broad areas which the Scheme covers. The Scheme includes provisions under which the regulators will normally review a complaint first, with the opportunity for complainants to refer their complaint to me for an independent investigation if they are dissatisfied with the outcome. If there are exceptional reasons why the FCA should not investigate first, I can take on the investigation directly. It was perfectly proper for the FCA to investigate the complaint first
6. I am not able to investigate your complaint about the qualifications of the employee who dealt with your complaint, as employment issues are not a matter for the Scheme. However, the FCA has previously explained to me the processes it uses to ensure staff are recruited with appropriate qualifications and experience. The FCA explains these as follows:

When recruiting, the FCA sets out essential requirements for an applicant to be considered for a role. For all roles at the FCA, this includes relevant qualifications or equivalent experience. The FCA follows a structured, competency-based approach to interviews, which explores the FCA Personal Strengths and Cultural Characteristics. These interviews can be

complemented with assessments to test the technical skills required for the role.

On appointment, the FCA's standard approach to pre-employment screening includes the verification of highest academic and professional qualifications. Ongoing training and support is provided, and competency is regularly assessed through performance appraisals, to help to ensure all staff have the relevant qualifications and experience necessary to succeed in their roles.

Element Two

7. You are unhappy that the FCA's explanations for not starting criminal proceedings are not transparent. The FCA explained to you that it will not generally provide feedback on what action has been taken and why. This is because section 348 (s.348) of the Financial Services & Markets Act 2000 (FSMA) classes some information the FCA holds about firms as confidential and places restrictions on how that information is dealt with. In addition to this, any information that is not restricted by s.348 FSMA may be restricted due to the FCA's policy on sharing information about regulated firms and individuals, who also have legal protections.
8. The FCA explained to you in its decision letter that it had reached the conclusion that allowing firm P to remedy its breach through the offer of options A and B was the best way of protecting the interests of investors, although it reserved the right not take enforcement action at a later point. As part of the Complaints Scheme, I have access to all the FCA's complaints papers, including confidential material. This is so that I, as an independent person, can see whether I am satisfied that the FCA has (or has not) behaved reasonably. Sometimes this means that all I can say to complainants is that, having studied the confidential material, I am satisfied that the FCA has behaved reasonably – but I am unable to give further details. This can be frustrating for complainants, but it is better that I am able to see the confidential material.
9. I acknowledge that there is a difficult balance to be struck between on the one hand protecting confidential information to enable the regulator to do its job, and on the other the need to give the public sufficient information and confidence to

judge whether or not the regulatory system is operating effectively. Whether or not the current position strikes the right balance is a legitimate matter for debate but it is not one that can be resolved by this Complaints Scheme.

10. I am, however, satisfied that the FCA's complaint response, that it would not inform you of why it took the action it did with respect to firm P, was reasonable in the circumstances; and I am satisfied that the FCA's decisions about firm P were taken following careful consideration of the options, and appear reasonable.

Element three

11. You became aware that the firm had revised its offer of option A from the FCA's response to your complaint. The firm had updated its website but had not written individually to investors. You had chosen option B but, had you been aware of the revised offer for option A, you would have chosen it instead. The FCA has not investigated this element of your complaint, and has asked me for the opportunity to review it. Under the circumstances, I thought this is a reasonable course of action and I invited the FCA to consider that element of your complaint. During its review of your complaint, the FCA liaised with the firm which confirmed it would arrange for you and any other investors who wish it to be moved to the revised option A. I gather that the FCA has written to you about this. This should address the remedy you are seeking in relation to this element.

My decision

12. I recognise that you have been placed in a difficult position because of firm P's actions. However, for the reasons above, I do not uphold elements one and two of your complaint against the FCA. In relation to the third element of your complaint, the firm has offered you the opportunity of your preferred choice, the revised option A, which offers the remedy you were seeking.

Antony Townsend

Complaints Commissioner

29 August 2018