

15 November 2018

Final report by the Complaints Commissioner

Complaint number FCA00512

The complaint

1. On 2 October 2018 you asked me to investigate a complaint about the FCA. I have carefully reviewed the papers sent to me by you and by the regulator. My preliminary report was published on 15 October 2018 and both you and the FCA have commented.

What the complaint is about

2. Between March and May 2018 you asked the FCA a series of questions about its awareness of allegations of fraudulent activity at Beaufort Securities Limited, the time taken to instigate regulatory action, its awareness of risk to investors from BSL, and in the Alternative Investment Market (the AIM) more generally.

What the regulator decided

3. The FCA did not uphold your complaint. Its complaint response of 23 August 2018 gave you some information about the regulatory action it had taken regarding BSL and Beaufort Asset Clearing Services Limited (BACSL) and referred you to a Frequently Asked Questions page on its website about the steps taken, including its application to the Court on 1 March 2018 to put both firms into the insolvency regime. The FCA said that it had not been aware of a specific web article dated 7 August 2016 you had referenced. The complaint response repeated information previously given to you about the FCA's approach to financial compensation and invited you to provide further details of your concerns about a lack of regulatory action by the FCA regarding the AIM.

Why you are unhappy with the regulator's decision

4. You have told me that your complaint to the FCA was '*about their failure to protect investors like myself and my wife who lost money on AIM shares where [BSL] was the broker to the company*' and the FCA's '*failure to act in a timely*

FCA00512

manner in that many months passed after serious questions were raised by a journalist who accused [BSL] of fraud and in the end they only acted once the SEC from USA took action following evidence of 'pump and dump' activities... had the FCA exercised their regulatory powers professionally the losses for ourselves and others may not have occurred.' You have told me that in your view *'the FCA 's slow and inaccurate handling of my complaint demonstrate there are serious leadership and cultural issues to be addressed'*. You have asked me to look at the following specific issues:

- a. Whether the FCA exercised its powers and discharged its duties to private investors in a timely and professional manner from August 2016 when allegations about fraud at BSL were made public.
- b. The apparent discrepancy between the FCA's response to you on 10 May 2018 that *'they were aware of the allegations contained in the article in question'*, and on 23 August when *'they say their press office did not receive a copy of the article'*, which has led to your complaint not being upheld.
- c. The time taken to investigate your complaint.

Chronology of your complaint

5. On 3 March 2018 you contacted the FCA to ask if it was aware that fraudulent activity at BSL had been highlighted in a web article on 7 August 2016, along with allegations of lack of regulatory action re the AIM and, if so, what the FCA had done. The FCA treated your questions as a Freedom of Information (FOI) request and on 10 May 2018 replied that it was aware of the allegations made and that the steps it had taken regarding BSL and BASL were well known. A link to the FCA's press release dated 2 March 2018 was provided: <https://www.fca.org.uk/news/press-releases/restrictions-imposed-beaufort-securities-limited-bsl-and-beaufort-asset-clearing-services-limited>. The FCA also explained that it would not be able to comment on ongoing operational matters.
6. You replied on the same day asking why the FCA had taken *'so long'* to take meaningful action and whether it was aware of the risk to investors. These additional questions were forwarded to the FCA's Complaint Team for response. This team wrote to you on 8 August 2018 to say that it was considering your

email of 10 May 2018 under the Complaints Scheme. Your complaint was defined as:

You have incurred financial losses with your investments in the Alternative Investment Market (AIM). You believe some of which you are likely to involve similar 'manipulations' to that in Beaufort Securities Ltd (BSL) and possibly even BSL themselves. You believe your losses would not have occurred if the companies had behaved honestly or the relevant regulators had taken action against them. Further, you have mentioned an article via Shareprophets which highlighted potential fraudulent activity by BSL and an indication that there is a lack of regulatory action by the FCA with respect to the AIM.

7. As noted above, the FCA's complaint response was sent to you on 23 August 2018. This response said that the FCA was not aware of the specific article you had referred to but:

...had been engaging with BSL and Beaufort Asset Clearing Services Limited (BACSL) for some time, due to concerns the FCA had with BSL's discretionary fund management business and BACSL's client money and assets systems and governance. In December 2016 and September 2017, the FCA imposed restrictions on both firms' permissions, to prevent them from performing certain regulated activities. In September 2017, the FCA prevented BACSL from holding any new client money or assets, or taking on new clients. The FCA also took supervisory steps to improve the firms' systems and controls. The FCA continued to supervise BSL and BACSL throughout this period, and at the end of February 2018 concluded that both firms were insolvent. On 1 March 2018, the FCA applied to the Court to place both firms into insolvency proceedings. The FCA also imposed requirements on the firms, with immediate effect, stopping the firms from conducting any regulated activities, and from disposing of any of their assets without the FCA's consent.

Further detail about the insolvency administration and the distribution plan was provided as well as detail of the FCA's media monitoring practices, which the complaint response concluded was reasonable in the circumstances.

8. After your complaint was received by my Office the FCA also responded to your allegation (not raised previously by you) that it had waited for US authorities to complete their investigation before taking regulatory action against BSL. It said:

It is not the case that the FCA only took action when it knew of the US investigations... On the evening of 1 March 2018, the US Department of Justice took action against BSL and various other parties. The US Department of Justice did not 'control' the actions taken by the FCA and the FCA had, in any event, taken actions in respect of the firms well in advance of any liaison with the US Department of Justice.

My analysis

Substantive issues

9. Taking your second issue first, I am satisfied that the FCA's responses of 10 May 2018 and 23 August 2018 are not inherently contradictory. You asked whether the FCA was aware of the article/allegations. The FOI response was that the FCA was aware of the allegations (my emphasis) contained in the article in question. The complaint response was that no one in the relevant staff teams was aware of the specific article published on 7 August 2016. It is possible for both statements to be correct and I understand that to be the FCA's position. In response to my preliminary report you have raised further concerns about apparent contradictions in the FCA's statements and I return to these below.
10. However, and turning to your first issue, although the Complaints Team looked into the question of whether staff were aware of the article, and provided some background information about the FCA's oversight of BSL, it did not test this information. In other words, it did not actually investigate the concerns you raised about the FCA's regulatory actions in relation to BSL, or the AIM more generally.
11. The Complaints Scheme is not the mechanism for reviewing the FCA's regulatory decisions as such. Much of the time, the actions and decisions it takes are confidential. In some cases I can review the FCA's confidential files, to satisfy myself whether actions appear to have been reasonable and provide some reassurance to complainants. However, I have not been able to do this in your case because, although it received limited information from other

departments, the Complaints Team did not call for the files and has not actively investigated these matters. As a result, I have not had access to relevant internal files to assess what action the FCA took in relation to BSL and on what timescale.

12. There is of course considerable information in the public domain, as provided to you in the FCA's press release and Frequently Asked Questions on its website. Nevertheless, the Complaints Team should have investigated fully the issues you raised even if some confidential matters could not be shared with you. It was not acceptable for it simply to repeat the information already published.
13. In the light of this analysis, **I recommend** that the FCA now offers to investigate in full your complaint about its regulatory oversight of BSL or provides me with relevant background files and information so that I can carry out my own investigation. It should also provide you with a response about its oversight of and policy approach to the AIM more generally.

Delay

14. You have also complained about the FCA's delay in handling your complaint. I note that the FOI department took over two months to respond to your email of 3 March 2018 and that you accepted its apology for this delay. In response to your email of 10 May, the Complaints Team contacted you with holding responses on 21 May, 13 June and 10 July but no substantive action was taken until 8 August. The complaint response dated 23 August offered sincere apologies for the delay.
15. The FCA's internal files show that there was activity on 22 May (to check with relevant teams that there was no need to defer investigation of your complaint) but no further activity until 8 August, with no apparent explanation for this delay. The target date for responding substantively to your complaint was 13 July. This was missed by some margin but more seriously, the substantive issues you raised were not investigated or addressed in the eventual complaint response.
16. I therefore uphold your complaint of delay and note that there will now be further delay while the FCA or my Office investigate your concerns. In view of this, **I recommend** that the FCA offers to pay you the sum of £100 for the distress and inconvenience caused to you by this delay.

My decision

17. Overall, I am not satisfied that the complaint response was a satisfactory answer to the concerns that you raised. The complaint response was also delayed. I have partly upheld your complaint and **recommended** that:

- a. the FCA now offers to investigate in full your complaint about its regulatory oversight of BSL or provides me with relevant background files and information so that I can carry out my own investigation. It should also provide you with a response about its oversight of and policy approach to the AIM more generally;
- b. the FCA offers to pay you the sum of £100 for the distress and inconvenience caused to you by its complaints handling delays.

18. In response to my preliminary report the FCA has accepted my recommendations and has agreed to investigate your complaint about the FCA's regulatory oversight of BSL and Beaufort Assets Clearing Services Limited as a new complaint. The FCA will open the new complaint on receipt of this Final Report. The manager of the Complaints Team will contact you by telephone to ensure your specific allegations against the FCA are captured.

19. The FCA will also write to you to apologise and offer you £100 for the distress and inconvenience caused by its complaints handling delays.

20. My recommendation also asks the FCA to provide a response about the oversight of and policy approach to the Alternative Investment Market more generally. I also asked the FCA to address further the additional points you made in your response to my Preliminary Report (paragraph 9 above). The FCA has asked me to agree to it responding to these points as part of its new complaints investigation and I have agreed to this. I appreciate that this means further delay for you, but my view is that the best way forward is for these matters to be referred back to the FCA in the first instance. If you remain dissatisfied at the conclusion of the FCA's investigation you will be able to refer the matter back to me for review.

Antony Townsend Complaints Commissioner

15 November 2018