

13 May 2019

Final report by the Complaints Commissioner**Complaint number FCA00535***The complaint*

1. On 20 December 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 issued on 22 March 2019 and both you and the FCA have provided comments.

What the complaint is about

2. On 6 September 2016 you submitted (via your representative) a formal complaint about the authorisation and supervision of a firm [Firm A] by the FCA and its predecessor organisation, the FSA. You said that the regulator had failed to act on issues arising from complaints notified to it in 2013 by the Financial Ombudsman Service (FOS) or to consider allegations of fraud by one of Firm A's directors. As a result Firm A had been able to default on its obligations, declare bankruptcy and sell its assets to another FCA-authorized firm [Firm B], which remained closely associated with a non-UK firm [Firm C] substantially owned and controlled by the same director. Although you had made a separate complaint to the FOS that was upheld, your losses will now have to be met by the Financial Services Compensation Scheme, which has an overall cap of £50,000.

What the regulator decided

3. The FCA issued its complaint response on 11 October 2018. It had divided your complaint into two parts:
 - a. Part One – failure to supervise Firm A including:

- i. failing to act on information received from the Financial Ombudsman Service (FOS) and
 - ii. failing to act on allegations of fraud by an individual connected to Firm A
 - b. Part Two – negligence in authorising Firm A in the first place.
4. Part One of your complaint was partly upheld on the basis that allegations of fraud had not been properly recorded. The FCA sincerely apologised for this but said that the information had now been appropriately reviewed and documented and there was no reason to believe any detriment had resulted. The remainder of your complaint was not upheld on the basis that the FCA had been proactive with the FOS, and had not been negligent in its authorisation of Firm A.
 5. The complaint response also said that some of your concerns were receiving ongoing consideration. However, you could not be given more details about this or the FCA's past supervision of Firm A due to confidentiality restrictions.

Why you are unhappy with the regulator's decision

6. You have expressed your overall dissatisfaction with the FCA's complaint response and asked me to investigate further.

Preliminary points

7. I note that, as with several cases I have seen recently, the issues you raise in your complaint go to the heart of an understanding of the FCA's regulatory approach to firms operating in the UK and overseas, conducting both regulated and unregulated business, and how it responds to allegations of fraud.
8. I have dealt with these matters before, particularly in [my published decision on the Connaught Series 1 Income Fund](#). Although the facts of your complaint differ, I continue to see a number of cases where IFAs, consumers and others report concerns about a firm or a fund to the FCA, sometimes over several years, and where there is a mismatch between stakeholders' expectations and the perceived actions of the regulator. Some of this mismatch arises from the confidential environment in which the FCA operates, both under the Financial Services and Markets Act 2000 and because of its own policy approach, which means that action which the FCA is taking is not apparent to complainants. Some arises due to the passage of time and different approaches taken now and

in the past by the FCA and its predecessor organisation, the FSA. However, I continue to have concerns about a lack of effective prompt action by the FCA in some cases. I have also commented that the FCA could do more to explain and clarify its approach to these matters, a matter which the FCA is now addressing. I will return to these matters in my conclusions below.

My analysis

9. I have had access to all the FCA's papers and I have asked detailed further questions. I appreciate the considered answers I have received from both the Complaints Team and the Supervision Team. Like the FCA, I am required to respect confidentiality. This means that sometimes I cannot report fully on all the material I have seen. However, it is important that under the Complaints Scheme, as an independent person, I can assess whether I consider that the FCA has behaved reasonably.

Part One – Lack of Supervision of Firm A

10. Part One of your complaint was that the FCA has failed to supervise Firm A. The confidential material I have seen shows that the FSA/FCA did not ignore information it was receiving, and took active steps to supervise Firm A. However, I have concluded that this supervision was inadequate because:
- i. Multiple concerns about Firm A from reputable sources, including the FOS, resulted in little effective action;
 - ii. Supervision of Firm A was initially treated as general and thematic rather than focussed, and key concerns were not followed up;
 - iii. Information and intelligence received about Firm A's activities, with different companies and in several jurisdictions, was not co-ordinated. In some instances, internal teams did not pass on relevant information;
 - iv. There are no records to show why some regulatory actions, including supervisory visits, were not taken or were not followed up;
 - v. In particular, there was a failure to follow-up with Firm A on issues affecting potential consumer detriment.

11. In response to my further enquires on these matters, the FCA's current Supervision Team accepts that the supervision could have been better. It says

that the failure to follow up on item (v) above is regrettable. It also says that it has recently changed the way in which it carries out supervisory activities:

Where we become aware of problems at firms, we expect them to rectify the issue to prevent future occurrences and will, where appropriate, proactively require them to demonstrate that they have done so satisfactorily.

12. This is of course to be welcomed, but it does not address the question about the consequences for consumers of the FCA's accepted omissions between 2014 and 2016 when critical decisions were being taken about whether there was sufficient evidence to support stronger regulatory action against Firm A.
13. Eventually, the FCA agreed to an ordinary insolvency administration for Firm A on certain terms. I appreciate that you consider this enabled Firm A to avoid its responsibilities while one of its directors continued to be involved in Firms B and C. As you know, the FCA is continuing to look at certain matters regarding Firms B and C and I cannot comment further on this at this stage. I will be asking the FCA to keep me informed of the outcome of its investigation into these matters.
14. I now turn to the two specific areas of lack of supervision of Firm A highlighted within Part One of your complaint: (i) failing to act on information received from the Financial Ombudsman Service (FOS) and (ii) failing to act on allegations of fraud by an individual connected to Firm A.

Failing to act on information from the FOS

15. This aspect of your complaint was not upheld on the basis that the Complaints Team had reviewed the exchanges of information between the Financial Ombudsman Service and the FCA relating to Firm A and did not find evidence that the FCA failed to consider or act on information provided by the Financial Ombudsman Service. I have confirmed in paragraph 10 above that the confidential evidence I have seen shows that the FSA/FCA did not ignore information it was receiving, and took active steps to supervise Firm A, even though I have concluded that these steps were inadequate.

Fraud allegation

16. This aspect of Part One of your complaint was upheld and an apology offered because your allegation of fraud by one of Firm A's directors was not properly

recorded. You were assured that no detriment had arisen. However, I note that some information provided to the Complaints Team about the FCA's approach to fraud was not passed on to you. This was to the effect that *unproven* allegations of fraud against an individual are unlikely to be followed up and that action is only likely after formal charges and findings of guilt. The Complaints Team seems to have been reluctant to pass this on to you on the basis that you would be dissatisfied. If so, in my view that was unhelpful. I have previously expressed my view that the FCA could do more to explain its approach to allegations of fraud. There is an external perception that the FCA will take action whereas internally there is a view that fraud is 'not for us'. Clearer statements are needed for both staff and the public about the FCA's approach to fraud and its likely actions in the context of risk-based regulation.

17. In response to my Preliminary Report, the FCA has clarified that Supervision's response [to the Complaints Team] was about an individual allegation of forgery, whereas the Complaints Team's response more accurately expressed the FCA's overall approach to fraud. I understand this, although I am still not clear why the FCA felt unable to explain to you that Enforcement action against individuals for forgery requires the allegations to be proven.

Part Two

18. Part Two of your complaint was that the FCA had been negligent in authorising Firm A. Based on the information I have seen, I am satisfied that it was reasonable for the FCA's complaint response to say that the relevant Threshold Conditions were met at Firm A's Authorisation in 2007. It follows that I consider it was reasonable for the FCA not to uphold Part Two of your complaint. I note that the issues you pointed to, that Firm A did not have qualified financial services' trained staff and operated out of serviced offices in London whilst services were diverted overseas, were among the issues identified and addressed by the FSA's supervisory visits to Firm A in 2013 and 2014.

My decision

19. I have concluded that:
 - a. The FCA's response to Part One of your complaint was inadequate because it focussed too narrowly on the two specific examples of lack of supervision

you had provided rather than your overall complaint that the FCA had failed to supervise Firm A. The response is not supported by the evidence and does not reflect the seriousness of the supervisory failings or consider the implications for consumer detriment.

- b. The FSA/FCA's supervision of Firm A was inadequate and lacked strategic oversight. Information and intelligence received about Firm A from consumers, advisers and the FOS were not co-ordinated in a way that might have supported more robust regulatory action. This led to some matters being overlooked or not followed up when clearly they should have been. It is not possible to say whether consumer detriment has resulted from the failings I have identified;
 - c. There were appalling delays in the handling of your complaint. I note that you accepted a payment of £200 to reflect this.
20. In approaching this case, while being mindful of the FCA's exercise of discretion in regulatory matters, I have asked myself whether any objective observer reading the FCA's own analysis of events would think that its supervision of Firm A was done well. The Supervision Team itself, in response to my questions, agrees that it was not. I appreciate this candour.
21. In your response to my Preliminary Report you have also said that there remain questions to be answered and reassurance provided that steps have been taken to prevent future cases like yours. The FCA's response to my Preliminary Report refers to its recently updated [Approach to Supervision](#), and says it is confident that the changes made make it 'less likely' that the supervisory issues seen on cases such as yours will be repeated. This is to be welcomed and I will be monitoring these changes in any complaints that come through to me to check whether the change in approach is achieving the desired results. However, I remain concerned about elements of the complaint response in your case. The FCA's confidentiality regime must not be used as a screen to avoid proper scrutiny and reflection or, where appropriate, admission of clear failings. Although the FCA engaged positively and openly with the further questions I raised, I am concerned that the FCA's complaints process was both badly delayed and did not get to all the issues underlying your complaint. The

Complaints Team needs more resources – a matter on which I have commented before, and which is now being addressed.

22. In my view a compensatory payment under the Scheme should be made because, after serious delays, the FCA's complaints process failed to provide you with a fully substantiated response to your concerns. **I recommend** that the FCA offers to pay you a further £500 to reflect this, in addition to the £200 you have already accepted for the FCA's complaints handling delays, a total of £700. In response to my Preliminary Report the FCA has indicated that it will make this offer, although I note that you consider this to be inadequate because you have continuing health issues and must work longer due to loss of your pension funds. I am extremely sympathetic to the situation you find yourself in. However, it is not possible for me to assess compensation for you on this basis under the Complaints Scheme as Parliament has exempted the FCA from liability in legal damages except in cases of bad faith or a breach of human rights, and that would need to be decided by a court.

Antony Townsend

Complaints Commissioner

13 May 2019