

13 May 2020

Final report by the Complaints Commissioner**Complaint number FCA00707***The complaint*

1. On 3 March 2020 you asked me to investigate a complaint about the FCA. I have carefully reviewed the papers sent to me by you and the FCA. My Preliminary Report was published on 6 April 2020 and both you and the FCA have commented on it. The FCA twice asked me for additional time to provide its response, despite the fact that this case is a simple one, the matters I have highlighted do not raise complex issues, and it relates to a problem that keeps recurring when it ought not to.

What the complaint is about

2. You complained to the FCA that it had failed to supervise Woodford and Link Fund Solutions and that as a result you have lost a £1,000 pension investment. I am very sorry to learn of the difficulties you have faced.

What the regulator decided

3. The FCA decided to defer investigation of your complaint under paragraph 3.7 of the Complaints Scheme (the Scheme) because “it is connected with, or arises from, some form of continuing action by the FCA”.

Why you are unhappy with the regulator’s decision

4. You have told me that you feel ‘summarily dismissed’ by the FCA and your complaint just brushed aside. You especially find the words used in its complaint response letter of 21 February to be completely callous towards your very real situation. You have asked me to investigate further.

My analysis

5. First, the FCA is right to say that your complaint is connected with some form of continuing action by the regulator. [Andrew Bailey’s letter to Nicky Morgan of 18](#)

FCA00707

[June 2019](#) confirmed that an investigation has been opened into the events surrounding the suspension of the LF Woodford Equity Income Fund. Under paragraph 3.7 of the Scheme,

A complaint which is connected with, or which arises from, any form of continuing action by the regulators will not normally be investigated by either the regulators or the Complaints Commissioner until the complainant has exhausted the procedures and remedies under FSMA (or under other legislation which provides for access to the Scheme) which are relevant to that action. The complainant does not have to be the subject of continuing action by the regulators for this provision to be engaged. An investigation may start before those procedures are completed if, in the exceptional circumstances of the case, it would not be reasonable to expect the complainant to await the conclusion of the regulators' action and that action would not be significantly harmed.

6. The language used in this paragraph is not particularly clear but the thinking behind it is that undertaking a complaints investigation at the same time as carrying out regulatory action (that is, an investigation which might lead to action against regulated individuals or firms) could have two adverse consequences: it could divert resources away from the regulatory investigation, and/or it could prejudice the regulatory action.
7. However, these consequences need to be weighed against the interests of complainants and the wider public interest – the paragraph I have quoted from the Scheme refers to exceptional circumstances in which a complaint may be considered before regulatory actions have been completed.
8. The FCA has confirmed that an investigation is active. It seems to me likely that that investigation will produce material which is relevant to the consideration of your complaint. I also consider that it would be unhelpful if the FCA Complaints Team were to undertake a parallel investigation into these matters. To that extent, I think that the FCA's deferral decision is reasonable.
9. However, I agree with you that there were deficiencies in the FCA's complaint process and response to you, as follows:

- a. On 5 February the Complaints Team wrote to you saying they would write to you in four weeks to summarise your complaint. However, this did not happen and on 21 February a Decision Letter was issued to you without any explanation why they did not summarise as promised.
 - b. The Decision Letter dated 21 February says there is continuing action and you can write to the FCA when it is over if you want your complaint investigated. However, you will not be able to know when the action is over. The FCA should have offered to be more proactive in keeping you informed of progress and asking at a later date if you wish to pursue your complaint.
 - c. The Decision Letter also says that the FCA is limited to what you can be told due to confidentiality obligations set out in section 348 of the Financial Services and Markets Act (FSMA) 2000 and for policy reasons. It is unclear why this paragraph was included in the letter, since you had been told why your complaint was being deferred, particularly since s348 applies only to what a firm tells the FCA.
 - d. In an email to you on 3 March, after you had received the FCA's Decision Letter, the Complaints Team investigator told you: 'I'm unable to comment on whether or not there is any action being taken by the FCA'. However, her Decision Letter says that your complaint is being deferred because there is ongoing action.
 - e. The response included some standard wording about the FCA's protection from being sued for damages, but did not fully address your options.
10. It may be helpful if I set out the basis on which this Complaints Scheme operates, which is that it is concerned with the actions or inactions of the FCA. I realise that your point is that you believe the FCA's actions or inactions have directly led to your loss but I think it is important that you are aware that the Scheme is not a redress service for individual consumer complaints. The Financial Services and Markets Act 2000 explicitly provides for a consumer redress service separated from the FCA, which is the Financial Ombudsman Service or, where a financial firm has failed, the Financial Services Compensation Scheme. You may wish to investigate these options in respect of

the loss of your pension fund invested with Woodford/Link. The FCA should have advised you about this.

11. These significant shortcomings in the FCA's response meant that you did not receive as helpful a response as you should have done, and I can appreciate that you were left feeling that your concerns had been dismissed and/or treated lightly.
12. My view is that the complaint investigation should not be deferred until 'any ongoing action is finished'. If the FCA's investigation leads to a decision to take action against individuals or firms, there is a significant risk that proceedings will take many months or years before they are concluded. I do not consider that it would be reasonable for you (and others) to have to wait for that long, *unless* there was a *serious* risk that completing the complaint would *seriously* jeopardise the regulatory action.
13. For that reason, I consider that the FCA should defer consideration of your complaint (and any other essentially similar complaints) for six months or until the conclusion of the investigation (whichever is the sooner). At that point, on the basis of the material produced by the investigation, it should consider whether there remains a justification for further deferral (either because there is not yet sufficient information, or because there is a real risk of serious prejudice to Enforcement proceedings) and, if so, for how long.

My decision

14. I have **partly upheld** your complaint because, although I am satisfied that the FCA was justified in deferring your complaint, its complaints process and Decision Letter had the deficiencies I have identified above (paragraphs 9 and 10). I **recommend** that the FCA offers you an apology for these deficiencies.
15. I also **recommend** that:
 - a. The FCA should defer consideration of your complaint for six months from the date of its Decision Letter (21 February 2020) or the conclusion of its current investigation, whichever is the sooner;

- b. At that point, the deferral should be reconsidered and the complaint investigated unless either there is a real risk of prejudice to enforcement proceedings or because there is not yet sufficient information;
 - c. The FCA should report the outcome of that consideration to you and to me.
16. In making these recommendations, I should record that the FCA has repeatedly agreed in a number of cases to adopt the approach which I have outlined above, and yet persists in not adopting this procedure.
17. In response to my preliminary report the FCA has acknowledged the deficiencies I have identified and accepted both of my recommendations. It has told me that it has made a number of changes to the wording of its letters to ensure that this does not arise in future. It has also expressed regret that these changes were not made earlier. It says that the Complaints Team is already reviewing deferrals every six months to assess whether they can now be investigated. It has also updated its letters to make it clear when these reviews will take place.
18. Once a decision is made that complaints can be reasonably investigated without any risk of harm towards any ongoing action, the Complaints Team will contact complainants to inform them of this and to ask them to confirm whether they would like the investigation into their individual complaints to progress. The FCA has confirmed to me that, as well as offering you an apology, it will do this in your case. It will also be contacting all other complainants affected by the deficient wording to make them aware of this. I welcome these steps.
19. I hope that my decision gives you some personal reassurance as well as the knowledge that your complaint has made a difference to others in a similar situation. Thank you for bringing this matter to my attention.

Antony Townsend
Complaints Commissioner
13 May 2020