

13 October 2022

Final report by the Complaints Commissioner**Complaint number 202201132***The complaint*

1. On 18 June 2022 you asked me to investigate a complaint against the FCA.

What the complaint is about

2. In its decision letter dated 28 March 2022 the FCA described your complaint as follows,

Part One

You are unhappy as you feel that the FCA did not adequately supervise Firm A. You feel that the FCA failed to identify that the firm was fraudulent in their conduct and operation. You have explained that the firm committed fraud over a 6-month period that resulted in you losing all your life savings.

Part Two

You have explained that you have sought assistance from the Financial Ombudsman Service, but they rejected your complaint against the firm and directed you to Cysec (who you had 28 March 2022 Complaint Ref: XXXXX already been to). You raised another complaint with the Financial Ombudsman Service about Bank A's failure to protect you. You are unhappy with the outcome of this complaint. You want the FCA to work with the Financial Ombudsman Service to investigate the firm. You would also like the FCA to support your claim that Bank A should take responsibility and pay for the losses you have incurred.

What the regulator decided

3. The FCA did not uphold your complaint. With respects to Part One of your complaint the FCA stated it was limited due to confidentiality restrictions as to

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what it could share with you. The FCA explained the different factors it takes into account when deciding what action to take with a Firm which include considering the quality of the intelligence and an assessment made of the scale and severity of the potential harm. Then the seriousness of the potential misconduct is looked upon. The FCA explained that if significant harm is identified then the FCA will consider what additional steps need to be taken to prevent further detriment which may or may not include Enforcement action depending on the circumstances. The FCA stated that it had looked into the action taken by the relevant area and was satisfied the intelligence was handled in an appropriate manner and correct process was followed.

4. In Part Two of your complaint the FCA explained that it had excluded this complaint from the Complaints Scheme subsequent to paragraph 3.4 as this complaint point relates to the actions, or inactions of the Financial Ombudsman Service (FOS). The FCA also provided an explanation of itself and the FOS stating that the FOS is operationally independent of the FCA and the FCA cannot get involved in the decisions the FOS makes about individual complaints.

Why you are unhappy with the regulator's decision

5. I have summarised your main complaint points as follows,
6. You feel the FCA have failed to take any responsibility for Firm A defrauding you of your life savings leaving you in considerable debt. You have highlighted in relation to this point that Firm A were providing services to you as a UK citizen using the FCA registration it had been given under the passporting scheme.
7. You feel the FCA relies only on the regulator Cysec to hold responsibility for the regulation and the FCA avoids all responsibility for protecting UK customers from what you refer to as a gap in the regulatory system.
8. You feel the FCA failed to take responsibility to protect you and redress harm when it occurred. You reference the FCA's press release to protect and alert in relation to this.

Preliminary points (if any)

9. During my analysis of your complaint, it is my intention to look at and investigate the points that are appropriate and closely connected with the Complaints Scheme.
10. I am also only able to investigate complaints about the regulators. Complaints about the Financial Ombudsman Service (FOS) is not something the Complaint Scheme deals with. You would need to seek independent legal advice in relation to challenging this. As such I agree with the FCA's decision to exclude Part Two of your complaint.

My analysis

11. I am sorry to hear about the loss that you have suffered and the trouble and upset this has caused you.
12. Whilst investigating your complaint I also made my own enquiries with the FCA so that I could see first-hand what happened in your case, including the wider work the FCA has conducted concerning Firm A. I have looked at all the information that has been provided to me in the FCA case file. This is so that I can see the internal workings of the FCA in this area observing first-hand whether I feel the FCA's actions have been reasonable or fallen outside the bounds of reasonableness. In these respects, I am subject to confidentiality obligations.
13. The sharing of confidential information given to the FCA about firms is restricted by law under FSMA. Like the FCA, I am required to respect confidentiality. This means that sometimes I cannot report fully on the confidential material to which I have access. Similarly, information from the FCA shared with me via a sharing gateway is given to me exclusively so that I can see the insights of the work the FCA has undertaken in certain sectors. This at times is classed as confidential information as it has been in this case. However, 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 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 (or has not) 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.

14. I hope it provides some reassurance to you that based on my observations of the FCA's actions and the wider work it has undertaken in this area, I am satisfied the FCA have acted appropriately in its oversight and acted where the need arises. I appreciate you may want further information shared with you, but due to the confidential restrictions that I am bound by I am unable to give further details on this. The Office of The Complaints Commissioner has in the past persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible. As such and as the FCA confirmed with you in its Decision Letter, there is no general right for members of the public to know the outcome of reports the FCA makes. 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 restricts how that information is dealt with. Equally 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.
15. As the FCA explained to you Firm A was not subject to direct supervision by the FCA. It was a Cypriot-registered investment firm which provided regulated services to UK consumers, from 25 June 2012, pursuant to an EEA MiFID services passport. I am sorry I cannot share any more than this, but based on what I have seen, I do not believe the FCA need to take responsibility for Firm A for the fraud that took place. I understand you will feel differently on this, but I have analysed very carefully the actions that the FCA took including my own enquiries concerning your case and I think the FCA's actions were reasonable. I am also pleased to see the FCA took time to explain its decision letter to you by telephone and followed this up by email on 14 April 2022 when you raised further queries with it.
16. It is also worth mentioning that just because a Firm has been authorised, this does not automatically mean protection is instantly provided to an investor from the FCA and other organisations such as the Financial Services Compensation Scheme (FSCS). Based on the information and evidence I have seen, it is most

likely there would have been a section in the register entry for Firm A at the time that it was authorised, suggesting that one should contact the home state regulator of Firm A for more information about any action it has taken against the firm. This would have also suggested for those considering doing business with EEA Authorised firms, that they may wish to ask further information from the Firm about its complaints and compensation arrangements. In this regard I think the FCA would have displayed this on the register entry at the time.

17. It is also worth pointing out for reference that Firm A is no longer authorised by the FCA and subsequently cannot undertake regulated business in the UK unless an exclusion applies. In these respects, overall, I think the risks for potential new investors being harmed is mitigated.
18. You feel the FCA relies only on the regulator Cysec to hold responsibility for the regulation and the FCA avoids all responsibility for protecting UK customers from what you refer to as a gap in the regulatory system. As I have mentioned earlier in my report, Firm A was not subject to direct supervision by the FCA. It was a Cypriot-registered investment firm which provided regulated services to UK consumers, from 25 June 2012, pursuant to an EEA MiFID services passport. In these respects, again, whilst I cannot share anything further due to confidentiality restrictions that I must abide by, based on the evidence I have seen I can provide assurance that the FCA in this instance did not avoid its responsibilities for protecting UK consumers.
19. You raise the point that the FCA did not redress harm when it occurred. I understand that you will feel differently, but overall based on all the information and evidence I have looked at, I do not think the FCA need to compensate you for the loss you suffered. I realise this will be difficult to read and I am very sorry for the loss that you have suffered. I hope this removes any doubts you have that the FCA did not act in the interests of consumer protection in this instance.

My decision

20. I am sorry but for the reasons above I have not upheld your complaint.

Amerdeep Somal
Complaints Commissioner
13 October 2022