

04 October 2022

**Final report by the Complaints Commissioner****Complaint number 202201138***The complaint*

1. On 30 June 2022 you asked me to investigate a complaint about the FCA. My preliminary report was issued to you on 11 August 2022 and both you and the FCA have now provided your responses.

*What the complaint is about*

2. The FCA set out in its decision letter dated 24 June 2022, the following summary of your complaint;

**Part One**

You were a victim of a scam and complained to your bank about this. When you received the bank's final response, you did not refer the complaint to the Financial Ombudsman Service (FOS) because your bank's final response and a letter from the FCA (to that effect), indicated that the FCA was pursuing the funds on your behalf through the courts. Your solicitor has advised that you are now out of time to refer the complaint to the Financial Ombudsman Service.

Consequently, you are unhappy that you have not received any of the funds that you paid to the scammers when the FCA took legal action through the courts.

**Part Two**

You believe the FCA should have told you to seek redress through your bank.

**Part Three**

You have said that since a member of FCA left their role, you have not been kept up to date about the proceedings.

*What the regulator decided*

3. The FCA did not uphold Part One of your complaint and set out that it was unable to investigate Part Two of your complaint (under Paragraph 1.1 of the Scheme), it did uphold Part Three of your complaint.

*Why you are unhappy with the regulator's decision*

4. You wrote to me on 30 June 2022 and expressed that you were not happy with the FCA's investigation into your complaint. You asked me to 'investigate the matter properly'.

*Preliminary points*

5. In your email of 30 June 2022, you have set out that the emails you sent to the FCA asking for information have been ignored and the evidence that you supplied to the FCA has been ignored.
6. These appear to be additional complaint elements that the FCA did not address in its decision letter dated 24 June 2022. As such I have not considered these elements of your complaint to me as I believe it would be desirable for the FCA to respond to these complaints in the first instance if you choose to ask the FCA to respond to these new complaint elements. If you are then not happy with the FCA's response to these complaint elements, you would then be able to refer them back to me for consideration.

*My analysis*

7. Firstly, I want to express how sorry I am that you have been the victim of this money laundering scam and lost a significant amount of money. I am also sorry about the impact that this has had on you, in particular the emotional upset and distress that this has clearly caused you in the past few years.
8. In investigating your complaint, I have reviewed the information that you have set out to me along with the FCA's complaint file about your matter. Having done this I can say that I am satisfied that the complaints team have appropriately investigated your complaint, reviewing the correspondence on your file and speaking to the relevant investigators and departments that were involved in the investigation of the scam investigation.

9. I am also satisfied that the FCA was correct in its decision not to look at the element of your complaint that the Bank advised you not to pursue a complaint with the FOS because the FCA were pursuing this with the courts. As set out in the FCA's decision letter this element of your complaint relates to the actions of the Bank and as this element is an individual complaint between you and the Bank it means neither the FCA nor I cannot look at it under the Complaints Scheme. I also note that I have not had sight of the Banks final decision letter to be able to comment on any such matter even if I could.
10. Whilst I agree with the majority of the information set out by the FCA in relation to Part One of your complaint in the decision letter, I have however formed a slightly different position to the FCA in regard to your belief that the FCA indicated to you that it would pursue your lost funds through the court. In its decision letter the FCA said:

Having reviewed all correspondence relating to this matter, I have not found any evidence indicating that you were advised by the FCA, that they were pursuing the recovery of your investment (on your behalf) through the Courts.

11. In my review of the complaint file, I read two emails from the Enforcement and Market Oversight Team (EMO Team) which I felt, whilst not categorically stating that the FCA would pursue your money on your behalf, could have resulted in you interpreting the following statements to be a suggestion that it would pursue the funds. The extracts are as follows:

The FCA will now pursue confiscation proceedings against him in order to try and seize his illegal gains.

*(Email from FCA to you dated 9 September 2021)*

We are currently working to identify potential assets Mr X has an interest in and will be asking the Court to make compensation orders to identified victims of his offending. We may need to contact you to provide further information in these confiscation proceedings and will in any event, keep you updated with significant developments.

*(Email from FCA to you dated 21 September 2021)*

12. I consider that the EMO team could and should have been clearer about what the potential outcomes of these actions might result in for you as one of several victims, and as part of this, it should also have set out that there were other avenues for victims to pursue their individual claims at the same time as the FCA pursued compensation orders through the courts. The information provided by the complaints team in the decision letter about the role of the FOS for individual complaints by consumers about financial service firms and its operational independence from the FCA are clearly set out but would have been more informative and helpful had it been set out by the EMO team when it provided its updates to you on the enforcement proceedings. This might have prompted you to initiate a concurrent complaint with FOS.
13. As such I have upheld an element of Part One of your complaint on the basis that I have found some evidence to partially support your claim that the EMO team in its correspondence may have led you to believe that it was pursuing compensation on your behalf and through the omission of any guidance to the contrary it was not unreasonable that you did not approach the FOS. In my preliminary report I **recommended** that the FCA apologise to you for not being clearer with you and the confusion that this may have caused. I am pleased that the FCA in its response to my preliminary report have acknowledged that its communications to you could have been clearer to help better manage your expectations around compensation and have accepted my recommendation to apologise for any confusion this may have caused.
14. Also, in its response to my preliminary report the FCA did agree with my view that EMO could have been more informative in its communications and have set out that it is working with the EMO team to consider ways it could improve future communications with victims in similar circumstances to yours, to remove the confusion regarding potential compensation and to sign post general information of other avenues that victims could consider pursuing.
15. In relation to Part Two of your complaint to the FCA, I agree with the FCA's position that, as it is set out, the complaint point does not relate to the FCA's relevant function and as such I have not investigated it. What I do note is that as I have set out above I do believe that the EMO team could and should have better communicated what the likely result of its actions meant to you and in

turn I believe it could and should have let you know that the FOS was potentially another avenue for you to pursue your individual claim for compensation, having already raised the matter with your Bank and received a final response.

16. The FCA upheld your complaint that it had failed to keep you updated since the departure of the investigator in the EMO team who had been communicating with you left the organisation. I consider that this breakdown in the FCA's communication to the victims of this crime was unfortunate, and I **suggest** that the EMO team review your experience and consider how it could manage the handover of live cases in future so that individuals like yourself who are already suffering as a result of being victims of money laundering schemes, do not have to experience further distress and inconvenience following up their cases. In view of this, I agree with the FCA and uphold your complaint.

*My decision*

17. This is my final report into your complaint, I know that you will be disappointed with the outcome. I have upheld an element of Part One of your complaint that the FCA could have been clearer and been more informative in its communications with you and I am pleased that the FCA has set out that it accepts this and has accepted my **recommendation** to provide an apology to you in relation to this. I am also pleased that following my preliminary report the FCA has informed me that it has started to take steps to improve EMO future communications with victims to ensure that they are more informative.

Amerdeep Somal

Complaints Commissioner

04 October 2022