

25 October 2022

Final report by the Complaints Commissioner**Complaint number 202201150***The complaint*

1. On 21 July 2022 you asked me to investigate a complaint against the FCA on behalf of your client.

What the complaint is about

2. The FCA summarised the complaint as follows:

Our understanding of [your client's] complaint is that he is unhappy with the FCA's extensive and unreasonable delays in concluding its investigation into his role as an approved person at Firm X Ltd. You have said that the unreasonable delays, and the adverse effect this is having on your client are set out in your letter of 3 September 2021 to the FCA staff handling the investigation. To summarise these, the ongoing delays continue to have a significant emotional and financial impact on him. You have also provided a timeline of the communication you have had with the investigation team since 3 September 2021, in your email of 8 February 2022 You have said that [your client] was informed that the that the investigation was anticipated to take 6 months to complete. But it has been four years since [your client] first completed his interview and 29 months since he was informed that the FCA had formally appointed investigators. To resolve the complaint, [your client] is seeking confirmation of the conclusion of FCA's investigation and the FCA's intended approach to dispose of this matter.

What the regulator decided

3. The FCA did not uphold your complaint. The FCA Complaints Team wrote to you on 21 April 2022 as follows:

I can appreciate that the investigation into your client has taken a considerable time and has not yet concluded. I have reviewed the information provided by the Enforcement team and can see there have been some delays. Unfortunately, I am not able to provide any detail relating to this due to confidentiality. I appreciate the lack of information and the elongated, and at times uncertain, timescales involved in the investigation so far must have caused frustration and uncertainty for your client. I have reviewed the submissions from [your firm] in relation to the negative impact the investigation and the timescale is having on your client. I am mindful that the longer the investigation continues, and the outcome is undecided, this situation will be exacerbated. However, the investigation cannot be rushed to a conclusion in order to reduce the impact on Your client. The investigation must be conducted fairly and within the legal guidelines that apply. It is unfortunate that your client has been negatively affected but I do not consider the delays have been unwarranted. For the reasons given above I have not upheld this complaint.

Why you are unhappy with the regulator's decision

4. You referred the complaint to me for review. You say that

‘The Outcome Letter seeks to minimise the delays to the Investigation and fails to expand on or provide additional (or sufficient) detail in respect of the unsatisfactory reasons provided by the investigative team in respect of those delays. While the confidentiality of certain aspects of an investigation can of course be appreciated, it would appear that the delays may also be attributable in part to other non-confidential/investigative aspects including inadequate resourcing and/or – we submit – a failure to conduct certain aspects of the Investigation promptly’.

My analysis

5. In your initial complaint to the FCA, you say that your client was told the investigation would likely take six months to complete but that in fact it has continued for more than four years with no clear timeline for an outcome and as

a remedy you wish to know the FCA's 'intended approach to dispose of this matter'.

6. The FCA explained that it did not consider the delays were unwarranted but again was not able to provide you with further information about the timescales for the possible conclusion of the investigation.
7. I have made enquiries of the FCA as to the background and timeline of this case. I can see that subsequent to the submission of your complaint to me, you have been in correspondence with the FCA which has explained the following, which was already known to you: that delays since October 2021 are a result of the FCA conducting an investigation into another (undisclosed due to confidentiality reasons) subject of the same investigation as well as changes to the legal reviewer of the case; but it also told you that it anticipates that enforcement proceedings will be commenced against your client and the steps to be taken up to that point and the timescales that apply.
8. I consider that this effectively answers your query as to the FCA's intended approach to dispose of this matter.
9. I have discussed the alleged delays with the FCA. Although there were some delays attributable to staff turnover, as well as some of the difficulties brought on in the initial stages of the Covid -19 Pandemic, I can see that the overarching reason for the length of time it has taken the FCA to conduct this investigation is indeed due to the FCA's parallel review of a subject of the same investigation. Having reviewed the FCA's explanation about the latter, I am satisfied that it is progressing matters at a reasonable pace given the circumstances involved. Like the FCA, I am mindful of the impact this investigation is having on your client, however, in my view, although I have not formally investigated this case, I cannot see that there has been significant unwarranted delay in either your client's or the parallel investigation.

Amerdeep Somal
Complaints Commissioner
25 October 2022