

11 April 2023

Final report by the Complaints Commissioner

Complaint number 202201172

The complaint

1. On 5 February 2023 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. On 26 August 2022 you made a complaint to the FCA as it failed to act on intelligence you had provided concerning Firm X and their subsidiaries.
3. On 29 July 2022 and 12 August 2022, you wrote to Mark Steward to ask him to initiate criminal proceedings against Firm X under the provisions of section 401 and 402 of the Financial Services and Markets Act 2000 ('FSMA') and sections 327-330 of the Proceeds of Crime Act 2022 Part 7 (Money Laundering) in parallel with the Court of Appeal proceedings ref: [xxxx] sealed in the Court of Appeal Registry on 22 March 2022.
4. Mark Steward responded in a letter dated 18 August 2022 confirming no investigation would proceed based on referrals from individuals reporting allegations. You provided another letter, dated 20 August 2022, accusing the FCA of colluding with Z Group (the parent group of X) as it would not criminally investigate X. The FCA responded denying this in a letter dated 23 August 2022.

What the regulator decided

5. The FCA did not uphold your complaint. It said:

'In order for a criminal prosecution to be successful a certain evidential threshold must be met; in England and Wales that level is beyond all reasonable doubt. Therefore, in order for the burden of proof to be met,

sufficient evidence must be collected through a thorough investigation.....It was decided there was insufficient evidence to warrant an investigation being initiated.

You made reference to the FCA undertaking criminal proceedings against Firm X by means of the s168 Part XI of the Financial Services Markets Act 2000 (FSMA), However in these circumstances this is not possible. S168 Part XI allows the FCA to appoint investigators to a firm for a breach of regulations, however it does not allow the FCA to initiate an investigation for Fraud and Money Laundering, as you requested. Should the FCA uncover Fraud and Money Laundering offences during the course of an investigation under Part XI FSMA then they can consider those offences and continue to investigate them.

In order to begin an investigation under s167 the FCA requires a 'good reason' into a firm, such as an issue with their conduct or state of business. From the documents you required, there was insufficient evidence to show these criteria had been met, therefore no further investigation could take place.

In addition to the above, in order to bring forward a criminal prosecution we must agree the case meets the public interest test. Given this issue has only affected yourself and from a significant time ago, it is not the most appropriate use of the FCA's limited resources.

As an individual, you have the right to open a private prosecution against any firm you believe has wronged you.'

Why you are unhappy with the regulator's decision.

6. You have asked me to review the FCA's decision not to open criminal proceedings against Firm X.
7. You believe Firm X, its solicitors and the Registrar of Companies committed forgery in order to steal property belonging to your (now defunct) company.

My analysis

8. The background to your complaint is your commercial dispute with Firm X (and others) over a series of commercial transactions in the late 1980s which were the subject of court litigation during the early 1990s.

9. The judgment was not in your favour and it appears to me that you are now trying to deal with matters which have been disposed of against you in proceedings which have come to an end from a different angle, and by trying to involve the FCA to instigate criminal proceedings to litigate these matters for you.
10. I agree with the FCA that this is not possible under the Complaints Scheme and I do not uphold your complaint. I would further add that paragraph 3.6 of the Complaints Scheme provides that

The regulators will not investigate a complaint under the Scheme which they reasonably consider could have been, or would be, more appropriately dealt with in another way (for example by referring the matter to the Upper Tribunal or by the institution of other legal proceedings).

11. In addition, paragraph 6.16 of the Complaint Scheme provides that:

Any findings of fact or decisions of courts or tribunals not covered by paragraph 6.15 will carry such weight as the regulators or the Complaints Commissioner considers appropriate in the circumstances.

12. Your allegations against Firm X have already been decided in court. If you were unhappy with the judgment, your option was to appeal it, if possible. This Complaints Scheme is not an alternative to the courts: it is not open for you to revisit your claims against Firm X here because you are unhappy with a court judgment.

My decision

13. I do not uphold your complaint about the FCA for the reasons above. I appreciate you remain dissatisfied with my decision, but there is nothing further I can do for you under the Complaints Scheme.

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Complaints Commissioner

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