

18 August 2023

**Final report by the Complaints Commissioner****Complaint number 202201727***The complaint*

1. On 14 February 2023 you asked me to investigate a complaint about the FCA.

*What the complaint is about*

2. The FCA summarised your complaint in two parts, as follows:

*“Part One*

*In July 2017, you invested £5,000 in Firm X. Before investing with the firm, you checked the FCA website and did not see a warning alert so believed this was a legitimate firm. You mentioned that the warning alert about the firm was removed in April/May 2017. You are unhappy as had you seen the warning alert you would not have invested in the firm. Subsequently, you became aware that the firm was a scam when your investment in cryptocurrency did not materialise, and explained that it has since gone into bankruptcy, and legal action is being taken in the US.*

*Part Two*

*You are also alleging that the firm (Firm X) paid £40K to the FCA to have the warning alert removed based on an article you read online.”*

*What the regulator decided*

3. The FCA did not uphold your complaints. Part two was not investigated as the investigator stated you had not provided access for them to review an article which according to you supported this allegation.
4. Part one was not upheld on the basis that *“Firm X is not authorised or regulated by the FCA. We therefore made enquiries into its business to determine*

*whether it was involved in activities requiring our authorisation. Firms that carry on activities which we regulate without the requisite authorisation are in breach of the Financial Services and Markets Act 2000 (FSMA). We can take enforcement action against them and stop them from carrying on the activities. Having made our enquiries, however, we concluded that Firm X's activities were unlikely to fall within the legal scope of FSMA...And at the City of London Police's request, we published a consumer notice in September 2016 on our website informing consumers about the potential risks of dealing with Firm X, and the City of London Police's investigation, and encouraging potential victims to contact Action Fraud. We left the consumer notice on our website for twelve months."*

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

5. You do not accept the FCA's decision in relation to Part One and Part Two of your complaint and you do not believe the FCA sufficiently addressed either Part.

#### *Preliminary points*

6. It is important to note that you were issued with a Final Decision by the FCA on 21 January 2021 but you did not submit your complaint to my office until 14 February 2023.
7. The [Complaint Scheme](#) specifies at Paragraph 6.9 that *"When the relevant regulator(s) write to a complainant with their final report of their investigation, or explaining that they will not investigate a complaint under the Scheme, the relevant regulator(s) will inform the complainant that, if they are dissatisfied, they must refer the relevant regulator(s)' decision to the Complaints Commissioner within three months of the date of that letter.*
8. However, 6.10 also states that *"It will be for the Complaints Commissioner to decide whether there is a good reason to consider a matter which has been referred to their office outside the three-month time limit."*
9. In your case, the FCA's Decision Letter did not include the usual paragraph with your referral rights and the relevant time scales. As such, I allowed this complaint to be brought out of time, as you were not aware of the three months' time limit to refer your complaint.

10. I note that this may have been an accidental omission on the part of the FCA, however, based on the documents I have seen on file, this error was identified by the Complaints Team on 9 February 2023, following an email enquiry from you. You were given your referral rights at that point, but you were not told about the three-month time limit for making the referral and neither were you told that this information should have been shared with you when you first received their final decision and what to say to my office, should you wish to make a referral.
11. This ought to have been done by the FCA to ensure you fully understood the scheme and your rights. It would also have made your referral to my office smoother as my team would have been informed about the circumstances from the start, rather than having to go back and forth with you and the FCA to understand why the complaint was being referred so long after the Final Decision and whether it may be accepted on an exceptional basis.
12. It is imperative for the FCA to share the referral rights and timescales with complainants and for them to take steps to put everyone on notice and provide all the relevant information to complainants when an error is identified.
13. In its initial response to my preliminary report dated 16 May 2023, the FCA confirmed that it will apologise to you and offer an ex gratia payment of £100 to compensate for the inconvenience caused by this oversight.
14. The FCA also confirmed that it had reviewed all its templates to ensure that the correct wording about the rights of complainants to refer their complaints to the Commissioner are included, despite your Decision Letter having been issued over two years ago. The FCA understands the importance of ensuring complainants are provided with information about their right to escalate their complaint if they are not satisfied with its response.

#### *My analysis*

15. Based on the details of your complaint, it is clear to me that you are aware of the fact that it is advisable for consumers to carry out checks of the FCA Register and the FCA's scam warning list in order to try to protect themselves from fraud or from investing in products that may not carry the protections of the

Financial Ombudsman Service or the Financial Services Compensation Scheme.

16. You state in your complaint that you searched the FCA's scam warning list and could not find the firm in question, so you assumed it was safe to invest in it. It is not clear, however, whether you searched the FCA's Register, which lists all firms authorised to carry out regulated activities in the UK.
17. Upon checking the Register, there is no firm by this name which is or was authorised to carry out regulated activities. The fact that a firm offering investment opportunities to UK consumers is not listed on the FCA's Register should be a red flag to any consumer, prompting them to take further steps, such as making direct enquiries with the FCA to ensure they protect themselves as well as possible from scams.
18. Whilst I appreciate that not seeing a warning about Firm X on the Register may have provided you with some comfort, this ought to have been considered because there was no authorised firm matching the details of Firm X. The FCA provides lots of useful information to consumers on its website about how consumers may protect themselves from losses and which firms are safer to invest with. Not all potential scams can be covered in these pages, but there is now a specific section on [cryptoasset investment scams, albeit this was published in its current place on 27 June 2018](#).
19. It would have been better for the FCA to provide you with further information, such as what is set out above, ultimately the decision was correct. For these reasons, I do not uphold your complaint in relation to Part One of the FCA's Final Decision.
20. Turning to Part Two of the FCA's final decision, the warning that was on the FCA's website for about 12 months. The FCA had explained that Firm X was not regulated. Work was carried out to establish whether any of the firm's activities fell within the remit of the FCA, that is, if they were carrying out regulated activities in relation to specified investments, and it was found ultimately that they did not.
21. However, *"The City of London Police, with whom we had been working closely with was investigating Firm X. And at the City of London Police's request, we*

*published a consumer notice in September 2016 on our website informing consumers about the potential risks of dealing with Firm X, and the City of London Police's investigation, and encouraging potential victims to contact Action Fraud."*

22. It is clear, that whilst the firm was not deemed to be carrying out regulated activities, the FCA felt it appropriate to issue a warning on its website to try to protect consumers and to leave it there for 12 months.
23. The FCA's conclusion, "*Based on the findings above, that Firm X was not a regulated firm, and we published a warning notice on our FCA website to warn consumers of the potential risks of the firm at the request of the City of London Police was on our website for 12 months, I will not be upholding your complaint.*" is merely a reiteration of what happened, as opposed to an explanation or a rebuttal of any allegations.
24. The FCA has a warning list to notify consumers about any firms that appear to be acting without authorisation or which might pose a risk to consumers. There are a number of firms on the warning list that claim to be trading cryptocurrencies (not a specified investment) and these warnings go back many years. It was therefore not clear why the FCA had decided to completely remove the warning about Firm X after 12 months, as opposed to leaving it up or amending it, if required.
25. I therefore asked the FCA to provide me with its policies and procedures for deciding which firm (authorised or unauthorised, clone, scam etc) to publish a warning notice about, as well as its policy for taking these warnings down.
26. In addition to this, I asked the FCA to provide a detailed explanation as to why this particular warning notice was removed, when others like it stay up for many years. I found the FCA's response to Part Two of your complaint, which states that "*in [the] absence of the article you referred to in part two of your complaint, I have been unable to consider this allegation*" inadequate. Whilst the complaint investigator may not have had access to the article you refer to in your complaint, they had access to internal records which would have allowed them to investigate and decide about this complaint point.

27. Considering the complaint overall, I did not believe it was necessary for me to refer Part two back to the FCA for a Stage One Investigation and I also asked the FCA to provide me with the above information so that I can comment on the issues in my final report.
28. In its response, the FCA explained that there is a material difference between the alerts currently on its website, all stating that the cryptocurrency firms named in the warnings are carrying out or claiming to be carrying out an activity which falls within the remit of the FCA, whereas Firm X's activities fell outside of its "perimeter" and therefore remit. As a result, I have reviewed a number of current alerts and they do all contain the wording *"This firm may be providing financial services or products without our authorisation. You should avoid dealing with this firm and beware of potential scams."* The wording in the alert issued for Firm X did not.
29. The FCA added – *"The alert remained for as long as the FCA felt that it could support the position in absence of any direct evidence of breaches of its rules...we informed CoLP that we had to remove the alert as we had no proper basis on which to keep it up on our website."*
30. Finally, the FCA confirmed that it did not take down the warning because of receiving a payment from the firm as alleged by you, but that the warning was taken down as a result of Firm X the City of London Police not proceeding with its investigation of the firm any further.
31. Having reviewed the information and answers provided, I believe the FCA took additional steps to its usual processes when it published the warning on behalf of another law enforcement agency and took the warning down when it did as it did not have a lawful basis of keeping it up in light of the developments of the City of London Police's investigation.
32. The FCA also confirmed that because of the apparent confusion about why this warning was published and why it was taken down it no longer publishes warnings on behalf of other agencies, only when its own rules are being breached.

33. On review of the documents, I accept that the FCA's intentions, when publishing this notice, were consumer focused, but as the activities carried out by the firm, keeping it on its website was not possible.
34. It is also understandable that consumers like you or consumer groups would have been confused by this particular notice being taken down or indeed been critical as a result, because you did not have access to the information I was provided with following my enquiries, but I accept that the reason for taking down the warning was as set out in the detailed responses to my questions, rather than because the FCA was paid £40,000.
35. 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. 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.

*My decision*

36. I uphold your complaint in relation to Part Two of the FCA's final decision as its response did not appropriately address your complaint. However, having received responses to my queries, I find that the action to take down the warning was a reasonable step to take considering the circumstances.
37. I do not uphold your complaint in relation to Part One of the FCA's decision.

Amerdeep Somal

Complaints Commissioner

18 August 2023