

14 June 2023

Final report by the Complaints Commissioner**Complaint number 202300010***The complaint*

1. On 13 April 2023, you asked me to review a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

My understanding of your complaint is that you are unhappy with the FCA's actions in relation to a firm called X. You have said that you are an investor with the firm, and you have been impacted by FCA's actions as you have received no income for the last 9 months. This is because the FCA has frozen the firm's accounts as it has alleged that the firm has acted unlawfully.

You have explained that the firms' case is subject to a high court case and as such you do not feel that the FCA should be sending information to investors which declares that Firm X have acted unlawfully before this has been determined by the courts. You also feel that the FCA are taking too long to conclude the matter on its part.

You have not stated the remedy or outcome you are seeking from this complaint.

What the regulator decided

3. The FCA did not investigate your complaint, it said:

After carefully considering the information you have provided, we have concluded that this is not a complaint we would investigate under the Complaints Scheme.

Paragraph 3.5 of the Complaints Scheme provides that we will not investigate complaints that we reasonably consider amount to no more than dissatisfaction with our general policies or with the exercise of, or failure to exercise, a discretion where no unreasonable, unprofessional or other misconduct is alleged.

Your complaint relates to our enforcement actions in relation to a regulated firm, which we consider amounts to being dissatisfaction with our regulatory decision making / oversight of this firm but without any unreasonable, unprofessional or other misconduct being alleged. Accordingly, this is not something we will investigate under the Scheme.

I am really sorry to hear that you have been financially impacted by the actions of the FCA. Whilst I have not investigated your complaint formally under the Scheme, I have liaised with the area of the FCA most closely connected to your complaint in order to provide you with a general response to the matters raised.

As you will be aware from the FCA's 7 February 2023 press release the FCA has commenced High Court proceedings against an unauthorised investment firm and its sole director, Mr Y, in order to recover money for victims of the firm's unlawful activity. Further details of the allegations can be found [here](#).

The FCA has obtained undertakings equivalent to interim orders freezing Firm X/Mr Y's remaining assets. This action has been taken with the aim of protecting investors pending seeking final orders compensating approximately 13 lenders who lent money to Firm X and many others harmed by Firm X's unlawful investment promotion.

Despite this, investors who lent money to Firm X are likely to suffer very significant losses. Exact figures cannot be given at present, but Firm X's remaining assets appear to be far below what would be required to all investors' money.

No date has yet been set for the High Court trial concerning the restitution order. The FCA is seeking to resolve all matters as quickly

as possible. But the legal proceedings will take time. Only after they are successfully concluded will it be possible to return such funds as can be recovered to investors.

I am aware that you have been liaising with our Unauthorised Business Department and I can see that in their last update to you on 24 March 2023 they explain that they have been checking the position with our department. The team are working hard to resolve the issue, but the FCA is very limited in what we can say at this point due to the confidentiality restrictions we are bound by under the Financial Services Market act 2000.

They have also advised that the FCA is at a stage in the proceedings where the High Court rules don't provide for a trial date to be set. As indicated in the Press Notice High Court proceedings can take a significant amount of time.

If and when there are further developments, the team have said that they will update investors as soon as possible. Unfortunately, there is nothing further that can be added.

I appreciate this may not be the outcome you were hoping for and information that you have already been privy to but as explained the FCA is limited in what it can share. More information about the legal and policy restrictions that may limit the information we will be able to share with you can be found here:

<https://www.fca.org.uk/freedom-information/information-we-can-share/>.

Why you are unhappy with the regulator's decision

4. You have asked me to review the FCA's decision.

My analysis

5. You have told me:

They have failed to acknowledge that their communication with me contains FCA assertions that pre-judge the outcome of the court case Firm X.

Even in their response they state:

“This action has been taken with the aim of protecting investors pending seeking final orders compensating approximately 13 lenders who lent money to Firm X and many others harmed by Firm X’s unlawful investment promotion.”

Yet again, prejudging the outcome.

I am aware that Firm X’s solicitors have previously asked the FCA not to send this type of communication to investors to no avail.

Apart from this Firm X’s funds have now been frozen for more than 9 months and I am not convinced that there has been any urgency to conclude this matter.

They state that they are trying to protect the investors, but this protracted process is actually causing financial hardship.

the FCA are not willing (for “legal reasons”) to indicate how long the process will take.

It appears that the FCA can freeze accounts indefinitely – is this the case?

6. Whilst I sympathise with your situation, the complaints investigator at the FCA was right to say your complaint is excluded from the Complaints Scheme, as a result I am unable to investigate your complaint.
7. Although your complaint is excluded from the Complaints Scheme, I am pleased to see the complaints department within the FCA have liaised with the relevant department in order to provide you with as much information they can on your complaint.
8. I appreciate you are unhappy with the response you received from the FCA and you have further questions, however, this is not something I can look into under the Scheme.
9. In response to my preliminary report you have told me:

There is no mention of the FCA pre-judging the outcome of the court case.

There is no answer to my question regarding how long funds can be frozen. It is now nearly 12 months since the assets were frozen.

As I have outlined above, your complaint is excluded from the Complaints Scheme, as a result I will not be investigating your complaint and cannot provide you with answers to the questions you have raised.

My decision

10. Your complaint has not been investigated as it is excluded from the Complaints Scheme.

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Complaints Commissioner

14 June 2023