

02 August 2023

Final report by the Complaints Commissioner**Complaint number 202300150***The complaint*

1. The FCA issued a decision letter to you on 25 April 2023 and you wrote to my office on 2 May 2023 setting out that you were unhappy with the decision and that you would like me to investigate your complaints.

What the complaint is about

2. The FCA set out in its decision letter that your complaint was as follows:

...you are unhappy with the advice you have received from the FCA's Supervision Hub on 17 September 2021, 22 and 24 February 2023 which you feel is contrary to the Financial Services Market Act 2000 (FSMA) standards.

You have alleged that the FCA has failed to comply with its functions under FSMA by failing to bring criminal proceedings Firm X and obliging them to return your money of £XXXXXX and compensate you for the damages they have caused us in accordance with the terms of section 26 of FSMA.

To resolve your complaint, you are seeking for the FCA to:

1. Review your application with evidence and remedy the FSMA breach by Firm X.
2. Oblige Firm X to refund your money of £XXXXXXXX and compensate you for the damages caused.
3. Report the decision taken to carry out its functions in accordance with FSMA.

What the regulator decided

3. In its decision letter the FCA said:

For the Supervision Hub's service between September and November 2021 - I have concluded that this is not something I could investigate under the Complaints Scheme. This element of the complaint was not brought to the FCA within 12 months of the date on which you first became aware of the circumstances giving rise to the complaint.

I did not uphold the complaint point relating to the Supervision Hub's service in February 2023. This is because the relevant and correct actions had previously been taken in relation to your query and there is nothing further, they can do to help you with it.

Why you are unhappy with the regulator's decision

4. In your email to my office on 2 May 2023 you asked that I consider your complaint with evidence of offences that relate to FSMA and ROSA committed by Firm X.
5. You also asked me to appoint an independent officer to investigate, under your supervision, the criminal offences committed by Firm X.
6. Finally, you asked me to recommend that the FCA rectify the matters complained of.

My analysis

7. Firstly, I am sorry to hear about the substantial losses that you have experienced as a result of your investments in a fraudulent unregulated collective investment scheme (UCIS). I am sympathetic to your losses and I do appreciate why you continue to pursue your losses.
8. I have reviewed the decision letter issued by the FCA that you have asked me to review alongside the information that you have provided to me as well as having had access to the FCA's complaint file. The FCA's decision was that it

would not investigate Part One of the complaint. It relied on paragraph 3.3 of the Complaints Scheme which provides that complaints should be made within 12 months from the date on which the complainant first becomes aware of the circumstances giving rise to the complaint.

9. I can accept complaints which are out of time if I feel there is good justification. Having said that it is not practical for the Complaints Scheme to have an indefinite open time frame for lodging complaints. That is why the Scheme requires complainants to lodge a complaint within twelve months of becoming aware of the circumstances giving rise to their complaint. This ensures that an investigation into the complaint can be conducted at the time of, or close to the originating events of a complaint. The Complaints Scheme does not have unlimited resources; however, I always carefully consider cases where paragraph 3.3 has been used to ensure that it has been used appropriately and not being used to avoid addressing complaints, and I confirm I have done so in this case.
10. In your email to my office you have provided your detailed reasoning as to why you consider that the FCA should investigate your complaint. Having reviewed all of the available information, I am satisfied that the position set out by the FCA in its decision letter in relation to this aspect of your complaint concerning the events in 2021 was appropriate and I have **not upheld** your complaint. I will set out my reasoning below.
11. You were originally in contact with the FCA about the issues relating to your complaint between September to November 2021, having first pursued the matters with the Solicitors Regulation Authority (the SRA). The FCA responded to you at that time and informed you that the firms you had identified were not authorised by the FCA. It acknowledged that Firm X did appear on the FCA register as an exempt professional body, and correctly identified to you the appropriate regulator to contact in relation to the actions of Firm X was the SRA.
12. As noted, you were already aware of this having been engaged with the SRA since 2016 in relation to this matter. You were also aware at this time that the SRA had taken action against the relevant employees of Firm X to the Solicitors Disciplinary Tribunal and that a final judgment on the matter had been issued in

2019. The fact that you were not able to obtain the resolution you desired through the SRA does not change the fact that they were the appropriate regulator to investigate the actions of Firm X and did so.

13. I have not seen in any of the 2021 correspondence between you and the FCA that the FCA told you that the SRA could pursue Firm X in criminal proceedings. In fact, I note that it informed you that it could not assist you with your individual case of fraud and directed you that this was a matter for the police and that you had taken the correct steps having already reported to the Serious Fraud Office (SFO) and other relevant bodies.
14. As such I consider that you were aware of the circumstances surrounding your complaint in 2021 when you contacted the FCA, and it was your decision to try and pursue the matter with the SRA again, knowing that they had already investigated the matter and provided you with its response. I do not consider that your decision to do that precluded you from pursuing your complaint with the FCA at that time. Your assertion that you waited until the outcome of the further SRA investigation is not relevant. As such I am satisfied that it was appropriate for the FCA to set out in its decision letter that you had been aware of the circumstances of your complaint for over 12 months and that pursuant to 3.3 of the Complaint Scheme that you were out of time to raise a complaint in relation to the 2021 correspondence and that you had not provided reasonable grounds for the delay in making your complaint.
15. I note that in your response to my preliminary report you have set out that you consider that the FCA was in breach of 5.7 and 5.8 of the Complaint Scheme because it did not advise you of your right to refer your complaint. I note that you made your complaint to the FCA on 8 March 2023. It is not correct your complaint was not referred to a different area of the FCA to handle as it was investigated by the FCA's Complaints Team. As such there was no requirement to refer you back to the Complaint Scheme under paragraph 5.8. You were correctly referred in the FCA's Complaint Team's decision letter to my office pursuant to 6.9 of the Complaint Scheme.
16. I note that when you contacted the FCA in 2021, it informed you that it had passed on the information you had provided in relation to Firm X and the UCIS's

to its Unauthorised Business Department. The information was passed onto this team because it related to a firm that was not authorised by the FCA. I note that in your response to my preliminary report you still set out that Firm X is authorised by the FCA, this is not correct. The FCA also informed you at this time that it would not be able to provide you with any feedback on how it had followed up the information you had provided to it due to confidentiality restrictions.

17. The fact that the FCA does not provide updates, does not mean that the FCA has not done anything with the information you provided to it. In my role as the Commissioner, I am provided with access to the FCA files in my review of your complaint. Like the FCA I am limited in what information I can share with you due to confidentiality restrictions, however I can confirm that the information you provided was passed onto the appropriate department to action. I hope that this provides you with some assurance that the information you provided was relayed to the relevant department even if you will not be updated on any action that may or may not have followed.
18. In view of the reasoning I have set out above, I consider that the position set out by the FCA in its decision letter was also correct, that it did not uphold the complaint point relating to the Supervision Hub's service in February 2023. This is because the relevant and correct actions had previously been taken in relation to your query and there is nothing further, they can do to help you with it.
19. The key resolution you seek to your complaint to the FCA is to be refunded the money you lost by investing in the UCIS. The FCA does not investigate individual fraud claims and as such this is not a resolution that you will be able to obtain through the Complaints Scheme.
20. Finally, I note that you have written to my office to inform me that you have newly discovered evidence of the wrongdoing of the managers of Firm X. Whilst I have not felt it necessary to have sight of this information in preparing this preliminary report, you may wish to consider providing all relevant information to the FCA to further evidence any regulatory breaches that may have occurred. Whilst it cannot pursue your individual matter it does not mean

that it cannot pursue regulatory action if sufficient and relevant evidence is received but only the FCA can decide.

My decision

21. I agree with the FCA's decision not to investigate your complaint in relation to the events that took place in 2021 and I will also not investigate it. I have not upheld your complaint in relation to the FCA advice given in 2023 or that it has failed to comply with its functions under the FSMA.
22. This is my final report about your complaint and concludes my investigation.

Amerdeep Somal
Complaints Commissioner
02 August 2023