

29 August 2023

Final report by the Complaints Commissioner**Complaint number 202300230***The complaint*

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

What the complaint is about

2. You are unhappy with the FCA's actions connected with Firm X. In particular, you are unhappy that the FCA decided to close its investigation into Firm X and made a decision not to proceed to prosecution on the basis of the test for Crown Prosecutors. You have asked me to review the necessary level of evidence needed for the FCA to proceed to prosecution (Element One).
3. You feel that the FCA does not systematically share information between departments (Element Two).
4. You disagree with the FCA's position to not normally refer a matter to another agency after an investigation has been concluded and where a decision has been made not to proceed on the basis of the test for Crown Prosecutors (Element Three).

What the regulator decided

5. The FCA did investigate a complaint from you connected to its actions with Firm X, but it did not investigate the complaint elements in the way you have posed them to me. Therefore, the FCA has not had an opportunity to formally respond to the points you make above.
6. Usually, under the Complaint Scheme to which both the regulators and I operate to, it is desirable for the regulator to conduct its own investigation first, as that is usually the best way to resolve matters.

7. In this instance, I have decided not to refer your complaint points to the FCA and will address them directly in this report, for the reasons I provide below. You and the FCA will be able to comment on my preliminary report.

My analysis

Element One

8. The FCA has explained to you that:

The FCA's investigation led to the identification of key suspects who were located outside the UK or who are now deceased, which therefore prevented further action being taken. We obtained, reviewed and analysed a large quantity of material from the firms under investigation, gathered material from consumers and banking data. Our review of this material found that there was insufficient evidence to provide a realistic prospect of conviction. The FCA is also aware that the firm is in liquidation....

The decision not to proceed to prosecution is made following consideration to the Code for Crown Prosecutors on the basis of the Crown Prosecutors' test (evidential sufficiency and in the public interest); the decision to prosecute is based on many factors, not all of which are in the public domain which I am sure is frustrating for you.

As you are aware the decision not to prosecute was subject to a review under the Code of Practice for Victims of Crime. The reviewer was independent, with no prior knowledge of the case, and the reviewer concluded that the original decision to close the criminal investigation was not wrong.

9. You feel I should review the evidence available to the FCA and the independent reviewer and determine 'what is the necessary level of evidence for the FCA to take action against a company's director'.
10. The necessary level of evidence for prosecution in the public interest has already been determined through the Crown Prosecutors test. I suspect your complaint is whether it was reasonable for the FCA not to proceed to prosecution, i.e. did it apply the test correctly.

11. In essence, you are asking me to review the FCA Enforcement investigation and determine whether the Crown Prosecution test has been met or not (notwithstanding the fact an independent reviewer has already done such a review).
12. I do not agree that this is something I can do under the Complaints Scheme, and my view is that your request is for an action on my part which is excluded under the Complaint Scheme. Although I am not going to formally investigate your complaint, I can see from the evidence available from the FCA file that the FCA has undertaken a considerable effort during its investigation, and I am pleased that it also engaged with an independent reviewer to corroborate its final decision not to proceed to prosecution, which I hope provides you with comfort that due process has been followed.

Element Two

13. You feel that the FCA does not systematically share information between departments. You say this is because you were contacted by a department within the FCA about Firm X which you claim was not aware you had been in contact with another department within the FCA.
14. Your original complaint to the FCA was different in that you said you were unhappy that you were not contacted immediately when the FCA investigation started into Firm X.
15. The FCA did not uphold this complaint. It said that:

The FCA appointed investigators from the Unauthorised Business Department on 10 March 2020 to conduct an investigation into [Firm X]. The investigation gathered a large amount of information which the team required time to understand and then formulate an investigative strategy. Analysis of the collated data enabled the case team to identify potential consumers to contact resulting in multiple first contact / introductory emails being sent. You were identified as one of those consumers. Case team records show an email with an attached consumer questionnaire was sent to your email address on 30 March 2021. No apparent reply was received. After a review by the case team and second attempt to engage with identified consumers, a further email was sent to you on 30 March

2022. You responded and engaged with the case team providing investment details and documentation for which we are grateful.

16. Your complaint to me seeks to approach the matter from a different angle but in my view it constitutes a distinction without a difference. I find the FCA's explanation about what happened during the course of its investigation reasonable, and I do not think you or the investigation were adversely affected by the interaction between departments with respect to your contact details. Therefore I do not think there is any merit in reviewing this matter further.

Element Three

17. The FCA explained to you that in general it does not normally refer a matter to another agency after an investigation has been concluded and where a decision has been made not to proceed on the basis of the test for Crown Prosecutors.
18. It also said that in this instance it had approached another agency to provide it with information but that due to confidentiality reasons it could not give you more information.
19. It said both the appointed liquidator, or you could of your own accord, refer a matter to the Insolvency Service (IS). You have said to me that you have done this, but you have expressed a view that perhaps the FCA ought to have referred to the IS. You have also provided me with an email from the Supervision Hub which says the FCA will not be able to share your concerns with other agencies: however, that is beside the point. The FCA shares its own concerns rather than consumer concerns: the latter would need to do this themselves.
20. This is not a point you have raised with the FCA: namely, a dissatisfaction with the FCA's policy. This would be excluded under section 3.5 of the Scheme, because it amounts to general dissatisfaction with the regulator's general policies. I have, however, liaised with the FCA to obtain more information in order to be helpful. The FCA confirms:

We do work collaboratively with other agencies on a case by case basis, where appropriate. Agencies are normally involved during the investigation stage, and would therefore be updated at the conclusion.

Annex 2 of the Enforcement Guide, [The Enforcement Guide \(fca.org.uk\)](https://www.fca.org.uk) which forms part of the FCA Handbook, as well as this link from the FCA website, ([Enforcement | FCA](#)) give more information about the other agencies we may work with.

21. Although your complaint can not be investigated under 3.5 of the Scheme, I refer you to the fact the FCA has confirmed to you that it has already involved another agency in its work on this case, although no formal referral has been made. I hope this will give you the necessary reassurance you seek.

My decision

22. For the reasons given above, Element One of your complaint is excluded under the Scheme and Elements Two and Three will not be investigated under the Scheme.
23. I appreciate you feel strongly about the issues you raise and you have written to me on a number of occasions but I have not seen any grounds to change my decision.

Amerdeep Somal
Complaints Commissioner
29 August 2023