

20 March 2024

Final report by the Complaints Commissioner**Complaint number 202300333***The complaint*

1. On 12 July 2023, you submitted a complaint about the FCA to my office.

Your complaint to the FCA

2. The FCA described your complaint as follows:

“You’ve informed us that you invested in FutureFuel Renewables II plc (FFII) after being introduced to it by an ‘FCA regulated firm’, Aymya Ltd. FFII have since gone into administration and is currently the subject of a fraud investigation by the Metropolitan Police as it’s alleged that the directors embezzled the funds raised from the retail investors.

It’s your belief that the FCA ignored or failed to act upon clear warnings of Aymya’s boiler room scam from as early as March 2017. As a result of this, you have lost £120,000 in capital.

To resolve your complaint, you would like your capital to be reimbursed plus any accrued interest which you may be entitled to.”

What the regulator decided

3. The FCA deemed your complaint out of time and declined to investigate it by referring to Paragraph 3.3 of the Complaint Scheme which says “complaints should be made within 12 months of the date on which the complainant first became aware of the circumstances giving rise to the complaint. Complaints made later than this will be investigated under the Scheme only if the complainant can show reasonable grounds for the delay”.

4. The FCA explained that Amyma had been an appointed representative (AR) of an FCA authorised firm X between 2018 and 2019 and later wound up its business voluntarily on 27 May 2020.
5. The FCA also said:

“News of our response and actions regarding Amyma have already been in the public domain for a number of years, such as the Independent article that you have referenced which was published on 22 October 2021. Considering this, it would appear that you were aware of the issues giving rise to this complaint before 22 March 2022, however, your complaint was not submitted until more than 12 months later”.
6. However, although the FCA did not investigate your complaint, it provided you with detailed information about its involvement with the firm in order to be helpful, and advised you to pursue your claim for losses through the principal (X) of Amyma if you had invested whilst the firm was an AR.

Why you are unhappy with the regulator’s decision

7. You claim that you only became aware of fraudulent activity at FFII in April 2022 as a result of an administrators report, which in turn prompted you to undertake research into both FFII and Amyma. It was only then you realised that Amyma had been in the news in previous years. Therefore, you feel your complaint is within time because you did not become aware of the actions or inactions of the FCA in connection to Amyma until after April 2022.

My analysis

8. The previous Complaints Scheme (March 2016) says at paragraph 3.3:

“Complaints should be made within 12 months of the date on which the complainant first became aware of the circumstances giving rise to the complaint. Complaints made later than this will be investigated under the Scheme only if the complainant can show reasonable grounds for the delay.”
9. The time limit starts running when the complainant becomes aware of action or inaction by one of the Regulators.

10. The FCA should consider when you became aware of actions or inactions by the FCA. This is a question of fact which the FCA must determine on the basis of relevant evidence.
11. Neither paragraph 2.4 of the 2023 Scheme nor paragraph 3.3 of the 2016 Scheme enable the Regulators to reject complaints on the basis that the complainant should or ought reasonably have known that they had cause to complain more than 12 months before submitting their complaint (for example because there was sufficient information in the public domain). That alternative test cannot be read into the wording of the Scheme.
12. The test is based on actual knowledge (the person knew) rather than constructive knowledge (a reasonable person would have known). Although actual knowledge is a fact which may for this purpose be determined from evidence on the balance of probabilities, it is a much more difficult to establish than constructive knowledge. The wording of the Scheme is clear that the Regulators must consider when the complainant themselves actually first became aware of the issues (or circumstances).
13. The FCA and I must decide on the basis of the available evidence when, on the balance of probabilities, you became aware that there was a basis to complain to the regulator about some action or inaction by the Regulator.
14. In this case the FCA decided that the you must have known of the issue/circumstances, given in their view there has been widespread national media coverage of a failure by the regulator with respect to Amyma.
15. I do not agree with the FCA decision. The fact that that Amyma and the FCA's actions in connection with the firm had been in the news previously is irrelevant if you claim not to have read it and on the balance of probabilities, I find your explanation plausible that you only became concerned about introducer Amyma when you obtained information that FFII were alleged to have operated fraudulently in April 2022.

My decision

16. For this reason, I recommended the FCA lift the time bar and investigate the complaint, however, if you made the investment Amyma was not an AR, this route may option may not be available to you. The FCA has accepted my

recommendation to review the case. Once it has issued a decision, if you are not satisfied with the outcome you may refer it to me for an independent review.

Rachel Kent

Complaints Commissioner

20 March 2024