

03 November 2023

**Final report by the Complaints Commissioner****Complaint number 202300367***The complaint*

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

*What the complaint is about*

2. You complained to the FCA that it had failed to supervise SIPP provider X properly and that it allowed X to enter administration and sell its loan book before paying out compensation to you. You say this amounts to 'sacrificing the few for the many', and that you are one of the people who did not receive compensation as a result of a FOS award in your favour.

*What the regulator decided*

3. The FCA did not uphold your complaint. It said it was satisfied that its 'supervisory team acted on the information they received and worked with the firm to try and understand the capital position and address issues as they arose', but it could not tell you what actions the FCA took due to confidentiality restrictions. The FCA said that when it became evident to the directors of the firm it was insolvent, the latter placed it in administration: 'Once Firm X's directors received professional advice that the company was insolvent, their position is primarily governed by insolvency legislation. If an insolvent firm makes redress payments to its customers, it could possibly be breaching insolvency law because such payments may have given preference to those creditors over others, which is not allowed.'

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

4. You have said to me that you do not understand why the FCA took two months to tell you it 'can't tell you anything' and if it knew it was bound by confidentiality

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restrictions, what was the point of the investigation and keeping you waiting (Element One)

5. You still don't know what actions the FCA took to protect investors such as yourself and feel that the FCA 'did nothing' for a number of years whilst the FOS decisions were being made against the firm (Element Two)
6. You continue to feel that the FCA should not have allowed the firm to enter administration without paying its FOS awards and you feel you have been 'sacrificed' as one of the 'few for the many' (Element Three)
7. You are also unhappy with the length of time both the FCA and my office has taken to review the complaint (Element Four)

### *My analysis*

#### Element One

8. As the FCA has informed you, the regulator welcomes information from people who report concerns. However, as you were told, the FCA does not generally say what action it has been taken in response to the information that it receives. This is because section 348 (s.348) of the Financial Services & Markets Act 2000 (FSMA) classes some information the FCA holds about firms as confidential, and restricts how that information is dealt with. In addition to this, any information that is not restricted by s.348 FSMA may be restricted due to the FCA's policy on sharing information about regulated firms and individuals, who also have legal protections.
9. You have asked what the point of an investigation is if you can't be told what actions the FCA took, and why you weren't told from the outset 'you wouldn't be told'.
10. I have seen the FCA acknowledgement of your complaint in a letter to you dated 23 May 2023. The FCA tells you that it will begin investigating your complaint but also, to manage your expectations, says that 'there may be information we review during the investigation of your complaint that we may not be able to share with you.' It then provides more explanation on this point and refers you to the relevant section of its website for further clarification. In my

view, the FCA did inform you that there may be information it would not be able to share with you at the very beginning of its investigation.

11. You now ask what the point of this investigation has been if you are non the wiser about what the FCA did (or did not do). I appreciate it is frustrating for you not to know the outcome of the FCA's investigation on the concerns you submitted. But that does not mean that there was no point in the FCA investigating.
12. Whilst I recognise you may have obtained little satisfaction personally from the outcome of the investigation, these investigations are important because the FCA may identify deficiencies in its supervision of firms which require addressing.
13. The FCA has investigated the concerns arising from information you provided for the purpose of considering whether or not regulatory action towards the firm is justified and whether its regulatory approach is adequate, rather than whether or not you require redress: whether that is compensation or information about what the FCA did.
14. So, although you may not have personally benefited, these investigations can lead to identification of issues which need addressing, and which addressed appropriately, in turn have the potential to benefit the community at large going forward.
15. Therefore, I do not uphold your complaint that the investigation into your complaint is pointless, although I appreciate your frustration at not being told what the FCA's actions were so frustrating for you.

## Element Two

16. 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. On occasions, I have persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible.

17. Based on the information I have seen in this case, I am satisfied that the FCA's complaint response was reasonable in the circumstances and that its supervision of the firm was appropriate. Therefore I do not uphold your complaint that the FCA's supervision of the firm was inadequate. I realise that this leaves you with concerns and unanswered questions but I hope you will be reassured that I have reached this conclusion after independently reviewing the confidential material.

#### Element Three

18. The FCA has explained to you that once the firm was placed into administration, it could not pay its FOS awards as it could possibly be breaching insolvency law because such payments may have given preference to those creditors over others, which is not allowed. Therefore, it is not the case that the FCA 'sacrificed the few for the many'. It is insolvency law, not the FCA which determines whether you got your payment from the firm.
19. If your query is why the firm entered administration, it was, as the FCA explained to you, because it took legal advice on the basis on which it determined it was unable to meet its obligations as they fall due. The FCA is unable to prevent firms from going into administration or liquidation if they become insolvent.
20. For the reasons above, I do not uphold your complaint.

#### Element Four

21. I appreciate you feel there have been delays in the review of your complaint. However, it has taken both the FCA and me eight weeks to review your complaint which is in line with service standards of both organisations. I appreciate you would have wanted your complaint to be reviewed sooner, however, that is not a reason to uphold your complaint. I am sorry to disappoint you but your complaint is not upheld.

*My decision*

22. I have not upheld your complaints for the reasons given above. I appreciate you remain unhappy with my decision and frustrated at not having access to more information about what happened, however, as I explained above, there are confidentiality restrictions in place.

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Complaints Commissioner

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