

28 September 2023

Final report by the Complaints Commissioner**Complaint number 202300383***The complaint*

1. On 16 August 2023, you asked me to review a complaint about the FCA.

What the complaint is about

2. On 7 December 2022 you complained to the FCA about three matters, one of which you have referred to me for review, and which the FCA summarised as follows:

You are unhappy following the FCA's actions against a firm (Firm A). You say the FCA have an asset freezing order against their assets, and the FCA should distribute the funds to investors. You have an investment of £350,000 with Firm A, which is backed by another firm (Firm B). However, Firm B will not look at claims until the FCA disclose what assets are in the accounts. You've been told by an associate that the court will instruct the FCA to distribute the funds back to investors, regardless of the outcome – so you feel the funds should be distributed now as there's little point in waiting for the court case to finish.

What the regulator decided

3. On 27 January 2023 the FCA issued a decision letter with reference 208739586 and did not uphold the complaint above. It explained that:
4. 'The FCA began an investigation into Mr X of Firm A in 2021 over concerns of breaches of the Financial Services and Markets Act 2000 (FSMA). On 10 June 2022 as part of the ongoing investigation, the FCA obtained a court undertaking from Mr X and Firm A. The effect of this was suspending access to funds contained within said accounts. The court undertaking is a legal document, any

breach of the order would be a contempt of court, therefore whilst the court undertaking is in effect the funds cannot be accessed.

5. The FCA took the action to freeze the UK assets of Mr X and Firm A to prevent whatever remains of them from being disposed of during the legal process. This protects the interest of all investors owed money by Firm B not just Firm B. Had the FCA not frozen the assets it would have left Mr X and Firm B free to dissipate them risking even greater potential losses to the investors’.
6. The FCA also explained to you that no funds can be released from the frozen accounts until a court makes an order to allow that to happen.
7. The FCA decision letter made it clear that if you were unhappy with the decision, you ought to contact the Complaints Commissioner within three months of the decision letter date.
8. You did not contact the Complaints Commissioner within three months of that letter. On 8 August 2023 you contacted the FCA by telephone to complain again. You said you were unhappy with the way the FCA handled Mr X of Firm A, as you allege he has ‘done a runner’ and that he should have been arrested. You further said that although the FCA had frozen the account there was no money in it anyway so it was pointless.
9. The FCA responded to your complaint on 16 August 2023 saying that it ‘concluded that this is not a matter we would investigate under the Complaints Scheme. This is because we have already considered the substantive matters which were the subject of your complaint (our ref: 208739586). You were provided with our conclusion on these matters in our letter dated 27 January 2023’.

Why you are unhappy with the regulator’s decision

10. You then referred your complaint to me on 16 August 2023 to reiterate you were not happy with how the FCA had handled matters with Mr X.

My analysis

11. Your original complaint on 7 December 2022 to the FCA was about the fact it took the action to freeze the assets of Mr X and firm A. The FCA issued a

decision on this complaint and did not uphold it. You are out of time to refer this complaint to me, however, for the purpose of transparency and completeness, I will say that I do not find the FCA's position on the matter as detailed in its letter of 27 January 2023 unreasonable, for the reasons it gives.

12. I note you have not, in any event, referred this matter to me. You have raised what I consider to be a different complaint on 8 August 2023 with the FCA and again with my office on 16 August 2023.
13. Your concern now is how the FCA is handling its ongoing investigation into Mr X of Firm A. You do not think the FCA is doing a good job and that the investigation appears to be too slow.
14. My office has liaised with the FCA to explain my view that you are complaining about a new matter. As you are aware, there is currently an ongoing investigation into Mr X of firm A over concerns of breaches of the Financial Services and Markets Act 2000 (FSMA). The FCA has provided me with an update and I can see that matters are being progressed, however, neither the FCA nor I am able to share with details about an ongoing regulatory investigation due to confidentiality restrictions. The FCA has already made you aware of this.
15. Complaints such as yours, connected with, or arising from, ongoing regulatory action by the FCA are normally deferred under paragraph 3.7 of the Complaints Scheme (unless there are exceptional circumstances) which provides that a complaint which is connected with, or which arises from, any form of continuing action by the regulators will not normally be investigated by either the regulators or the Complaints Commissioner until the complainant has exhausted the procedures and remedies under FSMA (or under other legislation which provides for access to the Scheme) which are relevant to that action.
 - a. It may be helpful for me to explain the objective which underlies paragraph 3.7. The objective is to ensure that a complaint investigation does not cause detriment to, or prejudice, any ongoing work by the FCA. Such interference may inhibit the FCA from achieving its statutory objectives in a timely manner.

- b. The thinking behind it is that undertaking a complaints investigation at the same time as doing an Enforcement investigation (that is, an investigation which might lead to action against regulated individuals or firms) could have two adverse consequences: it could divert resources away from the regulatory investigation, and/or it could prejudice the regulatory action.
 - c. FCA Enforcement investigation is active. It seems to me likely that that investigation will produce material which is relevant to the consideration of your complaint. I also consider that it would be unhelpful if the FCA Complaints Team were to undertake a parallel investigation into these matters.
 - d. It is likely that the regulatory action will produce material which is relevant to your complaint.
16. On balance, I think it is better for the FCA to complete its investigation, and to that extent, I think it is reasonable to defer the review of your complaint until the conclusion of the FCA regulatory action. It is usually the case that it is better for the regulator to do so under paragraph 3.7, and there are no recorded instances of a Complaints Commissioner interfering with ongoing regulatory actions: the circumstances would have to be exceptional, which is not the case here. I would like to assure you that this deferral will not have any impact on you with respect to your eligibility to raise a complaint under the Complaints Scheme in the future, although there are limitations on what I can review in terms of the FCA regulatory investigations.

My decision

17. For the reasons explained above, my view is that your complaint is deferred until the FCA completes its investigation into Mr X and Firm A. I appreciate you are unhappy with the FCA investigation, but this is not a matter that either the FCA or I can reasonably look into now. Your complaint may be reviewed after the FCA concludes its regulatory investigation. The FCA has agreed to defer your complaint.

18. I understand you are unhappy with my decision, however, my office has emailed you to say that even though your complaint is currently deferred, you are not disadvantaged by this.

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Complaints Commissioner

28 September 2023