

26 June 2024

Final report by the Complaints Commissioner**Complaint number 202300546***The complaint*

1. On 19 October 2023, you asked my office to review a complaint about the FCA.

Your complaint to the FCA

2. In its letter of 6 September 2023 the FCA described your complaint as follows:

Part One

“You want to know whether the FCA has investigated the concerns you raised in your letter of 26 January 2017. Your complaint explains that you believe you invested £50,000 in a regulated investment scheme. You want an explanation / evaluation from the FCA as to the extent of any investigation of your concerns; mainly about the unregulated company A. You want that assessment to include / consider:

- Firm A
- The Fund Manager
- Unregulated Company B and Unregulated Company C
- an explanation of the differences between the FCA’s approach in this case compared to investigations by the FCA of collective investment schemes (CIS) and unregulated collective investment schemes (UCIS).

Part Two

You want the FCA to conduct a fresh investigation into Firm A and Unregulated Company B incorporating the information provided to it since

2017. You consider that investors would also have a right to know the outcome of such an investigation”

What the regulator decided

3. The FCA did not uphold your complaint. The FCA stated the following in relation to Part One and Part Two of your complaint.

“It may be helpful if I explain that the FCA takes several factors into account when deciding what type of action to take. Firstly, the quality of the intelligence is considered; then an assessment is made of the scale and severity of the potential harm and, importantly, the seriousness of the potential misconduct. If significant harm has been identified, then the FCA will consider what additional steps need to be taken to prevent further detriment. This may or may not include Enforcement action depending on the circumstances.

Additionally, even if further Enforcement action is not feasible, the FCA will retain and flag pertinent intelligence for future use. This will be collaborated with any future information which may then lead to further Supervisory or Enforcement actions.

Although I am unable to give you any detail of the actions of the FCA, I can confirm the intelligence received by the FCA was sent to the correct teams and I have reviewed the action taken by the areas. I am satisfied the intelligence was handled in the appropriate manner.

As explained in the letter to you from the CEO in 2017:

My colleagues in the FCA’s Supervision division will look into the role of Firm A and The Fund Manager, to assess whether they may have breached any rules or acted improperly.

I can confirm that neither of the other two main entities involved, unregulated company A and unregulated company C, are currently authorised by the FCA to carry on any regulated activities as defined in FSMA. One of my teams in the Unauthorised Business Department is in the process of reviewing the information you have helpfully provided us with to consider whether either of these entities may have been carrying on

any regulated activities in breach of Section 19 of FSMA, commonly referred to as the General Prohibition, which stipulates that firms carrying on regulated activities must be authorised by the FCA, or exempt. Firms found to be acting in breach of the General Prohibition are committing a criminal offence. Unfortunately, when consumers invest with an unauthorised firm, there is a real risk that their money will be lost, with little chance of recovery, and they will not have access to the Financial Ombudsman Service or Financial Services Compensation Scheme, if things go wrong.

I can appreciate that you would have liked the FCA to take action to enable you to regain your funds, or to have provided feedback to you. As the CEO explained in 2017 and again in 2021, we are unable to take action on behalf of individuals and are unable to give feedback or updates.

I note that you would like to understand why the FCA approach in this case has in your opinion been different compared to investigations of CIS or UCIS investments. Due to confidentiality restrictions I cannot give you any specific details of the investigations carried out into the concerns raised in 2017 or any other intelligence received about any firm or investment (regulated or unregulated).

However, I can confirm that the FCA carries out many investigations and each investigation is specific to the concerns raised and the nature of the concern, the type of firm and the relevant rules and legislation that applies.

I appreciate that you are seeking to understand the events that led to the loss of your funds and you are seeking details of the FCA's actions. I am sorry I am unable to provide you with the level of detail you require and I would like to acknowledge the frustration this must cause you."

Why you are unhappy with the regulator's decision

4. For ease of reference I have divided your complaint to me into "Elements" which I have considered in my report below.

Element One

5. The time the FCA have taken to reach a decision.

Element Two

6. You are unhappy because you feel the FCA isn't sharing any information with you about the way in which it investigated your complaint. You also state that the FCA used confidentiality reasons to not disclose information.

Element Three

7. You specifically mentioned to me in your complaint two of the entities you invested in (Unregulated Company B and the Alternative Investment Manager), including how and why the Directors and operators of the collective investment scheme caused investors like yourself to lose your money by taking risks. Essentially you feel that investors interests were not protected by the Managers, Directors and operators of the collective investment scheme.

Element Four

8. You feel the FCA has not investigated your complaint in a similar manner to other complaints regarding similar collective investment schemes.

Element Five

9. You state that the FCA's letter is directed to Mr & Mrs, whereas the complaint relates to a Mr and Mr. You feel this shows that the FCA Complaints Team have failed to take note of such detail regarding yourselves.

Element Six

10. You feel investors should be compensated for the failure of the FCA to supervise the collective investment scheme adequately and for allowing directors, Unregulated Company C and Firm A to establish and operate the investment scheme in a negligent manner.

Preliminary points

11. As it stands the Unregulated Company A is registered as a Small Registered UK Alternative Investment Fund Manager (AIFM), under regulation 10(1) of the Alternative Investment Fund Managers Regulations 2013. The Register of Small Registered UK AIFMs (updated 27th March 2024) is a public document which

can be accessed here: <https://www.fca.org.uk/publication/systems-information/aifmd-small-register.pdf>

12. Whilst Unregulated Company A is registered as a AIFM, Small registered UK AIFMs are not authorised persons as a result of their registration as small registered UK AIFMs and are not included on the Financial Services Register in relation to this business. A small registered UK AIFM need only:
- i. register with the FCA;
 - ii. provide information regularly on the main instruments in which it is trading and on the principal exposures and most important concentrations of the AIF in order to enable the FCA to effectively monitor systemic risk and
 - iii. notify the FCA in the event that it no longer complies with the qualifying conditions.

My analysis

Element One

13. You logged your complaint with the FCA on 18 June 2021 and received the FCA's decision letter on 6 September 2023. I understand your frustrations having to wait over two years to get an answer to your complaint. I can see the FCA apologised and offered you £250 in recognition of the delay caused. I think this is fair and reasonable, particularly when considering the FCA's approach to payments for complaint handling delays here: [Compensatory payments for complaint handling delays | FCA](#). So I do not think the FCA need to do anything further here in recognition of the delay caused.

Element Two

14. I understand why you have made the FCA aware of your concerns. It must be noted that the FCA welcomes information from consumers who report concerns. However, as the FCA communicated with you in the decision letter, they are unable to let you know what is done with the information you provided to them. 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. Equally 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. Under this policy the FCA will not normally disclose the fact of continuing action without the agreement of the firm concerned. There is a good explanation of the statutory and FCA policy restrictions on information sharing here <https://www.fca.org.uk/freedom-information/information-we-can-share>

15. 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.
16. I understand your concerns about the FCA not sharing information with you concerning the investigation and it citing confidentiality as the reason not to disclose information. The sharing of confidential information given to the FCA about firms is restricted by law under FSMA. However, I can tell you that I have seen the FCA file and I can confirm that the information you shared with the FCA did go to the relevant departments which in this case was the Executive Casework Unit Department, Supervision Department and the Unauthorised Business Department. Further, looking at the file shows that the decision the FCA made to not share specific information with you was reasonable.
17. That said, I can see from the file that the information was passed to the relevant departments (listed in paragraph 16) and those departments gave proper consideration to the issues. This included considering whether entities that were not regulated were conducting regulated activities without authorisation and whether regulated firms breached any rules and whether the FCA had failed to adequately supervise a firm which although not authorised was registered as an AIFM. In particular I note that (firm A) was neither a collective investment

scheme not authorised by the FCA. It was registered as a Small Registered UK Alternative Investment Fund Manager (AIFM). Having reviewed the files I can also see that the decisions they took were reasonable.

18. However, your case did highlight areas where the FCA could improve its recording of key decisions, particularly in its Executive Casework Unit Department. Whilst investigating your matter I could see that the information you provided to the FCA between 2020-2021 was not considered by the Supervision department until 2023. I think in the interests of transparency the FCA should have informed you of this in its decision letter. The FCA stated the following in its decision letter,

“Although I am unable to give you any detail of the actions of the FCA, I can confirm the intelligence received by the FCA was sent to the correct teams and I have reviewed the action taken by the areas. I am satisfied the intelligence was handled in the appropriate manner.”

19. The FCA decision letter does not highlight that the intelligence you shared with it between 2020-2021, was not shared with Supervision until 2023 as a result of the Complaints Team investigation, who then subsequently shared the intelligence with the Supervision department. I am pleased to see that this information was eventually shared and considered by the Supervision department. And it is important to note that for the reasons outlined above, I cannot share more about what the Supervision department did with this information other than the fact that they did eventually receive it and handled it appropriately. In any event I understand from my observations of the FCA case file that the FCA is looking into the issue of recording key decisions in its Executive Casework Unit which should mitigate the risk of issues happening in the future.
20. I have also considered the information that was given to you and the amount of information that was shared with you. The information that was shared with you was within the scope of the legislation, which is s348 of FSMA and within the scope of the FCA’s own policy on information sharing. In other words, it was appropriate that the FCA did not share any more information with you.

Element Three

21. You specifically mentioned to me in your complaint two of the entities you invested in which were Unregulated Company B and the Alternative Investment Manager. You state that you asked the FCA to investigate these two entities and in particular how and why the Directors and operators of the collective investment scheme caused investors like yourself to lose your money by taking risks. For the reasons I have already given to you in Element Two of your complaint regarding the confidentiality restrictions, I am sorry but I also cannot share any further details on this. Again I can say I am satisfied the FCA have taken on board the information you shared with them used it appropriately and the decisions they made based on it were reasonable.

Element Four

22. You feel the FCA has not investigated your complaint in a similar manner to other complaints regarding similar collective investment schemes. I note you did not provide any further information or examples of cases that might be relevant here. However, every complaint is individual and assessed on its own individual merits. In this instance, I can confirm the FCA did investigate your concerns and the information you shared with it on an individual basis. The Complaints Team were very robust in ensuring the information you shared with the FCA since 2017, was shared with the relevant teams and handled appropriately. So I think the FCA took your matter very seriously and have not been able to conclude that you were put at a disadvantage in comparison to other similar complaints.
23. I note from the case file that you provided the FCA with a copy of the Information Memorandum concerning your investment. I understand your frustrations that you want to understand how the FCA used this information for example and the actions that it took. I've mentioned in my report the FCA's actions were in the realms of what is reasonable and appropriate, however I cannot share any more than this. The primary responsibility for the contents of the Information Memorandum is primarily with the regulated Firm. I understand from the information you have shared with me that you may have raised your concerns with the Financial Ombudsman Service or at least it appears you are aware you can do so as you have mentioned investors who have referred their

complaint to the FOS. For reference this aspect of your complaint concerning the primary responsibility for the contents of the Information Memorandum would be excluded under the Complaints Scheme.

Element Five

24. I understand your frustrations that the FCA have made an error in its correspondence to you. The decision letter the FCA sent to you was addressed to a 'Mr and Mrs' as opposed to 'Mr and Mr". This is a very unfortunate incident and I am sorry that this happened. Although this error has not materially affected this case or the outcome of your complaint, you are correct the FCA made a mistake here. Therefore, I uphold Element Five of your complaint. I have set out in the recommendations of my report what I think the FCA need to do to put things right here.

Element Six

25. I acknowledge your considerable efforts to voice your concerns and sharing information with the FCA with the aim of improving the protection afforded to consumers. As I have mentioned earlier in my report I have access to the FCA file. There are elements that I cannot disclose to you, regarding what was or was not done with the information you shared with the FCA. This is due to confidentiality restrictions that I too need to abide by.

26. The FCA is also not able to intervene in individual disputes about a Firm. The information that the FCA gave you is correct, this is a matter for the Financial Ombudsman Service (FOS). They are independent of the FCA and the appropriate recognised body to investigate individual disputes abouts Firms. In detailing your complaint to me you have mentioned other investors that have referred their matter to the FOS. You did not comment in your complaint whether you yourself have referred this matter to the FOS. I do of course recognise that you may be aware of this, but you may wish to raise your matter with the FOS directly. If you have raised a complaint with the FOS and you are unhappy with the decision and have not accepted it, it would appear from the resources available on FOS's website that you would need to explore whether you wanted to start judicial review proceedings against the decision. You can

find out more about this here <https://www.financial-ombudsman.org.uk/who-we-are/make-decisions>

27. I can see in at least one of the letters the FCA issued to you, the FCA informed you that if there was an issue regarding a Firm that was not authorised by the FCA, you may need to seek legal advice about the next steps. I consider this an appropriate response from the FCA. In your complaint submission to me, I was not able to see whether you have sought legal advice yet. You may wish to seek independent legal advice in relation to this if you have not already.
28. For completeness I understand you are seeking the FCA to pay compensation as you feel it did not supervise the various entities adequately and allowed directors of Unregulated Company C and Firm A to establish and operate the investment scheme in a negligent manner.
29. For reasons I have already shared in my report, I cannot disclose more about what was or was not done with the information you shared with the FCA concerning the Firms. I however, can say that I have concluded that the FCA received the information you shared with it and handled it appropriately. The FCA gave the matters you raise proper consideration and the decisions taken on the basis of that information were reasonable.
30. I appreciate that you have waited a long time for this decision and that it will not resolve your dissatisfaction with the financial loss you have incurred. It is not appropriate that I recommend the FCA pay you compensation as I have not seen anything to suggest any supervisory failings on their part. I am sorry to disappoint you but, for the reasons given, I do not uphold this element of your complaint. It may be that you nevertheless have a claim against some or all of the parties in your complaint which you could pursue in the Courts.

My decision

31. In Element One of your complaint the FCA apologised and offered you £250 in recognition of the delay caused in your complaint. I agree with this and think this is fair and reasonable.
32. In Element Two and Three of your complaint I agree with the FCA for the reasons it gave. It was appropriate that the FCA did not share any more

information with you due to s348 of FSMA and the FCA's own policy on information sharing.

33. In Element Four I can see the FCA took your matter very seriously and have not been able to conclude that you were put at a disadvantage in comparison to other similar complaints.
34. I have upheld Element Five of your complaint. I **recommend** the FCA provide you with an apology due to the trouble and upset caused by incorrectly addressing you as Mr and Mrs. I **recommend** the FCA provide feedback to the Complaints Team and specific members involved in the investigation of your complaint to avoid this happening again. In response to this point the FCA have informed me it accepts my recommendation and will be issuing an apology to you upon receipt of this Final Report. The FCA has also confirmed that it has sent feedback to the members involved in the investigation to prevent this error from happening again.
35. In Element Six of your complaint for the reasons I have given I am sorry to disappoint you but I do not think the FCA need to make a compensatory payment to you for the financial loss you have incurred. I have seen no evidence of supervisory failings on the part of the FCA.

Rachel Kent

Complaints Commissioner

26 June 2024