Complaints Commissioner

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21 June 2024

Final report by the Complaints Commissioner

Complaint number 202300599

The complaint

1. On 18 November 2023 you submitted a complaint about the FCA to my office.

Your complaint to the FCA

2. The FCA issued a decision letter (DL) on your complaint on 19 September 2023. It said your complaint was that "You deposited money with the firm [X]. Since making your deposit, the firm closed their retail arm of their business on 15 December 2022. You have since been unable to withdraw the money you deposited".

What the regulator decided

3. The FCA reviewed a complaint from you connected to Firm X which centred on your concern that the FCA had permitted the firm to exit the retail side of its business. You did not refer this complaint to me so I will not review it further.

4. The FCA looked at a further complaint point about the firm freezing your funds and not allowing you to withdraw them. The FCA did not uphold this complaint and said:

> "In regard to withdrawing your funds, I appreciate this must be frustrating and I would encourage you to contact the firm to discuss this; a link to their contact page can be found HERE. However, in the course of my investigation I did establish that within the firms Terms and Conditions, clause 7.15 states The Firm X Companies reserve the right to withdraw Auctions from the Website at any time and for any reason".

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Why you are unhappy with the regulator's decision

5. You say that the FCA did not address the entirety of the complaint you made to it. Losing access to your funds was only part of the complaint you made which was as follows:

   "[Firm X] issued an e-mail to retail investors stating that it had decided to exit the retail arm of its business to focus on institutional investors. As a consequence of this strategic and unilateral decision the following measures were implemented without notice:

   1. All accounts frozen with no ability to withdraw funds.
   2. No ability to cancel/close accounts.
   3. No ability to terminate the contractual relationship between AC and the retail investor.
   4. The commencement of a loan book "run off" over a forecast period of ~5-years.
   5. Immediate reduction of interest rates to a much reduced and uncompetitive 4% per annum regardless of account.
   6. Introduction of exorbitant new "management fees" to administer the "run off" and restructure the organization (to be deducted from interest).

   The measures above are comparable to a fly being forcibly trapped in a spider's web and being slowly bled dry by the spider.

   <u>The actions above are completely unacceptable as [Firm X] is:</u>

   - Using trapped retail investors to subsidize other parts of its business.
   - Providing no competitive return on frozen funds.
   - Still charging borrowers the same fees and interest rates as before.
   - Still charging retail investors (i.e. lenders) the same fees as before plus the newly introduced fees and thereby "pocketing" the huge delta between the revenue from borrowers and cash outflows to investors.
   - The decision by [Firm X] to exit the retail business and focus on the institutional side of its business is a strategic decision of the company and

should not be funded by retail investors (it should be paid for from previously retained profits, shareholders and institutional investors).

[Firm X] stated that these actions had been approved by FCA - which is why I also make a formal complaint against FCA for seemingly permitting such a one sided and insidious package of measures”

My analysis

6. I agree with you that your complaint was more comprehensive than just the fact you had lost access to your funds and that the FCA has not answered the additional points you have raised.

7. The FCA answered your complaint about its role in connection to the frozen funds by saying that you should speak to the firm and that in any event, the firm could withdraw auctions from its website. This answer is not clear and it needs more explanation. First, your complaint is about the FCA’s role in connection with the firm’s decision to freeze investor funds in its secondary market trading account. Second, the fact that the firm can withdraw auctions from its website is irrelevant to the question of why it froze the account. I invited the FCA to answer these points.

8. After you referred your complaint to my office on 18 November 2023, further correspondence ensued between the FCA and you, which resulted in the FCA issuing a second decision letter to you on 4 December 2023. It appears that you submitted a similar complaint point described in paragraph 5 above both to me and to the FCA after you received your first decision letter dated 18 September 2023.

9. On 4 December 2023 the FCA upheld your complaint that it had misunderstood your original complaint and not answered it correctly. The FCA Complaints Team explained that they were “satisfied with the actions taken by the team in Supervision in respect of Firm A and the run-off of its retail business. I consider that the actions taken by the FCA are reasonable and appropriate in the circumstances. To reiterate, I cannot share information with you about the actions the FCA has or hasn’t taken with the Firm due to the legal requirements and our policy”.

10. You replied to the FCA that same day to say “I have already escalated to the Complaints Commissioner in relation to my first complaint”. You did not approach me to say that the FCA had issued a second decision letter: I saw this from the file I received from the FCA. Therefore, I assume you remain dissatisfied with the FCA answer in the decision letter dated 4 December 2023, i.e. that it was satisfied the FCA had taken appropriate action with respect to the firm, but not telling you what that was or providing further information or rationale.

11. The FCA does not generally say what action has been taken in relation to the firms it regulates. 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. 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 at https://www.fca.org.uk/freedom-information/information-we-can-share. This means that, as you were told, there is no general right for members of the public to know what actions the FCA undertakes, if any, with respect to the firms it regulates.

12. However, within those constraints it is clearly in the public interest that as much information as possible is shared with complainants and the public, since without that information it is hard for people to consider whether or not the regulators are performing their duties adequately and reasonably. Furthermore, in this particular case the matters at issue are largely already public knowledge. The firm undertook some actions and the FCA was cognisant of these actions.

13. This is not the first complaint in relation to a peer to peer (“P2P”) firm which I have received. A number of firms in the P2P industry have experienced difficulties and complainants have also told me, that these firms have changed terms and conditions in relation to investment products without recourse to investors.

14. You have alleged that the FCA ought not to have allowed the actions the firm took as it was unfair and breached the account agreement terms.

15. I have read your allegations about what actions the firm took as outlined above: I have not checked whether each individual allegation against the firm is made out. What is relevant for the purposes of my investigation is that it is evident that the firm did take some actions with respect to the accounts it offered which may have breached the account terms.

16. The FCA's position is that the firm informed the FCA of its considerations and actions and what it had considered as part of its obligations: it considered alternatives to the solvent run off were considered, but were assessed to be potentially of much greater detriment to Lenders. The decision to take the action was the firm's, although the FCA did not object. FCA describes the decision "considered the greater good for all as a better outcome as opposed to individual needs." I can appreciate an aspiration to ensure that investors achieve better results in the round, however, I invited the FCA to confirm what powers it relies on in not objecting to far reaching changes of terms and conditions without recourse to the investor. The FCA has confirmed that it did not rely on any particular powers however, it closely monitored a number of options available to the firm and did not object to the winddown plan because it was deemed the best option from a range of options available to the firm. This means that even if the firm had amended its account terms (which I have not formally investigated or established) the outcome for you under the winddown plan is better than what would have happened if the fees had not been charged. This is because it enabled them to recover more loans. Therefore, I do not consider that the FCA's decision was unreasonable.

17. For the reasons above, I do not uphold your complaint that the FCA did not supervise the firm adequately.

18. I note that you do not agree with my decision, however, although I have considered your comments carefully my view remains as above for the reasons I have given.

Rachel Kent
Complaints Commissioner
21 June 2024