



31 January 2025

Final report by the Complaints Commissioner

Complaint number 202400312, 202400332, 202400333, 202400337

The complaint

1. On 5 July 2024, you submitted a complaint about the FCA to my office.

Background Information

2. The background to your complaint is as follows. You and three other individuals, collectively the “complainants”, gave Individual Z a large sum of money to invest on your behalf. Z had an account in his own name at Firm X into which he put your funds. In 2017, you attempted to recover your funds. However, since all the investment accounts had been set up solely in Z’s name and you had not been named as beneficiaries on the accounts, you could not access the funds.
3. In 2021, you submitted a complaint to the FCA. Dissatisfied with the FCA’s decision on your complaint, you referred it to my office for review. Although the Commissioner (my predecessor) agreed with the FCA that you were out of time, given your concerns, the Commissioner made enquiries with the FCA into the issues you had raised, and it was decided that the FCA’s conduct was reasonable. My predecessor’s report is on the company website here:
<https://frccommissioner.org.uk/wp-content/uploads/FCA001405-Issued-22-December-2021.-Published-18-January-20221.pdf>
4. You separately sought redress directly from Firm X and the Financial Ombudsman Service (FOS), but in neither case were you successful.

Your new FCA complaint

5. In 2023, after discovering that the FCA had published a Final Notice about Firm X regarding its inadequate AML systems and controls, you raised a number of points with the FCA. In one of these, you alleged that the Notice, which was the 202400312, 202400332, 202400333, 202400337

result of the FCA's investigations into Firm X in 2014 and 2016, was directly relevant to your situation, which occurred in 2017, because it confirmed, in your view, that Firm X had inadequate systems. You feel that this may have impacted on your situation. You also stated that if only the FCA had provided you with a copy of their investigative reports sooner, you would be able to prove that you were the true owner of the funds used by Z to conduct trades on your behalf, and could therefore compel Firm X to compensate you for the losses you suffered. You also allege that you met with representatives from Firm X while Z's account was still there, and that firm Z were aware that he was managing your funds. You requested that the FCA assist you with getting compensation from Firm X.

What the regulator decided

6. Whilst the FCA did not uphold your complaint, in its decision letter, it furnished you with additional information in response to the queries you had raised and confirmed that, despite its generic nature, the information provided to you was relevant and appropriate. The FCA said it could not assist you with obtaining compensation from Firm X.

Why you are unhappy with the regulator's decision

7. You say that the FCA's response was inadequate, and you want comprehensive and complete answers to your questions, which you set out along with new complaint points, in your complaint to my office. Having analysed your complaint, it appears that the issues are two-fold: an alleged lack of a detailed response to your questions (Element One); and your dissatisfaction with the FCA's response regarding the relevance of the Final Notice to your case (Element Two).

Analysis

8. I understand that you are dissatisfied at the lack of progress with recovering your losses and I sympathise with your situation.

Element One

9. Regarding the lack of a detailed response, having reviewed the information on the file, I note that in its decision letter, the FCA provided a comprehensive response to all the questions you raised in the new FCA complaint.
10. However, you feel that they failed to answer some of the questions that you subsequently asked, namely:
 - a. “an individual’s right to privacy cannot take precedence over potential victims of fraud; therefore both the FCA and Firm X should have monitored and been aware of Z’s background and activities”;
 - b. did the FCA inform FOS about its investigation? “Do the FCA and FOS work together in order to protect the interests of consumers?”
 - c. “did the FCA inform the police about Firm X’s inadequate AML systems and controls? Please provide a copy of the FCA statement given to West Mercia Police.”
11. These were new points, which were not part of your FCA complaint. In the Preliminary report, I asked the FCA if further information could be provided. The FCA has provided a response.
12. Before I set it out, I would like to remind you that, 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.
13. In relation to matters as a whole (i.e. your questions set out at 10 a, b and c), the FCA have said this:

“The FCA does not monitor individuals who have been prohibited, either by the FCA or predecessor organisations (as was the case with Z). The Financial

Services Register lists firms and individuals who are currently authorised and approved to undertake regulated activities. We encourage the public to check the Register, and not to engage with firms or individuals who are not authorised. If the FCA becomes aware that individuals and/or firms are undertaking regulated activities without authorisation, we can take appropriate action. In this case, Z did not appear on the Register because he was not approved by the FCA.

The FCA's memorandum of understanding with the FOS sets out how our respective organisations carry out their functions and how we cooperate with one another. We work closely with the FOS, which typically includes sharing information in order to assist in discharging our respective functions. We do not, as a matter of course, inform the FOS or other agencies every time we appoint investigators into the conduct of a firm. If other agencies request information from the FCA about particular firms or individuals, gateways exist through which we are legally permitted to share information.

The FCA is bound by the confidentiality requirements of section 348 of the Financial Services and Markets Act 2000 (FSMA)³. This provision restricts the information we may disclose publicly (including information about our investigations). We may publish certain information only after following the requisite statutory process.”

14. I am unable to provide any further information due to the confidentiality provisions.
15. In my view, the FCA has now answered the questions you have asked as far as possible given the confidentiality restrictions in place.

Element Two

16. In your FCA complaint, you stated that the Final Notice issued by the FCA to Firm X was entirely relevant to your circumstances because had Firm X had adequate AML systems and controls in place, you would not have lost your funds. However, in its email response dated 27 June 2024, the FCA rejected this view and advised you that: *“you ha[d] misrepresented the outcome of the investigation into Firm X repeatedly. It [was] made clear to you that the action*

[the FCA] [had taken] in relation to Firm X ha[d] no bearing on your case. [The FCA] c[ould] understand why you [might] think th[at] [was] not the case, but [it] c[ould] confirm that in [its] view [the] investigation and subsequent action would likely have not prevented [Z] from defrauding you."

17. I sought further clarifications from the FCA on this issue. Although due to confidentiality restrictions, I am unable to share the details of my conversation with the FCA, my understanding is that the findings in the Final Notice are not relevant to your circumstances. Therefore, the previous Commissioner's view that the FCA's conduct was reasonable, still stands. With regard to the timing of the Notice, given it's not relevant to your case, you are not deemed to have been directly affected under the Complaints Scheme.
18. I note you claim to have met with representatives from Firm X who were aware Z was managing your funds, however, you have not provided any evidence to support this, and unless you do so, it is not a matter I can consider further.
19. In view of the above, I do not uphold this Element of your complaint. Given that I do not find the FCA investigation into Firm X has a direct bearing on your complaint, I have exercised my discretion not to review the FCA's action against Firm X. This includes reviewing the length of time the FCA took to investigate the firm.
20. I appreciate you are disappointed with my decision, but for the reasons I have given above, I do not find the FCA at fault and there is nothing else I can help you with under the Complaints Scheme.

The Complaints Commissioner

Complaints Commissioner

31 January 2025