

17 December 2024

Final report by the Complaints Commissioner**Complaint number 202400410***The complaint*

1. On 02 September 2024, you submitted a complaint about the FCA in which you raised your concerns about its lack of action in relation to securing the return of funds to customers of a Cypriot firm, Firm X, which had a right to carry out regulated activities in the UK under what was known as a “service passport”.
2. You acknowledge that the FCA did take action in 2020, based on information received from concerned consumers, and required Firm X to stop carrying out regulated activities targeting UK consumers and to return the funds of its existing consumers within a set period. The FCA also worked in conjunction with the Cypriot regulator, the Cyprus Securities and Exchange Commission (CYSEC) to protect consumers.

Decision

3. The FCA excluded your complaint as being out of time, however for the reasons set out below, I do not agree with the FCA. I **uphold** your complaint that the FCA ought to investigate your concerns and **recommend** that the FCA does so and considers your questions appropriately, and provides you with information about its powers (if any) and when it decides to use these for dealing with firms such as Firm X not complying with its instruction to return funds to its UK customers.

Background

4. The FCA excluded your complaint on 5 June 2024 and again on 30 August 2024, following the Prudential Regulation Authority referring the complaint you submitted to it on the same subject. The FCA’s reason for the exclusions was

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that the complaint was not made within 12 months of you becoming aware of the issues you are complaining about.

5. In your complaint to my Office, you explained that you believe this exclusion is incorrect as the FCA told you in its response to your initial query about the issues, on 25 February 2021, to follow a number of different steps, including contacting CYSEC. It is your assertion that it was only recently that you had exhausted the steps you were advised to take, which is why you were only escalating your complaint to the FCA when you did.

Preliminary Points

6. You stated in your complaint to the FCA that the date of the *event “when you first became aware of the circumstances giving rise to your complaint”* was 1 January 2024, but you did not provide as much information to it as you provided to my Office. The FCA did invite you in its email of 5 June 2024 to contact the Complaints Team “*...if there is any further information or evidence you could provide that you think would be relevant to our assessment of whether this is a complaint we could investigate under the Scheme, please could you let me know by 19 June 2024*”.
7. You did not respond to this request, instead you submitted the complaint to the PRA, also without providing the background information.
8. In my preliminary report I stated that “*I agree, if the FCA told you to exhaust all available avenues in Cyprus to try to resolve your concerns*”, it should not be time-barring your complaint if you have only exhausted all other avenues available to you. In its response to the preliminary report, the FCA objected, stating that the email correspondence shows it was not suggesting that you should seek redress through the Cypriot regulator. In your email dated 18 February 2021 you asked the FCA:

“Should I approach CYSEC for compensation scheme under EU Rules?”

9. The FCA responded saying:

“You should contact the Cypriot financial services regulator to report your concerns and seek their guidance on what actions you may be able to take against [Firm X]. You may also want to seek independent legal advice.”

10. I acknowledge that the above is correct based on the emails I have seen. You asked the FCA for its opinion on the options open to you and following the receipt of the above response, you pursued a route potentially open to you to recover your lost funds. You only recently exhausted this.
11. As none of the steps you took resulted in you recovering the outstanding losses, you came to the conclusion that you need to raise a complaint about the FCA, as it has not taken any action against Firm X to date, despite the firm not complying with the FCA's instruction given in 2021 to return customer funds.

My Analysis

12. In your complaint you acknowledge that the FCA responded to reports about Firm X and that it had taken steps to prevent it mistreating UK consumers, including stopping its access to the UK market and requiring the firm to return the funds of UK customers (based on information published on the Register).
13. You also understand that Firm X was a firm "passporting" into the UK and not directly authorised by the FCA, but you provided a number of comments about how it operated and what you believe the FCA should have done, and what it should still do to secure the return of the funds lost by UK consumers.
14. In my preliminary report, I asked that the FCA considers the information about why you submitted your complaint when you did (I suggested you provide evidence to the FCA of the last response you had in relation to you pursuing a resolution in Cyprus, to support your case, although it is not clear if you did this), and its decision to exclude your complaint.
15. I received a lengthy response from the FCA to the preliminary report, in which it analysed your complaint in three parts as follows:
 - a. *The FCA provided consumers with a "false sense of financial security and assurances" about the UK consumer protections that would apply to an investment with the firm. (Element one)*
 - b. *The FCA failed to share communications with British customers following the FCA enforcement proceedings in May 2020, with the complainant only finding out about this by chance. (Element two)*

- c. *The FCA failed to enforce repayments to customers by the firm, with or without cooperation from the Cypriot authorities. (Element three)*

Element one

16. In relation to this element, the FCA has accepted that you only received a notification that the Financial Ombudsman Service could not investigate your complaint in August 2023, therefore this complaint was made in time. The FCA has apologised for excluding the complaint and has confirmed that it will now investigate this allegation. I welcome the FCA's decision on this point.

Element two

17. The FCA makes the argument that as you were provided with a link to the published Enforcement Notification for Firm X on 25 February 2021, you would have been aware at this date that the FCA did not share information with consumers in 2020. I agree with the FCA that this complaint point was raised out of time and therefore should not be investigated.

Element three

18. The key argument put forward by the FCA as to why it believes the complaint set out in this element is out of time, is that *"by February 2021, [you] would have known the FCA had instructed the firm to return the money to consumers, but had decided not to take any direct action to enforce the instruction and obtain payment for [you]...[because you were told on 25 February 2021 that]... We won't be able to investigate this or act on your behalf to recover your money."*
19. You stated that you are complaining about the FCA now as you had exhausted all other avenues available to you but in the meantime *"no follow up action has been executed [by the FCA] to enforce comprehensive equitable compliance by this Firm"*, It is my understanding that you are saying that you expected the FCA to take some enforcement action following Firm X's failure to comply with its instructions to return customer funds.
20. I do not accept that being told by the FCA in February 2021 that it will not take action to assist an individual consumer to recover their personal losses on an investment (which is not the FCA's role) equates to the consumer understanding that the FCA will never take any action in relation to the total

losses suffered by all customers affected by the actions of the firm in question (which may be an option open to the FCA, for example, through enforcement action).

21. Additionally, the FCA also told you in 2021 that *“[your] information would be reviewed by the FCA, but [you] would not receive any reports back on any action we may or may not have taken”*. This is a standard approach taken in all similar situations, but it is not a categorical statement confirming that no action will be taken.
22. It is my view that the FCA should not be excluding this complaint on the basis that you had already asked it questions on this subject in 2021, were aware that no action would be taken by the regulator and should have submitted your complaint within 12 months of that date. At that time, you were not aware that the firm would fail to fully comply with the FCA’s instructions, nor were you aware that the FCA would not take any action following this failure to comply with its instructions.
23. Linked to the above point, I also asked the FCA to explain, by way of a response to my preliminary report, whether any of the issues you are raising and remedies you are seeking fall within its remit, and if not, why not.
24. *On remedies*, the FCA explained it believes *“even if the complainant suggests we should have taken action more broadly, for the benefit of all other affected customers – it appears the outcome they are requesting may not be one that can be falls within the Complaints Scheme (6.4 of the Scheme rules). The Complaint Scheme confirms the Scheme is not intended to insure against losses caused by firms that are not covered by the Financial Ombudsman Service or FSCS (6.7 of the Scheme rules)”*. The response went on to set out that, in addition to the above point, it would need to be investigated whether or not the FCA has any powers of enforcement that apply in the circumstances, that is, the firm is a former Passporting firm based in a different jurisdiction.
25. In my view, however, it is within the remit of the Scheme to investigate the allegation that the FCA failed to take reasonable action to enforce an instruction given to a firm, which the firm did not comply with.

26. The key question to determine in this particular instance was whether or not your complaint was appropriately excluded as being out of time. I do not consider that it was, for all the reasons set out above.
27. Considering the nature of your complaint, and quite separately from the question of whether it was made in time or not, it is my view that it should be investigated by the FCA and responded to in the public interest. This is because the number of affected individuals and the amount of money lost by them clearly met a threshold for the FCA to intervene in 2020. Given that the FCA did take action at that time, based on information received from concerned consumers, and required Firm X to stop carrying out regulated activities targeting UK consumers and to return the funds of its existing customers within a set period, I think it is important that the FCA investigates your complaint which raises legitimate concerns about the lack of action from the FCA following the instruction to return funds. At the very least, the FCA should provide information about what has happened subsequently with respect to this matter and why.
28. As set out above:
- a. I uphold Element one and the FCA accepts that it should not have excluded Element one and has agreed to investigate this;
 - b. I do not uphold Element two and I agree with the FCA that Element two was raised out of time and it should not be investigated; and
 - c. I uphold Element three. I do not agree with the FCA in respect of Element three of your complaint and I **recommend** that the FCA investigates this.

The Complaints Commissioner

Complaints Commissioner

17 December 2024