



17 February 2025

Final report by the Complaints Commissioner

Complaint number 202400432

The complaint

1. On 21 September 2024, you submitted a complaint to my Office about the FCA. In your complaint, you set out your allegation that *“The FCA has failed to fulfil its regulatory duties in this matter, and their actions (or lack thereof) have caused serious concerns regarding the enforcement of key market regulations.”*
2. Specifically, you asked for the following three points to be considered:
 - a. *“Why the FCA has failed to take enforcement action against [Firm X] for the reported violations of MAR and DTR, despite having received sufficient evidence one year ago.”*
 - b. *“Why the FCA has not acted within the reasonable timeframes expected for such serious matters of market abuse, as prescribed by MAR Article 31 and the FSMA.”*
 - c. *“Whether the FCA’s handling of this case represents a breach of its regulatory duties, and what steps should be taken to rectify this situation.”*

Decision

3. For the reasons set out below, I **do not uphold** your complaint in relation to the way the FCA acted in response to the information you provided it with from circa October 2023 until around April 2024.

Preliminary Points

4. Like the FCA, I am subject s348 of the Financial Services and Markets Act 2000 as well as other confidentiality restrictions. This means that sometimes I cannot report fully on the confidential material to which I have access. However, as part

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of the Complaints Scheme, I have access to the FCA's complaints papers, including confidential material encompassing legally privileged information. This is so that I, as an independent person, can see whether I am satisfied that the FCA has behaved reasonably.

5. Sometimes this means that all I can say to complainants is that having studied the confidential material is that I have formed a view on the appropriateness or otherwise of the FCA's behaviour, 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 and to allow me to make an informed decision.

Background and analysis

6. I note that your complaint does not relate to a regulated firm, rather to a firm which falls within the remit of the FCA under its role of regulating financial services markets, including exchanges and the issuers of securities.
7. You contacted the FCA on five occasions between 26 October 2023 and 8 April 2024, detailing your concerns about Firm X and its activities. As part of my investigation, I have reviewed all the information on the complaint file, including that which was provided by you to the FCA, the FCA's internal communications and its confidential materials in relation to your reports about Firm X.
8. In addition to reviewing the information provided by the FCA, I also asked it some follow-up questions to better understand the timeline and factual matrix.
9. It is my view that the FCA has not acted unreasonably within its remit in the way in which it handled the information you provided it with.
10. You have said that the 'lack of tangible outcomes from the FCA's investigation', coupled with the lack of what you perceive to be transparency in my report, "raises serious concerns about the efficacy of the regulatory framework".
11. I will address your points in turn.
12. You feel that as the FCA has not taken formal (i.e. public) regulatory action against Firm X, it has inadequately dealt with the firm in response to the information you provided. Whilst I can't comment about this case specifically, I provide the following general information from the FCA's own publications about how it deals with the firms it regulates: "the FCA uses a range of tools to carry

out its responsibilities and meet its objectives. Formal regulatory action is just one of the tools available to the FCA. The FCA assessment of which tool to use includes considering whether using alternative tools to enforcement action is more appropriate taking into account the overall circumstances of the person or firm concerned and the wider context. The FCA's choice as to the use of a regulatory tool is therefore a question of how the FCA uses its resources effectively and efficiently and how it ensures that it is an effective regulator. The fact that the FCA has not used formal regulatory action against a firm does not mean that it has taken no action to bring the firm into compliance”.

13. “The FCA does not usually make public the fact that it is investigating a firm or individual. This is partly to protect the effectiveness of any investigation, as publicity might encourage people to destroy or hide evidence, and partly because announcing an FCA investigation can damage reputations of potentially innocent parties or firms that are able to rectify issues it has identified. It is important to note that just because the FCA is investigating a firm, it does not necessarily mean that the firm will be found to have breached the rules”.
14. I have provided the general information above to you in order to make you aware that the fact that no information has been published formally about a firm does not mean that the FCA is not treating the information complainants provide appropriately.
15. In this case, I have reviewed the file, had discussions with the FCA, and on that basis I do not find that the FCA has breached its regulatory duties as you suggest and as a result, I am not making a recommendation that the FCA pay you compensation.
16. I turn to your point about transparency with respect to the information I (and the FCA) can share with complainants. I am aware that complainants are often left frustrated due to the fact that they are not told what action, if any, the regulators have taken in connection to information they provide. There are difficulties in deciding what information can be released. This is partly because s348 of the Financial Services and Markets Act 2000 (as amended) prohibits by law the disclosure of a wide range of information relating to the business affairs of those

who are regulated, and also because of the FCA's confidentiality policy. 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.

17. My predecessors have explored the issues of confidentiality and transparency (for example see the foreword page 5 <https://frccommissioner.org.uk/wp-content/uploads/OCC-Annual-Report-2020-2021.pdf>) and I also continue to do so. How much information can be shared depends on the circumstances of each case. On occasions, I have persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible.
18. The fact that confidential information can not be released to the public does not mean that the regulatory system is ineffective. I comment only on my office and provide the following information which you may find useful about how my role and office contribute to the efficacy of the regulatory regime (as well as areas which may need further scrutiny) : <https://frccommissioner.org.uk/wp-content/uploads/OCC-FSRFR-response-final-15-February-2021.pdf>
19. Finally, you have said that "What are the terms for securing such protection on the London Stock Exchange? If Firm X could operate with blatant breaches and still avoid penalties, it's clear that arrangements were made". I can confirm that no arrangements of any kind have been made to protect the company as you allege by either the FCA or myself.
20. In answer to your question "How much was paid to ensure this outcome"?.... How much would it cost to secure your protection in a similar situation?" in relation to this point, I am appointed statute to investigate complaints independently of the FCA, the stock exchange and indeed you as the complainant. I reject any implication of impropriety on the part of my office, nor have I seen any evidence to support your allegation with respect to the FCA.

My decision

21. For the reasons set out above, I do not uphold your complaint.

The Complaints Commissioner

Complaints Commissioner

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