

02 June 2025

## **Final Report by the Complaints Commissioner**

**Complaint number 202400660**

### *The Complaint*

1. On 09 February 2025, you submitted a complaint about the FCA to this office which I have summarised as follows:

#### **Element One**

2. You are unhappy with the financial penalties imposed by the FCA upon the former partners of Firm X (“the Firm”). You feel the financial penalties are grossly underweight and are not commensurate with the level of misconduct and disregard of the FCA’s rules.

Outcome: Excluded

#### **Element Two**

3. You provided further evidence of the lack of financial hardship of one of the directors to the FCA but you allege the FCA did not review this evidence

Outcome: Not upheld

#### **Element Three**

4. The FCA’s handling of your information.

Outcome: Upheld

#### **Element Four**

5. The FCA’s reliance on confidentiality restrictions is inappropriate.

Outcome: Not upheld.

### *Background*

202400660

6. In 2018, you invested in fixed income bond A based on the financial advice provided by the Firm. The advice turned out to be unsuitable. You lost the entirety of your investment and you have experienced financial loss and distress as a result.
7. The FCA put in place an asset requirement on the Firm in 2020 to safeguard assets for *“customers who were owed redress due to financial losses incurred following the advice they had received”*. Shortly afterward, two partners of the Firm withdrew funds from the Firm’s account for personal gain. Both individuals also failed to report the breach of the asset requirement to the FCA. Upon finding out about the breach, the FCA imposed financial penalties on the partners, which were later reduced due to claims by both partners that the penalties imposed would cause them serious financial hardship. The two individuals also received prohibition orders to prevent them from performing any function related to regulated activities carried out by an authorised or exempt person.
8. In 2021, the Firm entered voluntary liquidation. For reference the Financial Services Compensation Scheme (FSCS) has paid out £2.2 million in relation to 35 claims.
9. You received a proportion of the investment in compensation from the FSCS but you have been unable to recover the full amount that you invested.
10. On 5 December 2024, you submitted a complaint to the FCA that you were unhappy with the financial penalties imposed upon the former partners of the Firm. You feel the financial penalties are not commensurate with the level of misconduct shown by the partners of the Firm towards its customers. In particular, you feel that their misconduct has directly caused you to suffer significant financial loss and personal trauma in having to find a route to salvage what you could of your original investment.
11. You allege that, according to information in the public domain, one of the former partners of the Firm appears to be living a lifestyle that does not suggest that he is suffering any degree of financial hardship. Based on this, you would like the FCA to reconsider the reduction of the financial penalties.

12. Furthermore, you asked whether the FCA has passed information to the relevant law enforcement agencies to consider whether the former partners of the Firm should face any criminal proceedings.
13. The FCA issued you with its Decision Letter dated 19 December 2024. It did not investigate your complaint because of two separate aspects.
14. First, it felt you had not been directly affected by the level of financial penalties imposed upon the individuals. Second, it stated that your complaint related to the level of financial penalty imposed which is set out in the FCA's penalty-setting regime of the FCA Handbook. The FCA specifically cited [Decision Procedure and Penalties Manual \(DEPP\) 6.5 and DEPP 6.5D](#) which sets out the FCA's approach when it considers financial hardship regarding the determination of penalties. On that basis, the FCA concluded that your complaint was in connection with its exercise of legislative functions, and as such, was excluded from being considered under the Complaints Scheme.
15. The FCA also said that it could not reveal whether it had passed the information you had provided to relevant law enforcement agencies due to confidentiality restrictions in place under [Section 348 of the Financial Services & Markets Act 2000 \(FSMA\)](#).
16. You referred the complaint to me for review as you were not satisfied with the outcome. In addition to raising the same two points as you did with the FCA, you also say that you are unhappy that the FCA will not share information with complainants due to confidentiality restrictions.

#### *My analysis*

*Element One: You are unhappy with the financial penalties imposed by the FCA upon the former partners of the Firm*

*Outcome: Excluded*

17. I sympathise with your situation. It appears you were misadvised by a regulated firm and as a result you invested in a bond which led to your losses. You say you have spent considerable time and effort trying to recover some portion of your investment, but you remain significantly out of pocket. Consequently, you feel the reduced financial penalty the FCA applied to the advisers was

insufficient to account for the losses, distress and inconvenience you and other investors experienced.

18. While I appreciate your concerns, the information provided to you by the FCA was correct. Under paragraph 2.9 of the Complaints Scheme, the FCA is not able to investigate concerns relating to its own rules or guidance. As such, matters concerning the level of financial penalties — which are governed by the FCA's penalty-setting regime within the FCA Handbook — fall outside of the scope of the Complaints Scheme.
19. That said, it could be within the Complaints Scheme's remit to consider whether the FCA has applied those penalties appropriately in a given case. The FCA is correct in stating that a complainant must be directly affected by the actions or inactions of the FCA in order for a complaint to be eligible for investigation under the Complaints Scheme. I consider that you would be directly affected in these circumstances if the penalties had been applied for the wrongdoing which affected you personally. The reduced penalties imposed on the former partners of the Firm would have added to your distress regarding your financial loss and the time you have spent trying to recover your loss. However, in this case, the FCA imposed penalties for breaches of asset requirements which are a different matter to the one which led to your losses: namely poor advice which the firm gave you. For these reasons, I agree that you are not directly affected by the penalties and your complaint about the level of the penalties is excluded.

*Element Two: You provided further evidence of the lack of financial hardship of one of the directors to the FCA but you allege the FCA did not review this evidence*

*Outcome: not upheld*

20. Regardless of whether the complainant satisfies the "directly affected" threshold under the Complaints Scheme, the substance of what is being reported — namely, that a director may have lied about financial hardship to secure a reduced penalty — should trigger regulatory concern on its own merits.
21. Credible allegations that a regulated person or subject misled the FCA are serious and merit regulatory scrutiny, not dismissal on procedural grounds.
22. Even if the complaint were inadmissible under the Scheme the information provided should be treated as a supervisory or enforcement lead, not ignored.

23. I find that the FCA should have investigated the substance of the your submission — not necessarily through the Complaints Scheme if deemed ineligible, but through its enforcement or supervisory functions.
24. In its response to my preliminary report, the FCA Complaints Team stated that you had submitted your evidence directly to the Enforcement department, and that Enforcement had reviewed it. However, due to confidentiality restrictions, the FCA could not disclose whether any action was taken. I am satisfied the Enforcement department considered your evidence appropriately. Therefore, **I do not uphold your complaint** that the evidence you provided was not considered.
25. In my view, you may also have a legitimate concern regarding the adequacy of the FCA's regulation of the firm. For example, did the FCA take sufficient regulatory action in light of the circumstances—action that might have had the potential to prevent the negligent advice given by the firm to a number of investors, including yourself, in relation to Bond A. Such a concern would fall within the scope of the Complaints Scheme and could be eligible for investigation. However, this is not the nature of the complaint you have made. Should you wish to pursue this line of complaint, I recommend raising it directly with the FCA in the first instance for its review, as under the Complaints Scheme to which both the regulators and I operate to, that is usually the best way to resolve matters. If you are not satisfied with the outcome, you may refer it to me for an independent review.

*Element Three: The FCA's handling of your information*

*Outcome: Upheld*

26. The FCA's response to your question, and its handling of the information you provided was inappropriate.
27. It is standard practice that FCA departments on receipt of information supplied by members of the public, to pass this onto the relevant areas within the FCA for their consideration and to inform complainants they have done so. There is no evidence this happened in this case.
28. It is unclear whether the Complaints Team was aware of this review at the time it issued its decision letter to you, or whether it became aware only after my

preliminary findings. If it was aware earlier, it should have informed you, to provide reassurance that your evidence had been properly considered. In any event, I have seen no evidence that the Complaints Team itself referred your submission to Enforcement.

29. The Complaints Team should review its internal escalation procedures to ensure that credible allegations of misconduct submitted through the Complaints Scheme are not disregarded solely on the basis of standing.

*Element four: the FCA's reliance on confidentiality restrictions is inappropriate*

*Outcome: not upheld*

30. The FCA welcomes information from members of the public but it is limited in what feedback it can provide. 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. The FCA's Decision Letter dated 19 December 2024 provides further information on this subject.
31. S.348 is a very important part of the relevant legislation. It was designed by parliament to encourage disclosure of information to the FCA, by firms and the public. Breach of it is accordingly a criminal offence (although the FCA is permitted to share that information with me so that I can assess complaints). Given that the prohibition is contained in a statute, there is nothing the FCA or I can do. For that reason, I do not uphold this element of complaint.

*The Complaints Commissioner*

Complaints Commissioner

02 June 2025