

11 October 2021

Final report by the Complaints Commissioner**Complaint number FCA001167***The complaint*

1. On 13 July 2021 you asked me to review the outcome of your complaint to the Financial Conduct Authority (FCA). I have carefully reviewed the documents that you and the FCA have sent to me. My preliminary report was issued on 23 August 2021 and both you and the FCA have commented.

What the complaint is about

2. Your complaint arises from the actions of a fraudster who has been imprisoned and banned from the financial services industry. You want to know what action the FCA has taken regarding the bank that the fraudster used for his activities. You had hoped for the backing of the FCA, in the discharge of its duty as regulator, to take action against the bank. You consider that its inaction has enabled the commission of very serious financial crime, in an obvious case of money laundering of £7.5M that went unchecked for 5 months.

What the regulator decided

3. The FCA's Decision Letter dated 20 May 2021 concluded that you were out of time to bring your complaint under the Complaints Scheme (the Scheme).

Why you are unhappy with the regulator's decision

4. You told the FCA that you objected to this outcome because: *At the beginning of the complaint you had the choice to accept or reject the complaint based upon rule 3.3 and 5.3.... You decided NOT to reject it but instead to investigate it due to the fact that you accepted that the case was still ongoing and there were associated issues with a parallel FOI request. The correct course of action under 5.3 would have been to reject the claim at that time but this was not done and*

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hence you have by your actions legitimised the claim. It is therefore not acceptable to then reject the complaint after first accepting it. The time to have rejected it was at the outset and by investigating the complaint this was a de facto admission that the complaint was valid hence the decision to reject the claim contradicts the initial actions taken and must be struck out.

5. You would like me to investigate your complaint, review all the available evidence and make 'a proper appraisal of all the facts'. You would also like me to consider whether there is a justified reason as to whether the FCA's documents can be withheld from you and whether a mechanism is available to you to have this information released.

My analysis

6. Paragraph 3.3 of the Scheme says:

Complaints should be made within 12 months of the date on which the complainant first became aware of the circumstances giving rise to the complaint. Complaints made later than this will be investigated under the Scheme only if the complainant can show reasonable grounds for the delay.

7. The Complaints Team concluded that you had not raised your complaint issues in time and there were no reasonable grounds for the delay. This was because you were aware of the circumstances giving rise to your complaint in 2017 and had been informed of your complaint options in 2018 but had not pursued these.
8. You say that there were no reasons to resort to a complaint at that stage and that you were hoping for a collaborative approach. You consider that this approach, taken in good faith, should not be 'weaponised' and used against you.
9. The FCA's files show the following timescale relevant to your complaint:
 - a. The FCA took enforcement action against the fraudster in 2014 and 2015.
 - b. You contacted the FCA's Unauthorised Business Department (UBD) on 14 August 2017 to ask if the FCA could examine the conduct of the bank(s) into which money was deposited to see if all the appropriate action was taken. Your concerns were passed on to the relevant Supervision team(s) but you were told that you would not receive further information about this because

of confidentiality restrictions. The UBD Manager informed you of your option to complain about the FCA on 5 April 2018.

- c. The FCA published a Final Notice banning the fraudster from the financial services industry in January 2018. He also received criminal sanctions, including imprisonment. On 23 March 2018, the FCA published a further press release about this.
 - d. You contacted the FCA's Supervision Hub to complain about the bank over a year later, on 23 May 2019. Your email did not state any complaint about the FCA. Your email was referred to the relevant Supervision team for the bank.
 - e. You made a FOIA request to the FCA, asking for further information behind its 23 March 2018 press release, on 14 September 2020. The FCA's Information Disclosure Team (IDT) responded to this on 28 January 2021.
 - f. You were referred to the Complaints Team by the IDT on 11 February 2021.
10. Having reviewed this timeline and the information supplied to me by you and the FCA, I am satisfied that you did not bring a complaint to the FCA in time. The fact of continuing action is not, in my view, a reasonable ground for delay as the Scheme makes clear that it is possible for complaints to be deferred in such circumstances (paragraph 3.7). Furthermore, you took no steps to initiate a complaint until February 2021, when the Complaints Team approached you after an internal referral from the IDT. I have therefore concluded that the Complaints Team's decision that your complaint was out of time under the Scheme without reasonable grounds for the delay, was reasonable in all the circumstances.
11. Nevertheless, I accept that for three months the FCA led you to think that it was investigating your complaint. The Complaints Team's acknowledgement email of 24 February 2021 said that your complaint would be investigated under the Scheme. This was restated in an update email of 24 March 2021, which said: 'We have assessed that your complaint can be investigated under the Complaints Scheme and we will update you every 4 weeks.' In fact, no such assessment had taken place. In April and May 2021 further steps were taken to clarify your complaint and further progress updates were sent to you. However, on 20 May 2021 you were sent the FCA's Decision Letter with a very abrupt covering email saying your complaint could not be investigated. This was

extremely poor customer service and I can understand why you have been left feeling 'fobbed off' by the FCA.

12. I have recently **recommended** in in another case that the FCA should review the wording of its complaint acknowledgments to avoid giving the impression that a complaint is being investigated when it subsequently may not be. I repeated this recommendation in my preliminary report. The FCA has confirmed in its response to my preliminary report that it has accepted this recommendation. . On this occasion, this was made worse by the incorrect wording of the update email sent to you in March. The FCA also had an opportunity to review this failure to manage your reasonable expectations at the conclusion of your case but it was neither noticed nor acknowledged to you.
13. Although I do not agree with you that this means the FCA should now investigate or uphold your complaint, I **recommended** in my preliminary report that the FCA should offer you an apology and an ex gratia payment of £100 for leading you to believe for three months that your substantive complaint was being investigated when it was not. The FCA has responded to my preliminary report and it has agreed to my recommendation.
14. You asked my office to send you a copy of the FCA's file for you to check its completeness and to add any supporting evidence if necessary. Although I can appreciate the reason for your request, under the Scheme I must observe any statutory restrictions applicable to me relating to the disclosure of confidential information (paragraph 7.15). This means that I cannot simply send you the FCA's file. Furthermore, as the FCA did not in fact investigate your complaint, the file I have reviewed does not contain the information that you seek. In response to my preliminary report you have asked why I did not consider this additional material as part of my investigation. You have restated that your case is not limited to the timing of the complaint but is about the FCA's conduct. However, as I have concluded that the FCA's decision not to investigate your complaint out of time was reasonable, I have not needed to see any further information and this has not been requested from the FCA.
15. I note that you have already explored the FOIA route for obtaining the information that you seek from the FCA and I have reviewed the material you

were sent. However, it does not change my decision because you did not request further information about the 23 March 2018 press release until 14 September 2020 . If you disagree with the outcome of your FOIA request you may make a referral to the Information Commissioner's Office: <https://ico.org.uk/>.

My decision

16. I have concluded that it was reasonable for the FCA to decide that your complaint was out of time for the reasons stated above. I realise that my decision is likely to be a very great disappointment to you but I hope you will understand how I have reached it.
17. I am pleased that as set out above the FCA has accepted my **recommendations** that:
 - a. The FCA should review the wording of its complaint acknowledgments to avoid giving the impression that a complaint is being investigated when it subsequently may not be;
 - b. The FCA offers you an apology and an ex gratia payment of £100 for leading you to believe for three months that your substantive complaint was being investigated when it was not.

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Complaints Commissioner
11 October 2021