

26 November 2021

Final report by the Complaints Commissioner**Complaint number FCA001389***The complaint*

1. On 14 August 2021 you complained to me about the FCA's investigation of your complaint. I have carefully reviewed the information that you and the FCA have provided to me. My preliminary report was issued on 19 August 2021 and both you and the FCA have had the opportunity to comment.

What the complaint is about

2. The FCA issued its decision letter to you on 12 March 2021 and then sent a further response to you dated 29 July 2021. Your complaint relates to the FCA's oversight of the Firm.

What the regulator decided

3. The FCA explained that it regretted that it may be unable to investigate your complaint under the Scheme because paragraph 3.3 of the Scheme states 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. The FCA considered that you should have become aware of the circumstances relating to your complaint over 12 months before you brought your complaint to it.
4. In its letter dated 29 July 2021 it re-stated that its decision remained that your complaint was made out of time and that there were no reasonable grounds for a delay in making your complaint.

Why you are unhappy with the regulator's decision

5. In your email to me dated 14 August 2021, you set out your explanation why you are unhappy which I have summarised below in the key points below.

FCA001389

6. You believe that the FCA are hiding behind 'The Time Limit on Complaints' in the hope that you and the rest of the investors in the Firm will capitulate in this matter.
7. You have set out that you do not think that it is appropriate for the FCA to determine when an investor had knowledge of any event that triggered a complaint. You complained to the FCA when you realised that a complaint needed to be directed to the FCA and that you had a right to complain to the FCA for serious regulatory failures (as a result of the Dame Elizabeth Gloster report), and that it was not more than 12 months ago.
8. You consider that the FCA was provided information on a number of occasions about serious fraud allegations and failed to act which resulted in you losing your savings.
9. You also set out that you believe that this evidence provided to the FCA showed that the Firm acted outside their regulatory permissions, like LCF. Although the Firm was 'unregulated', it was carrying out 'regulated' activities without FCA Authorisation.

My analysis

10. Firstly, I want to say that I am very sorry to hear about the financial losses you have suffered as a result of your investment with the Firm.
11. Secondly, I want to note that your complaint is not the only complaint that has been received about the FCA's handling of matters involving the Firm. The issues that you have raised in your complaint about the FCA investigation of your complaint appear to mirror those raised by other complainants recently received by my office and that I have previously reviewed.
12. You have set out that you consider that the information that led to your awareness is not relevant to when you raised your complaint and that you do not consider that liquidation is a catalyst for an investor to consider that they would have a complaint to raise against the FCA. You have said that it was the report by Dame Elizabeth Gloster into the London Capital & Finance (LCF) PLC case, released on 23 November 2020, that was a key catalyst that made you aware of your right to complain to the FCA for serious regulatory failure. You were not previously aware of this.

13. I have considered your position set out in your email of 14 August 2021 and your response to my preliminary report dated 31 August 2021, and in your case, I do not consider that the information that has been brought to your attention in the past 12 months provides new grounds for you to lodge a complaint that would otherwise be out of time.
14. I accept the FCA's position that there were already numerous pieces of information publicly available before you brought your complaint to the FCA including the Jersey Financial Services Commission press releases, the Final Notices issued on the two regulated financial adviser firms and the Firm going into liquidations.
15. I know that you disagree with this point. In your response to my preliminary report you set out that the Jersey Financial Services Commission press releases were completely irrelevant as it related to the actions of another regulator in another territory. You went on to say that you also considered the liquidation of Firm X was irrelevant because you did not invest in Firm X, rather you invested in a product that Firm X marketed to you.
16. Whilst I acknowledge these points, I also consider that the lack of updates and/or returns on your investment for a significant period would have prompted you to look (much earlier than the time of your complaint), into what was happening in relation to the investment. I believe that any investigations would have alerted you to the fact that the Firm was going into (or already was in) liquidation. It is my position that this was a significant event that would have put you on notice of the circumstances and issues in relation to the Firm and that there were serious concerns about your investment with the Firm's product.
17. I can accept complaints which are out of time if I feel there is good justification. I have considered the circumstances of this case and I do not think it is either practical or justified to investigate this case. It is not practical for the Complaints Scheme to have an indefinite open time frame for lodging complaints. As the time elapses from the time of the originating events of a complaint, it becomes more difficult to investigate the matters, more difficult to locate people within the organisation who can provide first-hand knowledge about the matters and obtain relevant documentation. This can result in a disproportionate amount of resources being allocated to investigate a matter for potentially inconclusive findings.

Accordingly, time limits are put into place to avoid these issues. However, I can assure you that I always carefully consider cases where Paragraph 3.3 has been used to ensure that it has been used appropriately and not being used to avoid addressing complaints.

18. It might be the case that you may have felt that you might obtain a financial resolution to your situation through the liquidators and that you were waiting to see what would happen, but this did not change the facts or the original actions of the Firm and you could have lodged a complaint at any time if you felt the FCA had failed to protect investors. The possibility of financial rectification is not reasonable grounds to delay making a complaint.
19. On this basis I consider that it was reasonable that the FCA set out that it was unable to look at your complaint as it is excluded under paragraph 3.3 because you should have been aware of the circumstances and issues in relation to the Firm at a much earlier point in time.
20. I also note that the Complaint Scheme is not devised to be a final step for complainants when other avenues for redress have been exhausted. It is there to investigate complaints about the actions or inactions of the FCA, including into its regulatory failures. I have noted that you have set out that it was Dame Elizabeth Gloster's report that alerted you to the fact that you could raise a complaint about the FCA's regulatory failures. I am pleased to see that the report has highlighted this option for complainants, but this still needs to be done within relevant time periods.
21. Finally, I want to note that the FCA does have a statutory duty to secure an appropriate degree of protection for consumers. It does so by regulating the financial industry through the setting of standards which firms must meet, and by taking enforcement action where that is justified. It does not investigate individuals' complaints against unregulated firms or the firms it regulates. It is the role of the Financial Ombudsman Service (FOS) to investigate an individual's complaint about regulated firms.
22. That does not mean that the FCA cannot investigate concerns arising from information about individual complaints, but it investigates those in the context of considering whether or not regulatory action is justified, or in the case of an

unregulated firm whether alternative action should be considered through other forums, rather than whether or not the individual requires redress. Any action the FCA may or may not take because of the information you provided could not lead to redress for you personally.

23. In your email to me you set out that the FCA had failed to act on the information that it was provided about the serious fraud allegations and in relation to the Firm acting outside its regulatory permissions. In its letter dated 29 July 2021 the FCA did detail the regulatory actions it had taken against the two regulated financial adviser firms that were found to be responsible for promoting and selling the Firm's schemes to UK consumers which resulted in the issuance of final notices to them in 2013 and 2014.
24. However, as you are aware, the Firm itself was not regulated by the FCA and it has not been able to take action against the Firm directly. In its letter the FCA did set out that it had looked into whether the scheme was a collective investment scheme, however the standard of information it required to pursue the matter further was not available due to jurisdictional hurdles that were in place due to the operations of the scheme being located overseas.
25. The FCA does not generally say what action has been taken in response to the information that it receives. 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. In addition to this, 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. Under this policy, the FCA will not normally disclose the fact of continuing action without the agreement of the firm concerned. There is a good explanation of the statutory and FCA policy restrictions on information sharing at <https://www.fca.org.uk/freedom-information/information-we-can-share>. This means that, as you were told, there is no general right for members of the public to know the outcome of reports that they make.
26. Consequently, whilst I have not investigated this matter further and I cannot confirm that the FCA reported the Firm to its unauthorised business department

and as set out above the FCA is limited in what information it will reveal, it does appear from the information set out in its letter that it did refer some of the information it received to relevant departments.

27. While I know that this will disappoint you, for the reasons above that it is my final position that I will not investigate your complaint further.
28. I am pleased that the FCA has acknowledged the delay in responding to your complaint and I agree that the ex gratia payment of £50 was appropriate in these circumstances.

Amerdeep Somal
Complaints Commissioner
26 November 2021