

01 March 2022

**Final report by the Complaints Commissioner****Complaint number FCA001395***The complaint*

1. On 22 October 2021 you asked me to investigate a complaint about the FCA.

*What the complaint is about*

2. The FCA summarised your complaint as follows:

**Part One**

You consider that the FCA's Unauthorised Business Department (UBD) was wrong to intervene with (Firm x). You believe (Firm X) provided you with commodities for the money you paid it and, therefore, that it could not be concluded that you invested or entered into a collective investment scheme (CIS). As such you believe the action the FCA took was outside of its scope. You allege the FCA intervention has meant that you have stopped receiving annual payments and prevented you from selling the commodities you own.

**Part Two**

You say that the Unauthorised Business Department has failed to provide you with updates since September 2019.

To resolve your complaint, you would like financial compensation "of at least the combined value of my purchases - £9930.00."

A chronology of the events connected to Part Two of your complaint is set out in the annex to this letter.

*What the regulator decided*

3. The FCA did not uphold your complaint, they advised you:

Decision

Part One of your complaint is outside of the scope of the Complaints Scheme.

I regret that we may be unable to investigate your complaint under the Scheme. This is 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. You can view the Scheme online at [www.fca.org.uk/your-fca/complaints-scheme](http://www.fca.org.uk/your-fca/complaints-scheme).

From your email to the FCA of 1 October 2019, it appears you became aware of the circumstances in relation to your complaint around that time and, importantly, over 12 months ago. In that email you stated:

“I have posted back your questionnaire today in the Freepost envelope with copies of contracts that I entered into for a commodity purchase. I have always thought that such transaction were out with the scope of FCA jurisdiction but I have filled in that questionnaire as appropriate.”

Answers you provided in the questionnaire also indicated that you thought the FCA should not have intervened. Those answer include (but are not limited to):

Question 14 (“How much contact did you have with (Firm X) before making your first investment?”) where you answered (with your emphasis):

“Not very much. But my contact was not about an investment. It was about purchasing a commodity.”

In response to Question 22 (“Please explain why you made your first investment?”) you answered:

“It was not an investment – it was a commodity purchase. I made the purchase because of favourable terms.”

In response to question 35 (“Did you choose to take immediate delivery of water when making your investment?”) you crossed out “investment” and replaced it with “purchase”. At question 51, you also replaced “investments” with “purchases”.

I do sympathise with your position and understand it will be frustrating for you being unable to access the money you paid to (Firm X). However, given that you have been aware, since October 2019 at the latest, of the FCA’s approach towards (Firm X) and the FCA’s interpretation that the money paid to (Firm X) amounted to investments, I believe the complaint is out of scope of the Complaints Scheme. However, we can look at complaints after this 12-month time bar if you have reasonable grounds for the delay in complaining. If you do, please send me evidence of this as soon as possible; otherwise, I will not investigate Part One of your complaint under the Scheme.

## Findings

### Part Two

You say that the Unauthorised Business Department has failed to provide you with updates since September 2019.

All but one of your contacts with UBD was responded to within a reasonable timescale and you have received updates since 2019 – notably in December 2020. I cannot conclude, therefore, that UBD failed to update you since 2019. However, I note your email of 21 January 2020 was neither acknowledged nor answered.

The FCA webpage Rights of Victims explains how potential victims of criminal activity will be treated by the FCA: “We are committed to treating victims fairly, with dignity and respect. We uphold the standards in the Code of Practice for Victims of Crime (Victims’ Code)”. In summary, the Victims Code states

that people should be told when they might expect to receive updates and, at page 26, it explains a right: “to be informed how often you will receive updates on the status of the case...”.

Looking at the questionnaire and the update letter of 3 December 2020 I can understand why you did not know what to expect from the FCA regarding updates; those communications were not in line with the Victims Code or clear on what you might expect with regard to updates.

You did receive an update in December 2020 and Associate A responded to all but one of your contacts with UBD. However, given the failure to reply to your email of 21 January 2020 and the lack of clarity with regard to when updates might be expected, I partially uphold Part Two of your complaint.

#### Recommendations

Please accept my apologies, on behalf of the FCA, for the failure to respond to your email of 21 January 2020 and the lack of clarity with regard to when updates might be expected. I would also like to offer you an ex gratia payment of £50 for any distress and inconvenience that might have caused you to experience.

I am also pleased to tell you that, as a result of your complaint, UBD has confirmed that:

- it has now taken steps to ensure that emails do not get missed.
- it will adhere to the Victim’s Code and communicate clearly when updates can be expected.

#### The delay in considering your complaint

Please accept my apologies for the length of time it has taken to reach a decision on your complaint and for any inconvenience this may have caused.

In view of the delay, I would like to offer you an ex-gratia payment of £50. I would be grateful if you could let me know by 4 January 2022 if you would like to accept this payment. If you require further time to consider this, please let me know.

*Why you are unhappy with the regulator's decision*

4. You have asked me to review the FCA's decision.

*My analysis*

5. You have told me you didn't invest in (Firm X) and the FCA have missed the point, however I can see from the file you initially complained about (Firm X) as your contracts with the other two companies had been novated to (Firm X).

You are also unhappy with the lack of updates and the delay in the FCA responding to your complaint.

Part One

The FCA have not investigated this part of your complaint as they have advised:

Part One of your complaint is outside of the scope of the Complaints. I regret that we may be unable to investigate your complaint under the Scheme. This is 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. You can view the Scheme online at [www.fca.org.uk/your-fca/complaints-scheme](http://www.fca.org.uk/your-fca/complaints-scheme).

From your email to the FCA of 1 October 2019, it appears you became aware of the circumstances in relation to your complaint around that time and, importantly, over 12 months ago.

Whilst I know you will be disappointed, I agree with the FCA, that your complaint was referred out of time, so I will not be investigating this part of your complaint.

Part Two

Whilst I am pleased the FCA have acknowledged they did not communicate when you would receive updates and have confirmed steps have been taken to ensure this doesn't happen in future, I cannot see that the FCA have provided

you with an update. I therefore recommend the FCA provides you with an update and increases the ex-gratia payment it has offered to £75.

Following on from my preliminary report, the FCA confirmed it accepts my recommendation to increase your ex-gratia payment and the FCA will provide you with an update by the end of March 2022.

Like the FCA, I am required to respect confidentiality. This means that sometimes I cannot report fully on the confidential material to which I have access. However, as part of the Complaints Scheme, I have access to all the FCA's complaints papers, including confidential material. This is so that I, as an independent person, can see whether I am satisfied that the FCA has behaved reasonably. Sometimes this means that all I can say to complainants is that, having studied the confidential material, I am satisfied that the FCA has (or has not) behaved reasonably – 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. Whilst I appreciate it may be frustrating, I am happy an update by the end of March is reasonable.

I note the FCA has apologised for the delay in answering your complaint and has offered you an ex-gratia payment of £50 in recognition. You have told me you are unhappy with this. However, I think the apology and ex-gratia payment is appropriate in the circumstances.

My decision

6. I realise you may be disappointed with my decision but for the reasons outlined above I am unable to uphold your complaint.

Amerdeep Somal

Complaints Commissioner

01 March 2022