

25 January 2022

Final report by the Complaints Commissioner**Complaint number FCA001399***The complaint*

1. On 23 August 2021, you complained to me about the FCA's investigation of your complaint. My preliminary report was issued on 9 December 2021. Both you and the FCA have provided responses to my preliminary report.

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 Firm X. In your response to my preliminary report, you have highlighted that your complaint relates to your belief that the FCA failed to report breaches of the FSMA by Firm X.

What the regulator decided

3. The FCA explained that it regretted that it would 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 its decision 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 on 23 August 2021, you asked me to review the decision set out by the FCA in its decision letter dated 29 July 2021. You have alleged that Firm X was involved in over 60 development investment projects between 2005 and 2013. You invested in a number of these investments. Your complaint relates to the losses that you suffered following your investment in an Argentinian Development project in 2008 that was promoted by Firm X.
6. From your complaint to me and the correspondence you have had with the FCA, I have identified the following reasons that you disagree with the FCA's decision to not investigate your complaint under paragraph 3.3 of the Scheme:
 - a. You believe the FCA's 'standard response' is fundamentally flawed because you believe that it sets out that the investors invested in Firm X when in fact, they invested in unregulated products that were promoted and marketed by Firm X. (Element One)
 - b. You do not consider that the liquidation of Firm X is a significant event because the product is still in existence and is separate from Firm X. You consider that the action taken by the Jersey Financial Service Commission against an entity who was handling Firm X's funds is not relevant, because 'it is action taken by another regulator in a different territory against a different organisation about a different product.' You have also set out that the FCA's action against the two IFA's is not relevant because it relates to an action taken against a different organisation about a different product. (Element Two)
 - c. You have set out that you disagree with the FCA's conclusions in its decision letter, your complaint is about the FCA breaching its fundamental duty and 'harming consumers.' You say that the FCA has never admitted to breaching its fundamental duty, and hence you do not believe the 'time clock' for the 12 months of awareness has not commenced. You believe that because the FCA has declined to comment suggests that the FCA had not done anything with the knowledge it had been provided with regards to Firm X's unlawful activity. (Element Three)

- d. You have set out that you only learned about the serious issues within the FCA when you read the Independent Investigation Report into Firm Y late last year. That report identified a fact that the FCA had ignored warnings not just in relation to Firm Y but also in relation to a number of unlawful promotions like that of Firm X. (Element Four)
- e. In your response to my preliminary report, you stated that the apparent lack of action to the two letters that you identified were sent between 2014 and 2017, is the 'sole subject of this complaint', I note that this did not form part of your original complaint to the FCA. You believe that the FCA has wilfully ignored the information of whistle blowers including the statements you provided to the FCA in 2017. You have also set out that you were interviewed by the fraud team in August 2011, but that the FCA has claimed that no notes were made. The investigation related to two IFA's who later had lifetime bans imposed on them, you therefore do not accept that the FCA made no notes, as they would have been required as supporting evidence for the bans. (Element Five)
- f. You believe that the FCA 'was aware of the criminal offences under FSMA' committed by Firm X since as early as 2007 yet did nothing about it. You yourself notified the FCA whistle blowing team on 29 March 2017 (after you obtained bank statement evidence only weeks earlier) of Bank Z's significant involvement in the laundering of investor monies through Firm X's bank accounts. You believe that your complaint which you made over 4 years ago to the FCA about its regulation of Bank Z has never been actioned, but that Bank Z are equally culpable in the causation of investor loss. You believe that 'the two are inextricably linked - Firm X committed the fraud, Bank Z laundered the monies.' (Element Six)

Preliminary points

- 7. An independent investigation report has recently been published that identified a number of failures by the FCA in its regulation of Firm Y, an FCA authorised organisation, who it was found offered both regulated and unregulated products, including Unregulated Collective Investment Schemes (UCIS), to its clients.

8. Whilst there is a temptation to compare other cases, including yours, with the independent investigation report into Firm Y, it is not appropriate to do so. I must emphasise that every case has its own unique circumstances and it is important that I assess each case looking at its own specific details and circumstances.
9. Firm X whose products you invested in, was not regulated by the FCA at any time and the products that you invested in were unregulated products.

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 Firm X.
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 Firm X. The issues that you have raised in your complaint about the FCA investigation of your complaint have some similarities to those raised by other complainants recently received by my office and that I have previously reviewed. You have identified that the FCA has responded in a similar fashion to the complaints it has received about Firm X, what you have termed as its 'standard response.'

Elements One, Two Three and Four

12. I have considered your position set out in your email of 23 August 2021 and your response to my preliminary report dated 11 December 2021, and in your correspondence with the FCA. 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.
13. I accept the FCA's position that there were already numerous pieces of information publicly available before you brought your complaint to the FCA that would have made you aware of the circumstances around your complaint. These include but are not limited to the Jersey Financial Services Commission press releases, the Final Notices issued on the two regulated financial adviser firms and Firm X going into liquidation.
14. I know that you disagree with these points and think that because the FCA has never admitted to any breach of its fundamental duty that the clock has never started on the 12 months of you having had knowledge of any event that triggered

a complaint. In addition to this you have raised the fact that you never received an informed response to information that you provided to the FCA in 2014 and 2017, so you feel that there was no possible way for you to ascertain that your correspondence had been ignored and for the clock to start from that point in time. You have also set out that the Jersey Financial Services Commission case related to a different product, and was in relation to a different organisation in a different territory, in addition to this, you do not consider that the liquidation of Firm X was a significant event as the products that the investors invested in still exist separate to Firm X.

15. Whilst I acknowledge these points, you have clearly had knowledge of the circumstances of your complaint for many years. You have set out that the sole subject of your complaint is the apparent lack of action including that the FCA did not provide you with an informed response to two letters that were sent to it, the first in 2014 and the second in 2017. You have set out that you provided information in interviews to the fraud team in 2011 and that you provided bank statements to the FCA in 2017. It is my understanding that you were also involved in the Investor Group which was established in 2014 and that you were on the board of the Group and wrote the CEO of the FCA. I understand that this Investor Group was looking into the negligence claims against Bank Z, the bank of Firm X at that time. This indicates that you and those members of the Investor Group were all on notice of the circumstances and issues giving rise to your complaint from that time.
16. 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. That is why the Scheme requires complainants to lodge a complaint within twelve months of becoming aware of the circumstances giving rise to their complaint. This ensures that an investigation into the complaint can be conducted at the time of, or close to the originating events of a complaint, and people within the organisation can be located to provide first hand knowledge about the matters and locate and obtain relevant documentation. It also ensures that steps can be taken to address current issues and steps can be taken to resolve and improve issues at that point in time,

rather than historical issues where the regulator may have already introduced changes to regulation and processes that are at question in the complaint. The Complaints Scheme does not have unlimited resources and whilst it is important to understand where there have potentially been historical issues and take lessons from them, this must be balanced with the available resources. 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, and I have done so in your case.

17. From your correspondence, it is clear that you were aware that there was an issue with your investment and that Firm X was in liquidation for some time before you made your current complaint about the FCA. It might be that you felt that you and/or the Investor Group might obtain a financial resolution to your situation through the liquidators or other avenues and that you were waiting to see what would happen, but this did not change the facts or the original actions of Firm X 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. There was nothing to prevent you from making a complaint with the FCA, even if you were exploring other avenues.
18. For these reasons 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 were aware of the circumstances and issues in relation to Firm X at a much earlier point in time.

Elements Five and Six

19. In relation to elements Five and Six of your complaint I 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 you only learned about the serious issues within the FCA when you read the Independent Investigation Report into Firm Y late last year. You set out that report identified the fact that the FCA had ignored warnings not just in relation to Firm Y but in many promotions over a period of time. You believe your case is evidence of this because the information that you provided to

the FCA in 2014 and 2017 by way of letters having been ignored. You feel that as a result there is no date of notification for you to ascertain whether your correspondence had been ignored.

20. 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.
21. 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.
22. In your response to my preliminary report, you have set out that the FCA did not take any action against Firm X or Bank Z following your co-authored letter to the FCA in 2014 about Firm X and your whistleblowing letter to the FCA in March 2017 about Bank Z. You set out that had the FCA provided you with an informed response to those two letters, that this may have provided a reliable date of notification to you, however absent of that, you consider that there was no possible way that you could have ascertained that your correspondence had been ignored. You said that this apparent lack of action is the 'sole subject' of this complaint.
23. Whilst I have not investigated this complaint, I have reviewed the FCA file in relation to your complaint and other information made available to me relating to Firm X, and I am satisfied that the complaints team have made relevant enquiries about the past information that was received in relation to Firm X and these enquiries show that the information you sent to the FCA was received and was passed onto the relevant departments. As you are aware, the FCA did detail in its decision letter, the regulatory actions it had taken against the two regulated financial adviser firms. They were found to be responsible for promoting and

selling Firm X's schemes to UK consumers which resulted in the issuance of final notices to them in 2013 and 2014. You have set out that you yourself provided some of the relevant evidence that enabled the FCA to take this action. In your correspondence you have said that this action relates to different organisations about different products. Whilst I acknowledge this point, I consider that there is a link and that these IFA's were related to Firm X albeit in relation to different products that they allegedly marketed in different locations and that it indicates that the FCA has acted on information it received.

24. In addition to this, you have questioned what happened to the information you provided to the FCA in the co-authored letter from 2014 and the letter that you sent about Bank Z in 2016/2017. Whilst this query did not form part of your original complaint the FCA did provide a response on 24 August 2021, and set out that the FCA did receive the information you provided about Bank Z in 2016/2017 and it was passed onto the Whistle Blowing Department and the Customer Queries Team who told you on 15 December 2016 that the information had been logged and was available to the Supervisory Team, but due to confidentiality restrictions they would not keep you updated on any further actions it took.
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. 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 behaved reasonably – but I am unable to give further details.

27. This can be frustrating for complainants, but it is better that I am able to see the confidential material. 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. I shall continue to pursue this matter with the FCA.
28. As I have already noted I have upheld the FCA's decision that your complaint has been made out of time. For this reason, it was not appropriate for me to conduct an investigation at this time, but following my review of the FCA's information that I have been provided with I am satisfied that the FCA received the letters you detailed, and that the information was passed onto and reviewed by the relevant teams at the FCA at that time. I am also satisfied that you were notified by the FCA at the time that you would not be advised about any action that was taken as a result of the information you provided. If you had any issue with this position, this should have been raised in a complaint at the time, not after other avenues pursued by you had been exhausted. I appreciate that following the report into Firm Y you might have considered that the information that you provided may have been ignored. However, I confirm that this does not appear to be the case from the information I have seen.
29. From the information that is available to me and as set out in my points above, I have established that Firm X itself was not regulated by the FCA and it has not been able to take action against Firm X directly. In its correspondence the FCA has set out that it had passed information onto other law enforcement agencies who had shown interest and that it had also looked into whether the scheme was a UCIS. However, it explained that 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.
30. So, whilst you have identified that the recently published report highlighted the serious failures of the FCA in relation to a different firm, being Firm Y where the

FCA failed to consider the holistic business model, and that you consider it shared many common characteristics with Firm X, every case must be considered in the context of its own circumstances. In this case the fact that Firm X was not regulated and the products you invested in were not regulated and were overseas products. Consequently, unlike Firm Y which was regulated by the FCA in relation to some of the activities it carried out and as such the FCA could have imposed a number of penalties against it, Firm X was not regulated and this meant that the FCA was limited in the actions it could take against it.

31. Finally, you raised a concern that the FCA had not provided you with records about the interviews you gave in 2011 that you say led to the two IFA's receiving their final notices and requested that the FCA provide you with this information. This is not something that I am able to look at under the complaints scheme. You may wish to contact the Information Commissioners Office (ICO) who considers a variety of complaints relating to information and data breaches, including individual complaints about how organisations have handled personal information, including if they have lost or disclosed it.

My decision

32. I understand that you have experienced delays with your complaint. In both its decision letters to you the FCA has apologised for the delay and the inconvenience the delays may have caused and offered you an ex gratia payment of £50 in acknowledgement of the delays of both occasions. I am pleased that the FCA has recognised and apologised for the delays you have experienced and I consider that the ex gratia offer was appropriate.

Amerdeep Somal
Complaints Commissioner
25 January 2022