

22 December 2021

**Final report by the Complaints Commissioner****Complaint number FCA001405***The complaint*

1. 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 are unhappy that the Supervision Hub has declined to provide you with “access to the outcome of the investigations” which you say the FCA undertook with regard to Firm X and Firm Y. You say you need the FCA to disclose to you the reports on the investigations so that you can demonstrate you were a customer, consumer or potential customer of Firm X: as Firm X will not acknowledge that it had a relationship with you.

## Part Two

You have said: “The FCA is requested to uphold our complaint against Firm X and assist with our compensation claim.”

*What the regulator decided*

3. The FCA said it would not 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 had been in correspondence with the FCA in 2017 about this matter and were told at the time that the FCA cannot share information about investigations it is carrying out with firms or individuals.

4. The FCA excluded Part Two of your complaint as your complaint relates to the resolution of your complaint about Firm X's conduct which it is not something that it is able to investigate under the Scheme. It said it was aware you had approached the Financial Ombudsman Service (FOS) on this matter.

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

5. You have explained the background to your complaint against Firm X and queried that Firm X was meeting its regulatory obligations. You would like the FCA to provide you with information to support your compensation claim against Firm X and you query why the FCA has not made its investigation findings into Firm X public. You also have concerns about certain individuals connected with the firm and query why you were not made aware of the FCA complaints procedure.

*My analysis*

6. You say you contacted the FCA in April 2017 to advise that you and others had been potentially defrauded of around £750k by individual Z, from multiple investment accounts managed by Firm Y and Firm X for individual Z. You allege Z designated each account to an individual other than one which was for an investment club group. The FCA advised the information regarding Firm X and Firm Y had been passed to their Supervision Team and the Unauthorised Business Department was also made aware.
7. I have sympathy for your situation. However, you were aware of these matters in 2017 but did not submit a formal complaint. You provided a number of reasons to the FCA for your delay in submitting your complaint, which I have considered, however, I agree with the FCA that your complaint is out of time and I will not investigate it under the Complaints Scheme for the reasons given by the FCA, namely: you say you have delayed bringing the complaint due to ongoing criminal action against individual Z and as the information you wanted was not released during the prosecution, but I do not consider that reasonable grounds for the delay. You now also say to me that you were unaware there was a complaints scheme previously. However, the FCA is right to say that the

remedy you seek is not available to you under the Complaints Scheme, so you are not personally disadvantaged from the time bar on your complaint.

8. The FCA has explained to you its *general* (my emphasis) policy on information sharing. 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. The FCA does not usually make public the fact that it is investigating a firm or individual. This is partly to protect the effectiveness of any investigation, as publicity might encourage people to destroy or hide evidence, and partly because announcing an FCA investigation can damage reputations of potentially innocent parties or firms that are able to rectify issues it has identified. It is important to note that just because the FCA is investigating a firm, it does not necessarily mean that the firm will be found to have breached the rules.
9. The regulator welcomes information from people who report concerns. However, as you were told, 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.
10. This Complaints Scheme is concerned with the actions or inactions of the FCA. It cannot deal with complaints against banks, individual firms [or against the Financial Ombudsman Service (FOS)], nor is it a redress service for individual consumer complaints. The Financial Services and Markets Act 2000 explicitly provides for a consumer redress service separated from the FCA. For these reasons and the reasons above, the FCA cannot provide information to you

about its investigation into firm in order to assist you with your claim against Firm X

11. You remain dissatisfied as you feel the FCA and its predecessor the FSA ought to have regulated the firm and individual in question better. I have made enquiries of the FCA, despite the fact I consider your complaint out of time, suggesting the FCA's Complaints team assures itself of the FCA's actions with respect to the matter you raised. The FCA has provided me with a detailed response. 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. I can say that I am satisfied that the FCA has not ignored the information which you have provided and gave it proper consideration. Unfortunately, I cannot say any more than that, and I recognise that that will be frustrating for you.

*My decision*

12. For the reasons given above, I consider your complaint out of time. Nevertheless, I have made enquiries of the FCA and been provided with a response which shows the FCA gave the matters you raise proper consideration. However, due to confidentiality reasons, I cannot disclose what actions, if any, the FCA took based on the information you provided. I realise this is frustrating for you, but I can assure you that your concerns have been properly considered. As to the matter of the FCA providing you with information with support of your compensation claim: that is not a remedy available to you under the Scheme.

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Complaints Commissioner

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