

14 December 2021

Final report by the Complaints Commissioner**Complaint number FCA001429***The complaint*

1. On 19 September 2021 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

You have invested in (Firm X) and have suffered a financial loss. In summary, your complaint is that:

Allegation

The FCA was first warned about (Firm X's) activities in March 2017 but failed to take action and investors have suffered loss.

I appreciate that you may have provided further details in your complaint. The approach I have taken is wider and enables us to respond to you in more detail. If you believe I have misunderstood your complaint, please contact me by 29 September 2021.

What the regulator decided

3. The FCA deferred your complaint, they advised you:

Having considered your complaint, I regret to inform you that we will need to defer our investigation into your concerns for a period of time.

This is because your complaint is connected with, or arises from, ongoing regulatory action by the FCA and there is a risk that, if the complaint is investigated at the same time, it could adversely impact that action.

FCA001429

I appreciate that this will be very disappointing for you. It may help if I set out the relevant extract from the Scheme, which explains the circumstances in which complaints investigations can be deferred, and the underlying reasons for this.

Paragraph 3.7 of the Scheme states:

‘A complaint which is connected with, or which arises from, any form of continuing action by the regulators will not normally be investigated by either the regulators or the Complaints Commissioner until the complainant has exhausted the procedures and remedies under FSMA (Financial Services & Markets Act) (or under other legislation which provides for access to the Scheme) which are relevant to that action. The complainant does not have to be the subject of continuing action by the regulators for this provision to be engaged. An investigation may start before those procedures are completed if, in the exceptional circumstances of the case, it would not be reasonable to expect the complainant to await the conclusion of the regulators’ action and that action would not be significantly harmed.’

The reasoning behind paragraph 3.7 is to ensure that a complaints investigation does not have an adverse impact on any ongoing regulatory action by the FCA. There are two ways in which it might have such an adverse impact, as explained below.

First, it could divert resources away from the regulatory action, which may inhibit the FCA from achieving its statutory objectives in a timely manner. This is because the key FCA staff that would be needed to assist the Complaints Team with its investigation will include the same staff who are responsible for bringing the regulatory action to a timely conclusion. Involving those staff in two processes at the same time would inevitably delay the conclusion of the action, which could be detrimental to consumers and, potentially, the firm concerned.

Second, the complaints investigation may prejudice the regulatory action. This might happen if, for example, the complaints investigation findings cut across the likely findings of the regulatory action.

In some cases, where there are 'exceptional circumstances', the FCA will proceed with a complaints investigation notwithstanding ongoing action. I have carefully considered, in line with paragraph 3.7 of the Scheme, whether there are 'exceptional circumstances' relating to your case. Unfortunately, I have concluded that your case does not fall into this category, which means that the investigation of your complaint will need to be deferred.

What happens next?

You will of course be keen for the investigation to commence as soon as possible, and I can assure you that we will keep you regularly updated. In six months' time, starting from the date of this letter, we will reconsider your complaint to assess whether the deferral remains appropriate and contact you with an update. We will also contact you if the ongoing regulatory action concludes before this time.

We will continue to update you at least every six months as necessary. As soon as we are in a position to take forward the investigation of your complaint, we will get in touch and ask you to confirm that you are happy for us to proceed with the investigation of your complaint.

Why you are unhappy with the regulator's decision

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

My analysis

5. The FCA is correct to say that, under paragraph 3.7 of the Complaints Scheme, investigations of complaints can be deferred where there is continuing regulatory action which might be undermined by the consideration of the complaint.
6. I agree with the FCA's decision to defer your and other complaints about this matter for the moment, as it is likely that the regulatory action will produce material which is relevant to your complaint. I also think it would be unhelpful if the FCA Complaints Team were to undertake an investigation into these matters in parallel with the regulatory investigation. I am pleased to note the FCA will be keeping you updated every 6 months.

7. I realise that this continuing delay is likely to be frustrating for you, but I hope you will understand that, in my view, it is the best means to ensure that your complaint is thoroughly considered at the most appropriate time.

My decision

8. I note from your comments on my preliminary report you are disappointed with my analysis, however I am pleased you understand the reasoning for my decision and the fact I cannot uphold your complaint.

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Complaints Commissioner

14 December 2021