

10 February 2022

Final report by the Complaints Commissioner**Complaint number FCA001483***The complaint*

1. On 28 October 2021 you asked me to investigate a complaint against the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

You allege that the FCA should not have authorised (Firm X).

What the regulator decided

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

I am deferring our investigation of your complaint. This is because your complaint is connected with, or arises from, some form of continuing action by the FCA. In this case the ongoing action is the FCA's investigation into the circumstances that led to the administration of (Firm X).

We are generally only able to begin investigating a complaint after any ongoing action is finished. Once that action is finished, we will write to you to confirm so that you have the option to continue with your complaint if you wish to.

The Complaints Scheme (the Scheme) sets out what the FCA will do in circumstances where there is continuing action at the time a complaint is made. 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 (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.'

It may be helpful for me to explain the objective which underlies paragraph 3.7. The objective is to ensure that a complaint investigation does not cause detriment to, or prejudice, any ongoing action by the FCA. Such interference may inhibit the FCA from achieving its statutory objectives in a timely manner. It is also important to explain that due to confidentiality restrictions, which I will explain in more detail below, we are unable to provide some of the information investors are seeking.

I have considered, in line with Paragraph 3.7 of the Scheme, whether there are exceptional circumstances relating to your case, but have concluded that there are not, and that the reconsideration of an investigation of your complaint should take place after the conclusion of any enforcement action which may result from the current investigation or every six months, whichever is sooner.

Unfortunately, there are limits on the information the FCA can provide you with due to confidentiality obligations set out in section 348 of the Financial Services and Markets Act (FSMA) 2000 and for policy reasons which are explained on our website.

Any information the FCA can share about its investigation will be available on the FCA website.

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 yours 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.
8. In response to my preliminary report, you have advised me:

Our complaint is NOT about the conduct of (Firm X) that the FSA are investigating. Our complaint is about the conduct of the FSA in their approving (Firm X) shortly before they ceased trading.

They have now had 2.5 years since we raised this and surely by now, they should be able to say whether their own internal actions in approving were appropriate or not?

That is the reason for our complaint as I appreciate the wider investigation into (Firm X) is ongoing (with no end date that they will communicate).

As a small investor that relied on the FSA's approval, we believe we are being unfairly treated by any further delay on their part. At the very least they should be able to communicate a target end date after all this time and would appreciate if you could press for at least that.

9. 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. 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.

My decision

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

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Complaints Commissioner

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