

24 March 2022

Final report by the Complaints Commissioner**Complaint number FCA001525***The complaint*

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

What the complaint is about

2. The FCA summarised your complaint as:

My understanding of your complaint is you are unhappy that the FCA failed to prevent the public from investing in Firm X. You state the FCA will have known the history of Mr A, who had been imprisoned for fraud. You believe he should not have been allowed to set up a company.

You have explained that you did not check the FCA Register (Register) at the time for Firm X and Mr A. You did check the Register for Firm Y, and as it was on the Register, you were given confidence to invest.

You would like an apology from FCA, you would also like to know why Firm Y were promoting investments (given Mr A's past) and why Mr A was able to set up a company. You would also like to get back the £10k that you lost.

I am very sorry to hear that the situation has caused you a lot of stress and anxiety and has worsened pre-existing health conditions.

What the regulator decided

3. The FCA declined to investigate your complaint under paragraph 3.3 of the Complaints Scheme which says that 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.

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Why you are unhappy with the regulator's decision

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

My analysis

5. You invested in a two year fixed bond with Firm X in September 2017 as it was actively promoted to you by Mr L from the company Firm Y. In September 2019 you had not had your investment back. Mr L tried to reassure you. However, by about mid-October Firm Y had gone into liquidation. Several more months and Firm X had also gone into liquidation.
6. In 2021 when more information came to light regarding Firm X and the FCA's lack of policing of Firm Y you complained to the FCA who have refused to investigate your complaint as your complaint was not made within 12 months of the date on which you first became aware of the circumstances giving rise to the complaint. You are extremely frustrated, angry and upset the FCA are not reviewing your complaint.
7. 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. Having reviewed the FCA file, you were aware of the issue in 2019 when you contacted the FCA but did not raise a complaint at this time. Whilst you have told me you have only recently learned of new information which has led you to make a complaint about the FCA, 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. Furthermore, it might be that you felt that you 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 there was nothing to prevent you from making a complaint with the FCA, even if you were exploring other avenues.

My decision

8. I know you will be disappointed, but for the reasons set out above I have upheld the FCA's decision that it is unable to investigate your complaint under paragraph 3.3 of the Complaint Scheme.

Amerdeep Somal
Complaints Commissioner
24 March 2022