

28 March 2022

Final report by the Complaints Commissioner**Complaint number FCA001532***The complaint*

1. On 9 December 2021 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. In its decision letter to you dated 15 November 2020 the FCA described your complaint as follows:

You have alleged that the FCA did not plan what action it would take after the requirements were placed on Firm X.

What the regulator decided

3. The FCA did not uphold your complaint.
4. The FCA informed you that it had reviewed the actions taken in respect of Firm X leading up to the OIREQ (Own Initiative Requirement) and that these were the most appropriate means of ensuring consumers and consumers funds were protected.
5. The FCA explained in its letter that due to the law under FSMA it was limited as to what it could share about the firm, as the sharing of confidential information about firms was restricted. It also explained there were specific circumstances where the FCA and the PRA had gateways that allowed disclosure of confidential information to certain third parties. The FCA further provided that disclosure other than in accordance with these provisions was a criminal offence. You were then provided with URL a link to the FCA's website explaining this further.
6. The FCA highlighted that it had reviewed the actions taken by the area and it was satisfied those issues were handled in the appropriate manner. The FCA

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also made clear that it had continued to engage with Firm X following the firm being placed into administration and that the reason for the firm being placed into administration was the decision taken by the Board of Firm X not the FCA.

Why you are unhappy with the regulator's decision

7. You are unhappy with the way the FCA has been dealing with your complaint. You mention to me specifically:

Element One

You are unhappy with the delay caused on your complaint.

Element Two

You think the FCA made a decision without a plan and do not think the decision it made was correct to protect customers.

Element Three

You would like somebody to look at the evidence of what happened with Firm X and would also like to know whether Firm X complied with the safeguarding requirements or not.

Element Four

You also asked questions in relation to Firm X's funds,

- i. Are there enough funds to be distributed?
- ii. Why are they holding the customer's funds if there are enough funds?

You also state that in your view you feel that protect means to ensure funds are available at any time.

Element Five

You have also requested, if possible, to make sure those "protecting" the funds return them.

Element Six

You mention, ...'It really worries me to read that the FCA is appealing a decision of the High Court relating to the legal status of safeguarded funds...'

Preliminary points (if any)

8. I have reviewed all the material you have provided to me. I have also been provided with the FCA case file. It is my intention in this investigation to look at what is appropriate and closely connected under the Complaints Scheme.
9. It is important for me to highlight for the purposes of my investigation, matters which are excluded from the scheme which I am unable to investigate.
10. Section 3 - 3.1 of the Complaints Scheme provides,
 - 3 Coverage and scope of Scheme
 - 3.1 The Scheme covers complaints about the way in which the regulators have acted or omitted to act, including complaints alleging:
 - a) mistakes and lack of care;
 - b) unreasonable delay;
 - c) unprofessional behaviour;
 - d) bias; and
 - e) lack of integrity.
11. This means my role as the Complaints Commissioner is limited to complaints about the four financial regulators which are the FCA and its predecessor the Financial Services Authority (FSA), the Prudential Regulation Authority, Bank of England, and the Payment Systems Regulator. I am unable to look at issues or complaints relating to Firms so I will be unable to investigate the questions you have posed in Element Four and in Element Five of your complaint. Generally, complaints about a Firm or a Financial Business for instance are for the Financial Ombudsman Service. The Administrators of Firm X are also best placed to approach regarding queries in relation to funds.
12. I can however look at issues to do with process such as the action or inactions of the regulator during its oversight of the Firms it regulates.

My analysis

Element One

13. You mentioned you are unhappy with the delay caused on your complaint. I appreciate and understand that this may have been frustrating for you. You also mention that you have waited nine months to be told that information could not be shared with you. The issue of delay is something that my office has raised with the FCA previously. On this occasion I'm pleased to see the FCA recognised the delays caused with your complaint and subsequently apologised in its decision letter to you. The FCA offered you an ex-gratia payment of £100.00. I think the amount offered is fair and reasonable given the circumstances of your case and the delays caused. Whilst it is regrettable it took a significant amount of time to get a decision on your matter, I am satisfied that the FCA have dealt with the delay appropriately. I also note that you have stated in your correspondence to me that you really appreciate a small amount has been offered as compensation, but you did not accept this.

Element Two

14. You believe that the FCA made a decision without a plan and do not think the decision it made was correct to protect customers. Part of my investigation means that 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. In this instance I can confirm that based on the FCA case file which has been provided to me and the further information I sought from the FCA, based on what I can see, I am satisfied the FCA acted appropriately when it came to Firm X. I am sorry that due to confidentiality reasons, I am unable to share anymore in relation to this on this point.

Element Three

15. I have looked at the information and evidence that has been provided to me in relation to Element Three of your complaint, this includes evidence I have requested after I received the FCA case file into your matter. Much like the

confidentiality reasons I have outlined in paragraph 14 of my report, all I can say is that I have reviewed the evidence, the FCA's oversight of Firm X, the actions that it took and I am satisfied with the FCA's actions in this regard. The Office of The Complaints Commissioner has in the past persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible. As such and as the FCA confirmed with you in its Decision Letter, there is no general right for members of the public to know the outcome of reports the FCA makes. 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. Equally 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.

16. You also stated in relation to Element Three of your complaint that you wanted to know whether Firm X complied with the safeguarding requirements or not. The FCA informed you in its decision letter there were concerns about the safeguarding of customer funds. I am also able to see additionally from a public perspective for instance, that Firm X entered insolvency without having safeguarded customer funds.

Element Six

17. You raised concerns about the FCA appealing a decision of the High Court relating to the legal status of safeguarded funds. Ongoing court proceedings is not an area that is appropriate for me to comment on but as I understand it, all are currently awaiting the judgement to be handed down from the Court.
18. Overall, I'm sorry to say I haven't upheld your complaint. I appreciate this may not have been the answer you were hoping for. However, I hope my investigation, provides you with some reassurance that the actions the FCA took I feel were appropriate. As explained previously, I have specifically had access to the confidential material for the purposes of my investigation. Even though I haven't been able to report on this confidential material, I hope by my having access to it and analysing it, gives you some comfort as to the reasons of my decision.

19. In response to my preliminary report, I can see you forwarded to my office URL links to new insolvency rules for payments and e-money firms that came into effect in 2021. Thank you for taking the time to share this with me from a knowledge perspective and bringing this to my attention.

My decision

20. For the reasons above I am unable to uphold your complaint.

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Complaints Commissioner

28 March 2022