

03 February 2022

**Final report by the Complaints Commissioner****Complaint number FCA001536***The complaint*

1. On 22 December 2021 you asked me to review a complaint against the FCA.

*What the complaint is about*

2. The FCA summarised your complaint as follows:

On 7 July 2021, we wrote to you advising you that your complaint which we initially received on 14 January 2018, was no longer being deferred. The deferral was applied after the Officer of the Complaints Commissioner's (OCC) Final Report of 10 July 2018, which confirmed that the complaint should be deferred pending the outcome of continuing action by the FCA. In the same letter, we also provided a summary of our understanding of your complaint. We did not receive any comments from you regarding the summary and so I have proceeded on the basis that it was correct. You were a member of X Trading Syndicate, which was shut down in 2012. You informed the FCA that you had invested £140,000 of your money in the Syndicate by this point. Over the years the FCA recouped a small percentage of the losses suffered by investors and you were expecting to be paid your share of this, around £8,000, but you did not receive the money as the FCA were asking you to provide proof to establish whether you are entitled to the whole or some of the compensation sum.

*What the regulator decided*

3. The FCA did not uphold your complaint.

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

4. You are not happy with the FCA's decision and have asked me to review it.

FCA001536

*Preliminary points (if any)*

5. You first asked me to review this complaint in 2018. The complaint (FCA00446 published here <https://frccommissioner.org.uk/wp-content/uploads/FCA00446-FR-for-publication-10-July-2018.pdf> ) was deferred due to ongoing FCA regulatory action which has now completed. The FCA reopened your complaint in 2021.

*My analysis*

6. The background to this complaint is that you were a member and invested £140,000 into X Trading Syndicate run by Mr M and Mr L. The Scheme was a 'Ponzi' scheme and the FCA shut it down in 2012. The FCA obtained interim injunctions against Mr. M and Mr. L, freezing their assets, and preventing them from operating the Syndicate. Mr. L settled on a no-fault basis. The FCA obtained a High Court order in 2014 requiring Mr. M to pay just over £Xm to investors.
7. The FCA, having recovered funds, made a distribution in 2016 to the 93 victims whom it was able to trace. However, it was identified by the FCA that 15 of the 127 investors had received payments from a company called Z, a company associated with one of the founders of the X Trading Syndicate Mr L or had received monies from Mr. M's lawyer. These payments were made after the X Trading Syndicate had been wound up in 2012. On 28 November 2016, the FCA emailed you requesting a witness statement and proof of origin of the payments from company Z so that the full amount could be paid. Monies withheld were being kept in escrow.
8. You confirmed shortly after in a letter received by the FCA on 6 January 2017, but dated 1 December 2016, that you had received the amount of £17,293.43 from "One of Mr. L's companies". You claimed at the time this was from salaried employment at £50,000 per annum for a few months.
9. The FCA asked you to provide proof that this amount was paid to you as salary from Mr L's associated company.
10. A very long and protracted correspondence ensued between you and the FCA on this subject. You claimed you had not kept any records to substantiate your claim of employment with company Z. The FCA offered several documents you

could provide, such as to provide a formal witness statement and proof of payment origin from company Z, emails from the company, contract of employment, payslips, P45, P60 or any other HMRC originated proof. You were not able to do this.

11. On 12 September 2017, you emailed an extract of your bank statements to the FCA, showing three thousand pounds worth of payments, under payment reference “wages”. No other evidence of employment was ever provided.
12. The FCA was not satisfied that you had provided sufficient evidence that you had received this amount as a salary. Therefore, the FCA deemed the £17,293.43 you received from company Z as a repayment of the capital of your original investment. The effect of this is that the FCA used the figure of £122,706.57 rather than £140,000 to work out your pro rata payments from the recovered funds.
13. You were unhappy with this and referred your complaint to me. You have told me that you ‘feel the main point of the investigation is "was I employed by [Mr L] or was I not employed and merely being given money every month for 3 years”’. You then say that you managed to locate some old training guides on PowerPoint which you have forwarded to me. You also say the FCA should do more to ascertain your claims such as find other individuals who were employed at the same time as you were by Mr L and ask them to confirm your claim.
14. I have reviewed the training guides you have sent me. I am afraid there is nothing there to corroborate your employment with company Z.
15. You have correctly identified the crux of the issue, which is that you need to provide sufficient support to your claim that you were employed by Mr L for three years after the X Trading Syndicate was shut down. This was requested of you as far back as 2016.
16. You have at times tried to place the onus on the FCA to try and verify your claim by seeking out other individuals or trying to obtain your HMRC records, but I do not think that is a reasonable request on your part. It is for you to advance your position and that means it is you that must gather and provide the documents which may support your claim rather than for the FCA to do the leg work on your behalf. The FCA has set out a wide range of documents which it has said would

support your claim. You have not been able to provide these. You have asked me what else you can provide to substantiate your claim. My view is that the range of documents in paragraph 10 which the FCA said you could provide is reasonable. As you are not able to provide any of these, I find the FCA's decision is not unreasonable and I do not uphold your complaint.

*My decision*

17. For the reasons given above, I do not uphold your complaint.

Amerdeep Somal

Complaints Commissioner