

06 June 2022

Final report by the Complaints Commissioner**Complaint number FCA001648***The complaint*

1. On 4 February 2022 you asked me to investigate a complaint about the FCA. My preliminary report was issued on 9 May 2022.

What the complaint is about

2. The FCA summarised your complaint as follows:

Your complaint relates to public statements made by Firm X, which liquidated on 15 January 2018, prior to its collapse. You say you bought £XXXXXX in Firm X shares in May 2017 and that you had relied upon Firm X's key performance indicators (KPIs) and a Regulatory News Service (RNS) announcement made by its CEO in May 2017.

To resolve the complaint, you want: "Compensation from the FCA for not correctly supervising a member firm."

What the regulator decided

3. The regulator did not uphold your complaint.

Why you are unhappy with the regulator's decision

4. On 4 February 2022, you wrote to me asking me to review your complaint saying that you want 'to appeal as this potential fraud would not have occurred if Firm X had been monitored correctly by the Financial Conduct Authority. After all the company went down owing £6 billion plus therefore, I suggest they were bankrupt several years previously whilst flying the FCA logo.

My analysis

5. I firstly want to acknowledge that because of your investment with Firm X you have lost a substantial amount of money. You have my sincere sympathies for

these financial losses you have experienced and the impact that this will have had on you.

6. In your complaint email to my office, you set out that you believe that your losses have come about as a result of the FCA failing to monitor Firm X correctly. You believe that the company would have been 'bankrupt for several years whilst flying under the FCA logo.'
7. In reviewing your complaint, I have had access to the FCA's investigation file into your complaint and have been able to consider the information that was used to investigate your complaint and reach its decision set out in its decision letter to you dated 4 February 2022.
8. As set out in its decision letter the FCA is subject to confidentiality restrictions under Section 348 (s.348) of the Financial Services & Markets Act 2000 (FSMA) classes some information the FCA holds as confidential and restricts how that information is dealt with. In addition to this, 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. There is a good explanation of the statutory and FCA policy restrictions on information sharing at <https://www.fca.org.uk/freedom-information/information-we-can-share>
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, and whether I am satisfied (or not) that the FCA has behaved reasonably – I am unable to give further details.
10. Having reviewed the information provided to me by the FCA I am satisfied that the FCA investigated your complaint thoroughly looking into the background to the issues you raised and reviewing the actions that the FCA took.
11. The FCA was correct in its decision letter setting out that Firm X is not and has never been authorised by the FCA and was therefore never a 'member firm.'

This means that Firm X has never been regulated or directly supervised by the FCA, because Firm X was not conducting regulated financial activities in the UK.

12. In your complaint to me you set out that Firm X flew under the FCA logo. Given Firm X was not authorised by the FCA and was not engaged in regulated activities, I am uncertain why Firm X might have insinuated that it was regulated by the FCA. Your complaint did not set out how or where you came to the understanding that Firm X was 'flying under the FCA logo' and I have not identified where or when this may have occurred, but I can appreciate that if that was the case, such an insinuation might have created a false impression that Firm X was regulated by the FCA.
13. In my preliminary report I asked you to provide me with any examples you had of Firm X identifying itself as being regulated by the FCA. In your response which you sent to my office on 9 May 2022, you set out that you did not accept my findings due to the following statement in Firm X's last accounts, it set out under the directors responsibilities that:
14. The Directors' responsibilities for the financial statements included within this Annual Report and the Directors' confirmations required under the FCA Disclosure and Transparency Rules are set out on page 85.
15. Whilst I can see from your response that the FCA's Disclosure and Transparency Rules were noted as having been complied by Firm X in its annual report, it did not set out that it was regulated by the FCA. As discussed in the following paragraphs, as a publicly listed company on the London Stock Exchange, Firm X was subject to the Market Abuse Regulations and 1.1.1 of the FCA's Disclosure Guidance and Transparency Rules Source book sets out:

The disclosure requirements and the disclosure guidance apply to all persons to whom the FCA is obliged to apply the provisions of the Market Abuse Regulation relating to disclosure under article 22 of that Regulation.

(See 1.1.1-

<https://www.handbook.fca.org.uk/handbook/DTR.pdf>)

As such, the notation of the Disclosure and Transparency Rules by Firm X was an indication that it was adhering to the relevant regulations, it did not imply that Firm X was regulated by the FCA.

16. You went on in your response to my preliminary report to set out that the FCA's own website sets out how it protects consumers. You set out the following excerpt from the FCA's website <https://www.fca.org.uk/about/protecting-consumers>:

From bank accounts to mortgages, credit cards, loans, savings, pensions and investments, virtually every adult in the UK is a consumer of financial services. One of our objectives is to ensure an appropriate degree of protection for all these consumers.

We work to protect consumers in various ways. We set rules and standards for financial firms, to make sure they:

- treat their customers fairly
- deliver appropriate products and services
- put customer protection above their own profits or income

We monitor which firms and individuals can enter the financial markets, making sure they meet our standards before we authorise them.

Whilst I appreciate this page sets out the FCA's role in protecting consumers, which you consider includes yourself, the page sets out the FCA's role in protecting consumers in the financial service industry. In particular it highlights the various regulated financial products in the UK and the fact that it sets standards for the firms it authorises. With regards to Firm X, as set out above, it was not authorised by the FCA as it was not conducting regulated financial service.

17. In its decision letter to you the FCA gave an overview of the regulatory regime and helpfully provided you with links to its website page on Market Abuse Regulation. As a publicly listed company on the London Stock Exchange (LSE), Firm X was subject to the Listings Rules and the Market Abuse Regulations (MAR), alongside its requirements to voluntarily comply with the UK Corporate Governance Code. The Listing Rules set the standards that listed companies

must follow, so that the market remains transparent, fair and orderly. The Rules and MAR also help listed firms, such as Firm X, understand the responsibilities they have regarding disclosure requirements, transparency rules and corporate governance rules. They also contain prohibitions on market manipulation by listed companies, and have provisions set out to prevent and detect manipulation. Under the Listing Rules, the responsibility for the accuracy of the information that a listed company publicly releases sits with the company and in particular with its directors. The rules do not place any statutory requirement for the FCA to check or pre-approve public statements by listed companies. Consequently, the responsibility for the statements made by Firm X and relied upon by you, lay with Firm X and not the FCA.

18. The FCA's statutory objectives are to protect consumers, enhance market integrity and promote competition. To achieve this in relation to the markets the FCA has a Primary Market Monitoring Team that monitors the markets for live and post event issues to ensure that share prices are not manipulated and to identify any breaches of the MAR and Listing Rules that occur. As set out in the FCA's decision letter, there are over 2000 listed companies on the LSE and they all release numerous public statements each year. It clearly would not be feasible for the FCA to pre-emptively fact check all the public statements for listed companies prior to their release. Consequently, the FCA's approach to monitoring can be described as reactive, in that as set out in the decision letter, they monitor the markets on a 'real time basis' and investigate potential breaches after the fact and where necessary take relevant action in response to breaches identified and impose relevant warnings and sanctions.
19. From the information I have reviewed I am satisfied that the FCA was adhering to relevant procedures in monitoring the markets and that it launched an investigation into Firm X in response to the substantial share movement, being a decrease of 39% on the day that the trading statement was announced on 10 July 2017, which its Primary Market Oversight Team identified as a flag that warranted an investigation. This ultimately resulted in the Warning Notice Statement issued on 18 September 2020 to Firm X and set out the following breaches:

- Article 15 of MAR- relating to engaging or attempting to engage in market manipulation.
 - Listing Rule 1.3.3R3 - with regard to the publication of misleading information.
 - Listing Principle 1 and Premium Listing Principle 2– relating to failure to have in place, and maintain, adequate systems and controls to ensure obligations are followed.
20. The investigation, among other things identified that the public statements that were released on 7 December 2016, 1 March 2017 and 3 May 2017, (which you have set out informed your decision to buy shares in May 2017), were misleading and did not accurately or fully disclose the true financial performance of Firm X.
21. Whilst it is regrettable that you had already invested in Firm X shares by the time the FCA took action, I have to conclude that given Firm X was not itself regulated by the FCA, and the FCA was not responsible for pre-approving market announcements for Firm X, so I am unable to find that the FCA failed to monitor Firm X correctly. The FCA monitored the markets and responded to a flag about Firm X when identified and made the relevant investigations. Consequently, I cannot conclude that the FCA was responsible for your losses, or that it should pay you compensation for your losses. As such I cannot uphold your complaint.
22. In your correspondence following my preliminary report you also advised me that you had made a request to the FCA under the Freedom of Information Act to detail monies paid by Firm X to the FCA in the past 5 years. My office responded to you in relation to this point, advising you that this was not information that was held by my office and that we were unable to assist you with this request and directed you to make this request directly to the FCA. You sent a further email setting out that ‘hefty fees insinuate the FCA should have been checking matters to avoid a company going bankrupt’. In your email you questioned whether I was stating that ‘the FCA did not have to cooperate’ with my office about earnings received from a member firm. The allegation of ‘hefty fees’ being paid by Firm X to the FCA appears to be a new element to your complaint and was not considered by the FCA in its decision letter and as such,

I have not considered this element in my review of your complaint and consequently I have not requested any information from the FCA in relation to this element. Generally, it is desirable for the FCA to conduct their own investigation into each element to your complaint in the first instance, as that is usually the best way of resolving matters. As such if you wish to raise this element of your complaint you should raise it with the FCA first. Once the FCA has completed its review, you have the option of approaching the Commissioner for an independent investigation into this element of your complaint if you are not satisfied with the outcome of the FCA investigation.

23. Finally, I do want to set out that I am pleased to note that whilst the complaint investigator found that the Primary Market Monitoring team followed the correct processes when monitoring the markets, they also reviewed all of the information and used this opportunity to engage with the Primary Market Monitoring team to consider whether there are changes which could be made to its future processes to identify potential firms of concern at an earlier stage. The Team has said that it will consider potential improvements to its processes. I appreciate this will be of little consolation to you as unfortunately this does not impact your situation, but I hope that you can take some comfort that the processes for monitoring the markets may improve in the future as a result of your complaint to the FCA.

My decision

24. For the reasons set out above I do not uphold your complaint.

Amerdeep Somal
Complaints Commissioner
06 June 2022