

21 June 2022

**Final report by the Complaints Commissioner****Complaint number FCA001652***The complaint*

1. On 11 February 2022 you asked me to investigate a complaint about the FCA. My preliminary report was issued on 27 May 2022.

*What the complaint is about*

2. The FCA set out in its decision letter dated 14 January 2022 that its understanding of your complaint was:

that you have concerns about "inexplicable delays by the FCA in issuing warnings over online ads and websites being used to scam consumers". You assert that as a result of these unexplained delays consumers have fallen victims to clone scams and lost money, which would have been avoided if the FCA had acted promptly. You cite a specific example in your letter of a website hosted at "xxxxxx.co.uk" which has been referenced in a discussion in Parliament, and in a BBC xxxxx programme that was broadcast on xxxx. You provide details of an individual (referred to as Miss X) who has apparently lost £xxxxxxx after receiving professional advice regarding her investments from an accountant (referred to as Mr X) because Mr X passed Miss X's £xxxxx to 3 different companies that appear to be scams.

You state that you reported the Google online advert and landing site for "xxxxxx.co.uk" to the FCA on 28 May 2020 and the FCA contacted you requesting further information the following day (29 May 2020). Your concern is that the FCA did not issue a warning until 22 December 2020 (web link omitted for anonymity) -nearly 7

months after you first reported the ad and site. Specifically, you raise a concern because after you reported the information to the FCA again on 30 November 2020, you believe that no action was taken in relation to the information you had provided, and the warning in December 2020 was issued [only] as a result of a journalist asking the FCA Press Office why no warning had been issued in respect of the ad and site you had reported.

You have not stated the remedy or outcome you are seeking from this complaint, although we note you have highlighted the plight of a particular consumer who appears to have lost significant sums of money as a result of the investment advice she received from her accountant.

3. The FCA then set out in its further decision letter dated 9 February 2022:

You have raised concern that you do not consider my letter of 14 January 2022 correctly summarises your complaint. You have stated your complaint is about the “failure of [the] FCA to take effective action in response to [your] report,” and the action the FCA should have taken was “issuing a Warning or other action.” You further advise that you have reported over 900 scams to the FCA in the past 2 years, and that you chose to complain specifically about “xxxxxx.uk” because this was a key example. You have stated that in relation to this example, you have suffered distress personally because you have had to spend a lot of time assisting the FCA only to discover this was in vain, and that the FCA’s failure (to issue a warning or take other action until December 2020) caused you to spend considerable additional time dealing with victims, politicians and the BBC.

In terms of the timing of making your complaint – you have stated you were not aware of the matters complained of between 28 May 2020 and 30 November 2020, and only became aware of the FCA’s failure to issue a warning or take other action when you were contacted by the BBC and victims in April 2021. You have not

offered any explanation for the delay in making the complaint since that date, but have stated that it would be “clearly in the public interest that this example of inaction to a report of a scam is investigated so that the FCA can learn lessons for the future and consumers can have [some] confidence that what the FCA does but cannot reveal (due to S348 FSMA and policies) is adequate to protect consumers from harm”.

You have further stated that as “the FCA is not complying with the time limits in the Complaints Scheme for investigating complaints and updating complainants where there is a delay....it is not a good look to try [to] use other time limits to exclude complaints.”

*What the regulator decided*

4. The FCA concluded that your complaint could not be investigated under the Complaints Scheme for two reasons which were set out in its first decision letter in which it said:

*Paragraph 3.2 of the Complaints Scheme explains that a complaint "can be made by anyone who is directly affected by the way in which the regulators have carried out their functions, or anyone acting directly on such a person's behalf provided that the complaint meets the requirements of the Scheme. To be eligible to make a complaint under the Scheme, a person must be seeking a remedy (which for this purpose may include an apology) in respect of some inconvenience, distress or loss which the person has suffered as a result of being directly affected by the regulators' action or inaction".*

Reviewing the information you have provided in your email of 7 January 2022, it isn't clear how you have been directly affected by the FCA posting a warning in relation to "xxxxxx.co.uk" on 22 December 2020, rather than by some earlier date or the inconvenience, distress or loss this has caused to you as a consequence.

In addition, paragraph 3.3 of the Scheme explains 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. Complaints made later than this will be investigated under the Scheme only if the complainant can show reasonable grounds for the delay".*

Noting the information you provided in your complaint, the circumstances giving rise to this complaint would appear to be matters you were first aware of between 28 May 2020 and 30 November 2020, yet this complaint was not submitted until more than 12 months later.

5. In its second decision letter the FCA again set out that it could not investigate your complaint because the complaint was made more than 12 months after the date you would have been aware of the circumstances giving rise to the complaint. It provided a further explanation that:

Regarding your assertion that you didn't become aware of the circumstances giving rise to this complaint until April 2021, I accept that may have been the date when you first became aware of the circumstances of 'Miss X' and 'Mr Z'. However, the complaint you have presented is about the actions – or alleged inactions or delay – of the FCA in response to a report you made about a website on 28 May 2020. When no warning or visible action had been taken by the FCA 6 months later, you say you submitted a further report on 30 November 2020. Also, at some time before the FCA did issue a warning on 22 December 2020, you appear to have raised a concern about the apparent lack of action or warning by the FCA with a journalist noting the explanation given in your correspondence that the journalist then made an enquiry to the FCA Press Office asking why no warning had yet been issued in respect of the ad and site that you had reported.

Therefore, on the basis of the facts and chronology you provided, and noting your complaint being about the alleged unreasonable delay in the FCA not issuing a warning or taking some other action regarding "xxxxxx.co.uk" until December 2020 when the first report

you provided was in May 2020, I conclude that you must have been aware of the circumstances giving rise to that complaint at the very latest by 30 November 2020, when you made the second report given the lack of visible action. As you have not demonstrated any reasonable grounds for the delay in making the complaint, this remains a complaint we would not investigate under the Scheme.

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

6. In your email dated 11 February 2022 you set out that you believed that the FCA was refusing to investigate your complaint on the incorrect assumption that you were aware of the circumstances giving rise to your complaint more than 12 months before you raised it with the FCA. You set out that you had no way of knowing that the FCA had not taken effective action to protect consumers following your reports made in May and November 2020 until you were contacted by the BBC in April 2021 (8 months before you made the complaint) and told you that people had fallen victim to the entity you reported long after the time you made your reports to the FCA.
7. In your further email to my office on 16 February 2022 you provided a timeline of the events and set out that you consider the FCA's position that you are lying and that you were aware of the FCA's omission is contrived. You believe it was impossible for you to be aware of what, if any, non-public action the FCA had taken, and you also consider that due to the substantial number of reports you make to the FCA, you cannot reasonably be expected to check whether the FCA have taken any public action in respect of each of them.
8. You have set out that the FCA's failure to take action on the information you have provided to them is distressing and has caused you to have to spend additional time dealing with victims, politicians and the BBC on the issue.

*My analysis*

9. Firstly, I want to acknowledge that I am aware of the vast number of issues you bring to the attention of the FCA and often in turn my office. As you have set out in your correspondence to the FCA and to my office, you have reported over 1000 suspected investment scams and frauds to the FCA over the past two years and as you highlighted that this has been acknowledged in the responses

of both Charles Randell and Mark Steward at the FCA's 2020 Annual public meeting.

10. You clearly invest significant amounts of time identifying issues within the financial service industry and identifying rogue entities that you bring to the attention of the FCA. I am aware that you also sometimes also assist individual consumers to raise complaints with the regulators. It is therefore understandable that, as you have set out in your correspondence to the FCA, that you feel that the FCA's actions or inactions do have a personal impact on you and that it is distressing to you 'to spend so much time assisting the FCA only to discover that this was in vain'.
11. In your response to my preliminary report sent to my office on 14 June 2022 you set out that you do not feel that I 'fully appreciate the nature of your engagement with the FCA'. I can assure you that I am aware that you participate in many communications and interactions with the FCA at various levels. As the Complaints Commissioner I am however bound by the remit of the Complaints Scheme which in paragraph 3.2 does set out that a complaint can be made by someone who is directly affected by the way the FCA carries out its functions. I do not find that you have been directly affected by the FCA's actions or inactions in this case. I note that in your response to my preliminary report you also noted that you believed that the FCA had considered your complaints on previous occasions when you 'were not a victim'. In my role I must consider each case that is brought to me individually and whether it falls within the remit of the Complaints Scheme. So, whilst I acknowledge that you do invest substantial time 'assisting the FCA' in relation to identifying scam adverts and companies and that that the perceived lack of action by the FCA has professionally and personally upset you, I do not consider that the FCA's actions or inactions have directly affected you.
12. I do consider this is where the FCA's two reasons for not investigating your complaint have an overlap. Since you yourself were not directly affected by the information you provided to the FCA about xxxxxx.co.uk, it meant that you had no specific requirement or need to follow up whether the FCA had actioned the information you provided to it in relation to Firm X, because any failure to do so would not have a direct impact upon you. This may indicate why you were not

monitoring the FCA's actions or inactions in relation to xxxxxx.co.uk and why you did not raise your complaint within 12 months of you becoming aware of the circumstances giving rise to your complaint.

13. You initially reported xxxxxx.co.uk to the FCA in May 2020, so on this basis I agree with the FCA that you were aware of the circumstances (xxxxxx.co.uk's scam advert on the internet) giving rise to your complaint from this point and this was more than 12 months before you raised your complaint. You again identified in November 2020 that Firm X advert was still up on the internet and contacted the FCA at this time. This indicates that you were on notice at this time that the FCA had not acted publicly on the information you had provided in May 2020 and was a potential flag that you should raise a complaint at this time.
14. I appreciate that you have stated that you had no way of knowing that the FCA had not taken effective action to protect consumers following your reports in May 2020 until the BBC contacted you in April 2021. This should have been another flag to you that the information you had provided about xxxxxx.co.uk to the FCA in May 2020 had not been actioned either publicly or non-publicly in a timely fashioned, and had consequently resulted in a direct impact on Miss X. I think that if you had raised a complaint at this time, it would have been made within the time remit of the Complaints Scheme and there would be an understandable nexus for this timing, notwithstanding the lack of direct impact on yourself discussed above.
15. I do acknowledge that you have set out that the FCA has, in numerous emails told you, that when you report issues about firms to it, that it is more than likely that it will be unable to provide you with an update on what has happened as a result of the information you have provided due to legal restrictions and this results in it being difficult for someone such as yourself to ascertain whether the FCA had taken any action in relation to the information you provided. Equally I acknowledge your position that given to the volume of information you pass onto the FCA as an individual it would be difficult for you to monitor whether there has been any public or non-public action taken by the FCA at any given time.

16. In my preliminary report I set out that it was unfortunately not clear to me why given the earlier flags (in November 2020 and April 2021), that the information you had provided to the FCA in May 2020 had not been actioned publicly or non-publicly, that it took you until December 2021 to lodge your complaint. In my preliminary report I set out that it was for this reason that I considered that the FCA was correct in its position that you had not provided a reasonable explanation for the delay in lodging your complaint and as such it falls outside the remit of the Complaint Scheme. In your response to my preliminary report, you set out that the reason for your delay in making the complaint was that *'it was on your list of things to do but I had not got around to it because I prioritised spending 12 hours a day identifying, investigating and reporting scams/frauds....'*. As I have acknowledged at the start of this 'analysis' of your complaint, I am aware of the large volume of work you carry out in supplying the FCA with information about scams, however I do not feel that alongside the fact that you are not directly affected by the issues you are complaining about in this matter, that the explanation you have provided is a sufficient explanation to require the FCA to consider a complaint outside of the 12 months remit provided under the Complaints Scheme.
17. I am sorry, as I know that this decision will disappoint you, but I agree with the FCA that your complaint fell outside the remit of the Complaints Scheme and that it did not investigate your complaint.
18. I do note that you have questioned the FCA using time limits when the FCA itself does not comply with the time limits set out by the Complaints Scheme for investigating complaints. Whilst I am aware that in a number of cases the FCA does fall outside the expected time frames for investigating complaints, in this particular case I am happy to see that it has kept well within the required time frames.
19. A final point from your response to my preliminary report that I would like to touch on is that you have questioned whether the remit of the Complaint Scheme to only consider complaints raised by persons who are directly affected, will result in there being no independent scrutiny of the FCA's failure to act on intelligence it is provided by whistleblowers and others and as such lead to no reliable monitoring of the FCA.



20. As set out above the remit of the Complaint Scheme currently only allows for a complaint to be brought by someone who is directly affected and this sets the remit of complaints that I am able to consider under the scheme. It is not within my remit to make comment on whether or not I agree with you that the current parameters set out by the Complaint Scheme impact the 'independent scrutiny' of the FCA. However, it is clearly something which you feel very strongly about and if you feel that the parameters should be changed this is something that you should raise with your Member of Parliament to pursue.

*My decision*

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

Amerdeep Somal

Complaints Commissioner

21 June 2022