

23 August 2022

Final report by the Complaints Commissioner**Complaint number FCA001670***The complaint*

1. On 12 June 2022 you asked me to investigate a complaint about the FCA

What the complaint is about

2. The FCA summarised your complaint as follows:

Part One

The FCA failed to take action over Firm X's misleading marketing to prevent people from investing.

Part Two

The FCA was first warned about Firm X's activities in March 2017 but failed to take action.

Part Three

The FCA was unprofessional in asking you what your complaint is about.

In your complaint document, you have included four general dissatisfaction points about the FCA. You said that the FCA:

- failed to monitor firms and individuals who can enter the market to sell their investment products;
- failed to take appropriate and timely action towards intense marketing tactics of complex investment schemes to retail investors;
- delayed responding to whistle-blowers and reports by other members of the public, media and consumers;

- was unprofessional by not owning up to regulatory failure.

As these are general points about the FCA, I do not consider that they are specific enough for me to understand if your allegations fall within the scope of the Complaints Scheme. A complainant has to be eligible to make a complaint under the Scheme, this is set out in Section 3 of the Scheme. I do not consider that you meet that eligibility criteria based on the four points above.

It also appears that these more general points are linked to your specific allegations about the FCA in respect of Firm X. Therefore, this complaint will respond to the three parts outlined above: two in relation to the FCA's action or inaction relating to Firm X, and one regarding our handling your complaint.

What the regulator decided

3. The FCA did not investigate Parts One and Two and did not uphold Part Three. The FCA advised you:

Parts One and Two (out of scope of the Complaints Scheme)

After carefully considering the information, you have provided, we have concluded that Parts One and Two of your complaint are able to be investigated under the Complaints Scheme.

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'

The information you provided in your complaint webform on 18 January 2022 suggests that you were first aware of the circumstances giving rise to this complaint on 22 April 2020, yet you did not submit this complaint until more than 12 months later. Therefore, these parts of your complaint are out of scope of the Scheme and will not be investigated.

Part Three (Not Upheld)

You have alleged that the FCA acted unprofessionally in asking you to confirm what your complaint was about.

As part of my investigation, I have reviewed the correspondence between you and the FCA's Complaints Team. Having done so, I do not agree that we have acted unprofessionally.

You submitted a complaint webform on 18 January 2022 to the FCA. I have reviewed this and I cannot identify any allegations against the FCA. You asked a number of questions in this complaints webform, such as 'I cannot understand why this as an example was not considered by the FCA from the perspective of the consumer (investor)?', 'why FCA has not called upon criminal activity by the Directors of Firm X?' and 'Has FCA walked away and considering this solely as 'lessons learnt'?' but in my view, these do not represent specific allegations about the way in which the FCA has acted or omitted to act.

I feel it was right for the FCA's Complaints Team to ask you to clarify your complaint. The Complaints Scheme has eligibility criteria which we need to ensure each individual complaint meets to be able to be investigated under the Scheme. The relevant criteria are set out in Section 3 of the Scheme.

After reviewing your complaint history, I can see that we provided you with a copy of the webform you submitted on 26 January 2022 and asked that you provide clarification on your allegations against the FCA. We asked that you provide a response by 16 February 2022. You asked for an extension to this. Unfortunately, the Investigator assigned to your case did not reply. However, on 1 March 2022 he apologised for not providing a new extension date and asked for you to reply by 7 March 2022. Your complaint remained open whilst we waited for a response and the Investigator promptly apologised for not providing an additional extension date.

Based on the above, I cannot agree that the FCA acted unprofessionally in asking you to clarify your complaint. It was

important that we received specific allegations from you about the FCA's actions or inactions to assess if your complaint met the criteria of the Scheme. As a result, I do not uphold this part of your complaint.

Why you are unhappy with the regulator's decision

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

My analysis

5. You have told me:

The complaint as a quick summary, is in line with FCA's delayed actions towards protecting consumers/investors from Firm X's fraudulent marketing tactics, together with promises of securities to guarantee payment in the event of investment failures and overlaps of services to Firm X's provided by organisations claiming to be authorised by the FCA, of which further misled consumers into believing Firm X's trustworthiness.

6. You have also contacted my office and asked that I listen to the telephone call you had with the FCA on 14 June 2022.

Part One and Two

7. The Complaint Scheme sets out 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. The information you provided in your complaint webform on 18 January 2022 suggests that you were first aware of the circumstances giving rise to this complaint on 22 April 2020, yet you did not submit this complaint until more than 12 months later. An increase in your awareness of the specific details is not reasonable grounds to overlook the 12 months set out in the Complaints Scheme
8. Whilst 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. As the time elapses from the time of the originating events of a complaint, it becomes more difficult to investigate the matters, more difficult to locate people within the organisation who can provide first hand knowledge

about the matters and obtain relevant documentation. This can result in a disproportionate amount of resources being allocated to investigate a matter for potentially inconclusive findings. 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 and ensuring that they are directed to recent and current issues. Accordingly, the time limits are put into place to avoid these issues. 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.

9. In response to my preliminary report you have told me:

Firm X failed in the year during Covid lockdown, and administrators letters informed of delays of administration processes. I have described this in very simple terms as there have been so many letters informing of the delays eventually both the media outlet and letters presented the reality. When that time arrived, I needed time to come to terms with the situation and decide what next I needed to do and have understood the situation. I started corresponding with the security trustees trying to understand the delays and eventually decided it would be best to understand what the FCA could have done, did or did not do.

Many had struggled during the lockdowns across the years 2019-2021, fear of losing their jobs, making ends meet knowing this investment was depleted and shock considering how the product was sold and what was said. Having read the Directors of the firm were still operating with their other businesses including selling their experience from Firm X, anyone could have easily experienced anxiety and met with no clarity on next steps one could take. To be able to process what had happened and identify and decide what next steps to take was impossible. Writing to the FCA, the Financial Conduct Authority was a daunting task given the circumstances of the day.

I acknowledge the struggles and impact the pandemic has caused; however it is still my view that 12 months was sufficient time for you to refer your complaint

from when you became aware of the circumstances giving rise to your complaint.

Part Three

10. I have reviewed the file and cannot agree the FCA acted unprofessionally when seeking clarification of your complaint. I note after receiving your decision letter you asked on more than one occasion how you could raise a complaint about the service you had received from the investigator and this was not addressed until you raised the issue again during your telephone call on 14 June 2022. Whilst it is disappointing you had to chase for this information, I note in the acknowledgement letter sent to you on 21 March 2022, it stated:

Information on how we handle complaints, and a copy of the Complaints Scheme, can be found on our website - <https://www.fca.org.uk/about/complain-about-regulators>.

This link provided information on how to make a complaint.

11. As I have confirmed above, I have listened to the telephone conversation you had with the FCA, I was pleased the advisor confirmed there was a distinction between your complaint about Firm X not being investigated and any action the FCA may or may not be taking relating to Firm X.
12. 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. 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. Under this policy, the FCA will not normally disclose the fact of continuing action without the agreement of the firm concerned. 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>. This means that there is no general right for members of the public to know the outcome of reports that they make.
13. 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 – but I am unable to give further details.

My decision

14. I am sorry to disappoint you, for the reasons outlined above I am unable investigate Parts One and Two and I do not uphold Part Three of your complaint.

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Complaints Commissioner

23 August 2022