

01 September 2022

Final report by the Complaints Commissioner**Complaint number FCA001697***The complaint*

1. On 7 April 2022 you asked me to investigate a complaint against the FCA. My preliminary report was issued on 22 July 2022.

What the complaint is about

2. You are unhappy with the FCA's handling of case 206372211. You referred the case to the FCA in writing on 18 December 2019 and the case to date is still unresolved. You feel the FCA have moved too slowly, and you feel the FCA have misled you in their communication regarding the progress of the case. These two facts have prejudiced yours and others' ability to seek financial recompense.

What the regulator decided

3. The FCA did not uphold your complaint in its decision letter it set out that:

..... You have claimed the FCA has 'misled you in their communication regarding progress and these two facts have prejudiced your and others' ability to seek financial recompense'.

I do understand that you have found the communication from the FCA unhelpful in regard to a timescale for the investigations to be completed. However, I do not believe that you were deliberately misled. MIU tried to give realistic timescales, but the resolution of the investigation was not in their gift and so the circumstances changed over time.

.... You allege the communication from the FCA has 'prejudiced your and others' ability to seek financial recompense'. I can see that on 24 December 2019 the Supervision Hub advised you to seek independent legal advice. On 25 February 2021 you asked 'Before we consider our

legal options can you advise if legal action will prejudice our case with yourselves or vice versa if anything that you can provide that will make legal action unnecessary or premature.

MIU responded on 1 March and explained 'I can't of course give you any advice on the merits of taking legal action against Firm X, or whether our enquiries might impact on your legal action. I'm sure you have your own lawyers advising you on those matters. However, I can confirm that if you took legal action against Firm X, it wouldn't affect or prejudice our own enquiries into this matter and, as far as I am concerned, our enquiries and any legal action you took could proceed in parallel.

I believe that this email was clear that any legal action you took would not be impacted by the FCA and that you did not need to wait before taking any action you (or others) wished to take.

For the reasons given above I have not upheld your complaint.

.... I recognise that you are seeking resolution and I am sorry that the FCA cannot provide you the support you are seeking or the information you would like due to confidentiality restrictions. The FCA does not intervene in individual disputes. I do not consider the correspondence with the FCA has been misleading, although I appreciate that the length of time the matter is taking must be stressful.

Why you are unhappy with the regulator's decision

4. You have provided me with your response to the regulators decision and you have asked me to provide my comments. In your email to me you set out the following summary of your dissatisfaction with the FCA's decision letter:

..... twice maintaining that I said you **deliberately** misled me when I said no such thing is concerning. (Element one) It is not acceptable to miss timescales to the extent you have done so just because they weren't termed firm deadlines.(Element two) It was reasonable to await your response before I took legal action given the timescales you provided and the fact that the issue is one that the FCA should take responsibility for. (Element three) I accept confidentiality can be a

constraint to the information you can provide but you shouldn't be as broad a brush as in this instance. (Element four)

Preliminary points (if any)

5. The FCA welcomes information from people who report concerns. However, as you were told, the FCA does not generally say what action has been taken in response to the information that it receives. 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. 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, as you were told, there is no general right for members of the public to know the outcome of reports that they make.
6. 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, 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. On occasions, I have persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible. I shall continue to pursue this matter with the FCA.

My analysis

7. Firstly I note that in your response to my preliminary report on 15 August 2022, you have challenged and set out that you disagree with a number of points within my preliminary report which I have reviewed and considered in finalising this report.

Element One

8. Having reviewed your correspondence I acknowledge that you never said that the FCA had deliberately misled you.
9. This being said, I do not think that the FCA intended to imply that you had specifically said that you had been 'deliberately' misled. From my review of the decision letter, I believe that the Complaints Team chose to use the word 'deliberately' in an attempt to set out that in reviewing the information relating to your case it had not found that there was any intent by the MIU team to mislead you.
10. I note that in the findings of the decision letter when the Complaints Team noted that it did not believe you were deliberately misled, it attempted to explain why this was the case, with the following statement;

'MIU tried to give realistic timeframes but the resolution of the investigation was not in their gift and so the circumstances changed over time.'

11. Having reviewed the FCA's complaint file I believe that the Complaint Team were acknowledging that whilst the MIU team endeavoured to provide you with realistic time frames based upon its knowledge of its own investigations and processes and discussions with other parties, it was not actually in possession of the relevant knowledge and did not have the ability to speed up other investigations and as such could not provide timeframes on behalf of those other parties involved in the investigation. In your response to my preliminary report you have set out that you 'fundamentally disagree' and still consider that it was 'completely within their gift to sort the matter out within two years'. As set out in my preliminary report I do feel the statement used by the Complaints Team was unclear and unhelpful within the findings and I can understand why

this would have frustrated you and I accept that you disagree with my understanding of the FCA's use of the statement.

12. In view of the above, I have partially upheld this element of your complaint on the basis that I agree that you did not say that the FCA 'deliberately' misled you, and whilst I do not feel that the FCA used the word 'deliberately' to imply you had said they had deliberately misled you, the statement used by the Complaints Team was unclear and unhelpful.

Element Two and Three

13. The investigation into your concerns about the alleged anomalies around the demerger of Firm X and the trading platforms has taken a long time. You sold your shares in Firm X in November 2019 and first raised your complaint with MIU and the LSE in December 2019. Whilst acknowledging that the investigation has taken a long time, I do note that in my experience it is not unusual that a more complex investigation that requires the involvement of several FCA departments and other organisations, to take a significant amount of time. I note that the Complaints Team acknowledged at the end of its decision letter how the length of time the matter is taking must be stressful.
14. In your response to the FCA's decision letter you accepted that the FCA never provided firm deadlines and pointed out that you never said they did. You however, clarified that your complaint was about non adherence to pretty defined and short timescales, not deadlines. You reiterated your point in your response to my preliminary report setting out that your 'complaint is not about the length of process in its own right but the length of the process related to the timescales provided by the FCA'.
15. In your response to the FCA's decision letter you set out that regardless of how they are termed it, it was not acceptable for the FCA to have missed these timeframes to the extent that it did. You set out that there were multiple timescales provided to you at various points which were not kept to or even closely met. You have set out 'a timescale naturally leads to reasonable expectation.'
16. Having reviewed the file and correspondence, I do feel that it was unhelpful that the MIU officer kept providing their anticipated timescales to you about when the

matter would be finalised. I can see how this might have led you to feel that the case would be resolved a lot quicker than it was, although I do acknowledge the fact that when it did provide a timescale, MIU did always set out that it was a 'hope' and it was never a definite timeframe.

17. I also acknowledge that MIU did attempt to explain in its email on 20 July 2021, that whilst the investigative steps were effectively complete that the formal decision on the next steps had not been taken. MIU explained that this was due to the enquiry being more complex than most enquiries because there are several strands to it and with different strand run by different teams and more steps than usual to be taken for clear decision making across different parts of the FCA. I do consider that this explanation would have alerted you to the fact that there were other factors that might impact the time scale provided beyond the scope of MIU alone.
18. Having reviewed the file, I feel that MIU should have tried to better manage your expectations and that it would have been helpful and clearer if whenever it stated a 'hopeful' timeframe to you, it should also have reiterated that as a matter of policy that even when the investigations were finalised that some or all of the outcomes of its investigation may not be shared with you. This may have resulted in you placing less reliance on waiting on the outcome of the investigations. I do acknowledge that the FCA did inform you of this fact at the start of the investigation.
19. I do think that whilst MIU continued to correspond with you and discuss timings of the investigation and continued to apologise for delays and not being able to give you any more detail at that stage, this all created an anticipation that you might be provided with details about the outcome of the matters you had raised, when this was not necessarily the case. For this reason, I do agree that your frustration has been exacerbated because of the repeated 'hopeful' timescales provided and missed.
20. Whilst I appreciate your position that you feel your case has been prejudiced because you were waiting on the outcome of the FCA's investigation before taking legal action, I do find the FCA did set out to you that its investigations should not stop you from pursuing your related issues via other avenues and it

had set out on a couple of occasions that due to confidentiality you may not be provided with the details of any outcomes of its investigations. In particular, when you specifically asked whether legal action would prejudice your case in February 2021, MIU responded on 1 March 2021 confirming that as far as it was concerned that its enquiries and any legal action you took could proceed in parallel.

21. In your response to my preliminary report you set out that whilst you accepted that the FCA investigation could proceed in parallel with legal action, you felt that it made no sense for you to take legal action before the FCA finished its enquiries. You set out that there were four parties that were involved in the 'debacle' and that you wanted to see what the FCA would say about the role of the three organisations that it regulates in relation to the 'fiasco' and that you were essentially asking the FCA if it could 'apportion blame' to the four parties involved as this would have helped you with any legal action.
22. Whilst I understand the reasoning you set out in your response to my preliminary report as to why you chose not to proceed with legal action, it is important that I explain that it is not the role of the FCA to investigate individuals' complaints against organisation. That is the role of the Financial Ombudsman Service (FOS) to investigate an individual's complaint about regulated firms. That does not mean that the FCA cannot investigate concerns arising from information about individual complaints, but it investigates those in the context of considering whether or not regulatory action is justified, or in the case of an unregulated firm whether alternative action should be considered through other forums, rather than whether or not the individual requires redress. Accordingly the purpose and outcome of the FCA's investigation was never intended to provide apportionment of blame to the four parties you identified, rather it was to identify if it needed to take any regulatory action against those parties.
23. It remains my position that the fact that you chose not to pursue legal action was ultimately your decision. MIU did not advise you to wait for the outcome of the investigations. As noted above it did tell you from the start of its investigation that you may not be provided with any further detail about the

outcome of its investigation, and it did not suggest that it would provide you with an apportionment of blame to each of the four organisations that you identified.

24. I appreciate the examples that you provided to the FCA in your response to its decision letter demonstrated how a reliance might be placed on a timescale given in those example settings. These were good and clear analogies. However, I do think there is a difference between a solicitor saying it will prepare a contract in six weeks and a mechanic saying it will repair a car in six weeks compared to your situation. In the examples you provided there is an agreed result between the parties. You raised a complaint with MIU and it confirmed that the information you provided would be assessed and where appropriate passed onto the relevant departments. It set out to you that as a matter of policy it does not provide updates on its assessments. So, in this circumstance I cannot see that there was ever a specific end result promised to you, but as noted above I do accept that by outlining hopeful timescales MIU created an expectation that some detail might be provided.
25. In your response to my preliminary report you set out that you took my point about the analogies and reframed the language to set out you consider that the FCA would not accept the management of expectations and communications in cases from the organisations that they regulate. I consider that this is a valid point you have made.
26. In view of the above I partially uphold Element Three of your complaint to the extent that I do feel that MIU have created a false expectation around timing and the extent to which it might eventually share with you the outcome of its investigations. I would **suggest** that the FCA and MIU should review and consider whether it is necessary to implement clearer language in its correspondence with consumers regarding MIU investigations. Whilst I acknowledge that a false expectation around the completion of MIU's investigation may have been created, I do consider that it clearly set out that you could pursue legal action in parallel while the investigation proceeded and you for your own reasons felt it was reasonable to wait for an unknown outcome.

27. I am pleased to note that the FCA in its response to my preliminary report has confirmed that it has accepted this suggestion and that the area involved has confirmed that it will brief MIU about this case and the complaint and, in light of my suggestion stress the need for clear language in correspondence with consumers/investors.

Element Four

28. I understand that you feel that the FCA has used confidentiality as a way to brush off your complaint and that it used template wording to address this rather than specifically address the details you had raised. I note that under the heading the FCA has used template wording to explain its position about the strict confidentiality regulations it is bound by. I note that in my preliminary points above I have also used template wording which you may again have found frustrating. However, as set out above in my preliminary points, whilst the restrictions do limit what information can be provided to complainants, that under the Complaints Scheme, I do 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. Having studied the FCA's records I can say that I am satisfied that the FCA has not ignored the information which you have provided, that there have been ongoing investigations between MIU and other departments and that the matter appears to be given proper consideration. Unfortunately, I cannot say any more than that, and I recognise that that will again be frustrating for you.
29. I note that in your response to my preliminary report, you set out that you understood that you could not necessarily expect further details from the FCA. You said that this was not your main argument. You went onto explain that the main arguments were essentially that you feel like the FCA has 'strung you along' and that you feel like the fact that the one month indicated to you in relation to the investigation has turned into two years, suggests that the FCA didn't have a satisfactory handle on the investigation. You suggested that the public interest may have been better served if they had conversed with you rather than rigidly sheltering behind confidentiality. I do understand why you have been left feeling this way and I do think that this is unfortunate. Whilst I cannot provide you with further details, as I have set out above, I am satisfied

that the FCA did not ignore the information you provided and believe that if they had required further information that it would have conversed further with you as needed during its investigations.

30. In your response to the decision letter, you questioned the fact that the FCA states that “we don’t usually make public the fact that we are investigating”. You set out that the FCA has already stated to you that it is investigating and then questioned whether in fact the FCA has been investigating the matter. You said:

‘Given that I brought my concerns over this situation to you in the first place, I believe you should be able to provide some information without confidentiality being an issue. Even a few one liners would help.’

31. As I have stated above, MIU’s decision to communicate with you and set out that it could not provide you with details at that time, has potentially created a false expectation that you would be provided with more information than the FCA is in fact able to provide under the confidentiality restrictions. The fact that you have been informed that it was investigating the matter is more information than the FCA sometimes provides to the public and you should not expect any further details than you have already been given from the FCA.
32. The use of confidentiality restrictions by the FCA in complaints is a common concern raised by complainants and is something that I am aware of and actively monitor to ensure that the FCA is applying the restrictions only where necessary.

My decision

33. This is my final report for the reasons given above I have partially upheld Elements One and Two and Three of your complaint and I have not upheld Element Four.

Amerdeep Somal
Complaints Commissioner
01 September 2022