

15 August 2022

Final report by the Complaints Commissioner**Complaint number FCA001698***The complaint*

1. On April 2022 you asked me to investigate a complaint against the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

Part One

You have explained that you would like to complain about Bank X. You state they have failed in the duty of care they have towards you by “allowing an investment to proceed with a known fraudulent entity called Firm Y, a CFD trading firm based on Cyprus, utilising celebrity endorsements to capture amateur investors based in the UK.” You believe that Bank X failed by not monitoring your transactions with a known fraudulent entity from 10 May to 20 May 2020. You have explained that you were suffering from the effects of a brain abscess from mid-March 2020 to 23 May 2020. As a result, your judgement had deteriorated, and you displayed uncharacteristic behaviours and actions. You state Bank X failed to recognise signs that you were a vulnerable customer. You believe Bank X failed to treat you “according to the guidance and best practice contained with BSI PAS 17271”. You state there was no action from Bank X in any way. You explained Bank X refused to help you recover your stolen funds. You state that your funds could have been recovered “through the charge back principles offered by VISA misrepresentation clause 13.5” which were open to you at the time. However, you state that Bank X refused to speak to you saying it was not possible as you had raised a complaint with the Financial Ombudsman Service.

Part Two

You have explained that the firm's conduct was being monitored by the FCA from 9 January 2018 to 23 May 2020 before the FCA issue supervisory notice was issued. The notice removed the firm's passporting rights to cease legally trading in the UK market from 28 May 2020. You query why the FCA allowed this firm "to present an ongoing harm to amateur investors for over 28 months without removing their passporting rights once it became evident of their illegal conduct". You state that the FCA acknowledged over 99 complaints and suspected criminal activities of Firm Y during this time. You believe that the "FCA should have clamped down immediately and not dithered whilst seeing what the Cyprus based authority CySEC would do". You have explained that as a remedy you would like back the money you invested in Firm Y.

What the regulator decided

3. The FCA said 'In our letter of 10 December 2021, you were advised that Part One of your complaint was excluded under Paragraph 1.1 of the Scheme'.
4. The FCA said this about Part Two: 'After carefully considering the information you have provided, we have concluded that this is not a complaint we can investigate 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." I am very sorry to hear about your health problems you were facing from mid-March 2020 to 23 May 2020 and understand it would have been a difficult time for you. However, to look at your complaint, I need to be satisfied that there were "reasonable grounds" for you not raising the complaint within 12 months of your first becoming aware of the circumstance giving rise to the complaint. This means that you had 12 months from May 2020, to have raised a complaint. Whilst I sympathise with the ill health that you suffered, I am not persuaded that the timeline you have provided amounts to "reasonable grounds" for the delay. This is because you have advised in your complaint that you were able to return

to work in January 2021. Therefore, it is my view that you would have been able to bring the complaint within the 12-month timeframe as you could have reasonably submitted the complaint from January 2021 to May 2021'.

Why you are unhappy with the regulator's decision

5. You have referred both of your complaints to me for review. You explain in detail how affected you were by your health problems and although you were able to undertake some odd work, which is not to say you were well in general to focus on all aspects of your life, including matters such as this complaint.

My analysis

6. I empathise with your position as you have explained the trouble and upset you have experienced over the past two years.
7. I have considered the material which I have found to be most relevant to your case. My investigation of this complaint at this stage is the question of whether the complaint was referred in time and whether I think the FCA were right to exclude Part One of your complaint under 1.1 of the Complaints Scheme and use 3.3 of the Complaints Scheme as reasons to not investigate Part Two of your complaint.
8. I turn to Part One of your complaint.
9. This Complaints Scheme is concerned with the actions or inactions of the FCA. It cannot deal with complaints against banks, individual firms [or against the Financial Ombudsman Service (FOS)], nor is it a redress service for individual consumer complaints. The Financial Services and Markets Act 2000 explicitly provides for a consumer redress service separated from the FCA.
10. If you have a complaint about how you have been treated by a regulated firm, and seek financial redress, the correct organisation to approach is the FOS, and I understand you have already done so.
11. That does not mean that the FCA cannot investigate concerns arising from information about individual complaints, but it investigates for the purpose of considering whether or not regulatory action is justified, rather than whether or not the individual requires redress. The fact that a bank may have done something which justifies redress (through the FOS or through individual legal

proceedings) does not automatically mean that regulatory action is justified – that would depend upon the scale of the problem, and the risk of recurrence.

12. The Complaints Scheme is not an alternative redress scheme to the FOS. For the reasons above I agree with the FCA that this complaint is excluded. In your response to my preliminary report you continue to believe that you can seek financial redress through either the FOS or the FCA. This is not the case. I refer you to paragraph 10 above and I reiterate that you can only pursue financial redress through the FOS.
13. I now turn to Part Two of your complaint.
14. On review, I agree the FCA was right to not investigate your complaint citing 3.3 of the Complaints Scheme. I think the FCA were right to determine that you ought reasonably to have brought the complaint in time. I acknowledge you had ill health, however, given you were able to undertake some work, it stands to reason that you would also have been able to submit your complaint about matters which were already within your knowledge in time.

My decision

15. I do hope your situation improves. For the reasons above I am sorry I have not been able to investigate your complaint. I agree with the FCA that it could not investigate your complaint under 3.3 of the Complaints Scheme due to matters being submitted to it more than 12 months after the date you ought to have been aware there was a problem and cause for raising a complaint.

Amerdeep Somal
Complaints Commissioner
15 August 2022