

19th April 2018**Final report by the Complaints Commissioner****Complaint number FCA00405***The complaint*

1. On 23rd October 2017 you asked me to investigate a complaint about the FCA. I have carefully reviewed the papers sent to me by you and by the regulator.
2. First of all, let me say that I was very sorry to learn about the financial loss which you suffered.

What the complaint is about

3. In its decision letter to you, dated 16th October 2017, the FCA summarised your complaint as follows:

You allege that the FCA has acted unreasonably by creating an eligibility period for investors in Tesco plc to receive compensation. This eligibility period is for those who purchased shares and/or bonds in Tesco plc between 29 August and 19 September 2014. You have told us you invested in Tesco plc before this and you believe you were misled about the financial stability of the company and misled into buying shares. You think that the three week period should be extended for you, due to the loss you have suffered and the distress caused to you

What the regulator decided

4. The FCA did not uphold your complaint. It said:

From the information I have reviewed, my view is that the eligibility criteria in relation to the three week window is reasonable in all of the circumstances and I do not think that the dates should be extended.

The FCA issued a press release on 28 March 2017 which, in my view, suitably explains the FCA's position concerning the three week window for the compensation scheme. Further information can be found here - <https://www.fca.org.uk/news/press-releases/tesco-pay-redress-market-abuse>.

Why you are unhappy with the regulator's decision

5. In your letter to me, you say:

I would like to complain about this 3 week window- its all a sham and a disgrace- no information is being given to me why 3 weeks.

Preliminary points

6. There are two things I need to explain before I analyse your complaint. The first is that, although I have access to the FCA's confidential documents – which I have looked at carefully – I am bound by the same requirements for confidentiality as the FCA. I have, however, tried to provide as full an explanation as possible.

7. The second thing is that it is not my role to say what I might have decided if I had been the FCA. My role is to look at what the FCA did, and say whether or not it was reasonable and professional.

My analysis

8. Although the background to the events which led to the FCA's compensation scheme for people who were the victims of the market abuse by Tesco is a complex one, your complaint is essentially simple. You want to know why the compensation scheme was restricted to losses sustained during the three-week window, rather than a longer period.
9. I have looked at the quite extensive email correspondence between you and the FCA, some of which came before your formal complaint. I have sympathy with your frustration, since the FCA's responses have largely simply asserted that they consider what they have done was "sufficient", rather than explaining their reasons. The FCA have, however, explained to you that the fact that the compensation scheme which they agreed with Tesco is restricted to the three-week period does not prevent you and other investors from taking additional legal proceedings against Tesco if you consider that you have a case for further compensation.
10. The matter is also complicated by the confidentiality restrictions which I have already mentioned, but the FCA have agreed that I can give you a little more information, which I hope will at least partly help to explain what happened.
11. I have seen detailed papers from the FCA from which it is clear that they considered very carefully what period the compensation scheme should cover. It is important to emphasise that, in making decisions of this kind, the FCA has to take into account quite a range of factors, since it does not have the power simply to impose a compensation scheme on a firm. It is also important to say that the FCA does not guarantee to protect investors from losses, and arranges restitution schemes only rarely. You can find further details at <https://www.handbook.fca.org.uk/handbook/EG/11/2.html>.
12. In this case, factors which the FCA took into account in deciding upon the period the scheme should cover included the strength of the evidence of market abuse in relation to a number of events (including those which you have mentioned in your correspondence), and how long ago the events took place (this is relevant to how difficult it might be to prove market abuse over a longer period).
13. Having studied the FCA's papers carefully, I am satisfied that the FCA gave thorough consideration to these and other factors before agreeing a scheme with Tesco. I recognise that this will not result in the additional compensation which you would like, but I hope that it will give you some assurance that the FCA did not ignore the position of investors, and that it made a rational decision.

My decision

14. For the reasons I have given, I am afraid that I cannot uphold your complaint.

Antony Townsend
Complaints Commissioner

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