

28 August 2018

**Final report by the Complaints Commissioner****Complaint number FCA00481***The complaint*

1. You wrote to me on 6 July 2018 to complain about the FCA's alleged failure to oversee firm X properly.

*What the complaint is about*

2. You invested in firm X, an unauthorised firm which was not permitted to offer regulated financial services. The FCA began investigating the firm in 2015 and later decided that the best option for the firm's investors was to allow the firm to remedy its breach. Consequently the firm offered two options (option A and option B) to its investors, which the FCA considered an improvement on the original position for investors. However, you felt that the FCA should have 'taken stronger action' against the firm and that the terms of option A were unfair. You also felt confused because firm X wrote to you to say that the two options had been agreed with the FCA, but the FCA subsequently informed you that it had not agreed the options with firm X.

*What the regulator decided*

3. The FCA did not uphold your complaint. It gave the following reasons:
  - a. It had considered taking further action against the firm, but reached the conclusion that the best outcome for investors was to allow firm X to remedy its breach; and
  - b. The FCA explained why option A had been offered to investors structured in the way it was. You were also informed that firm X had revised option A subsequently to make it more safe for investors, and this had been advertised on the firm's website recently. The other option (B) was an

improvement on the original investment, as this option was now lawful whereas the original investment was not.

4. The FCA did not address your point about the discrepancy in the firm's and the FCA's correspondence with you about whether or not the FCA had 'agreed' the options with the firm.

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

5. You referred the complaint to me as you felt that:

Element One

The FCA had not addressed your concerns in 4 above.

Element Two

The FCA ought to do more to enable investors in firm X to get their money back quickly, especially as you are concerned the firm may wind down before it returns your investment. As a direct result of this investment, you say you are struggling financially.

*My analysis*

Element one

6. I can see that your original complaint to the FCA raised the issue of the alleged discrepancy in the wording used by firm X and the FCA with respect to the two options offered to investors.
7. The FCA wrote to you on 16 May 2018 explaining what its understanding of your complaint was. Unfortunately, it omitted this element of complaint.
8. I cannot see any record of you correcting this mistake as a result of the 16 May FCA letter. The FCA therefore issued its decision letter without addressing this element.
9. Nevertheless, I would have expected the FCA to have taken more care in setting out your complaint. Normally, when the FCA has not investigated a complaint, it is preferable that it does first before I begin my investigation. However, in this case, having made enquiries of the FCA, I decided that it would be quicker to address your concern as part of my investigation.

10. It is clear that you received different accounts about the FCA's involvement in the two options offered to investors: firm X stated that the options had been agreed with the FCA, while the FCA denied this.
11. I have asked the FCA about this. The FCA has explained that it is concerned that investors should not be given the impression that either option offered by firm X are *FCA-Authorised* or *FCA-Endorsed*. It does not want investors to have the impression that either option has the same kind of status or protections as doing business with an authorised firm. The FCA makes a distinction between the terms being "agreed" with the FCA (in the sense that it has agreed that if Firm X offers those terms and takes various other steps, it will not sue Firm X) and the FCA not having "approved" or "endorsed" the offers being made. The response sent to you in January was intended to communicate the latter point, but the FCA can understand why you did not find this clear.
12. My understanding is that shortly after you received the firm's communication in January 2018 where it used the wording that the options had been agreed by the FCA, the FCA became aware of this issue and discussed it with the firm. As a result of these further discussions, the firm acknowledged that it would not use the term 'the FCA agreed'.
13. I do not consider that the FCA set out to mislead you, but it should have given you a fuller explanation. By saying that the options had not been "agreed", the FCA gave you the impression that the FCA had not any involvement in the offering of the two options. That was not the case, since it is clear that the FCA had considered the two options as part of its assessment as to how best to protect investors' interests, and whether or not to take action against the firm. However, the FCA has now taken steps to put this matter right.
14. Element Two
15. You feel the FCA should be doing more to enable investors to get their money back quickly. As you are aware, the FCA is working with the firm with a view to ensuring investors are treated fairly. However, as you were told, the FCA will not generally provide feedback on what action has been taken and why. 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 places restrictions on 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.

16. 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.
17. In this case, I am satisfied the FCA is taking reasonable steps to ensure the firm remedies its breach and that a fair outcome is achieved for investors. This does not mean however that the FCA can guarantee the return of your investment.

*My decision*

18. The FCA did not include element one of your complaint in its investigation, and should have done. It should have been clearer to you in explaining the extent to which the FCA had been involved in considering the two options offered by firm X. However, it has now rectified the matter. I **recommend** that it acknowledges this.
19. For the reasons above, I do not uphold element two of your complaint.
20. You have enquired whether you are entitled to compensation from the FCA as a result of my investigation into your complaint. I did not uphold element two of your complaint, and I concluded that element one of your complaint should have been reviewed by the FCA in its investigation. The fact that it was not is regrettable. However, the FCA's actions with respect to firm X have been reasonable and you have not been disadvantaged in any way by the FCA. The FCA has acknowledged that it should have been clearer. Therefore, I do not consider that the FCA should make any ex gratia compensatory payment.

Antony Townsend  
Complaints Commissioner  
28 August 2018