

31 January 2019

Final report by the Complaints Commissioner**Complaint number FCA00538***The complaint*

1. You wrote to me on 7 January 2019 asking me to review the FCA's decision to defer your complaint about its oversight of Firm X .

What the complaint is about

2. In its decision letter of 3 October 2018, the FCA described your complaint as follows:

Part One

You allege that the FCA has failed to appropriately regulate the firm by failing to ensure that the firm had ring-fenced client monies in segregated client accounts. You are now seeking compensation for the financial losses incurred following the firm entering administration.

Part Two

You state the firm has committed fraud and allege the FCA has done nothing about it.

What the regulator decided

3. The FCA said that it was deferring the investigation of your complaint until a later date. This is because your complaint is connected with, or arises from, some form of continuing action by the FCA.

Why you are unhappy with the regulator's decision

4. You wrote to me to say 'in my opinion, too much time has passed since I first made my complaint and I have not received an update since their initial response', and you provided further details of alleged wrongdoings by the firm FCA00538

which you say the FCA did not look into before undertaking regulatory action against the firm, which is currently in creditors voluntary liquidation.

My analysis

5. Under the Complaints Scheme, a complaint which is *connected with, or which arises from, any form of continuing action by the regulators will not normally be investigated by either the regulators or the Complaints Commissioner until the complainant has exhausted the procedures and remedies under FSMA (or under other legislation which provides for access to the Scheme) which are relevant to that action. The complainant does not have to be the subject of continuing action by the regulators for this provision to be engaged. An investigation may start before those procedures are completed if, in the exceptional circumstances of the case, it would not be reasonable to expect the complainant to await the conclusion of the regulators' action and that action would not be significantly harmed* (see paragraph 3.7 of the Complaints Scheme at <http://frccommissioner.org.uk/complaints-scheme/>).
6. Having asked the FCA for further details, I am satisfied that it is investigating the actions of the firm. The FCA explained that its investigations are time consuming due to their complexity. The factors include the fact that the company used over 60 accounts (in different currencies) over a six-year period, the possibility of criminal activity, and the need to request assistance from involved parties including overseas. Therefore, the FCA is unable to say how long its review will take, although it is not unusual for such reviews to take many months or years.
7. The reasons why complaints connected with continuing regulatory action may be deferred are first to ensure that that action is not prejudiced by dealing with the complaint, and second because staff involved in the continuing action may become diverted by having to deal with the complaint.
8. I am satisfied that, at this fairly early stage of the FCA's investigations, it is reasonable for the FCA to defer consideration of your complaint. However, I am aware that you – and many others – are seriously affected by this matter, and therefore I do not think that your complaint should be deferred indefinitely.
9. You have asked me if I can arrange a separate, independent investigation into the FCA's oversight role over Firm X, to be conducted either by the Serious

Fraud Office (SFO) or a similar organisation. This is not something I can do. The SFO takes its own decisions on whether to investigate suspected fraud. My role is restricted to the actions, or inactions, of the FCA.

My decision

10. For the reasons given above, I believe the FCA is taking reasonable steps to progress its investigation into the firm. I agree with its decision to defer the investigation of your complaint, but I do not think that should be indefinite.
11. I **recommend** that the FCA should update me and you every six months on the progress of its inquiries (though I recognise that particularly in the early stages there may be considerable limits to what the FCA can say).
12. I also **recommend** that, additionally, the FCA informs me every six months on whether its reasons for deferral – possible prejudice to its inquiries, diversion of staff – remain sufficient to justify deferral, or whether the complaint could be dealt with even though any regulatory action is not complete.
13. I am pleased to say that the FCA has accepted these recommendations.
14. Finally, if having received the results of the FCA's investigation you remain dissatisfied, you will have the right to come back to me.

Antony Townsend
Complaints Commissioner
31 January 2019