

6 February 2019

**Final report by the Complaints Commissioner****Complaint number FCA00545***The complaint*

1. You wrote to me on 24 January 2019 asking me to review the FCA's decision on your complaint about its oversight of Firm X .

*What the complaint is about*

2. You complained to the FCA on 15 November 2018 that it had been negligent in regulating Firm X. You indicated that your savings had been transferred to Firm X's accounts and, since the firm has ceased trading, you have been unable to recover your funds. As a remedy to your complaint, you want the FCA to take action to recover your funds.

*What the regulator decided*

3. On 16 November 2018 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 are not happy with the FCA's deferral of your complaint.
5. You have provided me with your view about the FCA's role in the Firm X's administration/liquidation proceedings and the involvement of an ex FCA employee.
6. You have also raised a number of new complaints about the FCA register: about the information it displays generally on authorised companies (what you refer to as data integrity issues) and about Firm X specifically. You claim that when you transferred your savings to Firm X the register was showing it as authorised.

7. You refer to a letter the FCA sent you on 7 January 2019 which stated 'in the interim we (FCA) have had to prioritise some other urgent cases'.
8. You also say your 'separate complaint sent to FCA on 15 November 2018, re the FCA's misleading issued at that time remains unanswered.'

*Preliminary points*

9. I understand that you have not yet approached the FCA for a review of your complaints about the register in 6 above. Under the Complaints Scheme the FCA usually do their own investigation first, as that is usually the swiftest way of resolving matters. For that reason, I suggest that you send your complaints about the FCA register to the FCA. Once the FCA has completed its review, you can ask me for an independent investigation if you are not satisfied with the FCA's decision on that matter.
10. I asked you if you think that there is a particular reason why I should review your complaints about the register without waiting for the FCA to investigate, which I would consider., You have responded that you are looking for a fast resolution to your complaint as a whole (both the FCA's oversight of PFX and the upkeep of its register), as the longer it takes to investigate, 'the more likely it is that victims will become ill, destitute and even suicidal'.
11. Neither I or the FCA have not been able to locate the letter of 7 January which you refer to in 7 above, or the separate complaint you sent to the FCA on 15 November which you refer to in 8 above. I asked you to provide copies to me so I can review these matters further. You have not replied to me on that point or provided further information, so I cannot investigate those matters further.

*My analysis*

12. I have reviewed the FCA's decision to defer your complaint.
13. 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/>).

14. 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 its 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.
15. 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.
16. 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. It is for that reason that my recommendations below include regular review, so that the investigation into your complaints can begin as soon as that becomes possible.
17. You have asked me if I am able and willing to compel the FCA to compensate you and other investors, and if not, if I can arrange a separate, independent investigation into the FCA's oversight role of 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 at this stage is not to determine the merits of your underlying complaint: it is to decide whether or not to uphold the FCA's decision to defer consideration of your complaint

## My decision

18. 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.
19. 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).
20. 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.
21. In relation to your new complaints about the register, I consider that you should ask the FCA to investigate them first. This is usually the swiftest way of resolving issues, unless there are exceptional circumstances. I have sympathy for your situation but I do not consider there are exceptional circumstances here in order for me to conduct my own investigation without the FCA doing its own first.

Antony Townsend

Complaints Commissioner

6 February 2019