

14 June 2019

## Final report by the Complaints Commissioner

### Complaint number FCA00550

#### *The complaint*

1. On 11 February 2019 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. My preliminary report was issued on 13 May 2019. My preliminary report was issued on 13 May 2019 and both you and the FCA have responded. This final report takes account of those comments, and concludes my investigation.

#### *What the complaint is about*

2. Between July and November 2018 you contacted the FCA's Consumer Contact Centre (CCC) on several occasions to raise your concerns about a firm and a financial adviser. On 27 November 2018 your concerns were referred to the FCA's Complaints Team.
3. The FCA divided your complaint into the following three parts:
  - a. Part One – an allegation that the FCA failed to supervise appropriately a financial adviser in an FCA-authorised firm, causing you and your wife to lose over £125,000, and amounting to a failure to protect consumers and the integrity of the financial services industry.
  - b. Part Two – an allegation that the FCA is giving approval to financial advisers without any kind of audit on their portfolios or without considering that they are selling '*unregulated products and dealing with unregistered companies*'.
  - c. Part Three – an allegation that the FCA's rules for the Financial Services Compensation Scheme (FSCS) have meant that due to a technicality you are unable to obtain compensation for your losses.

*What the regulator decided*

4. The FCA's complaint response of 30 January 2019 said that Part One was not upheld because CCC passed on the information you provided to the relevant Supervision Team who had acted appropriately. Further details could not be provided to you because of confidentiality restrictions and the FCA's policy approach to its regulatory work. Parts Two and Three of your complaint were not formally investigated because the FCA considered that they fell outside the Complaints Scheme, although some further information was provided to you.

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

5. You are dissatisfied with the FCA's response because it does not provide you with a remedy for losses you have experienced after trusting an FCA-approved firm and financial adviser. You consider the FCA's rules and approach fail to provide adequate consumer protection for inexperienced investors. In addition to your concerns about what has happened to you, you are concerned that the adviser concerned has been authorised by the FCA to open his own firm and continues to give advice, now as an independent financial adviser.

*My analysis*

6. In 2014 you and your wife sought advice from an FCA-authorised financial adviser at an FCA-approved firm on your options for investment and retirement planning. You had not used a financial adviser before and you relied on the FCA involvement as an assurance that the advice you received would be suitable for your needs and that you would be protected if anything went wrong. The adviser reassured you that he was 'fully insured'. He recommended that you used your pension lump sum to take out two loan agreements with Company A, which he described as low risk and in your best interests. However, Company A has now declared insolvency and you have lost the whole of your investment, £125,000.
7. You have since learned that the adviser's firm had a connection to Company A, a conflict of interest that was not disclosed to you. You approached the Financial Ombudsman Service but were told that you had no redress against the adviser, only the firm he worked for, which had also by that time gone into voluntary liquidation. You approached the Financial Services Compensation Scheme, but your claim was declined because you had taken out unregulated products with

an unregistered company. You had no awareness that this was the case when you agreed to take out the loans. You have lost substantial funds and have been left without redress. I have great sympathy with your situation.

8. In reviewing the FCA's handling of your complaint, I have had access to all the FCA's papers, including confidential files. Like the FCA, I am required to respect confidentiality. This means that sometimes I cannot report fully on all the material I have seen. However, it is important that under the Complaints Scheme, as an independent person, I can assess whether I consider that the FCA has behaved reasonably.

*Part One*

9. The FCA's response to Part One of your complaint focussed on your interactions with CCC and concluded that this team had referred your concerns correctly to the Supervision Team who had dealt with your information appropriately. Based on what I have seen, I am satisfied that this was a reasonable description of what occurred after you contacted CCC. The FCA's role is not primarily to assist individuals in relation to complaints (that is the role of the Financial Ombudsman Service and FSCS) but to gather information and intelligence to regulate firms. Its confidentiality restrictions mean that most of its regulatory activity is not disclosed. This can sometimes mean that any regulatory action the FCA may be taking is not apparent to complainants and others. Unfortunately, this means that I also cannot give you any information about the FCA's ongoing supervision of the individual who advised you. However, I expect the FCA to take note of your experience and ensure that proper steps are taken to avoid any repetition.

*Parts Two and Three*

10. In my view it was reasonable for the FCA to conclude that Parts Two and Three of your complaint fell outside the Complaints Scheme for the reasons given to you. I note that some further information was provided to you about the way in which the FCA approaches its supervisory responsibilities. The FCA's files show that attempts were also made to contact the FSCS to understand more fully the basis on which your claim for compensation was declined. However, the FSCS failed to respond in a timely manner and a decision was eventually made by the

Complaints Team that this could not be pursued within the timescales available. It is unacceptable that the FCA was unable to extract a response from the FSCS.

*My decision*

11. I am unable to uphold your complaint as I am satisfied that the FCA conducted an appropriate investigation and provided a reasonable response to your complaint. I appreciate that this will be of little comfort to you following your experience and substantial loss. As you say, you trusted the 'badge' of FCA approval only to be let down by unscrupulous advice to invest in unregulated products. By a combination of circumstances and through no fault of your own you have been unable to obtain redress from the firm, its insurers, the Financial Ombudsman Service or the Financial Services Compensation Scheme. It is not possible for me under the Complaints Scheme to award you compensation on the scale you have requested to make good the shortfall in funds you have experienced. Parliament has exempted the FCA from liability in legal damages except in cases of bad faith or a breach of human rights, and that would need to be decided by a court.
12. In my preliminary report I **recommended** that the FCA takes urgent steps to ensure it has proper arrangements in place for liaison with the FSCS. In response to this the FCA has told me that it has taken action and is confident that it now has proper liaison arrangements in place, including a shared mailbox for enquiries. This is to be welcomed. In your response to the preliminary report, you have referred again to a number of issues related to the interaction between the FCA and the FSCS. In view of this, and because you have never had a satisfactory response to the questions the FCA complaints team posed to the FSCS, I **suggest** that the FCA now seeks a response from the FSCS on the following point:

Why was your loss not covered by the FSCS when it seems that customers of the firm with other unregulated products were compensated and such products have also been covered following the collapse of another firm?

You have also asked why you did not receive a client contact letter from the FCA dated 17 October 2017 advising customers of the firm to contact the FSCS, and why this letter was sent if unregulated products were not covered? I **suggest**

that the FCA also provides you with a response to these questions. In doing so, I reiterate that I agree with the FCA that this aspect of your complaint (Part Three) is not covered by the Complaints Scheme. I cannot adjudicate on the criteria the FCA sets for the FSCS to pay compensation. However, you have made the forceful point that the nature of the investment is irrelevant to those who have been the victim of unscrupulous practice. I consider that it is only reasonable in the circumstances that the FCA provides you with further information to help explain to you why your substantial losses are not covered.

13. I have raised with the FCA on several occasions my concern that people may be under the false impression that their investment is protected because the firm is regulated by the FCA. In January 2019, the FCA issued this [Dear CEO letter](#) warning firms about the importance of ensuring that financial promotions make clear where products offered are not regulated. In response to my preliminary report, the FCA has told me about subsequent steps to follow up with firms, which in some cases has led to changed marketing to make the distinction between regulated and unregulated business clearer. The FCA has also told me about actions taken to strengthen its rules and guidance and that it intends to publish further information regarding regulated firms conducting unregulated business.
14. I very much welcome all of these initiatives. However, I also note that in your response to my preliminary report, you have restated your anguish that the badge of FCA approval gave you a false sense of security to your serious detriment. The FCA clearly needs to do further work to reassure consumers and the public that they can have more confidence that it is fulfilling its consumer protection mission. The publicity surrounding recent high-profile cases has exacerbated this, and I am pleased to receive the FCA's assurance that it is not complacent about there being room for improvement.
15. In my view, the FCA also needs to consider what more it, and the regulatory system as a whole, can do to stamp out abuses and the exploitation of inexperienced investors unfamiliar with financial services products. It should also consider what steps can be taken to mitigate the risk that unscrupulous firms and advisers can escape responsibility in the way that you have experienced, leaving no safety net for victims.

Antony Townsend  
Complaints Commissioner  
14 June 2019