

31 December 2019

Final report by the Complaints Commissioner**Complaint number FCA00673***The complaint*

1. On 7 November you complained to me that the FCA had not upheld your complaint about its alleged lack of action in response to information which you had provided it with.
2. I was sorry to hear about the financial losses which you have suffered.

What the complaint is about

3. In its decision letter of 9 August 2019, the FCA described your complaint as follows:

You claim that the FCA has ignored all your previous correspondence about [Firm A], and as such is 'allowing criminals to walk free' by not acting on the information you provided.

You also provided the FCA with information regarding [Firms B, C and D]. You believe no action was taken in light of this and feel that the FCA showed no interest in your concerns.

To resolve your complaint, you would like compensation for the time you have spent on these matters and the money you have lost.

What the regulator decided

4. The FCA partially upheld your complaint. It said that information which you had supplied to the Financial Services Authority (FSA – the FCA's predecessor) had not been passed on to the relevant department as it should have been, and apologised.
5. The FCA also offered you £50 because of the delay in handling your complaint, which you accepted.

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Why you are unhappy with the regulator's decision

6. In your email of 7 November, you have set out clearly and in considerable detail your view that the FCA failed to respond adequately to the information which you provided, failed to acknowledge it properly, and that, as a result, you have shares which are worthless. You are seeking compensation of £22,826.00 plus interest.

Preliminary points

7. I need to explain what I can and cannot do: you may already be aware of these points, but they are important, given that this report is likely to be published.
8. This Complaints Scheme considers the actions or inactions of the FCA. The FCA is a regulator: its role is to consider information about financial services providers and decide whether or not to take action.
9. My role is not to second guess the FCA's exercise of its discretion – it has competing priorities and complex legal processes to consider. I can, however, consider whether or not the FCA's actions or inactions have been reasonable.
10. When the FCA receives information from someone, it acknowledges that information and explains to the informant that it will usually be unable to report what, if any action, has been taken as a result of it. This is because the FCA operates to a strict regime of confidentiality. The result is that people supplying information often do not know whether the FCA has taken action. This is frustrating, but is a product of the statutory regime set up by Parliament.
11. It is also relevant that the FCA is not a consumer advice or compensation service. Parliament has established separate organisations – the Financial Ombudsman Service and the Financial Services Compensation Scheme – to undertake those roles.
12. I note that many of the events about which you complain took place some time ago – well beyond the usual 12-month limit for bringing complaints. However, the FCA did not exclude your complaints on that basis, and neither do I.
13. Finally, it is important to stress that the financial services regulatory system does not offer financial guarantees against losses incurred in share dealing.

My analysis

14. Although your complaint encompasses alleged malpractice by a number of organisations over a considerable period, the kernel of your complaint is relatively simple. You consider that you have drawn the regulator's attention to malpractice (and indeed, on one occasion assisted the regulator in enforcement action), but that the regulator failed to take adequate action and that, as a result, you have lost money.
15. The consideration of your complaint by the FCA was very badly delayed: the initial investigation was ill-focussed, and then nothing was done for a period of about six months. That was clearly unacceptable, but the FCA has apologised and you have accepted a payment.
16. When your complaint was reallocated in the summer, the new investigator undertook a very thorough inquiry into what happened, including consideration of events going back many years.
17. The FCA investigator established that the information about firm A which you supplied to the FSA in 2011 and 2014 had not been passed on within the organisation as it should have been. However, information which you supplied in 2015 and 2018 was appropriately considered within the organisation, and action was taken.
18. Because firm A is no longer an FCA authorised firm, the FCA explained to you that there was nothing further which it could do in relation to the information which you had supplied.

My decision

19. It was clearly unfortunate that the FSA did not properly process information which you supplied in 2011 and 2014, but it is not possible for me to establish what, if any, effect it would have had if the information had been referred properly.
20. Fundamentally, your complaint is against firm A, and the alleged mis-selling of shares. Consumer complaints against firms are matters for the FOS, FSCS, and the courts, depending upon the nature of the complaint, not for the FCA.

21. I recognise that you have suffered significant financial losses. In my view, the FCA's decision to partially uphold your complaint, and offer you a payment for the delay in handling it, was appropriate.
22. I do not see grounds to recommend that the FCA should offer you a payment for your financial losses. In general, the law gives the FCA protection against legal action for financial losses. In exceptional cases, where there is evidence of sustained and significant failure by the regulator to take action, I may recommend a payment, but I am afraid that I do not think that the mishandling of two pieces of information in 2011 and 2014 is a sufficient reason to make such a recommendation. I suggest that you seek legal advice about whether there are any alternative ways you might recoup your losses.
23. I agree with the FCA's decision, and I do not uphold the remaining parts of your complaint. I recognise that this will be disappointing for you.

Antony Townsend

Complaints Commissioner

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