

Date 17 December 2020

Final report by the Complaints Commissioner**Complaint number FCA00769***The complaint*

1. On 17 October 2020 you asked me to review a complaint about the FCA's oversight of Firm X.

What the complaint is about

2. The FCA summarised your complaint as follows:

You confirmed your wish not only to be informed of when Epayments Systems Ltd ('the firm') is expected to complete its remedial action plan, but also for the timeframe to be as short as possible.

For ease of reference, I have summarised your complaint below.

Part One

You are unhappy that since 11 February 2020 the FCA has suspended the activities of the firm, and that you have been unable to access the bank account you have with the firm and the funds held within the account.

Part Two

You are unhappy that the FCA has not given you a clear answer to your letter of 30 June 2020.

Part Three

You are unhappy that the FCA has failed to update you, as promised, after 4 weeks from making your initial complaint and you believe that your complaint has been ignored.

Remedy

You would like the FCA to:

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- *provide a clear response to your letter of 30 June 2020.*
- *provide/ determine a timeframe by when the firm is expected to complete its plan (with your wish being for the timeframe to be as short as possible).*

What the regulator decided

3. The FCA did not uphold part one and two of your complaint. The FCA upheld part three of your complaint.

Why you are unhappy with the regulator's decision

4. You feel the FCA should be sharing information with you about its regulatory actions with respect to Firm X and not citing confidentiality as a reason to keep you uninformed about the detail of these actions (Element One).
5. You do not feel that the FCA has given a clear answer to your letter of 30 June in which you ask the FCA to '*determinate timeframes to [firm X] to finish their improvement plan*' so you can access your funds (Element Two).

My Analysis

Element one

6. The background to your complaint is that you were a client of firm X, which suspended its activity on customer accounts in February 2020 . This decision was taken following a review, by the FCA, of firm X's anti-money laundering systems and controls, which identified weakness that required remediation.
7. As a result of this, you (and other of the firm's clients) have been unable to access your funds since then. You are concerned about this.
8. The FCA has explained to you that due to confidentiality restrictions it can't provide you with full details on why the restrictions of firm X were agreed.
9. Like the FCA, I am required to respect confidentiality This means that sometimes I cannot report fully on the confidential material to which I have access. However, 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.

10. I recognise that there's a difficult balance to be struck between protecting confidential information, and the need to give consumers sufficient information and confidence to judge whether or not the regulatory system is operating effectively. However, having reviewed the papers, I am satisfied that the FCA was correct to engage with firm X with respect to its activities, and that it is reasonable for it not to disclose further information due to confidentiality reasons.

Element Two

11. You are concerned that you do not have access to your funds and in your letter of 30 June 2020 you say '*I ask you to determinate timeframes to [Firm X] to finish their improvement plan. Without any timeframe they will do their «improvements» endless time.*'
12. My understanding of your complaint is that you would like the FCA to set a 'deadline' by which the firm completes its remediation, as otherwise it could ostensibly be the case that the firm delays and your funds are frozen indefinitely.
13. The FCA's decision letter to you pointed out that it was '*continuing to work with the firm to progress matters and to ensure it can return to business as usual, as quickly as possible. The timescales for when this happens and customers may access their funds will depend on the firm's progress.*'
14. You are not happy with this response as you do not feel it addresses your concern about a possible scenario where your funds are indefinitely frozen.
15. I have made enquiries of the FCA who has told me that it did not understand your complaint to be about the amount of time it is taking for remediation to be completed, and that '*there is a difference between us saying that we would defer complaints about the time it is taking for the firm/FCA to agree when funds can be released, and [the complainant] saying that we haven't given any timeframe for when this will happen. The latter can be answered now because we can't give those timeframes because it depends on when the firm satisfies the FCA that the [requirements] should be lifted (which we do explain in the Decision Letter), and the former would be deferred because the action isn't yet*

complete and so we can't say whether the amount of time it took was reasonable or not.

16. I have considered the FCA's comment above but I consider that:
 - a. Your letter of 30 June clearly expresses your concern that without the FCA determining a timeframe for the firm's completion of the remediation, your funds may be frozen indefinitely. The FCA should have, but did not address this point.
 - b. It is clearly not the case that the FCA has no say in the matter and the firm can prolong remediation to continue indefinitely. Whilst the FCA may not be able to provide a specific timeframe for the release of your funds, the FCA could have explained to you that your complaint about how long it is taking for the FCA and the firm to complete regulatory action is deferred until it is completed. Whilst this does not answer your question directly, it offers you an opportunity to submit your complaint under the Scheme in the future, and it will allow an investigation into whether the amount of time the process is taking is reasonable or not.
17. For the reasons given above I uphold your complaint that the FCA did not answer your letter of 30 June 2020. Under the Complaints Scheme (see <http://frccommissioner.org.uk/complaints-scheme/> for further details), the FCA usually do their own investigation first on complaint matters, as that is usually the best way of resolving matters. Normally, I would suggest that the FCA now answer your letter, however, given the prolonged background to your complaint (you have made enquiries of my office and the FCA numerous times prior to 17 October 2020 when I accepted your complaint for review), I have decided to press ahead and review your complaint without referring it to the FCA any further to avoid any further delay.
18. I agree with the FCA comments in paragraph 15 above that it is appropriate to defer investigating your complaint about how long it is taking for regulatory action with respect to firm X to finish.
19. I have sympathy with your situation but to give directions for deadlines for the remediation (which could only be recommendations) under this Scheme would be to insert a complaints process into a statutory regulatory process, which

seems to me to be improper, has the potential to disrupt and therefore harm the regulatory action, and is a function which ought to be exercised through the courts. In my view, bringing a prompt resolution to the regulatory action cannot be resolved through this kind of Complaints Scheme.

My decision

20. I hope that the FCA will take all practical steps to ensure the firm undertakes the remediation as swiftly as possible, but my view is that the intervention of a Complaints Scheme into statutory proceedings is something for which the Scheme was not designed. I appreciate you are not happy with my decision but unfortunately I cannot help you in the way you want under the Scheme.
21. I uphold your complaint that the FCA did not answer your concerns as stated in your letter of 30 June 2020 and I recommend the FCA apologises for this.
22. My view is that the FCA should defer the investigation of your complaint about the length of time it is taking for the remediation to be undertaken until all regulatory action has been completed. I appreciate this does not address your question directly as to how long such action will take, but it does allow you an opportunity to bring your complaint under the Scheme in future.

Amerdeep Somal
Complaints Commissioner
Date 17 December 2020