

18 March 2021

**Final report by the Complaints Commissioner****Complaint number FCA00811***The complaint*

1. On 25 August 2020 you wrote to me about the outcome of a complaint which you had made to the Financial Conduct Authority (FCA) in September 2018, to which the FCA finally responded in July 2020. I am sorry about the delay in issuing your report. There have been considerable delays on the part of the FCA in providing me with documentation and answers to my queries.

*What the complaint is about*

2. In its letter of 20 July 2020, explaining its decision on your complaint, the FCA described your complaint as follows:

You are unhappy with the perceived lack of action the FCA has taken against a financial adviser, Mr [X]. You feel the FCA should have punished Mr [X], but he has been allowed to continue with his career in financial services.

You believe the FCA hasn't acted on information you provided about Mr [X] since 2015.

You had a complaint upheld by the Financial Ombudsman Service regarding advice you received from Mr [X], but the FCA has done nothing to force Mr [X], or his firm at the time, [Firm Y], to make the payment to you.

You say you seek an ex-gratia payment on the grounds that the FCA failed in its role as a regulator.

Additionally:

You say the FCA has failed to act robustly and in the principles of the "Approach to Enforcement" Section 2.1 and 2.11. You say this allowed

[Firm Y] the time and confidence to abuse these FCA principles, sort out the winding up of the business and put the company into voluntary liquidation, negating any chance of recompense against them.

You say the FCA was informed in full of the past business history of [Mr X] and had both written and verbal dialogue from you, the Financial Ombudsman Service, your solicitor and your MP ... yet it allowed Mr [X] to continue working as an approved person.

You say the FCA was aware of [Mr X's] refusal to cooperate but did not force him to fulfil his obligation to pay the Financial Ombudsman Service award of £77,521.03.

#### *What the regulator decided*

3. The FCA did not uphold your complaint. The principal points the FCA made were as follows:
  - a. The Financial Ombudsman Service (FOS) was the organisation responsible for making and enforcing awards of compensation;
  - b. Where (as was the case with Firm Y) a firm went into liquidation with awards outstanding, the Financial Services Compensation Scheme (FSCS) was the organisation responsible for considering claims for compensation;
  - c. Following approaches from you and your MP in 2016 and 2017, the FCA was in contact with both the FOS and FSCS, and with Firm Y, about the settlement of your award;
  - d. The FCA was 'satisfied that the information [you] supplied was appropriately considered'.

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

4. In your letter to me, you make the following assertions:
  - a. The FCA has failed in its statutory duty of care to you by failing to use its enforcement powers;
  - b. Both you and the FOS alerted the FCA to Firm Y's failure to pay awards in 2015, and your solicitor and MP chased this up in 2016;

- c. Firm Y had been fined by the Financial Services Authority (FSA) in 2008 for mis-selling, and had High Court actions against them in 2014 for mis-selling;
- d. You say that Mr X had 10 notices for compulsory strike-off, six notices for voluntary strike-off, and one application for strike-off against his six companies; and that three of those companies had been dissolved, and two were in voluntary liquidation;
- e. Mr X was putting his client's investments in unregulated funds, for which he did not have professional indemnity insurance (PII);
- f. You say that in 2015 Mr X lied to the FOS about his PII;
- g. Mr X was stalling in paying compensation, and taking money out of his businesses;
- h. You feel you have been let down by the regulatory system.

*Preliminary point*

- 5. Your complaint is centred upon the activities of Mr X. It is not my role to make any findings about Mr X's conduct. My focus is upon what the FCA did or did not do.

*My analysis*

- 6. I was very sorry to learn of the substantial financial loss you have suffered, and all the efforts you have made to try to gain restitution.
- 7. I have investigated the substance of your complaint summarised under three headings, and I have not made a finding on the individual points you raise apart from what I have written below:
  - a. Your request for compensation (Element One);
  - b. The FCA's regulation of Mr X and Firm Y (Element Two);
  - c. The FCA's handling of your complaint (Element Three).
- 8. Before looking at those three aspects, I start by setting out a chronology of your account of the main events, as you have explained them to me in your complaint letter.

- a. 2006 – you entrust your life savings (including an inheritance) and a pension to Mr X of Firm Y;
- b. 2008 – Firm Y fined by the Financial Services Authority for mis-selling;
- c. 2013 – you complain to the FOS about mis-selling and are awarded £77,521.03 which Firm Y is obliged to pay;
- d. 2014 – Firm Y are the subject of High Court orders for £2.4m for mis-selling – a fact of which you say the FCA was aware at the time;
- e. 2015 – you inform the FOS that Firm Y has not paid your award. Firm Y tells FOS that the matter is with its insurers (you say this was a lie). You inform the FCA of the non-payment. FOS agrees to report Firm Y to the FCA;
- f. 2016 – your solicitor and your MP chase the FCA for action. Firm Y pays £12,500 as a first instalment of the award. You inform the FCA that Firm Y has no PII.
- g. 2017 - Firm Y placed into voluntary liquidation. You make a claim for compensation from the FSCS;
- h. 2018 – discussions between your MP and the FCA. You lodge a formal complaint with the FCA;
- i. 2020 – the FCA gives you its decision on your complaint.

#### Element One: Your request for compensation

9. As you may be aware, Parliament has granted the FCA immunity from being sued for damages, save in very limited circumstances. The principal sources of compensation for clients of financial services companies are, as you know, the FOS and the FSCS. Although this Complaints Scheme does include provision for the payment of *ex gratia* compensation, this is not designed as a back-up for the FOS and FSCS arrangements, nor has this Scheme paid out the kinds of compensation which a court might award in damages. Furthermore, payments under this Scheme are in respect of actions or omissions of the regulators, not the actions or omissions of financial services firms.
10. The question of the limits for payments under this Scheme is currently a matter of debate, following the FCA and Bank of England's launching of a consultation

on changes to the Complaints Scheme, which can be found on the FCA's website – [www.fca.org.uk](http://www.fca.org.uk). However, that debate does not affect this complaint.

11. Looking at the chronology above, it appears that the principal cause of your loss was the behaviour of Mr X and Firm Y in the period leading up to 2013. It is clear that the then regulator, which was the FSA took action in 2008.
12. While you say that the FCA did nothing to enforce the payment of the FOS award, that was the responsibility of the FOS, and then the FSCS. You have told me that the FSCS reviewed your claim but did not offer compensation on the basis that your pension has done better than expected since the initial FOS award, as a result of which you have not incurred any loss. I appreciate you dispute this, but the neither the FCA nor I can intervene in a decision taken by the FSCS.
13. The FCA monitors firms when it learns they have not complied with a FOS award. One of the options in its regulatory toolkit is to recommend to the FCA Regulatory Decisions Committee (RDC) to cancel the firm's permissions. In this case, Firm Y had already voluntarily applied to cancel its permissions in 2012, The firm subsequently failed to obtain PII cover, ceased trading and went into liquidation before it had paid your full award.
14. For the reasons above I agree with the FCA's decision not to uphold this element of your complaint. I appreciate you do not agree with this and feel that the FCA should have taken action to ensure the firm honoured the FOS award. I can only reiterate that the regulatory action the FCA takes in these cases is not to enforce FOS awards.

#### Element Two: The FCA's regulation of Mr X and Firm Y

15. I have dealt with the FCA's regulation of Firm Y in the previous section, and the regulation of Mr X up to 2016. However, one element of your complaint is that the FCA allowed Mr X to continue with his career in financial services'.
16. The FCA's decision letter says this:

Mr [X] held a controlled function at [Firm Y] from December 2001 to March 2017 and with [Firm Z] from July 2010 to February 2019. While Mr [X] held controlled functions as a director and adviser at both firms,

these firms were separate legal entities. This, in effect, means that [Firm Z] cannot be held liable for the actions of [Firm Y] – even though the directors are the same.

I've seen the information you have provided to the FCA in relation to this matter. I've also seen the different departments that have had access to the this, and other information regarding Mr [X]. The information has been used by the FCA in its general supervisory work. However, due to the aforementioned confidentiality restrictions, I'm not able to provide more information than this. Having read the documents, I am satisfied that the information supplied was appropriately considered.

17. The FCA is correct to say that Firm Z was not responsible for the actions of Firm Y even though Mr X was a Director at both. However, the FCA proceeded to authorise Mr X for controlled functions on two separate occasions after the events described above with connection to firm Y. The FCA has said in response to my preliminary report that it did not formally investigate the matter in relation to these authorisations as it considered it out of scope. I refer to this more fully in paragraph 24 below.
18. Nevertheless, I appreciate your understandable concern that the individual who gave you such unsuitable advice 'has been allowed to continue with his career in financial services'.
19. From the documents I have seen, the FCA's authorisation process of Mr X following the demise of firm Y was inadequate and lacked strategic oversight. Information and intelligence received about Mr X were not co-ordinated in a way that might have supported a more robust and joined up review of Mr X's application. The procedures used by the Authorisations Team led to some matters not being reviewed at all, others being overlooked or not followed up when clearly, they should have been.
20. The FCA has now reviewed its internal authorisations processes leading to considerable procedural and policy changes within the authorisations department. This was a welcome development.

21. Further regulatory work was commenced in relation to Mr X and his role in firm Z, but that firm went into liquidation before this work could be completed. Mr X is no longer authorised.

#### Element Three: The FCA's handling of your complaint

22. Yours is far from the only complaint which has suffered from delays in the FCA. This is a matter which my office has discussed with the FCA on several occasions, and it has now increased the resources of its Complaints Team, which should help to reduce the risk of these kinds of unacceptable delays.

23. I uphold your complaint about delay. The FCA offered you £250 for the two-year delay in handling your complaint.

#### *My decision*

24. I started off by saying I am concerned about the failings in the authorisations process of Mr X following his involvement in firm Y. The FCA's Complaints Team response to this point is that it had only considered the matter of whether information provided by you had been considered, in relation to which it concluded that it had, but that it had not reviewed the subsequent supervision of Mr X past his involvement in Firm Y as part of its investigation as it felt 'these matters being outside the scope of the eligible complaint'. I agree that the information you provided was appropriately considered by the FCA, however, your complaint included a concern that Mr X 'has been allowed to continue with his career in financial services'. The FCA's response to your complaint, quoted in paragraph 16 above, says 'The information [you provided] has been used by the FCA in its general supervisory work. However, due to the aforementioned confidentiality restrictions, I'm not able to provide more information than this.' This response is vague in that it does not specifically say that the FCA had not formally reviewed your concern about the FCA's subsequent supervision and authorisation of Mr X, or the reasons why. I am concerned that the FCA's complaint response was both badly delayed and did not directly speak to the issues underlying your complaint about the regulation of Mr X after his involvement with firm Y. I can see however, that other areas within the FCA considered the ongoing regulation of Mr X subsequent to his involvement with

firm Y and identified areas of concern. A number of changes to internal processes have since been made.

25. I welcome the fact the FCA has now reviewed its internal processes and instigated improvements. The FCA Complaints Team has now clarified that it has not formally investigated this aspect. As the events described above happened in different companies to the one you invested in, they have no bearing on your complaint directly and the issue of compensation by the FCA does not arise in your case. Nevertheless, your own experience was that following unsuitable advice, you incurred a financial loss at the time which Firm Y avoided being accountable for.
26. My predecessor has previously asked the FCA to 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 inadequate protection for victims. I repeat this suggestion to the FCA as well. But it is also the case that ultimately your loss was due to the unscrupulous actions of your adviser.
27. I uphold your complaint about delay. Given the two years you have waited for an outcome, and the delay I have experienced in the FCA providing information to me, which has furthered delayed the review of your complaint, I recommended the FCA increase its ex gratia payment offer to you to £500, and I welcome that the FCA has accepted this recommendation.

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Complaints Commissioner

18 March 2021