

17 February 2021

Final report by the Complaints Commissioner**Complaint number FCA00851***The complaint*

1. On 27 October 2020 you complained to me about the FCA's investigation of your complaint.

What the complaint is about

2. The FCA described your complaint as follows:

You are unhappy that the FCA failed to act on the information you provided four years ago concerning 'Firm X'. To resolve your complaint, you would like to know the outcome of any investigation into firm X.

What the regulator decided

3. The FCA upheld your complaint and acknowledged the delays caused in reviewing your complaint and offered you an ex-gratia payment of £100.00.

Why you are unhappy with the regulator's decision

4. In your correspondence with me you make the following principal points:
 - a. *the FCA has acted in bad faith against my concerns originally raised.*
 - b. *I contacted the FCA in November 2015 nearly 5 years ago, to ask for an investigation to be made into what was indicated to be a significant fraud, and respective market abuse, by the directors of a stock exchange listed company.*
 - c. *The FCA replied to my original communication back in 2015 stating that the Market Code of Conduct would apply. However, the FCA stated that it does not publish firms under investigation, and I would have to wait until a conclusion has been made. I made two subsequent attempts to clarify the status or results of any investigation.*

- d. *Finally, I contacted the FCA in 2019, and the FCA confirmed that there was no decision published on the FCA website and there was no evidence of any further or ongoing investigations.*
- e. *After 5 years of waiting for an investigation be completed, I was astonished that in this significant timeframe no conclusions had been made and published. This seems incomprehensible, that what looks to be blatant severe market manipulation, which is a breach of the FCA's market code of conduct, has resulted in no action whatsoever.*
- f. *I feel that as small private investor who lost many thousands of pounds due to the 'Firm X' bankruptcy that my concerns were not treated fairly, suitably, or in a reasonable timeframe. I feel that the FCA has acted in bad faith and continued to stonewall my repeated requests to publish the finding of their investigations*
- g. *I feel that the FCA's acts are in major breach of their own handbook.*

My analysis

- 5. I am sorry to hear about your financial loss. I've considered your complaint points and the FCA case file, including confidential information provided to me.
- 6. The background to your complaint is that you invested in an unregulated firm (firm X, listed on the AIM exchange), which subsequently went out of business. You have incurred losses as a result of this.
- 7. The FCA has told you that it upheld your complaint. This is because the contact you made with the FCA in 2015 with respect to firm X was not communicated to the relevant areas. It should have been, and the FCA Complaints Team acknowledge this, however, they stopped short of seeking assurances from the Supervision Hub that processes are in place to ensure such occurrences are minimised in future. I have raised this point with the FCA and its response is that *'most recently there have been improvements made to the way we disseminate intelligence to [the Unauthorised Business Department] UBD specifically via the introduction of new queues to ensure it reaches the appropriate team faster as well as an improvement to the way we provide further intelligence that relate to referrals we've already made. This is something we've specifically worked on with UBD.'*

8. At this point, it is important to make a distinction between what the FCA did with the information you provided about firm X in 2015 (nothing, as it was not passed to any of the areas), and what it did with respect to firm X in general. As you are aware from a number of newspaper articles on the internet, the FCA launched an investigation into firm X in 2015 after it was suspended on AIM. It appears the firm itself first disseminated this information publicly. From the case file records I have reviewed, I can assure you that the information you relayed to the FCA Supervision Hub was already known to the FCA, even though your specific message was not passed on.
9. Since 2015 you have consistently sought to find out from the FCA how its investigation into firm X is proceeding. The FCA has declined to ever confirm that such an investigation is even taking place, and in its decision letter on your complaint it obscures the issue to the extent that it is not clear in its response as to whether the investigation is still ongoing or not, and what information it means to make public about any investigation, citing confidentiality reasons.
10. I should also make it clear that there are some difficulties in deciding what information can be released due to confidentiality restrictions. However, within those constraints it is clearly in the public interest that as much information as possible is shared with complainants and the public, since without that information it is hard for people to consider whether or not the regulators are performing their duties adequately and reasonably. My office has been in discussion with the FCA in the past to ensure there is maximum transparency when the FCA issues decision letters on complaints.
11. In this case, my view is that more information could, and should have been given to you by the Complaints Team. The FCA had already determined internally that you could have been given information about the investigation, and there was nothing stopping the FCA Complaints Team from giving you further information.
12. From the evidence on file and my further enquiries of the FCA, I can tell you that the investigation into firm X is still active and the FCA fully intends to make a public statement about this investigation when it's able to do so.

13. When this happens, you will be appraised of the outcome of the FCA investigation, which is what you wish for and forms the issue at the heart of your complaint.

My decision

14. You have been left unnecessarily frustrated, and significant quantities of your, the FCA's, and my Office's time have been wasted on something which could have been resolved by a simple, helpful response by the FCA much earlier.

15. The FCA has confirmed that it is important that its 'people understand when confidentiality restrictions apply [with respect to FCA investigations into firms] and apply them consistently in order to be as helpful as possible to consumers and other stakeholders'. The FCA acknowledges that in this case it made an error in not confirming to you that there was a live investigation going on with respect of the firm, given that the firm itself had announced it and therefore no confidentiality restrictions would have been breached. The FCA has confirmed it will apologise to you for this. I welcome the FCA's response but it does not explain what steps if any it intends to take to ensure its staff understand when confidentiality restrictions apply. I recommend the FCA now does so.

16. I welcome the FCA decision to offer you a £100 ex gratia payment for delays in reviewing your complaint.

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Complaints Commissioner