

18 January 2021

Final report by the Complaints Commissioner**Complaint number FCA00868***The complaint*

1. On 30 November 2020 you asked me to investigate a complaint against the FCA.

What the complaint is about

2. You allege that the then FSA received intelligence regarding misconduct at firm X in October 2012 but allowed it to operate until 2014. During the two-year period you invested £380,000 in firm X. You claim that if the FSA/FCA had taken action on receipt of the intelligence in 2012 you would not have invested. You therefore hold the FCA responsible for your losses.

What the regulator decided

3. The FCA explained that your concerns were similar to other complainants who had complained about firm X. It said both it, and the previous Commissioner had investigated the FCA's involvement with this firm before (<https://frccommissioner.org.uk/wp-content/uploads/FCA00684-Clarke-Willmott-for-publication-FR250520.pdf>)
4. The FCA explained that the previous investigation upheld a complaint, about the failure by the FCA to appropriately take action based on a referral email. It went on to say: *'The report did not make any assessment regarding what action should have been taken and also stated that given the passage of time and the enhancements that had been made to the way the FCA supervises, they were not recommending such an assessment should take place. As your complaint is concerned with the same issue, I have upheld your complaint that, due to an error, we did not take appropriate action based on the circumstances of the case. I consider the referral email should have been considered in full and action*

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taken at the time to review the allegations of misconduct by the relevant team rather than the email remaining dormant as the case file was closed’.

5. The FCA acknowledged it *‘may be frustrating for you given the error that occurred and the fact that we have upheld the complaint. In order to award ex-gratia compensation for financial loss, the error would need to be the direct cause of your losses. Whilst the FCA should have taken action following the referral email, I am unable to know what the appropriate action would have been and the impact of any potential action is a matter of speculation.’*
6. The FCA declined to offer you ex gratia compensation due to the reasons given above, as well as the arguments the Complaints Commissioner made in his published report FCA00684.

Why you are unhappy with the regulator’s decision

7. You feel that although the FCA may not have been the primary cause of your losses, it contributed significantly and would like me to recommend the FCA offers you a financial remedy to make good your losses from firm X.

My analysis

8. I have sympathy with your situation. You have lost a considerable amount of money through no fault of your own, and although you have been recompensed in part from the Financial Services Compensation Scheme, you are still £198,789.55 out of pocket. You accept the primary cause of your loss is firm X, but you feel strongly the FCA could have done more with respect to firm X, and in turn the FCA accepts there were administrative errors which meant it did not follow up certain actions with the firm. Given this, you would like the FCA to make up the shortfall of your losses.
9. You are not the only complainant in these circumstances. Both the FCA and the previous Complaints Commissioner have reviewed this matter and the previous Commissioner dealt with it extensively in report FCA00684.
10. I appreciate your position, but the matters you raise relate to a case which has been determined in report FCA00684. You have argued that the FCA has already given you an ex gratia payment, but the FCA has explained that this was

distribution payment relating to an FCA civil freezing order against the firm in June 2019.

My decision

11. I appreciate that you continue to feel that the FCA ought to provide you with compensation for your losses given it has admitted to some errors. You have also asked, given that you are not to blame for the losses you have incurred, who is. I am afraid the primary cause of your loss is firm X.

Amerdeep Somal
Complaints Commissioner
18 January 2021