

19 August 2021

Final report by the Complaints Commissioner**Complaint number FCA00909***The complaint*

1. On 19 March 2021 you complained to me about the FCA's investigation of your complaint. My preliminary report was issued on 18 June 2021. On 9 July 2021 you provided me with your response to my preliminary report, and on 29 July 2021 the FCA sent you a further response to your complaint which I was also sent a copy of.

What the complaint is about

2. In its decision letter to you dated 12 March 2021, the FCA described your complaint as follows:

I have summarised my understanding of the main points of your complaint below.

You have said that the FSA should have been aware of irregularities at the firm in 2006/2007 following press releases issued by the Jersey Financial Services Commission (JFSC) and have failed to act on information by taking suitable action against the firm in order to protect retail investors.

What the regulator decided

3. The FCA did not formally investigate your complaint under the Complaints Scheme. The FCA explained that it regretted that it may be unable to investigate your complaint under the Scheme because paragraph 3.3 of the Scheme states complaints should be made within 12 months of the date on which the complainant first became aware of the circumstances giving rise to the complaint. The FCA considered that you should have become aware of the

circumstances relating to your complaint over 12 months before you brought your complaint to it.

Why you are unhappy with the regulator's decision

4. In your email to me dated 19 March 2021 you set out a detailed explanation why you are unhappy, which I have summarised below in the points below.
5. You believe that you have provided reasonable grounds as to why you have filed your complaint against the FCA for regulatory failure when you did and why you did not file a complaint any earlier and the FCA should have investigated your complaint.
6. In your response to my preliminary review dated 9 August 2021, you have set out that the reason that has led you to lodge your complaint about the FCA for serious regulatory failure is that you have only been made aware in the last 12 months that the FCA had knowledge of serious fraud allegations before the Firm's second investment scheme was marketed.
7. You consider that 'the LCF scandal' was a significant catalyst for your complaint because of the similarities between LCF and the Firm. You set out that like the LCF case, the FCA did not understand it had a responsibility to investigate serious fraud allegations and it was repeatedly warned about the Firm and it 'failed to take any action and therefore failed in its statutory objectives'.
8. In addition to this, you have set out that two liquidators have been involved in supposedly winding up this project and you think that the liquidators failed to act effectively to resolve issues around malfeasance on the part of the Firm. You feel that the FCA should have been aware of this and you feel that the FCA is also derelict in its failure to act to regulate irregularities and laxness on the part of the liquidators.

Preliminary points (if any)

9. Insolvency practitioners in the UK are not regulated by the FCA, they are instead authorised by Recognised Professional Bodies (RPBs) who are recognised by the Secretary of State under the provisions of the Insolvency Act 1986. Any complaints about individual insolvency practitioners' professional conduct should be made to its RPB.

My analysis

10. You have set out that between 2006 and 2008, you invested a total of £223,730 with the Firm.
11. In 2010 you became aware that there were issues with the Firm when they 'abruptly ceased trading' taking all the investors funds. Around this time, you contacted Fraud Action about the Firm and continued to contact them for succeeding years, later finding out that no action had been, or was going to be taken about the Firm.
12. You have since joined action groups to try and recover some of the losses you have suffered. Since joining these action groups, you have had new information brought to your attention in the last 12 months that has resulted in you lodging your complaint about the FCA serious regulatory failure that has led to your large scale losses.
13. Firstly, I want to say that I am very sorry to hear about the financial losses you have suffered as a result of your investment with the Firm.

Time bar

14. I understand that you may not have been alerted to all of the information such as the 2015 Jersey Financial Services Press release, the letters to and from the FCA about the Firm and the London Capital & Finance (LCF) PLC case review by Dame Elizabeth Gloster, until the last 12 months.
15. However, in your complaint to the FCA dated 17 November 2020, you set out that you became aware that there were problems with the Firm in 2010 when you raised your matter with Fraud Action. On this basis it is clear that you have had knowledge of the circumstances which have led to your complaint to the FCA since 2010 and could have raised a complaint with the FCA at any point from then.
16. In addition to this you have also set out that you were aware of the liquidators being appointed in 2018, which again should have alerted you and made you aware of the issues in relation to the Firm.
17. I can accept complaints which are out of time if I feel there is good justification. I have considered the circumstances of this case and I do not think it is either practical or justified to investigate this case. It is not practical for the Complaints

Scheme to have an indefinite open time frame for lodging complaints. As time elapses from the time of the originating events of a complaint, it becomes more difficult to investigate the matters, more difficult to locate people within the organisation who can provide first hand knowledge about the matters and obtain relevant documentation. This can result in a disproportionate amount of resources being allocated to investigate a matter for potentially inconclusive findings. Accordingly, time limits are required to avoid these issues. However, I can assure you that I always carefully consider cases where Paragraph 3.3 has been used to ensure that it has been used appropriately and not being used to avoid addressing complaints.

18. In this case I do not consider that the information that has been brought to your attention in the past 12 months provides new grounds for you to lodge a complaint that would otherwise be out of time.
19. On this basis I consider that it was reasonable that the FCA set out that it was unable to look at your complaint as it is excluded under paragraph 3.3 because you should have been aware of the circumstances and issues in relation to the Firm from as early as 2010 and at the very latest 2018.

Redress and investigation

20. In your email you have set out that the current Complaints Scheme should offer redress where the FCA have contributed to investor losses and you consider that it has by failing to act on information they were provided about the Firm about the fraudulent activity, and in doing so failed to meet its statutory objectives of protecting retail consumers and reducing financial crime.
21. You have also set out that Dame Elizabeth Gloster's report had concluded that due to serious regulatory failings contributing to significant financial loss in the LCF case it would be appropriate for the Treasury to support a compensation scheme for these victims. You went onto explain that you feel that the Firm's case and the LCF case were no different to each other and that there was serious regulatory failure by the FCA in relation to both of these cases because it had failed to understand its responsibility to investigate serious fraud allegations.
22. I note that the FCA has set out in its decision letter, in response to you seeking financial redress that under the Financial Services and Markets Act, that the FCA

is immune from legal liability and that it takes this immunity into account when it decides if it should pay you compensation and, if so, how much. It also set out that for substantial compensation, payments are more likely to be dealt with more appropriately in another way, like through the courts.

23. This information is correct and whilst I agree it was appropriate for the FCA to set this out to you, I also think that it could have helped you to understand why the FCA is not the appropriate forum to seek your redress by providing a further explanation about its role under the Complaints Scheme.
24. The FCA does have a statutory duty to secure an appropriate degree of protection for consumers. It does so by regulating the financial industry through the setting of standards which firms must meet, and by taking enforcement action where that is justified. It does not investigate individuals' complaints against unregulated firms or the firms it regulates. It is the role of the Financial Ombudsman Service (FOS) to investigate an individual's complaint about regulated firms.
25. That does not mean that the FCA cannot investigate concerns arising from information about individual complaints, but it investigates those in the context of considering whether or not regulatory action is justified, or in the case of an unregulated firm whether alternative action should be considered through other forums, rather than whether or not the individual requires redress. Any action the FCA may or may not take because of the information you provided could not lead to redress for you personally.
26. It is on this basis that the Complaints Scheme cannot provide the remedy of redress that you have said you expect. This is not remedy that can be provided under this Complaints Scheme as it is not a redress service for individual complaints.
27. I acknowledge your position that you consider that there are similarities between the LCF case and your situation with the Firm and that it should be assessed in the same manner and should receive the same redress. However, a key difference in the LCF case, is that LCF consisted of both regulated and unregulated parts of its business and this meant that the FCA had ways it could have imposed regulatory action on LCF and failed to do so. In your case, the Firm

was unregulated and this limited the regulatory action that was available to the FCA.

28. As set out in its letter dated 29 July 2021, the FCA did take regulatory action against the two regulated financial adviser firms that were found to be responsible for promoting and selling the Firm's schemes to UK consumers which resulted in the issuance of final notices to them in 2013 and 2014.
29. In relation to the Firm itself, because it was not regulated by the FCA it could not take action against the Firm directly. However, in its letter of 29 July 2021 the FCA did set out that it had looked into whether it was a collective investment scheme, however the standard of information it required to pursue the matter further was not available due to jurisdictional hurdles that were in place due to the operations of the scheme being located overseas.
30. It should be noted that the FCA does not generally say what action has been taken in response to the information that it receives. This is because section 348 (s.348) of the Financial Services & Markets Act 2000 (FSMA) classes some information the FCA holds about firms as confidential and restricts how that information is dealt with. In addition to this, any information that is not restricted by s.348 FSMA may be restricted due to the FCA's policy on sharing information about regulated firms and individuals, who also have legal protections. Under this policy, the FCA will not normally disclose the fact of continuing action without the agreement of the firm concerned. There is a good explanation of the statutory and FCA policy restrictions on information sharing at <https://www.fca.org.uk/freedom-information/information-we-can-share>. This means that, as you were told, there is no general right for members of the public to know the outcome of reports that they make.
31. Consequently, whilst I have not investigated this matter further and the FCA have only provided a summary of the action it took, it does appear from the information set out in the 29 July 2021 letter that the FCA did refer the information it received to relevant departments.
32. Finally, in your original complaint to my office you set out that you thought that the FCA was 'derelict in its failure to act to regulate irregularities and laxness on the part of the liquidators'. As noted in the Preliminary points above, the FCA does not

regulate insolvency practitioners and you should direct any complaints about the liquidator to its RPB. For this reason, I have not looked further into this part of your complaint. I note that you have acknowledged that this aspect of your complaint is not within my remit to investigate.

My decision

33. I am sorry to disappoint you, but for the reasons given above I am exercising my discretion not to investigate your complaint further.

34. I am pleased that the FCA has acknowledged the further delay in responding to your complaint and I agree that the ex gratia payment of £50 was appropriate in these circumstances.

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Complaints Commissioner

19 August 2021