

19 August 2021

Final report by the Complaints Commissioner**Complaint number FCA00910***The complaint*

1. On 24 March 2021 you complained to me about the FCA's investigation of your complaint. My preliminary report was issued on 18 June 2021. The FCA has written a further response to you which was sent to you on 29 July 2021 and you provided your further comments to me on 12 August 2021.

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.

Part One

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.

Part Two

You have said that the FCA has failed to seek financial redress for 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

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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 letter to me and the FCA dated 24 March 2021 you set out:

I believe the evidence of regulatory failure is now sufficiently serious that my complaint needs to be properly and fully investigated. I believe this letter provides evidence of reasonable grounds as to why I filed my complaint against the FCA for regulatory failure when I did and why I did not file a complaint any earlier.

5. In your letter to me dated 12 August 2021 you set out that you are disappointed that the FCA has not 'defended itself' against your complaint and have instead 'time barred' your complaint and this does not 'sit easily' with you.

My analysis

Time barred

6. You invested into two investment projects with the Firm from 2007.

7. The Firm was placed into liquidation in 2013. You have set out that there were discussions to find a solution to the project in 2014 and so there was 'no cause' for you to 'consider a complaint against the FCA at that time'. You also state that in the liquidator's report of July 2014 it was stated that there was unlikely to be a dividend was not a justification for you to raise a formal complaint against the FCA for serious regulatory failure.

8. You have stated that it was the 'concerns leading up to the replacement of the original liquidators' in February 2018 that led to your complaint.

9. On 24 March 2021, you sent a letter in response to the FCA's decision letter, to both me and the FCA. You set out that your complaint about the alleged serious regulatory failure is based on evidence that has been brought to your attention by an investor group who are considering a claim for negligence against the banks that operate the Firm's bank accounts. Through this group you have now seen:

- A letter to Martin Wheatley, the former FCA CEO, on behalf of the investors in the Firm Eastern European Funds. Although the letter was written in 2014, you have only seen in the last few months. The letter infers the FCA was warned on numerous occasions from 2010 that retail consumers were being put at risk by the Firm's activities.
- A letter from Mark Steward, Executive Director at FCA, in November 2020 to Nigel Huddleston MP in which he states the FCA 'had concerns that the Firm might have been engaged in fraud and we (the FCA) referred it to other law enforcement agencies that had shown an interest'.

10. You also set out in your letter that your awareness of the FCA's potential regulatory failure was heightened following the publication of the report of the independent investigation into the FCA's regulations of London Capital & Finance (LCF) PLC by Dame Elizabeth Gloster that was released on 23 November 2020. You say that:

the serious failures in the LCF cases share many common characteristics with the Firm in that the FCA failed to take appropriate action on this alleged serious investment fraud despite being warned about a series of financial irregularities.

11. You say that these pieces of information only came to your attention in the past 12 months and that there was no reason why you should have been aware of the details surrounding your complaint about the FCA over 12 months before you filed the complaint.
12. In my preliminary report I noted that it did not appear that the FCA responded to this letter and that this was disappointing. Since issuing my preliminary report the FCA has written back in response to the points you had raised.
13. I have now considered the FCA's decision letter and the further letter to you sent on 29 July 2021 and your response to the decision letter and to my preliminary report and I am still of the opinion that the FCA was correct in its decision that it was not able to investigate your complaint under paragraph 3.3 of the Scheme. I will go onto explain my reasoning for this position.

14. I understand that you may not have been alerted to all of the information such as the 'Jersey Press release', the final notices against two regulated financial adviser firms, and the letters to and from the FCA about the Firm until the last 12 months, and that in your email to me of 12 August 2021 you set out that the complaints investigator in its letter of 29 July 2021 disclosed further facts that were previously not available to you. However, you have stated that you were aware of the liquidation of the company in 2013 and the change in liquidators in 2018. At least two years has passed since you became aware of this information that should have alerted you to the circumstances relating to your complaint.
15. 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 the 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 'time bar' a complaint to ensure that it has been used appropriately and not being used to avoid addressing complaints.
16. The fact that you felt you might obtain a financial resolution to your situation through the liquidators, did not change the facts or the original actions of the Firm and you could have lodged a complaint at any time if you felt the FCA had failed to protect investors. The possibility of financial rectification is not reasonable grounds to delay making a complaint.
17. 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 at the very latest 2018.

Redress and investigation

18. The second part of your complaint to the FCA was that it had failed to secure financial redress for investors.
19. In your original complaint to the FCA you set out that you and your wife invested in two investments with the Firm and that your losses post 2007 currently sit at £295,877.
20. You consider that 'the FCA were the primary cause of this completely avoidable loss' and you feel that the FCA is responsible for putting the matter right and that you expect to get full redress.
21. 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 substantial compensation payments are more likely to be dealt with more appropriately in another way, like through the courts.
22. 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.
23. 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 individuals 'complaint about regulated firms.
24. 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 as a result of the information you provided could not lead to redress for you personally.

25. 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.
26. In your letter to me dated 12 August 2021, you set out that the FCA complaints investigator disclosed further information that you had not previously been aware of, and that it was still not clear to you what regulatory action has been taken or not taken and it is not clear whether any of it was effective. You set out that it appeared that the FCA decision whether or not to intervene with the Firm was based on the Firm being unregulated rather than the activities it was conducting that you believe were regulated activities. You questioned why the FCA did not refer the Firm to its unauthorised business department to investigate.
27. In its letter dated 29 July 2021, the FCA did detail the regulatory actions it had taken 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 issue of final notices to them in 2013 and 2014.
28. However, as you are aware, the Firm itself was not regulated by the FCA and it has not been able to take action against the Firm directly. In its letter the FCA did set out that it had looked into whether the scheme 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.
29. 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.

30. Consequently, whilst I have not investigated this matter further and as such I cannot confirm that the FCA reported the Firm to its unauthorised business department, from the FCA's summary of the actions it had taken (set out in its letter on 29 July 2021), it does appear that it did refer the information it received to relevant departments.

My decision

31. I am sorry to disappoint you, but for the reasons given above I am exercising my discretion not to investigate your complaint further.
32. 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.

Amerdeep Somal
Complaints Commissioner
19 August 2021