

15 April 2024

Final report by the Complaints Commissioner**Complaint number 202300489***The complaint*

1. On 29 September 2023, you asked my office to review a complaint about the FCA.
2. I have not upheld your complaint, for the reasons I give below.

Your complaint to the FCA

3. In its letter of 7 August 2023 the FCA described your complaint to it as follows:

“You state that the FCA failed to regulate Firm A and ensure that the structure of the company was sufficiently robust to protect the investments of its clients. You state that the company only had one qualified individual who resigned as director on 20 March 2017 and as a result on 17 May 2017, Administrator A were appointed as Special Administrators.

The special administration of the company continued until October 2019, during this time you state that you were frozen out and as a result suffered financial loss as you were unable to manage the investments.

In March 2019, you state that Administrator A misinformed you about the release of your investments. Your investments were released in October 2019, and you suffered further loss in exit fees that were charged which you state you weren't informed of nor agreed to.

You have explained that the FSCS compensation process is also taking its toll.

You have explained that the situation has impacted you and your family, and you have suffered financial loss and mental, emotional, and physical distress.

You would like the FCA to review its supervision and oversight processes so that does not happen. You would also like compensation.”

What the regulator decided

4. The FCA concluded that it could not investigate your complaint. The FCA stated the following in relation to your complaint:

“After carefully considering the information you have provided, we have concluded that this is not a complaint we could investigate under the Complaints Scheme.

Paragraph 3.3 of the Scheme explains that “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. Complaints made later than this will be investigated under the Scheme only if the complainant can show reasonable grounds for the delay”.

Noting the information you provided in your complaint, the circumstances giving rise to this complaint would appear to be matters you were first aware of in 2017 (when the company went into administration) and 2019 (when the FSCS started accepting claims), yet this complaint was not submitted until more than 12 months later.”

Why you are unhappy with the regulator’s decision

5. You disagree with the FCA’s decision because you think the system is not fit for purpose due to such a short duration (12 months) given to refer a complaint to the regulator.
6. You have also said in response to my preliminary report that your complaint is out of time because you were engaged in submitting complaints to the Financial Ombudsman Service (the FOS), other companies and the Financial Services Compensation Scheme (FSCS).

My analysis

7. I appreciate that you believe 12 months is a short duration making the system 'not fit for purpose'. However this is what the Complaints Scheme provides and what the requirements are. As such, the onus is on you to bring the complaint to the FCA's attention within that time period, unless there are good grounds for not doing so. I do not consider your personal view on duration is sufficient grounds for overturning the time bar. Although the scheme provides a twelve-month limit within which complaints can be made, this can be reconsidered if the complainant provides reasonable grounds for the delay.
8. You have said that the delay was caused by the fact that you have been engaged in complaining to other bodies. You say your complaint about firm A was rejected by the FSCS and you were advised to claim against the financial adviser who recommended you invest in firm A. You then tried to do this but the company which was responsible for the advice ultimately went into liquidation and you say you were able to claim against the company with the FSCS where you were partially successful in 2022.
9. You feel that the clock ought to start from the moment the FSCS accepted your claims in November 2022 against the financial adviser.
10. I appreciate you have had to spend a considerable amount of time trying to sort out the difficulties which have arisen regarding Firm A. I am very sorry to hear of the financial, mental, emotional and physical distress this ordeal has caused you and your family. However, Firm A and the financial adviser are two separate companies and the fact that the FSCS accepted your claim about the financial adviser in November 2022 does not mean that your complaint about the FCA in connection to firm A is within time. You were aware of the issues about firm A in 2020, which is when you ought to have complained about the matter.
11. However, as you have explained, the FSCS excluded your complaint about firm A on the basis that it felt your claim was more appropriately made about the company which gave you investment advice. Given this, it seems you would have been ineligible to submit a complaint to the FCA about its role in connection to Firm A, because under the 2016 Scheme, a complainant would have to be affected by the actions of the FCA with respect to the matter they are

complaining about. In your case, the FSCS has told you that you were affected by the actions of the financial adviser, rather than Firm A. You have pursued your case with the financial adviser and subsequently with the FSCS which is the right course of action.

12. For the reasons above, in my view your complaint about the FCA in relation to firm A is both out of time and out of scope.

My decision

13. I note that this will be disappointing but for the reasons I have given I do not uphold your complaint against the FCA.

14. I appreciate this was not the outcome that you were hoping for. The FCA were right to not investigate your complaint.

Rachel Kent

Complaints Commissioner

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