

12 April 2024

Final report by the Complaints Commissioner**Complaint number 202300350***The complaint*

1. On 23 July 2023, you asked my office to review a complaint about the FCA.

Your FCA complaint

2. The FCA described your complaint as follows:

“You allege that the FCA failed to regulate FundingSecure LTD satisfactorily, and that the company ripped investors off whilst the FCA did nothing to hold the company to account.

To resolve your complaint, you are seeking for the FCA to hold the company to account and to arrange compensation for your losses”.

What the regulator decided

3. The FCA deemed your complaint out of time and declined to investigate it by referring to Paragraph 3.3 of the Complaint Scheme which says “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”.
4. The FCA also said: “Noting the information that you provided to us in your web-form, you stated that you were first aware of the circumstances giving rise to your complaint on 01 January 2022.
5. It also said news of its response and actions regarding FundingSecure had been in the public domain for a number of years before you complained.

Why you are unhappy with the regulator's decision

6. You say that you did have suspicions and misgivings before, but it was information you received in June 2023 from the administrators of FundingSecure that definitively made you aware that that the FCA may have been at fault.

My analysis

7. The relevant Complaints Scheme (March 2016) says at paragraph 3.3:
“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.”
8. The time limit starts running when the complainant becomes aware of action or inaction by one of the Regulators.
9. The FCA should consider when you became aware of actions or inactions by the FCA. This is a question of fact which the FCA must determine on the basis of relevant evidence.
10. Neither paragraph 3.3 of the 2016 Scheme nor paragraph 2.4 of the new 2023 Scheme enable the Regulators to reject complaints on the basis that the complainant should or ought to reasonably have known that they had cause to complain more than 12 months before submitting their complaint (for example because there was sufficient information in the public domain). That alternative test cannot be read into the wording of the Scheme.
11. The test is based on actual knowledge (the person knew) rather than constructive knowledge (a reasonable person would have known). Although actual knowledge is a fact which may for this purpose be determined from evidence on the balance of probabilities, it is a much more difficult to establish than constructive knowledge. The wording of the Scheme is clear that the Regulators must consider when the complainant themselves actually first became aware of the issues (or circumstances).

12. The FCA and I must decide on the basis of the available evidence when, on the balance of probabilities, you became aware that there was a basis to complain to the regulator about some action or inaction by the Regulator.
13. In this case the FCA decided that you must have known of the issue/circumstances, given in their view there has been widespread national media coverage of a failure by the regulator with respect to FundingSecure and because you say you were aware of the issues in 2022. You have told us that this was a typo and you meant it to refer to the information that was sent to you by the Administrator in June 2023. You say that this was the first time you understood the role of the FCA in this matter.
14. I do not agree with the FCA decision. The fact that that FundingSecure and some of the FCA's actions in connection with the firm had been in the news previously is not sufficient if, as you say, you haven't had it. You say you only became aware about the FCA's actions when you obtained information in June 2023.

My decision

15. For the reasons above, I recommended the FCA lift the time bar. The FCA accepted this recommendation.

Rachel Kent

Complaints Commissioner

12 April 2024