



22 January 2018

**Final report by the Complaints Commissioner**

**Complaint number FCA00412**

*The complaint*

1. On 28 November 2017 you asked me to investigate a complaint about the FCA. I have carefully reviewed the papers sent to me by you and by the regulator. I issued a preliminary report on 20 December 2017. Both you and the FCA have had the opportunity to comment and I have carefully considered the points you have made and, where appropriate, refer to them below. The FCA did not comment.

*What the complaint is about*

2. You complained about the FCA's response to concerns you had raised about the conduct of a firm (the Firm) in relation to your father's investment portfolio.

*What the regulator decided*

3. The FCA identified three elements to your complaint as follows:
  - 1) You were unhappy with the FCA's claim that the Firm assessed your complaint in accordance with the DISP rules.
  - 2) You believed the FCA failed to respond 'properly and fully' to your email dated 7 August 2017 which referenced concerns which were raised in your solicitor's letter to the FCA dated 23 August 2016.
  - 3) In your view, the FCA had not acted appropriately on your concerns and had failed to take any action against the Firm.
4. The FCA Complaints Team did not uphold your complaint. It concluded that:
  - 1) Generally, the FCA would not provide an opinion on individual complaints but due to the unique circumstances under which you had contacted the FCA, the Supervision Team chose to provide their opinion to help you better understand the FCA's position. The FCA does not adjudicate on individual matters.
  - 2) The Supervision Team undertook suitable steps before making the following statement in their letter of 21 August 2017 '*.... we consider that [the Firm] considered your complaint in accordance with DISP 1.4.1 (R)*'.
  - 3) It is ultimately for a court to decide whether the DISP rules have been abided with (applying Section 3.6 of the Complaints Scheme, which states that '*the regulators will not investigate a complaint under the Scheme which they reasonably consider could have been, or would be, more appropriately dealt with in another way*').
  - 4) Although the Supervision Team contacted the Firm in relation to your

complaint, due to a combination of confidentiality restrictions and internal policies, it was unable to disclose any information to you about this.

Having reviewed the actions taken, the Complaints Team was satisfied with the decisions made and actions taken but could not disclose further details.

- 5) Although the Supervision Team's response did not specifically address all the points you made in your email of 7 August their answer ultimately tackled all the points made by you and your solicitor.

*Why you are unhappy with the regulator's decision*

5. You consider that the FCA's complaint response attempts to deal summarily with your complaint, with no evidence that it has independently and objectively considered and addressed each point you raised. You are disappointed that the FCA Complaints Team has reverted to the line that the FCA cannot adjudicate on individual matters when it has powers to order restitution under Section 384 (1) of the Financial Services and Markets Act 2000 (FSMA). You find the FCA's inability to disclose information to you unsatisfactory and have asked me to review all the confidential material.

*My analysis*

6. Your underlying complaint relates to financial advice given to your father and late mother by the Firm in relation to a family trust. You and your solicitor both wrote to the FCA in great detail about this matter on 23 August 2016. The FCA's reply dated 26 August explained that it does not have powers to intervene in individual cases or complaints. The letter continued: "*We will consider the information you have given us about the service your mother and father received it and use it when considering our supervision of the firm. We will not be able to let you know how we deal with the information provided, as any work we carry out is confidential.*"
7. This statement of the FCA's general approach was correct and I am satisfied that it was reasonable for both the Supervision Team and the Complaints Team to re-state this in subsequent correspondence with you. The FCA cannot adjudicate on individual matters. The Complaints Scheme was created to allow members of the public and others to challenge the regulators' conduct without incurring the significant expenses associated with the legal process and the courts. The Scheme was not designed to allow consumers who are unhappy with the conduct of a regulated firm to challenge the conduct of that firm (that is the role of the Financial Ombudsman Service or the courts). I note that in its correspondence with you, the Supervision Team discussed with you the further routes available to pursue your individual concerns about the Firm's conduct.
8. However, as you rightly point out, this does not mean that the FCA has no power to act on information provided to it by concerned consumers. As you know, in your case the information you provided was passed to the Supervision Team in 2016. After you had made a personal appeal at the FCA's Annual Public Meeting in 2017, that team gave you some details of the action it had taken, including that it had contacted the Firm. The confidential papers I have seen show that detailed enquiries were made and that relevant and probing questions were asked of the Firm. Although I understand your frustration that you cannot be provided with more evidence to demonstrate this, that is how Parliament, rather than the FCA, has decided that the regulatory system should operate.

9. Although it does not investigate individual complaints, the FCA can use aspects of individual cases to understand a firm's systems and controls from a regulatory perspective. The extensive confidential material I have reviewed satisfies me that in your case this was done in a way that was thorough, investigative, and responsive to the specific concerns you and your solicitor had raised. Although I cannot provide you with further details, I hope that this will be of some reassurance to you and your father.
10. In response to my preliminary decision you asked me whether the 'extensive confidential material' included a detailed analysis of the attitude to risk investment aims and objectives undertaken by the Firm in respect of the family trust. I confirmed that as well as asking general regulatory questions, the FCA asked the Firm specific questions about the suitability of the investments for the trust's risk profile and that the Firm provided a detailed response to these questions. I also confirmed that the FCA was satisfied with the responses it received from a regulatory perspective, which is of course different from the approach taken by the Financial Ombudsman Service or the courts. I explained that, although I understand that you would like to see this correspondence, it cannot be provided under the Complaints Scheme since s348 applies.
11. In further response to this, you have expressed your deep dissatisfaction with my reply and with the regulatory system. You have also stated your clear belief that the Firm has never carried out a compliant risk assessment for the family trust. I acknowledge your strongly held position; however, it does not change my decision, for the reasons stated in paragraph 7 above.
12. With regard to the DISP rules, the Supervision Team told you that it believed that the Firm had assessed your complaint in accordance with the DISP rules. The Complaints Team's response said that it was satisfied that Supervision had taken suitable steps before making that statement. The confidential material I have seen satisfies me that this response was reasonable. I also consider that it was reasonable for the complaint response to go on to say that whether the DISP rules had been complied with was ultimately a matter for legal interpretation by the courts.
13. You are correct to say that the FCA has power to require restitution under section 384 FSMA; however, this is only after enforcement proceedings taken against a firm. The FCA's published guidance states that it expects to exercise this power rarely and that when deciding whether to do so it will take into account relevant matters, including other ways that persons might obtain redress. For more detail, see <https://www.handbook.fca.org.uk/handbook/EG/11/?view=chapter>.
14. The FCA has regulatory discretion about which matters to pursue and most of the actions it takes are confidential. I understand that you would have liked to be reassured that the FCA would take further action against the Firm, including pursuing restitution for your father, but I am unable to comment on this in any detail. What I can say is that I have seen no evidence that the FCA has acted unprofessionally or unreasonably in response to the information you provided.

*My decision*

15. From my review of the confidential material I am satisfied that the FCA took appropriate steps to respond to the information that you and your solicitor had provided within its regulatory remit.

16. I am also satisfied that the Complaints Team's investigation was detailed, thorough and appropriately interrogative regarding the internal decisions made and actions taken by the Supervision Team. As a result, I do not uphold your complaint. Although I realise that this is a considerable disappointment to you, I hope you will understand how I have reached my decision.

Antony Townsend

22 January 2018