

8 March 2018

Final report by the Complaints Commissioner**Complaint number FCA00426***The complaint*

1. On 22 January 2018 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.

What the complaint is about

2. Your complaint to the FCA was that your email address had been blocked by several FCA officers and that the Firm Queries Team (FQT) had not responded to other emails you had sent. You also claim that the FCA owes you a large amount of money under an invoice that remains unpaid.

What the regulator decided

3. The FCA Complaints Team did not uphold your complaint. It confirmed that your email address had been blocked because an email sent from it to the FCA “contained many of the indicators of a targeted attempt to get money from senior executives which is known as ‘whaling’”. The email contained links to an alleged invoice in the sum of £2 million; the FCA disputes that it owes you any such sum.
4. The Complaints Team concluded that the FCA had acted appropriately and reasonably in blocking your email address in the circumstances. There was no evidence that the FQT had received any emails from you, presumably because your email address had been blocked for security reasons. The complaint response also noted that you had subsequently called the FCA’s Customer Contact Centre (CCC) on several occasions regarding payment of your invoice.

Why you are unhappy with the regulator’s decision

5. Your complaint to me expresses concern about the Complaints Team’s response. Your email of 22 January 2018 invites me to click on various links included within your invoice. You also refer to the International Organization for Securities Commissions (IOSCO) who you say agreed to ‘perform certain activities’, and to the fact that the FCA is on IOSCO’s Board and has a memorandum of understanding with IOSCO.
6. You also say that your fax to the FCA dated 19 December 2017 contains a copy of the emails sent to the FQT following the Complaints Team’s request to provide evidence of this correspondence.
7. In response to my preliminary report you have said that I have failed “to address the main purpose of the complaint concerned about the harassment, the disrespect

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for the code of conduct and the fake statements pointed out by the employees and staff members of the FCA that led to general damages, during written and verbal communications.”

My analysis

8. You sent a number of emails to the FCA demanding payment of an invoice that the FCA disputes. To the extent that you believe that you have a commercial dispute with the FCA, this is specifically excluded from the Complaints Scheme under paragraph 3.4 (b), which states:

3.4 Excluded from the Scheme are complaints:

- *b) connected with contractual or commercial disputes involving the regulators and not connected with the exercise of their relevant functions;*

In these circumstances you can pursue legal action for payment. The Complaints Scheme is not the correct route to follow. In response to my preliminary report you have said that your invoice is related to the exercise of the FCA’s relevant functions. You have also sent me a copy of your invoice dated 29 September 2017 addressed to Andrew Bailey at the FCA. The description reads:

Critics on the Consultation Report CR01/2016 (IOSCO - August 2016)
£1,000,000.00

Critics on the Consultation Report FR05/2017 (IOSCO - February 2017)
£1,000,000.00

Subtotal £2,000,000.00

Total £2,000,000.00 GBP

This gives no detail about the nature of the work undertaken and, given the FCA disputes that any such sum is due, I remain of the view that this matter is better dealt with through litigation.

9. Your emails included invitations to click on links that the FCA concluded were suspect and your email address was then blocked. I am satisfied that the FCA’s response was reasonable. The FCA is entitled to take reasonable steps to protect its cyber security. In response to my preliminary report you have said that the emails you sent to the FCA did not constitute a ‘whaling attack’ and suggested that I consult a specialist on cybercrime. However, this is not necessary as I have concluded that the FCA was entitled to form its own view on this, which was reasonable. The Complaints Scheme is not the appropriate mechanism to interpret specialist areas of law, which are matters for the courts.
10. The FCA’s decision letter of 10 January 2018 concludes: “*Regarding your emails to the FCA’s Firm Queries Team (FQT) and its alleged failure to respond, unfortunately, I cannot locate any emails from you. If you had sent emails to the FQT I can only assume that these were also undelivered as your email addresses had been blocked. Having said that I did locate an email from the FCA Consumer Contact Centre (CCC) to you dated 9 November 2017. This appears to be an email following a call where the CCC, essentially, asks for you to confirm your query relating to the FCA’s GCD.*”

11. I have reviewed your fax dated 19 December 2017 and I can see that page 9 contains an email dated “9 novembre 2017” (sic) timed at 11:54 that appears to have been sent from the FQT. However, the signature is clearly that of the CCC. I am satisfied that this is the email referred to in the FCA’s complaint response. Your fax indicates that you sent further emails to the FQT on 9 November at 12:09, 16 November at 16:36, 22 November at 10:53 and on 28 November at 11:03. I have no reason to doubt the Complaints Team’s response that the FCA has no record of receiving these emails. Your fax shows a mail delivery failure for each of the last two emails informing you that your address has been blacklisted. I do not consider that the FQT was under any obligation to reply further to you.
12. In response to my preliminary report you have said that you are only concerned about the reasons for not receiving automatic messages, following the notifications you sent to the email address firm.queries@fca.org.uk. You say that FCA employees had no right to deny receipt of the notifications and that this is different from having an obligation to reply. I believe it would be normal practice for only one automatic reply to be sent in such circumstances. In any event, I do not consider that this is of significance because you were aware of the action the FCA had taken and that your emails were blocked.
13. Although your response to my preliminary report requests more from me, including compensation for general damages, I have found no grounds to conclude that this would be appropriate. I have seen no evidence that would support your claim that FCA staff harassed you, breached codes of conduct or made false or fake statements to you. In general, it appears you are seeking an approach and response that is suitable for action in the courts, rather than through this Complaints Scheme.

My decision

14. In my view the FCA’s complaint response was reasonable for the reasons stated and therefore I do not uphold your complaint. I realise that you are likely to disagree strongly with my conclusions and my decision but there is no further avenue for you to pursue these matters through the Complaints Scheme.

Antony Townsend
Complaints Commissioner

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