

17<sup>th</sup> April 2018**Final report by the Complaints Commissioner****Complaint number FCA00442***The complaint*

1. On 15<sup>th</sup> March 2018 you complained to me about the FCA's response to a complaint you had made about its handling of your correspondence.

*What the complaint is about*

2. The essence of your complaint is that the FCA repeatedly failed to respond to a report which you had sent to them, at their request, in January 2017, which was about Professional Indemnity Insurance (PII).

*What the regulator decided*

3. In its response to your complaint, the FCA said "I have not upheld your complaint as I believe the FCA acted appropriately and I don't believe any delays to be unreasonable in the circumstances. Further, as explained above in this letter the FCA does not mandate the terms offered on professional indemnity insurance cover."

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

4. In your complaint to me, you say that the FCA requested a report from you, that it promised action in response to your report, that it then failed to respond to the report, that it failed to acknowledge and respond to a submission you made to an FCA consultation, and that the FCA has attempted to cover up its errors.

*Preliminary point*

5. My understanding of your complaint is that it is about the FCA's actions or inactions in response to your correspondence (a matter which falls within this Complaints Scheme). It is not about the actions of PII insurers which – although a concern of yours – is a separate matter not covered by this Complaints Scheme.

*My analysis*

6. The matter about which you complain is essentially simple. The chronology is as follows:
  - 1) In October 2016 you drew the FCA's attention to what you considered to be unfair practices in the PII market, and the FCA asked you to provide a report;
  - 2) Your report was received by the FCA on 26 January 2017;
  - 3) On 30 January 2017 your report was acknowledged. You were told that it had been referred to a specialist team, and that the FCA would be in touch once it had a response from that team;
  - 4) On 9 February 2017 you received a further email. This email said "I have received a response from the team who have advised me that the FCA are reviewing the effectiveness of professional indemnity insurance for

investment firms. In December 2016 we published a consultation paper, CP16/42, which discusses professional indemnity insurance, including the availability of run-off cover. The CP is available here.....You are able to comment on this consultation paper by using the form on our website.....We are asking for comments by 31 March 2017”;

- 5) On 20 March 2017, you submitted reports to the consultation email inbox. You complained on 30 March that there had been no acknowledgement, and you received a reply thanking you for your submissions “which we will consider in due course”;
  - 6) On 29 June 2017, you complained that you had received no meaningful response to your submissions;
  - 7) On 25 July 2017, you complained that you had still not received a response;
  - 8) On 15 August 2017, you received an apology for the failure to acknowledge the two previous emails, and an explanation that the two reports which you had submitted had been “taken as responses to the FCA’s consultation”, with an explanation that the FCA does not issue individual responses to consultation contributions, but rather publishes a policy statement;
  - 9) On 24 August 2017, you sent a formal complaint to the FCA under this Complaints Scheme. It was acknowledged by the FCA on the following day;
  - 10) Seven and a half weeks later, on 16 October 2017, the FCA sent you a letter setting out its understanding of your complaint, and asking you for comments by 23 October. You were away at the time, so asked for an extension, which was agreed;
  - 11) On 7 November 2017 you responded, asking the FCA to look again at your original complaint, and emphasising the point that you had prepared a report in response to a request from FCA staff;
  - 12) The FCA had some difficulties in tracing the correspondence you had had with it, and you supplied one of the missing emails;
  - 13) The FCA issued its decision on your complaint on 10 January 2018.
7. The FCA’s explanation for why it considered this sequence of events to be “appropriate” was this:

*I note you have made submissions to the FCA regarding Consultation Paper 16/42. Please note that the FCA’s approach to consultation is legislated under section 155 of the Financial Services and Markets Act 2000 (FSMA) which can be found here: <https://www.legislation.gov.uk/ukpga/2000/8/section/155>. Essentially, the FCA is not required to respond to individual submissions made by respondents on consultations papers, rather it considers all submissions made when deciding and making its Policy Statement publicly available - in line with section 155 of FSMA.*

*As per the FCA’s Cross-Sectoral and Funds Policy (CSFP) Team’s email dated 15 August 2017, following your call with that team on 7 August 2017, it appears that your correspondence was treated as responses to a consultation*

*paper. I reviewed the submissions and in my view it was reasonable for the FCA to treat said correspondence in that way. I would like to reiterate, as stated in the CSFP Team's email, that the FCA does not mandate the terms offered on professional indemnity insurance cover and as such cannot provide you with an individual response to aid any negotiations in that regard.*

8. That explanation seems to me to miss the point. It is a statement of policy, and does not address the facts of your case. It is an example of the FCA's tendency – on which I have had to comment before – of justifying the individual actions of its staff rather than placing itself in the shoes of the complainant and considering the cumulative effect of its actions.
9. It seems to me that the problem was this. You responded to a request to provide a report, and were promised a response. You were then informed that there was a consultation, which you interpreted – not unreasonably – as a request for additional information for an additional exercise. What you were not told was that the team which had received your original report had determined that it was not for them, and that therefore the request for a consultation response was *instead of* the original exercise. You continued to believe that you would receive a substantive response to your reports.
10. The matter was made worse because the chasing email you sent in June 2017 was not responded to, and you had to chase the matter again in July. You did then receive an apology from staff responsible for the consultation exercise, explaining that the FCA did not provide individual replies to consultation responses, but that team seems to have been unaware of the earlier report which you had submitted to a different team.
11. Finally, the Complaints Team took four and a half months to respond to your complaint. The handling of it appears to have been over-elaborate, exacerbated by difficulties in locating correspondence and determining which teams were responsible.

#### *My decision*

12. The FCA handled your correspondence badly. The explanations you were given were inadequate, and it appears that information was not shared between teams. If the position was that you would not be given a substantive response to the report which you had provided at the FCA's request, you should have been told this at the outset. Your expectations were raised and then not met.
13. There were minor delays in the handling of the original correspondence, and further delays in the handling of your complaint.
14. The FCA's decision that its handling of your correspondence was "appropriate" relied upon general policy statements rather than a proper analysis of how the FCA's actions had affected you. The FCA failed to put itself in your shoes, and therefore failed to address your complaint properly.

15. I **recommend** that the FCA apologises to you for those failures, and offers you £100 as an ex gratia payment to acknowledge the distress and inconvenience which you have suffered. The FCA has told me that it accepts my criticisms and recommendation.

Antony Townsend

Complaints Commissioner

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