

28 August 2018

Final report by the Complaints Commissioner**Complaint number FCA00467***The complaint*

1. On 25 May 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. My preliminary report was issued on 11 July 2018, and I have considered your comments and those of the FCA.

What the complaint is about

2. On 16 April 2018 you submitted a complaint to the FCA detailing events related to your business and setting out what you regarded as bad faith and breaches of human rights by the FSA and FCA amounting to persecution. You said that you wanted an apology and compensation.

What the regulator decided

3. On 24 May 2018 the FCA Complaints Team informed you that it had decided not to investigate your complaint in accordance with paragraph 3.6 of the Complaints Scheme because it considered that the seriousness and complexity of your allegations would be more appropriately dealt with by a court.

Why you are unhappy with the regulator's decision

4. You have told me that you are dissatisfied with the FCA's response because you have been trying to get your complaint heard for some time. You first went to the Upper Tribunal, which did not have the jurisdiction to hear your complaint, and now the FCA has rejected the complaint and advised you to come to me.

My analysis

5. Paragraph 3.6 of the Complaints Scheme 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 (for example by referring the matter to the Upper Tribunal or by the institution of other legal proceedings)

6. I appreciate that you have been advised by the Upper Tribunal that it does not have jurisdiction to look at your concerns. I cannot revisit Judge Herrington's decision. I note that he set out clearly your options regarding

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litigation or a referral under the Complaints Scheme on the narrow issue of the way in which the FCA published your details. However, your complaint to the FCA made specific allegations that the FCA had acted towards you with bad faith and breached your human rights. The FCA's complaint response drew your attention to my published policy on remedies, which states in a footnote that only a court can decide whether the regulators have acted in bad faith, or breached human rights, and that these matters are not dealt with by my office.

7. I therefore agree with the FCA that the serious and complex allegations you have made would be better dealt with via court proceedings and cannot be pursued under the Complaints Scheme. It is possible that a differently formulated complaint, on the lines suggested by Judge Herrington, and not seeking compensation of the kind awarded by the courts, might be investigated under the Scheme, but that is not how your complaint was presented.
8. In response to my preliminary report you have said that you understand that I am unable to look at the issues of bad faith and human rights but would like me "to look into [Firm A] and [your] application to become an Appointed Representative (AR) of [Firm B]". I have considered this request and concluded that the best way forward is for these matters to be referred back to the FCA in the first instance. The Complaints Scheme says that usually the FCA will be allowed to do its own investigation into a complaint first. I am pleased to say that the FCA has agreed to accept your revised complaint on this basis and to consider the scope of its investigation. You should hear from the FCA Complaints Team shortly. If you remain dissatisfied at the conclusion of the FCA's investigation you will be able to refer the matter back to me for review.

My decision

9. For the reasons stated, I am not able to investigate the complaint you originally presented. I am pleased to say that in response to your comments on my preliminary report the FCA has agreed to accept your revised complaint and to consider the scope of its investigation.

Antony Townsend
Complaints Commissioner
28 August 2018