

19 June 2019

Final report by the Complaints Commissioner

Complaint number FCA00529

The complaint

1. You have made a number of complaints to the FCA about its lack of communication with you and its lack of action about the matters you reported.

What the complaint is about

2. The FCA's Complaints Team investigated your complaint about it not dealing with your allegation of under-allocation of declared gross profits by Firm X, which you believe may be potentially fraudulent, and the lack of responses from the FCA to your correspondence.

What the regulator decided

3. The FCA did not uphold your complaint. It said that the Consumer Contact Centre (CCC) advised you correctly on two separate occasions that, following prolonged correspondence, it would no longer correspond with you on these issues. It also confirmed that following your letter addressed to the Prime Minister, Theresa May, which was forwarded to the FCA to respond to, the matter was escalated to the supervisory team overseeing Firm X, who considered your allegations appropriately, (although they did not make a record at the time).

Why you are unhappy with the regulator's decision

4. You want to know what the FCA did with the detailed information you provided to it over the years about Firm X, and you believe its communications with you about how it was handling the information you provided were very poor. (Element one).

FCA00529

5. You also stated in one of your emails to me that you told the regulator that you were forced to sign an acceptance form with a 10% waiver following an offer being made without mentioning this waiver. You believe that this may be an unfair contract term and you had asked the regulator to look into this concern, but you never got an indication whether they did so or not. You believe its refusal to consider this issue is a failure of its duty to protect consumers. (Element two)
6. You also have a number of complaints not already addressed by the FCA and feel that there is a disconnect in the system, and that neither the FCA/ FSA nor the FOS serve the public well. (Element three)

Preliminary points

Element three

7. My office has already provided you with information about the way in which the Complaints Scheme operates and that any complaints not addressed by the FCA should usually be referred to it in the first instance.
8. While it has previously been explained to you by my office, and you have stated that you understand that it is not within my remit to make decisions about the way in which the financial services regulatory and complaints systems operate, as these have been set up by and can only be amended by Parliament, I felt it necessary to reiterate the point here.
9. I note from the file that you have written to your Member of Parliament (MP) about some of your concerns, which is what I would have suggested. In your response to my preliminary report you state again that in your view the system is very disjointed and does not serve the public well. You ask if it would be acceptable to make my reports public. I can confirm that my final report will be published on my website and therefore accessible for your MP and members of the public. You are, of course, free to copy this report as you wish as soon as it has been published.

My analysis

Element one

10. I have reviewed a number of the FCA's (and FSA's) files relating to your communications over the years. I can see that your correspondence was

acknowledged and you were told on a number of occasions in writing and over the telephone that your concerns had been referred to the relevant supervisory teams, and that the FCA would not be able to provide you with information about any action it might take and why. Examples of such correspondence are a letter dated 24 October 2010 and a telephone call with a CCC Associate on 15 October 2014.

11. There was further correspondence between you and the FCA, followed by the FCA's letters dated 13 and 30 October 2015 (based on the records on file). You were told in these letters that the CCC had given you as much information as possible in relation to the issues you raised and it had nothing further it could usefully add; therefore it would no longer correspond with you about the same matters but your letters would be placed on file.
12. I consider that the FCA's complaint response dated 18 November 2018 correctly concluded that you were sufficiently informed that the CCC would no longer enter into correspondence with you about your concerns about Firm X and related matters.
13. However, it did not explicitly address your concern that the FSA and then the FCA did not log and deal with your correspondence properly over the years. It would have been helpful if the CCC letters in 2015, and the decision letter from the Complaints Team, had confirmed that the concerns you raised over a long period of time had been referred to the relevant supervisory areas for their consideration in a timely fashion.
14. I uphold the FCA's decision, but I consider that its decision letter ought to have addressed the question of what happened to the information which you had provided. The records that I have considered show that information which you provided was sent to the relevant departments and was not ignored. In my preliminary report I **recommended** that the FCA ensure that all complaint points are addressed sufficiently in future complaints. In its response to my preliminary report, the FCA accepted this recommendation, saying that this was what it aimed to do, but that mistakes did happen on occasions..

Element two

15. While the FCA did not investigate this complaint point, it is clear from the correspondence on file that this is an issue you brought to its attention around 2015 and the CCC did deal with it. In a letter to you, dated 16 April 2015, it was stated that the regulator welcomes information from consumers but that due to confidentiality restrictions it cannot generally share information about what action it takes.
16. That letter does not state whether your concerns about the 10% waiver were referred to the relevant teams, such as the supervisors of Firm X or the Unfair Contract Terms Team at the FCA. It was not clear from the files I hold whether this was done. It is not for me to comment on the merits of this complaint point but in my preliminary report I **recommended** that the FCA check its records to confirm whether this issue was referred to the right teams and if it was not, that it forward the relevant information now and inform me in writing of the steps it had taken. The FCA has accepted this recommendation and confirmed that the information has been passed to the relevant areas.
17. In your response to my preliminary report you ask me if the FCA should have an “unfair terms department”. I can confirm that it does and that the FCA Complaints Team referred the issue of the 10% waiver to the relevant teams for consideration. As you have been informed already, the FCA, and my office, is restricted by legislation (s348 of FSMA 2000) and the FCA’s internal policies on information sharing and for that reason I cannot share with you the outcome of the referral.

My decision

18. I do not uphold the main elements of your complaint, but I do consider that the FCA should have provided you with more information to demonstrate that the information which you had supplied was referred to the correct FCA departments. The FCA has accepted this. I have also satisfied myself that the information you supplied was properly referred.
19. I understand that this may not have been the outcome you were hoping for and that you wanted the substance of your complaint resolved, but doing this is not

within the remit of the Complaints Scheme, as explained, and I hope you understand why I reached my decision.

Antony Townsend
Complaints Commissioner
19 June 2019



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