

27 February 2020

Final report by the Complaints Commissioner**Complaint number FCA00683***The complaint*

1. You wrote to me on 2 December to complain about the FCA's decision not to investigate concerns which you had about a firm of financial advisers.

What the complaint is about

2. The FCA described your complaint like this:

Part One

You submitted a letter of complaint to the FCA on 21 February 2019 in relation to [a firm of financial advisers, firm X]. You say the firm alleged that you "falsely submitted life applications to various companies, namely [insurance companies A, B and C] with Multiple postcodes and addresses that were not "genuine" and based on evidence they state they received they terminated me [you] for serious misconduct on the FCA register." You say the firm refuse to produce evidence to the Police or to your solicitor. You are unhappy that the FCA has not investigated this matter following your letter and would like the FCA to open an investigation into [firm X].

Part Two

You are unhappy that when you called the Complaints Team on 22 May 2019 you were told that the Complaints Team did not have a record of your complaint letter dated 21 February 2019.

What the regulator decided

3. The FCA did not uphold your complaint. In response to Part One it said that the Supervision Team which considered the information about firm X which you had supplied 'does not become involved in commercial or civil disputes', and your

letter 'did not provide sufficient evidence of failings to warrant an FCA investigation'.

4. The FCA did, however, say that you should have been spoken to by the team (who had simply left a voicemail message confirming receipt) to explain that the FCA would not be able to respond to your complaint against firm X, because the FCA 'does not investigate individual complaints against firms or individuals and/or commercial disputes as these are outside the FCA's scope'.
5. In relation to Part Two of your complaint, the FCA explained that – because your complaint was about a firm rather than about the FCA – your letter had been passed (correctly) to the supervision team, and this was why the Complaints Team had been unable to trace it.

Why you are unhappy with the regulator's decision

6. In your complaint to me, you say:

The fact that the FCA have stated that they are unable to "investigate individual complaints against firms or individuals and/or commercial disputes as these are outside the FCA's scope" is unbelievable. If this was the case this would mean that [firm X] are not answerable to any governing body and they can basically do whatever they want to.

The complaint that I made against [firm X] was very serious as they are withholding evidence from [police force Q] and this is hindering an ongoing criminal investigation of fraud and embezzlement against me by a person who used to work with me totalling approximately £320K. They stated in writing in April 2018 that they had sufficient evidence from insurance providers to state that some applications submitted were not genuine and informed the FCA that I was no longer fit and proper to continue as a Financial Adviser. To date neither they nor the providers concerned have produced any evidence supporting these allegations and refuse to cooperate with [police force Q].

Preliminary points

7. In this report I am looking only at Part One of your complaint. The FCA have explained what happened in relation to Part Two of your complaint; it appears to me that that explanation is correct; and you have not raised Part Two in your

letter to me, so I am assuming that you are content with the FCA's explanation on that point.

8. I should explain that it is not my role to substitute my regulatory judgement for the FCA's. The FCA is given a wide discretion over what matters it pursues and what regulatory action it takes, and the fact that I might have made a different decision would not be a reason to uphold a complaint. My role under the Scheme is to consider whether or not the FCA's actions or omissions were or were not ones which a reasonable regulator might have made. That is the test which I have used in analysing your complaint.
9. Finally, I should emphasise that I have made no assumptions about whether the matters which you have alleged against an individual and firm X, or the matters which have been alleged against you, are true or not. I am solely concerned with the actions or omissions of the FCA.

My analysis

10. The matter I have to consider is quite a simple one: faced with the information which you had supplied, was it reasonable for the FCA to conclude that no action should be taken?
11. You have expressed your incredulity at the FCA's explanation (paragraph 6 above), and I am not surprised. The FCA's explanation seems to me to be mistaken.
12. First, while it is true that the FCA does not *resolve* individuals' complaints in the way that the Financial Ombudsman Service does, the FCA can – and does – investigate information which individuals supply, if it is serious enough to merit investigation.
13. Second, and similarly, while it is true that the FCA does not resolve commercial disputes, it can of course investigate matters arising from commercial disputes if they are relevant to its regulatory remit.
14. Third, it seems to me that the FCA misclassified the information which you were supplying. While there may have been commercial elements in the dispute between you and firm X, you made it quite clear that what you were reporting

was – in your view – potentially a criminal matter which the police were investigating.

15. It appears to me that the FCA – while correctly identifying that your complaint arose from a dispute between you and firm X which was a civil legal matter which was not for it to resolve – failed to recognise that the information which you had supplied had potentially significant regulatory implications as well. On the face of it, a serious allegation had been made against you – a person who had been authorised by the FCA – and you had made a serious allegation against another person and firm X in relation to false accusations and a failure to co-operate with police inquiries. While the FCA could clearly not reach any immediate conclusions on the basis of your information, I am surprised that it did not consider that further inquiries would be wise.
16. The FCA has explained to me that the Complaints Team's consideration of your complaint was impeded by the fact that the copy of your original letter of 21 February 2019 which you supplied to the Complaints Team omitted the second page, in which some of the detail of the matters you were reporting were explained. While I accept that this may have contributed to its misunderstanding of the nature of your complaint, I do not think that it changes the fact that potentially serious matters were misclassified.

My decision

17. I have upheld your complaint, and the FCA has accepted this. I **recommend** that the FCA give further consideration to the matters which you have raised. (I should, however, explain that the FCA may not be able to tell you what, if any action, it takes as a result, for reasons of confidentiality.)

Antony Townsend
Complaints Commissioner
27 February 2020