

Final report by the Complaints Commissioner

Complaint number FCA00713

The complaint

1. You complained to me on 4 February that the FCA had upheld your complaint but not recompensed you.

What the complaint is about

2. The FCA summarised your complaint as follows:

You were in contact with associates and a Senior Manager in the FCA's Customer Contact Centre, (now known as the Supervision Hub), and you are dissatisfied with their responses to you. In particular, you are dissatisfied with the letter dated 1 August 2019, from the Senior Manager because the letter was unhelpful, contradictory and did not provide you with an explanation. To resolve your complaint, you would like a review of all the correspondence you brought to the Senior Manager's attention.

What the regulator decided

3. The FCA upheld your complaint because 'the involvement of Staffordshire Police was not made as clear as it could have been.' The FCA apologised for this.

Why you are unhappy with the regulator's decision

4. You say that:
 - a. On 18 January 2020 you wrote to the FCA but received an unsatisfactory on 29 January 2020 (Element One).
 - b. The FCA decision letter refers to a letter the FCA sent you on 18 October 2019 whereas in fact the letter was sent on 18 September 2019 (Element Two)
 - c. Your complaint was upheld but there has been no offer of compensation (Element Three)

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- d. You would like me to chase 'matters on your behalf' with Action Fraud, where you have registered a case (Element Four)

Preliminary points

5. The Complaints Scheme only deals with complaints about the actions or inactions of the FCA (and the other financial services regulators). I cannot intervene with Action Fraud on your behalf, and for that reason, I cannot review element four of your complaint, which is excluded.

My analysis

Element One

6. You wrote to the FCA on 18 January 2020 explaining that you had received a damaged and illegible letter from it. You felt Royal Mail had somehow damaged your post. You enclosed the damaged letter as proof and you asked for it and a replacement letter to be sent to you as you could not read what the FCA had sent you. You say the FCA replied to you on 29 January 2020 returning your damaged and illegible letter, but did not provide you with a replacement copy of its letter. Therefore you are none the wiser as to what the FCA wrote to you.
7. I recommend the FCA provides you with a copy of its letter and apologises for this administrative error.

Element Two

8. The FCA decision letter refers to a letter the FCA sent you on 18 October 2019 whereas the letter was sent on 18 September 2019.
9. You are correct that the FCA made a mistake with the date. I do not think that this has any effect on the outcome of your complaint, but I recommend the FCA apologise for this error.

Element Three

10. Your complaint was upheld but you consider that there has been no offer of compensation or benefit to you.
11. The background to your complaint is that you had provided documents and reported concerns about firm X to the Claims Management Regulator (CMRU),

which was a unit of the Ministry of Justice. On 1 April 2019 the FCA took over regulation of claims management firms

12. You then approached the FCA. Some correspondence followed, during which you requested the documents which you had provided to CMRU to be returned to you. The FCA wrote to you on 10 May 2019 to say

I've checked with my colleagues who received the documentation from the CMRU and they've confirmed that the original documents were retained by the CMRU who scanned and emailed copies over to us. We've requested they return the original documents to you. Please find enclosed the documentation you sent directly to us.

13. You did not receive any further documents and wrote again to the FCA on 31 May 2019 to say (among other things) 'I hope you don't mind chasing the holders again to see what the hold up is. Should there be a problem would it be possible for you alternatively to photocopy the 'scanned' copies as substitutes?'

14. You continued to ask the FCA to contact the CMRU, although you had already received electronic copies of all the documents the FCA held on file about your case. You then received a letter on 8 July 2019 in which the FCA said

Its my understanding your documents were stored with the Staffordshire Police and that they may have been destroyed. This being the case you'll need to contact both the Claims Management Regulator and the Staffordshire Police to see if they still hold your data. If once you contact them you're not happy with how they have handled your data you can contact the Information Commissioner's Officer (ICO)...

15. You then wrote to the FCA querying how you were expected to contact the CMRU if it no longer existed, why Staffordshire Police were involved at all, and if the FCA had promised you on 10 May 2019 that it would contact CMRU, why it was asking you now to do it yourself.

16. On 1 August the FCA replied to say that the letter of 10 May 2019 was referring to its internal department who received the documentation from the CMRU, and not the CMRU directly. The FCA was

unable to confirm whether your documentation was sent by the CMRU in electronic format or paper format which was later destroyed after being digitised. It said 'If sent to us in electronic format from the CMRU, it may be the case that the originals were sent for storage at Staffordshire police.

The agreement between the CMRU and Staffordshire police is a commercial agreement between those two agencies and isn't governed by the FCA. We're therefore unable to contact either agency on your behalf in relation to the storage of the documents you sent to them.

If you're looking to obtain your original documents you can contact the CMRU and/or Staffordshire police to see if they have the originals available. Any concerns you have about how your information was stored by the CMRU/Staffordshire police or the FCA, should be referred to the ICO.

17. You were not satisfied with this response and sent a complaint to the FCA Complaints Team on 14 August 2019.
18. The FCA upheld your complaint on the basis that 'the involvement of Staffordshire Police was not made as clear as it could have been. I am sorry for the inconvenience this has caused which led you to continue pursuing the matter with the FCA.' The FCA reiterated that you should follow the options outlined in its letter of 1 August to you with respect to the original documents.
19. You then referred your complaint to me, and asked why, given that your complaint had been upheld, there had been no compensation or benefit to you.
20. Paragraph 6.6 of the complaints scheme under which both I and the regulators operate says that 'Where it is concluded that a complaint is well founded, the relevant regulator(s) will tell the complainant what they propose to do to remedy the matters complained of. This may include offering the complainant an apology, taking steps to rectify an error or, if appropriate, the offer of a compensatory payment on an ex gratia basis'. I may also recommend a review of practice, policy or procedure of the regulator.
21. The FCA has apologised for failing to be clear in its correspondence with you about the involvement of Staffordshire Police. An apology is one of the remedies available to you under the Scheme.

22. However, I need to consider whether the FCA has gone far enough, and in particular whether it ought to have taken additional steps to put things right.
23. I have made enquiries of the FCA and can share some of its relevant responses with you:
24. The FCA has explained that the Financial Guidance and Claims Act 2018 (“the Act”) transferred claims management regulation from the Claims Management Regulation Unit (CMRU) to the Financial Conduct Authority (FCA). This happened on 1 April 2019.
25. The CMRU, a unit under the Ministry of Justice (MoJ), regulated the claims management sector until 31 March 2019. Some of the Unit’s operations were outsourced under contract to Staffordshire County Council but carried out under the direction of the CMRU.
26. The FCA understands that parts of Staffordshire County Council (SCC) shared premises with Staffordshire Police, but this was not the case for the CMRU and no documents belonging to CMRU were stored at premises shared with Staffordshire Police. The FCA has no information to suggest these documents were ever shared with Staffordshire Police for the purposes of handling your complaint about the firm X.
27. Relevant records were transferred from CMRU to the FCA electronically in the days before the transition. A very small number of paper records were transferred.
28. The FCA understands that both the MoJ and SCC should have now deleted all records in accordance with data protection legislation.
29. The records to which you refer were sent by post by you to the CMRU and were dated 23 April 2019. At that time, the CMRU had ceased operation and responsibility for regulation of CMCs had been transferred to the FCA. A Royal Mail redirection service was in operation and it is likely that Mr Watton’s letter was redirected to the CMC Department of the FCA.’
30. The conclusion which I draw from the FCA’s response is that:
 - a. Your original documents were never stored on the premises of Staffordshire Police;

- b. It is quite likely they were redirected to the FCA in April 2019. If that happened, the originals would have been destroyed under the FCA document retention policy.
 - c. If in the unlikely event your original documents were delivered to, and retained by the CMRU in April 2019, it seems that they would have been destroyed in October 2019.
31. Unfortunately, it seems that it is no longer possible for you to obtain your original documents.
32. I now turn to the handling of your complaint.
33. I welcome the fact that the FCA upheld your complaint, but it did so on the basis of one aspect only: the confusion it caused you by not explaining the role of the Staffordshire Police. During my investigation, it has turned out that the CMRU did not store documents on the premises of the Staffordshire Police. Therefore, the FCA Complaints team did not clear up the confusion over the role of the Staffordshire Police.
34. The Complaints Team repeated that your options for retrieving your original documents were outlined in the FCA letter of 1 August 2019 to you: you could approach CMRU (which had ceased to exist) or the Staffordshire Police (who, it turns out, had never held your documents). Neither option was relevant.
35. The fact that the FCA appears not to have understood the arrangements for the storage of claims management documents is a matter for concern.

My decision

36. I uphold your complaint. The FCA ought to have been able to explain to you the position in relation to your documents but in both its original response to you, and following your complaint, it failed to do so. In my preliminary report I **recommended** the FCA offer you £100 to reflect the distress and inconvenience which you have suffered, and the FCA has agreed to this.
37. I also **recommend** the FCA resend you its letter as you requested on 18 January 2020. The FCA has explained that there was some confusion about the letter damaged by Royal Mail, but that it will now resend the letter to you.

38. I have **recommended** the FCA apologise for the administrative error in referring to the wrong date in its decision letter to you, and the FCA has accepted this recommendation.

Antony Townsend
Complaints Commissioner
26 May 2020