

16 October 2020

Final report by the Complaints Commissioner**Complaint number FCA00749***The complaint*

1. On 29 May 2020 you complained to me about the FCA's decision on a complaint which you had made.

What the complaint is about

2. In its letter to you, the FCA described your complaint as follows:

Part one:

You have complained that the FCA released confidential information relating to you as part of the data breach in November 2019. Specifically, you have highlighted your concerns that the data was disclosed without your knowledge and that it included information about your financial status and the health conditions of yourself and your spouse.

Part two:

In our engagement with you regarding the data breach, you have complained that you are unhappy with the length of time taken to notify you that your data had been included in the breach.

Part three:

You have complained that as a result of the FCA disclosing your data you are concerned that third parties (with criminal intentions or ulterior motives) may seek to take advantage of this, as the content indicated your vulnerability to them.

Part four:

To resolve your complaint, you have requested financial compensation in respect of the data breach. You have told us that you wish to make a claim for £6,000.

Part five:

You have complained that this breach has had an impact on a number of other aspects, including your personal health, damage to your standing, the loss of privacy and causing distress and inconvenience.

What the regulator decided

3. The FCA upheld part one of your complaint, and apologised to you. It did not uphold the remainder.

Why you are unhappy with the regulator's decision

4. In your letter to me, you make the following principal points:
 - a. The FCA did not advise you on how to pursue your complaint. You were not aware that it enjoyed statutory immunity from being sued for damages, and it did not clarify the arrangements for ex gratia compensation, which you consider need to be reformed;
 - b. The FCA did not focus sufficiently upon the effect which the data breach had upon you, bearing in mind your health;
 - c. The FCA has not substantiated its view that the data breach in your case was of very limited effect;
 - d. The FCA initially offered to register you with CIFAS (a data protection service), but then withdrew that offer and simply offered to pay you the registration fee;
 - e. The FCA has failed to give you details of the scope and size of the data breach.

My analysis

5. Your complaint arose because of a data breach inadvertently committed by the FCA. In 2019, in response to an information request, the FCA posted on its

website some anonymised data about complaints it had received. Unfortunately, although it was not immediately obvious from the published page, it was possible for a reader to access some personal data about the complainants whose complaints were included in the published data. As soon as the breach became apparent, the FCA removed the data and reported the matter to the Information Commissioner's Office. A fuller explanation of this problem was posted on the FCA's website on 25 February 2020 – see <https://www.fca.org.uk/news/statements/fca-data-breach>.

6. The amount of data which was breached varied. In your case, the data which might have been accessed was your name and a high-level description of your complaint. That description made reference to a 'serious illness'.
7. On 6 March 2020, having first contacted you by telephone, the FCA wrote to you to explain what had happened. It advised you to check that you had not been the victim of identity theft as a result of the breach, and offered to register you with CIPFAS for two years. It also drew your attention to the Information Commissioner's Website for further information about 'steps you may wish to take', and explained how you could make a formal complaint under this Complaints Scheme. You went on to make that complaint.
8. Your complaint, and the FCA's response, are described in paragraphs 2 and 3 above.
9. I agree with the FCA's decision to uphold part one of your complaint.
10. In relation to part two, the FCA explained that having been made aware of the breach and removed the data from the website, it then had to analyse the data and contact those affected in order of priority, depending upon the extent of the breach. The result was that there was a 19-day delay between the breach being discovered and you being notified. While it would clearly have been desirable for you to have been contacted sooner, I do not think that in the circumstances the delay was unreasonable. The FCA was having to deal with a breach involving some 1,600 complainants, and had to deal with that carefully and in priority order. I do not, therefore, uphold part two of your complaint.
11. On part three, my view is that it was unlikely (though not impossible) that you might have been targeted as a result of the disclosure. I take this view because

the information was not readily observable, coupled with the fact that in your case no contact details were disclosed. The FCA also explained to you the steps it had taken to try to establish whether any of the data had actually been misused, and reported that it had not found any evidence that it had. I therefore agree with the FCA's assessment it is unlikely that the breach will lead to any actual damage to you. **I do not uphold part three of your complaint.** However, I will return to the issue of vulnerability later in this report.

12. On part four, you have made a claim for £6,000 compensation. The FCA rejected this, essentially on the grounds that it was unlikely that you had suffered any actual damage, and because it had offered you an apology and CIPFAS registration.
13. In my preliminary report, I raised the question of whether the FCA ought to have explained to you that you had an alternative route of complaint to the Information Commissioner's Office (ICO), or that you might wish to seek legal advice – my understanding is that the FCA's general immunity from being sued for damages does not apply in data protection cases. In its response the FCA has pointed out that it did give you details of the ICO; has said that it does not consider that it was under a duty to inform you of your right to take legal advice; and has noted that your letter of complaint made it clear that you had already undertaken legal researches. I accept these points, and **do not uphold part four of the complaint**, although I do consider that, **as a matter of good practice**, when the regulator is rejecting a request for compensation of this kind, it should inform complainants of their right to consider taking legal advice.
14. In relation to part five, in my preliminary report I said that I had some concerns that the FCA's decision did not seem to me to take into sufficient account the health dimension of your complaint. In response to my preliminary report, the FCA has made the following points:
 - a. It was because of the reference to 'serious illness' in the material which was disclosed that the FCA decided to treat your case as a priority when it was contacting those who had been the victim of the data security breach;
 - b. The FCA took steps to check that you had not suffered actual damage as a result of the breach, and offered you CIFAS registration.

15. On balance, although I think that the FCA might have been more explicit in its decision letter about its consideration of the anxiety which the data breach may have caused you, I consider that the FCA's position is a reasonable one, and I **do not uphold part five of your complaint.**
16. Although it was not part of your original complaint, I invited the FCA to comment on your criticism that, having offered to register you with CIPFAS, it then withdrew the offer, and instead offered to reimburse you the cost of registration. In response the FCA has said that it recognises that its decision not to undertake the registration on your behalf was disappointing to you, but it made the decision once it became apparent that due to the logistics involved in registering for protection, individuals would need to make the applications on their own behalf, with the FCA reimbursing them.
17. It was unfortunate that, having raised your hopes, the FCA then had to change its approach, but I am satisfied that the FCA did this with the best of motives.
18. Since I wrote my preliminary report, you have drawn my attention to an email which you sent to the FCA on 30 May 2020, making wide-ranging criticisms of the FCA's handling of a series of complaints which you had made, and of the Complaints Scheme in general. That email goes well beyond the scope of this complaint, and includes matters of policy (including compensation arrangements).
19. Although I cannot formally consider those issues in this report, it may be helpful if I make the following points:
 - a. The problem of serious delays in the FCA's handling of complaints is a matter to which I have drawn public attention, most recently in my [Annual Report for 2019-20](#). The FCA has acknowledged the problem, and is undertaking a programme to improve the efficiency and effectiveness of its complaints handling;
 - b. The question of the approach to compensation under this Complaints Scheme was also covered in my Annual Report, and in my [Response to the regulators' consultation on changes to the Complaints Scheme](#).

My decision

20. I am sorry to disappoint you, but for the reasons give above:

- a. **Agree** with the FCA's decision **to uphold part of your complaint;**
- b. **Agree** with the FCA's decision **not to uphold part two of your complaint;**
- c. **Agree** with the FCA's decision **not to uphold part three of your complaint;**
- d. **Agree** with the FCA's decision **not to uphold part four of your complaint,** though **invite the FCA** to consider whether, in all cases where a significant degree of compensation is being sought but is not agreed, the FCA should explain to complainants that they may wish to take legal advice about alternatives;
- e. **Agree** with the FCA's decision **not to uphold part five of your complaint.**

Antony Townsend

Complaints Commissioner

16 October 2020