

13 September 2022

Final report by the Complaints Commissioner**Complaint number 202201059***The complaint*

1. On 18 March 2022 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. In its decision letter to you dated 11 March 2022 the FCA described your complaint as follows:

Part One

You claim there was no recognition by the FCA of the conflict of interest as the defendant was your fiancé. You claim the FCA did not acknowledge how difficult the situation was for you, and that you only received any thanks as you sought to claim your expenses.

Part Two

You were not informed one of the defendants had entered a guilty plea. The FCA did not follow the correct naming convention for the trial when corresponding with you.

Part Three

You were not made aware that if your evidence was needed over 2 days then you would have been required to stay in a hotel overnight. You were only given 1 hours' notice of being stood down. You sought confirmation from the FCA about the ability to stay in alternative accommodation (rather than a hotel) and as this confirmation was not provided until the following day, you were inconvenienced.

Part Four

You claim you did not receive any care or support from the FCA during the time you were giving evidence or afterwards. You have explained that the period of time you were on the stand was traumatic. You believe this was exacerbated by the judge's aggressive attitude towards you as the judge believed you were late as you were not taken up to the court by the FCA at the correct time.

What the regulator decided

3. The FCA did not uphold Parts One, Three and Four of your complaint. The FCA upheld Part Two of your complaint.
4. In Part One of your complaint the FCA stated that from the correspondence it had seen, it clearly acknowledged the FCA was aware of the relationship with your fiancé. The FCA also stated neither you nor your legal representatives mentioned a potential conflict of interest. The FCA stated it had reviewed correspondence between you and the Witness Liaison Officer for the FCA proceeding and during the trial which showed an empathetic tone and acknowledged the experience may be stressful for you. With respects to your point that you only received thanks when you sought to claim your expenses, the FCA stated that it was a legal requirement for you to provide evidence and attend court and it could not guess whether you would have received any thanks or acknowledgement if you had not applied for expenses. The FCA felt it had acted appropriately.
5. In Part Three of your complaint the FCA stated it appreciated that the changes in timings and the potential need to arrange childcare at short notice would have been stressful for you. The FCA stated however that these changes were a result of the changing status of the court case and were beyond the influence of the FCA. Reference was made to the Pre-Hearing call in the FCA's decision letter and that this was not a recorded call, so the FCA was unable to confirm during this call whether you were told about the requirement to stay in a hotel if evidence was required over two days. The FCA determined that having reviewed the FCA Witness Liaison Procedures it could see that the Witness Liaison Officer would have discussed this with you prior to the trial as accommodation needed to be booked in advanced preferably through the FCA. The FCA decided it was likely the requirement to stay in a hotel if you were

required to give evidence over two days was discussed with you, as a subsequent booking was made and cancelled. The FCA then addressed an allegation about confusion over alternate accommodation referencing text messages on 30 November 2021 and 1 December 2021. The FCA recognised you may have wanted a response on the 30 November 2021 to plan your day on 1 December 2021, however it stated you did not articulate this in the text messages.

6. In Part Four of your complaint the FCA felt the tone of the correspondence prior to the trial was in general caring and supportive. Enforcement at the FCA explained the Witness Liaison Officer was unable to be present at the court for the trial due to covid isolation and the FCA's decision letter stated that this matter was not in the control of the FCA. The FCA made no comments on the court proceedings or the judge's 'attitude' or any potential causes of this, as it did not have access to the court transcript and was not present at the trial. The FCA confirmed it did review the correspondence and could not see any mention of issues with timing and understood the court clerk would have come out to get a witness when they were called to give evidence.
7. In Part Two of your complaint the FCA apologised for the error caused when the case reference was cited incorrectly to you. The FCA also apologised with respect to you not being made aware of Ms X's guilty plea, as it was previously agreed with the defence that witnesses would be made aware of the plea.

Why you are unhappy with the regulator's decision

8. I have summarised your complaint as follows:

Element One

9. You do not appreciate that the FCA insinuated you did not bother to reply to its email and letter you received on 21 January 2022. You state you replied to this by email on 31 January 2022.

Element Two

10. You feel it was the nature of your relationship with the defendant as to why you were called. You also state the FCA requested that you had to attend court in person and you were never given any other option.

Element Three

11. You state the FCA did not consider the time period you complained about concerning you not receiving care or support when you gave evidence and after you gave evidence at the trial. You feel the FCA should have spoken to the FCA representative who had been assigned to you during your time in court, in the absence of another, to understand what support and thanks they felt they gave to you during a very difficult day. You also feel it would have been better for FCA Complaints to speak to someone as part of its investigation who was actually there or who could access the transcript with respect to your complaint about the Judge's aggressiveness towards you for being late because you were not taken to the court at the right time by the FCA.

Element Four

12. With respects to Part Two of your complaint that was upheld by the FCA you would like to understand what has been put in place internally to ensure such mistakes don't happen again.

Element Five

13. In your complaint you have disagreed with the FCA's findings and outcome in relation to Part Three of your complaint with it concerning the communication regarding hotel accommodation if your evidence went over two days. You feel you were only informed about this at short notice when you discussed it the night before you were due to attend court. You hoped your Witness Liaison Officer may have had some sympathy and understanding for not only the difficult personal circumstances you were experiencing (which they were fully aware of) but also for the stressful situation you were facing by having to appear as a witness for the prosecution against your fiancé. You state you were left hanging overnight and the following morning and therefore had no other option but to take all your luggage and personal belongings with you to court.

Element Six

14. You do not understand why the FCA is unable to share the Witness Liaison Procedures with you even if it is only the parts relevant to your complaint. You feel this should be a public facing document and witnesses should have access to them.

Element Seven

15. Whilst your expenses have been paid you feel it should be clearly laid out in the Witness Liaison Procedures when witnesses can expect to be reimbursed for their expenses so they can plan accordingly. You mention this as your expenses were paid more than six weeks after your court appearance and seven weeks after most of the cost had been incurred. You add that this left you in a difficult financial position over Christmas having already lost earnings because of your inability to work because of having to attend court.

Element Eight

16. You find it unfathomable that it took 16 weeks for the FCA to respond to you and the investigation by the FCA Complaints Team was poor and unobjective.

Preliminary points (if any)

17. You provided me with your complaint outlined in a document dated 16 March 2022 setting out your response to the FCA's decision letter. I also acknowledge that you forwarded us a copy of your initial complaint made to the FCA 20 December 2021. I have summarised your main complaint points from your response letter dated 16 March 2022 which I have found to be most relevant to your case. It is my intention in this investigation to review and look at your main complaint points, which is appropriate and closely connected under the Complaints Scheme.
18. In your complaint you have made references to FCA individual members of staff. I should make it clear that this Complaints Scheme does not deal with complaints against individuals, but complaints against the regulators. This report does not identify individuals in the FCA.

My analysis

Element One

19. I've looked into the points you raised in Element One of your complaint, that you did reply to the FCA's email of 21 January 2022 and you do not appreciate the FCA insinuated that you did not bother to reply. I have investigated this and can see that you did respond to the FCA's email of 21 January 2022. You sent an email to the FCA on 31 January 2022 thanking them for acknowledging your

complaint and confirmed your complaint had been outlined correctly. The FCA considered your comments on this after you were issued with its decision letter and sent you an email on 16 March 2022 stating the following,

I also would like to apologise if the wording of the letter at that point was confusing. When I said, 'We didn't receive any comments from you regarding the summary, and therefore have proceeded on the basis that it was correct.' I did not mean to imply that you had not replied to my colleague's email. I was reflecting that you did not amend the summary of your complaint or add any additional allegations, this does happen with some complaints.

20. It is positive to see that the FCA understood the confusion and apologised upon realising the trouble and upset it had caused you. I find the FCA's response on this appropriate and do not think it needs to do anything further.

Element Two

21. You feel it was due to the nature of your relationship with the defendant that you had to attend court in person, you were not given any other option and have an email from the FCA confirming this. I have looked into the correspondence you received from the FCA in this respect.

22. The FCA sent you an email on 8 July 2021 informing you of the following,

We are yet unable to say definitively whether you will be required to attend court to give evidence. The three defendants are due to enter pleas in August. At that time, all parties will be required to indicate what witnesses will need to attend for the purposes of giving live evidence and so we will be better able to identify a more accurate time period. Of course, this may well also mean that we can let you know by that time you are not required at all.

23. The FCA then sent you a further email on 18 August 2021 informing you of the following,

Just to let you know, at the Hearing yesterday it was confirmed you will be required to attend court to give evidence.

The trial is due to commence on 25 October, but we do not yet have exact dates when you may be needed.

There will be a further Case Management Hearing on 8 October 2021 when we hope to be able to finalise a running order for witnesses and will be in touch again to liaise with you and make arrangements.

24. Looking at the correspondence and the FCA's decision, I agree that it was the Courts who required you as a witness rather than the FCA. The FCA stated in its email to you on 18 August 2021 that it was confirmed at the hearing you would be required to attend court to give evidence, which would indicate it was the courts who required you to attend to give evidence. I also understand from my investigations of this case that the defendants in this matter requested that you attend to give evidence and answer questions. As such, I am unable to agree that you were called to give evidence because of the nature of your relationship with the defendant, or that this was at the request of the FCA and the FCA did not give you any other option.

Element Three

25. Having investigated this and assessing the FCA case file, considering your concerns regarding Element Three I can confirm the FCA during its investigation did speak with the relevant FCA representative who had been assigned to you during your time in court. I can see at least two FCA representatives met you on the day of the trial when you gave evidence. However, I have not been able to determine that the FCA informed you of the court's witness care unit. I say this as having analysed the FCA's internal manual I believe the FCA should have determined the circumstances of the case and that the appropriate action would have been to inform you of the witness care unit, as per its manual requirements. Like the FCA, I am required to respect confidentiality. So I am unable to share further details of this manual. However, as part of the Complaints Scheme, I have access to all the FCA's complaints papers, including confidential material. This is so that I, as an independent person, can see whether I am satisfied that the FCA has behaved reasonably.

26. Based on the evidence I have seen I do not think the FCA provided you with the court's witness care unit prior to the trial or on the day of the trial itself. As mentioned, I think this should have happened in line with the FCA's internal manual I have referred to earlier.
27. With respects to your point about the Judge's aggressiveness towards you for being late and that you feel you were not taken to the court at the right time by the FCA, I am sorry, but I cannot reach a finding on the whether I find the FCA being at fault for this. Without further evidence I will not be able to look at this point any further. If you can provide further evidence in relation to this, such as the court transcript I will be happy to review this point again.

Element Four

28. I think you raise a fair question in Element Four of your complaint. I understand the FCA has given you an apology due to you not being made aware of Ms X's plea despite this being agreed previously that you would be made aware. You would like to know what has been put in place internally to ensure such mistakes do not happen again. Whilst the FCA apologised to you, I think it is important to know if the FCA have put measures in place to ensure this does not happen again. The FCA responded to me on this point. It accepted my recommendation set out in my preliminary report where I set out that the FCA put measures in place to ensure in court proceedings where it has been agreed with the defence that all witnesses are to be made aware of vital information such as a defendant's plea, the FCA does what it says it will do, follow through with this and share this information with all witnesses concerned. As the FCA has accepted my recommendation on this point, I no longer see the requirement to uphold Element Four of your complaint and am pleased to see this element as resolved.

Element Five

29. You have disagreed with the FCA's findings and outcome in relation to Part Three of your complaint with it concerning the communication regarding hotel accommodation if your evidence went over two days. You feel you were only informed about this at short notice when you discussed it the night before you were due to attend court. You hoped your Witness Liaison Officer may have had

some sympathy and understanding for not only the difficult personal circumstances you were experiencing but also for the stressful situation you were facing by having to appear as a witness for the prosecution against your fiancé. You state you were left hanging overnight and the following morning and therefore had no other option but to take all your luggage and personal belongings with you to court.

30. I have been provided with the text message exchanges that took place between you and the witness liaison officer between the 30 November and 1 December 2021. Based on the text messages I can see firstly it appears a hotel had been booked in advance of the trial date. On 30 November 2021 at 17.36 you sent a message to the Witness Liaison Officer stating your preference to not have to stay in a hotel the following night and explained your circumstances. The Witness Liaison Officer responded at 17.42 to clarify whether your fiancé would be present at your alternative accommodation. You responded to the Witness Liaison Officer at 17.56 to confirm that your fiancé would not be present. The Witness Liaison Officer subsequently responded to you the following day at 09.22 thanking you for your response and asked for confirmation as to whether they should cancel the hotel.
31. I empathise with your position at that time and understand your preference would have been to receive an earlier response from the FCA. However, I do not think it would be fair to penalise the FCA on this, when they had no knowledge that you required an expedited response that evening. I think had the FCA been made aware that your circumstances meant you required a response on the evening of 30 November 2021 (for example explaining that you would have needed a response by such time as you did not wish to take all your luggage and personal belongings to court), I think it's likely more than not, the FCA would have taken this seriously and worked its response around you. For this reason, I do not think the FCA have done anything wrong with respects to Element Five of your complaint.

Element Six

32. You have stated your thoughts in relation to the Witness Liaison Procedures and that you feel parts of this at least which were relevant to your case, should

have been shared with you and this should be a public facing document giving witnesses access to them. I have looked into this and can see that the Witness Liaison Procedures is not something that the FCA provide to witnesses. I empathise with your position being a witness during this trial and accept this was understandably at times quite upsetting for you. I understand you may feel differently, but I do not think the FCA's position on not sharing its Witness Liaison Procedures is a decision that fall outside the bounds of reasonableness, given it is the FCA's internal practice.

Element Seven

33. Whilst your expenses have been paid you feel it should be clearly laid out in the Witness Liaison Procedures when witnesses can expect to be reimbursed for their expenses so they can plan accordingly. You mention this as your expenses were paid more than six weeks after your court appearance and seven weeks after the majority of the cost had been incurred. You add that this left you in a difficult financial position over Christmas having already lost earnings because of your inability to work because of having to attend court.
34. I have looked at the FCA's internal manual with respect to this complaint point and additionally sought further enquiries from the FCA during my investigation of your complaint. From my observations as to what is expected and from a perusal of the email correspondence between you and the FCA, whilst I understand the time it took to receive your reimbursement was not satisfactory for you, I do not think the FCA needs to change its approach to this as a result. Looking at the email correspondence I also do not think the FCA behaved unreasonably in this regard. There can be a variation of reasons and processes involved as to why an organisation may not be able to process a reimbursement as quickly as one would like. This can be especially when the matter is not a straightforward one and involves several different elements for reimbursement.

Element Eight

35. You mention it was unfathomable that the FCA took 16 weeks to respond to you. Whilst I appreciate you feel the FCA should have responded to your complaint earlier, on review I do not think 16 weeks is an excessive delay for the FCA to investigate and provide an outcome to your complaint. It may be

helpful to know the FCA recently published its approach to calculating ex gratia for the delay in its handling of complaints. This approach was published on the FCA website on 29 April 2022 here: [Ex-gratia payments for complaint handling delays | FCA](#) You also feel the investigation by the FCA Complaints Team was poor and unobjective. As part of my investigation, I have access to the FCA case file. During my investigation I was unable to see that the FCA Complaints Team were poor and unobjective when it investigated your complaint. As such I could see no significant issues with the FCA's handling of your complaint.

My decision

36. I have partially upheld your complaint.
37. With regards to Element Three, I **recommend** the FCA ensures witnesses involved in court proceedings - as per the FCA's internal manual regarding witnesses, are informed of the witness care unit.

Amerdeep Somal
Complaints Commissioner
13 September 2022