

04 October 2022

Final report by the Complaints Commissioner**Complaint number 202201123***The complaint*

1. On 30 May 2022 you asked me to investigate a complaint about the FCA. I issued my preliminary report to you and the FCA on 22 August 2022. You have provided a detailed summary of your ongoing situation in response to my preliminary report.

What the complaint is about

2. In its decision letter dated 20 May 2022, the FCA set out the following summary of your complaint.

Part One

Our understanding of your complaint is that you are unhappy with the inactions of the FCA in relation to information you submitted to it.

On 26 November 2021, you gave the FCA a House of Commons Select Committee's report on how unsafe the Private Healthcare sector is. You raised a number of issues that you believe the FCA need to look at which include medical indemnity not being a regulated insurance product and a regulated firm (Firm Y Legal Insurance) failing to provide you with reasonable adjustments. You have emailed the Complaints Team with the other areas of concerns that you raised with the FCA.

Part Two

You are unhappy that the FCA have not responded to your concerns, and you believe the FCA has not taken any action in this sector. You have explained that you went to the PRA and they have referred you

back to the FCA, saying that the matters raised fall under FCA regulations.

To resolve your complaint, you are seeking a response to the following:

- You would like medical indemnity to become a regulated insurance – if not you would like to understand why?
- Explanation as to why the FCA has not done more in this sector.
- Want to know why the FCA did not take any action in relation to the correspondence you sent it; and
- You would like the FCA to look at Firm X contracts and duty of care.

What the regulator decided

3. The FCA partially upheld Part One of your complaint on the basis that it felt that when reviewing your case felt that the Complaints Team should have forwarded your emails on to the relevant Supervisory Team in charge of Firm X, when it first received the emails.
4. In relation to Part Two of your complaint the FCA concluded that the Supervision Hub had failed to respond to and apologised for the fact that a response was not forthcoming by the FCA and for any inconvenience this may have caused you, and upheld Part Two of your complaint.
5. With regards to the resolution points you detailed in your complaint, the FCA in its decision letter referred you back to its email of 5 April 2022, where it had provided a response to your request that medical indemnity should become a regulated insurance and why the FCA has not done more in this sector. It also provided details of the consultation it has recently conducted in relation to consumer duty to address the points you raised about Firm X and duty of care.

Why you are unhappy with the regulator's decision

6. In your email to my office dated 31 May 2022, you set out that you believe that there are unfair terms and conduct issues to be considered by the FCA, especially in light of the new Consumer Duty.

7. You also set out that you have not been happy with the FCA's responses you have received and that you will not trust the responses from the FCA, and therefore wanted to make me aware.
8. You also asked me 'how is it right that Firm X will rely on regulatory bodies (they know are dysfunctional as per House of Commons Report March 2020) until the government makes legislation forcing them to do more for their members'. You asked me to provide you with my thoughts on this point.

Preliminary Points

9. This Complaints Scheme is concerned with the actions or inactions of the FCA. It cannot deal with complaints against banks and individual firms. As such it is not appropriate for me to provide my thoughts as you requested in relation to your question set out in paragraph 8 above.

My analysis

10. Firstly, I would like to say that I am very sorry to hear about the issues you have experienced that have stemmed from the healthcare you received that resulted in your policy claims which have ultimately led to your complaint to my office. It has clearly been a difficult experience which has resulted in not only in issues with your physical health but also your mental wellbeing.

Parts One and Two of the FCA Decision Letter

11. In relation to Part One and Part Two of your complaints set out in the FCA's Decision Letter of 20 May 2020, having had access to the FCA file and having reviewed the correspondence you entered into with the Complaints Team following the Decision Letter and your emails to my office, I am satisfied that the FCA's response to these aspects of your complaints were correctly investigated and that the FCA's decision to partly uphold Part One and to Uphold Part Two of your complaint were correct. As such I do not intend to further analyse these points.

Unfair contract terms and conduct issues

12. In your emails in response to the FCA's decision letter on 30 and 31 May 2022, and in your complaint email to me of the same date, you outlined that you considered that Firm X have unfair contract terms which you still want the FCA

to consider as well as conduct issues relating to Firm X especially in light of the new Consumer Duty. In your response to my preliminary report, you acknowledged that the FCA could not be involved in your individual case, but you suggested that they could be involved in Firm X's contracts and get the contracts changed.

13. Having reviewed the complaint file I can see that when you initially lodged your webform with the unfair contracts team on 26 November 2021, that the response email set out that the FCA cannot resolve individual disputes with firms, or arrange individual, one-off compensation for consumers and stated that it cannot provide any update on the action or progress of a consumer complaint. The response to the webform also advised that the Financial Ombudsman Service may be able to help them as it is a free, independent service for settling disputes between financial services firms and their customers. This information was again set out to you in the FCA's decision letter on 20 May 2022.
14. I note that you then spoke on the telephone with the Lead Investigator on 31 May 2022 about the unfair contract terms and conduct issues. He explained that the information you had provided would be sent onto the Unfair Contracts Team in relation to the unfair contract terms and the information about the conduct of Firm X would be passed onto the relevant supervision team. He explained to you that you would not receive feedback on the information you had provided in terms of any action the FCA took.
15. Following your telephone call with the Lead Investigator, the Complaint Investigator provided confirmation to you by email on 1 June 2022, that he (as a precautionary measure to ensure nothing had been missed) had personally actioned the forwarding of the information you had provided to the Complaints Team by referring all your concerns and associated email correspondence to the Unfair Contracts Team and the supervisory team in charge of Firm X.
16. As set out in the FCA's email there are legal and policy reasons which mean the FCA would not be able to tell you whether the FCA takes any action following the information you provided reasons. This is correct and this also prevents me from being able to tell you whether any action has been taken by the relevant departments. What I can confirm to you though is that through my review of the

FCA's file I am able to advise that both the Unfair Contracts Team and the Supervisory Team in charge of Firm X, have both confirmed receipt of the information that the complaints team sent through to it and that it is now sitting with the right team for review. I hope this provides you with some assurances.

17. I am satisfied that the FCA through its telephone call on 31 May 2022 and follow up email on 1 June 2022, has confirmed to you that it has taken appropriate action in relation to the unfair contract term and conduct that you raised in your complaint to my office. It has explained that the information you have provided is with the relevant team to consider and has set out that you will not be provided with feedback on the information you provided. In your response to my preliminary report, you noted that you have spoken with Firm X who have advised you that it has not heard from the FCA since March 2022 which you consider is evidence that the FCA has not taken any further action. In your response you also indicated that you are disappointed that you will not be provided with any further information due to confidentiality, especially in view of the fact that you consider that Firm X has breached any confidentiality that existed.
18. Whilst I understand your frustration that you have not and will not be provided with feedback, I am satisfied following my review of the FCA's file that the FCA's response to the information you provided was reasonable and appropriate. As such, whilst I know it will disappoint you, I have not upheld this element of your complaint.
19. Finally, you set out that you wanted the contract terms considered in light of the new Consumer Duty. I note that that in its decision letter the FCA discussed the new Consumer Duty that was set to be released in July 2022. The new provisions will not come into effect until 31 July 2023. In the meantime for your reference you can find details of the new rules and guidance that have been published (in advance of the new rules coming into effect) using the following link: <https://www.fca.org.uk/publications/policy-statements/ps22-9-new-consumer-duty>

My decision

20. This is my final report. Whilst I know that this decision will disappoint you, I have not upheld your complaint.

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Complaints Commissioner

04 October 2022