

CONFIDENTIAL

04 October 2022

Final report by the Complaints Commissioner

Complaint number 202201151

The complaint

1. On 21 July 2022 you asked me to investigate a complaint against the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

You contacted the FCA (an Executive at the FCA) with suggestions to trial your proposals on the FCA's ScamSmart campaign. You felt that if the FCA implemented these proposals it would better fulfil the FCA's obligations. The FCA responded to you, advising you that it was unable to trial your suggested proposals. In making this complaint you have alleged that the FCA has acted unreasonably or unprofessionally, in that a reasonable, professional regulator would have been open minded to such a suggestion and would have trialled it, given the evidence base and rational arguments to suggest it might work, the de minimis cost of such a trial relative to the FCA's budgets and the potential benefits relative to the consumer harms caused by scams.

Your initial email to the FCA directed to an Executive was responded to by the Executive Casework Unit (ECU). You had several further exchanges of emails with this department as you were unhappy that the response received was from the ECU and not the Executive himself. You were also not happy with the contents of the responses as you felt they were generally obstructive, complacent and defensive.

What the regulator decided

3. The FCA did not uphold your complaint on the basis that there is no evidence to suggest that the FCA has acted unreasonably and unprofessionally in declining your proposals.
4. Nevertheless, the FCA Complaints Team consulted with the FCA Campaigns Team and provided you with a detailed overview of the ScamSmart campaign. It also said that it spoke to the FCA Campaign Team and 'they acknowledged that your suggestion is an interesting idea to consider an approach to encouraging reporting of scams, and they have in fact found that as a result of our campaign, they have had increased levels of reporting and received better intelligence by virtue of people completing all the stages of the Warning List tool mentioned earlier. The team receive a regular report from this tool which provides them with insight into the types of investment being offered, the nature of the approach the scammers use, the name of the firm that they are looking up – all of which inform our Enforcement teams and identify emerging trends which in turn help the team with communications to warn consumers. The team told me that they will be reviewing their ScamSmart strategy over the next year and they will factor in these ideas when they do that.'

Why you are unhappy with the regulator's decision

5. You have said to me that 'It seems to me the key point is this: while the FCA and I disagree about whether my proposed change to the ScamSmart campaign would be productive, and neither side can currently prove the veracity of their position, the only way to establish who's right is to trial my proposal. In refusing to do so, the FCA is at best showing itself to be complacent and narrow-minded and at worst is refusing to implement a change that could finally begin to stem the tide of investment fraud.'
6. The FCA also reviewed other aspects related to your complaint, but you have not referred these to me. I am only therefore going to review your complaint in paragraph 5 above.

My analysis

7. The background to this complaint is that you approached the FCA to offer suggestions to trial your proposal on its ScamSmart campaign. Further correspondence ensued between you and the FCA culminating in an email from the FCA dated 7 December 2021 in which a member of the Executive Casework Unit (ECU) wrote to you 'As such, we do not intend on changing the focus on our ScamSmart campaign in line with your suggestion'. They also explained why.
8. You did not agree with the rationale in this email and submitted a formal complaint to the FCA.
9. The FCA did not uphold your complaint. In this respect, I agree with the FCA. Although you have provided a suggestion for the ScamSmart campaign, it is up to the FCA to decide whether it will implement your suggestion or not. I should make it clear that it is not my role to say what I would have decided had I been the regulator. My task is to assess whether or not the decisions were within the range of decisions which the regulator could reasonably have taken, in the light of its statutory duties and policies.
10. In this case, I can see that the FCA considered your proposal initially and took a different view which it explained to you in the email dated 7 December 2021. You do not agree with the FCA's view. Although there is a debate to be had about the merits of both your and the FCA approaches, in my view the FCA's approach was not unreasonable.
11. However, notwithstanding the fact that the complaint was not upheld, the FCA Complaints Team went to considerable effort to give your complaint consideration. It entered discussion with the FCA Campaigns Team, the result of which appears to be that the FCA Campaigns Team has acknowledged that your suggestion is an interesting idea which they will factor into their review of the ScamSmart strategy over the next year.
12. In my view this is a positive outcome. It is also a very different position from the ECU one on 7 December 2021, which also said it had liaised with colleagues from Enforcement and the Campaign Team when it told you it would not take your suggestions forward.

13. The Complaints Team has not explicitly addressed the issue as to why you received vastly different answers on 7 December 2021 and 29 June 2022 although the FCA decision letter states that the Campaign Team found, as the campaign progressed, that ‘they have in fact found that as a result of our campaign, they have had increased levels of reporting and received better intelligence by virtue of people completing all the stages of the Warning List tool mentioned earlier’, which is likely why they now find your suggestion interesting.

My decision

14. It does not seem to me, from the FCA’s decision letter dated 29 June 2022 that the FCA disagrees with you that your suggestion would be productive. It has not dismissed your suggestion out of hand. The FCA said it is an interesting suggestion which will be factored in its next strategy review of the campaign. In my view this is a positive outcome on your complaint, and a perfectly reasonable response.
15. In my view the FCA Complaints Team handled your complaint well and although it was not upheld, went to considerable lengths to be helpful and relay a positive outcome with respect to your suggestion.
16. You have told me that you disagree with my view that my task is to assess whether or not the decisions were within the range of decisions which the regulator could reasonably have taken, in the light of its statutory duties and policies as it is tantamount to a ‘test’ which does not exist in the Complaints Scheme and you have suggested I should refer to paragraph 3.1 of the Scheme which provides that :

3.1 The Scheme covers complaints about the way in which the regulators have acted or omitted to act, including complaints alleging:

- a) mistakes and lack of care;
- b) unreasonable delay;
- c) unprofessional behaviour;
- d) bias; and

- e) lack of integrity.
17. Following from this, you say that the review of your complaint should not be finalised until the next strategy review of the Scamsmart campaign so that there is feedback as to whether the FCA has implemented your proposal. This feedback will determine if the FCA has acted unprofessionally or if there has been unreasonable delay.
 18. I am afraid I do not agree with you. It is up to the FCA to decide whether it will implement your suggestion or not. It is not my role to provide an alternative judgement on the viability of your proposal. The FCA has said that it will review your suggestion but the timescales for doing so are at its own discretion: I do not think it is appropriate to apply the test of 'unreasonable delay' or 'unprofessional behaviour' in this case.
 19. Nevertheless, I invite the FCA to provide you, and me with feedback once they have considered your suggestion.

Amerdeep Somal
Complaints Commissioner
04 October 2022