

7 October 2022

Final report by the Complaints Commissioner**Complaint number 202201165***The complaint*

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

What the complaint is about

2. In its decision letter dated 18 August 2022, the FCA described your complaint as follows:

Part One

Following your call with the Supervision Hub you are more confused. You claim the supervisor was unable to help you with your queries or give you any advice. You are unhappy with the service you received.

Part Two

You wanted to complain about the automated system (when calling the Supervision Hub) as you found this confusing as you weren't sure which option to choose.

Part Three

You have active complaints at the Financial Ombudsman Service and you have received an email which said they will close all your cases on 10 August 2022 unless you appoint a representative. You have explained there is no one that can represent you and you feel this is discrimination because you have disabilities.

Part Four

I'm unhappy that the Complaints team do not answer telephone calls and instead have a voicemail in place. And the FCA don't get a second change to

make a first impression. I believe this is a barrier to access and consider it disproportionately affects vulnerable consumers who do not like to speak on the telephone or who suffer from anxiety, nerves or stutter. The chances for understanding is greater. Some people think they are talking to a real person and not a machine. People don't always remember to include name or contact details on a voicemail so the FCA can respond. Some people might believe the phone number gets logs automatically I am also concerned that any message left will not be followed up or when precisely and who Talking to a machine (voicemail) lacks empathy and understanding Complaint enquiries might get signposted to other departments I felt uncomfortable using the voicemail as I was expecting to speak to someone and get a quicker response and ask me other information if needed. Banks and other financial institutions have challenging callers and don't react in such extreme measures. Any kind of barrier is one too many, when you're working with vulnerable consumers. I regularly work with disabled students who go shy on a voicemail or simply won't speak, especially if it's someone or something new. I want this changing so the complaints terms have a minimum of one live person during office hours taking calls or messages, dealing with urgent matters. And just being human.

Part Five

The FCA has not always complied with their obligations under the Equality Act 2010. The FCA had sight of my reasonable adjustments since 31 December 2020. For reasonable adjustments to be effective the interpretation must be consistent. It's not seen as 'good faith' to interpret after the event to give yourself a real or perceived advantage if challenged. The FCA interpretation of my adjustments was agreed around this time by XXX of the FCA complaints team. On the 16 August 2022, XXX called me without scheduling a call in advance, causing unnecessary distress and confusion. (Scheduling a call in advance was prior agreed reasonable adjustment with the FCA)

3. As a remedy you asked the FCA for compensation for injury to feelings.

What the regulator decided

4. The FCA upheld Part Five of your complaint and did not uphold Parts One and Four of your complaint. It excluded Parts Two and Part Three of your complaint as being out of scope of the Complaints Scheme.
5. With respects to Part One of your complaint the FCA reviewed a call that took place on 13 July 2022 with an FCA Supervisor. The FCA felt the Supervisor was correct when you were informed that they were best able to deal with all queries as the FCA did not have specific advisors who dealt with specific issues. The FCA state the Supervisor tried to ascertain the specific nature of your query. However, it also stated that at that point during the call you explained you wanted to make a complaint. The FCA felt that had the Supervisor been able to ascertain the specific nature of your query they may have been able to provide you with some further information or arrange a call back to discuss the matter in more detail, but it was at this point that you decided to make a complaint. Overall, the FCA did not believe the Supervisor acted incorrectly.
6. In Part Four of your complaint the FCA explained why they operate a voicemail system and that generally, it aims to return voicemails within 24 hours on working days whilst also trying to make at least two attempts to speak someone. It also shared that the FCA webpage offers alternative methods of contact including offering different methods of accessibility. The FCA noted your concerns that voicemails may not be followed up, but it did not find this was the case when you left a voicemail.
7. The FCA looked at the remainder of your points concerning Part Four of your complaint regarding its voicemail facility and provided its view. It split your complaint points into sections. The FCA disagreed with your view that the voicemail is a barrier to access, disproportionately affecting vulnerable consumers. Whilst it did agree that discussing a matter can aid greater understanding, it added that the voicemail system did not preclude a telephone call and offered a way to manage calls. It also spoke to the number of ways the Complaints Team could be contacted without any telephone use.
8. You had concerns about people thinking they are talking to a real person and not a machine. The FCA agreed that could be the case, but also believed such

misapprehension would only last for a limited period of time and that voicemails are returned by the Complaints Team where the complainants could have the opportunity to speak to someone.

9. With respects to your point that people do not always remember to include a name or contact details on a voicemail so the FCA can respond, the FCA agreed without these details it is difficult for the FCA to return the call, but that the FCA mentioned that it has a number of methods of contact available for complainants.
10. You made the point that some people may believe the phone number gets logged automatically. The FCA assured that its voicemail system shows the number for a caller (unless withheld or transferred from the FCA switchboard or another part of the FCA).
11. You had concerns that any message left will not be followed up on when precisely and who. The FCA explained that it has a process in place that makes sure voicemails are responded to and that all the voicemails you left were responded to in the timescales expected.
12. You raised the point that talking to a machine voicemail lacks empathy and understanding. The FCA agreed that talking to a machine would not offer any empathy or understanding but it does not replace direct telephone calls.
13. You stated that complaint enquiries might get signposted to other departments. The FCA responded that its Complaints Team only deal with complaints that fall within the scope of the Complaints Team and that any enquiry that is better dealt with by another area is forwarded to the appropriate area.
14. You felt uncomfortable using the voicemail as you were expecting to speak to someone to get a quicker response and ask you for some other information if needed. The FCA apologised if you felt uncomfortable when you left a voicemail. It explained that it did not provide a response to complaints on the telephone when it has not had the opportunity to investigate the allegations. It also said it offered complainants the opportunity to add any further information in relation to their complaint when it writes to them to summarise the allegations much like the example of the letter you received on 8 August 2022.

15. You felt banks and other financial institutions have challenging callers and do not react in such extreme measures. You feel that any kind of barrier is one too many, when working with vulnerable consumers. The FCA did not believe operating a voicemail system is an extreme measure or created a barrier to complainants.
16. You have said that you regularly work with disabled students who go shy on a voicemail or simply will not speak, especially if someone or something is new. The FCA noted your comments and recognised that for some, telephone is not always a comfortable experience, however it did not require complainants to speak with it directly there were a number of ways on offer to bring a complaint to try and meet different needs. It also raised the point that it's Supervision Hub gives the option of speaking directly to someone during office hours and the team are able to forward information to the Complaints Team.
17. The FCA upheld Part Five of your complaint as it noted that as part of your document you refer to as '...reasonable adjustments...' it should have emailed you ahead of calling to arrange a convenient time. The FCA apologised in its decision letter for any distress or confusion this may have caused you.

Why you are unhappy with the regulator's decision

18. You have asked me to review all parts of your complaint you had with the FCA. You also raised some additional points with me which I have listed below:
 - a. Is the FCA trying to humiliate me?
 - b. Yet again "the FCA has not always complied with its obligations under the Equality Act 2010"
 - c. FCA are demonstrating "bad faith"
 - d. The FCA agreed to a reasonable adjustment to put page numbers, but these are absent apart from all but the first page of your letter.
 - e. An FCA staff member never scheduled a call prior to making a decision or consulted with me prior to making his complaint decision if I require a call on his parts of the investigated.
 - f. Overall, the document formatting is inconsistent and it's hard to Differentiate between the Allegations I made and the FCA response.

- g. To the FCA, please revert the wording of my adjustments back to the original, I will not put up with the FCA passing the buck and implying a vulnerable customer is to blame. Previously staff member of the FCA complaints team understood them, it's the person and not the words to blame
- h. I was seeking compensation or redress for this poor and inconsistent service but was ignored.

Preliminary points (if any)

- 19. During my analysis of your complaint, it is my intention to look at and investigate the points that are appropriate and closely connected with the Complaints Scheme.
- 20. I am unable to investigate complaints about whether the FCA has complied with its obligations under the Equality Act 2010. This is not a matter for the Complaints Scheme. So, whilst I will not be able to look at this element of Part Five of your complaint, I can look at the other points you have raised such as your complaint that no one scheduled a call with you in advance before making a call to you on 16 August 2022.
- 21. I am also only able to investigate complaints about the regulators. Complaints about the Financial Ombudsman Service (FOS) is not something the Complaint Scheme deals with. You may wish to seek independent legal advice in relation to challenging this. As such I agree with the FCA's decision to exclude Part Three of your complaint.

My analysis

- 22. In Part One of your complaint with the FCA I have listened to the call recording that took place on 13 July 2022. I did not have any concerns with how the FCA handled this call and agree with the FCA's assessment in its decision letter that the Supervisor did not act incorrectly.
- 23. The FCA excluded Part Two of your complaint which was as follows,
 - You wanted to complain about the automated system (when calling the Supervision Hub) as you found this confusing as you weren't sure which option to choose.

24. The FCA explained during a call with you on 8 August that its Supervision automated system were not part of its relevant functions so the FCA could not look at this. Section 84(1)(a) of the [Financial Services Act 2012](#) requires the FCA to,
- Make arrangements (“the complaints scheme”) for the investigation of complaints arising in connection with the exercise of, or failure to exercise, any of their relevant functions (see section 85)
25. Section 85 provides,
- (a) its functions conferred by or under FSMA 2000, other than its legislative functions and
- (b) such other functions as the Treasury may by order provide.
26. I do not think that there is any suggestion that sub-paragraph s85 (b) applies, nor that we are dealing with ‘...legislative functions...’ The argument therefore turns on whether Part two of your complaint relates to ‘...functions conferred by or under FSMA 2000...’
27. The [Complaints Scheme](#) provides,
- Coverage and scope of Scheme
- 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.
28. I think there are arguments relevant to Part Two of your complaint falling within the scope of the Complaints Scheme as above. I say this because I have previously investigated complaint points connected to complainants calling the FCA such as the FCA’s Complaints Team helpline in the case of [FCA001526](#) and [FCA001675](#). Whilst your complaint point differs slightly in the sense that

you are complaining about the automated system and how you found this confusing not knowing which option to choose, I still do not think the FCA has adequately articulated its reasons for not investigating this part of your complaint. Your complaint is about your experience of attempting to communicate with the FCA and finding difficulty with its automated systems. In turn, I think there are arguments relevant on this point, that complaints about the FCA's systems which are in place when an individual contacts the FCA, is a reflection of the FCA's functions and the processes it has in place for contact and your belief you experienced poor customer service when you tried to call the FCA. The FCA responded to me on this particular point. I am pleased to share the FCA are happy to accept my recommendation that it should take Part Two of your complaint back for investigation thereby accepting it into the Complaints Scheme. The FCA have informed me it has opened a new complaint in relation to Part Two of the previous complaint so you will hear from the FCA regarding this.

29. With respects to Part Four of your complaint, I appreciate you could not speak to anyone when you called the FCA helpline. The reason for this is because for operational reasons, the FCA helpline provides a voicemail service where callers can leave a message, which the Complaints Team then aim to respond to within one working day. My office operates a similar approach with our phone lines, we use a telephone bureau to take our calls and we subsequently return calls within two working days. So, I cannot see any issues with the way the FCA operate their helpline from an operational point of view or that this needs to be amended in any way. I have also reviewed the FCA's assessment of the points you made and find the outcome of its investigation fair and reasonable.
30. Part Five of your complaint: I am sorry to hear you feel the FCA caused you unnecessary distress and confusion on the 16 August 2022 when the FCA called you without scheduling a call in advance. I understand you feel scheduling a call in advance was agreed prior as part of your document you refer to as '...reasonable adjustments...' with the FCA. I have listened to the call recording that took place on 16 August 2022. I am pleased the FCA was very apologetic with you as soon as it realised you were not happy that prior arrangements hadn't taken place to plan the actual call in advance and that it

had misunderstood this. The FCA did offer during the call, to call you another time at your convenience if that suited you better. The FCA additionally amended your document you referred to as ‘...reasonable adjustments...’ and added to it that it would email first to arrange a suitable time and date when arranging a telephone call in the future. The FCA’s investigation decision letter on this point also recognised this and subsequently upheld this point. I think the FCA took the right steps by apologising to you during the call and recognising that it should have arranged the call prior to making a call to you at any given date and time. I do not think the FCA need to do anything further to advance an outcome on this point, I believe the recognition and apology is sufficient.

31. You have raised further additional complaint points:
 - a. The FCA agreed to a reasonable adjustment to put page numbers but these are absent apart from all but the first page of your letter.
 - b. Overall, the document formatting is inconsistent and it’s hard to differentiate between the allegations I made and the FCA response.
32. With respects to point ‘...a...’ above I agree with you that the FCA decision letter does not have page numbers apart from the first page of the letter. Given that the FCA previously agreed to your document which you describe as ‘...reasonable adjustments...’ which stipulates ‘...when applicable use page numbers...’, it is regrettable that the FCA made a similar error yet again and did not follow the requirements it agreed to set out in the document. I would think that the FCA’s decision letter to you regarding the outcome of your complaint is an applicable, important document for you that should have the pages numbered as per your agreed request. It is also important to highlight that the call that took place on the 16 August 2022 lasted over one hour in total. A focal point of that call was your continued emphasis, on the importance of the FCA adhering to your document which the FCA had agreed to do previously. You were given assurances that this would happen going forward, but unfortunately a similar error occurred again shortly after, which ultimately should not have happened. In my preliminary I upheld this part of your complaint and recommended that the FCA apologise to you for the error and make an ex gratia payment of £50 for the trouble and upset caused. The FCA have taken

this on board and I am pleased to report that it agrees and accepts this recommendation. It will write to you to apologise for the error made and make the offer of £50 ex gratia for the trouble and upset caused by not including page numbers in its decision letter. I have asked the FCA to do this once this Final Report has been published.

33. The FCA have also informed me that it has reviewed its letter templates and have updated all letters to show page numbers as standard, which it feels will assist complainants in the future. I think this is a positive outcome and agree that it will assist complainants in the future.
34. Whilst investigating point ‘...b...’ above I understand you feel that the formatting of the FCA’s decision letter is inconsistent and it is hard for you to differentiate between the allegations you made and the FCA’s response. Upon review of the FCA’s decision letter I am sorry to disagree with you, but I do not think there are any issues with the formatting of the letter or the way the FCA have structured its letter. The FCA set out your allegations at the start of the letter describing them as Parts One to Five. It then provided its decision under separate headings forming Parts One to Five later in the letter. I think this is the best way to ensure a sequential chronological flow and layout which additionally allowed the FCA to provide its response and decision to your complaint. I understand you feel differently but I do not see any issues with the FCA’s decision letter when it comes to format and its structure.

My decision

35. As the FCA accepted all of my recommendations in my preliminary report I am no longer upholding your complaint.

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Complaints Commissioner

7 October 2022