

16 January 2023

Final report by the Complaints Commissioner**Complaint number 202201166***The complaint*

1. On 9 August 2022 you asked me to investigate a complaint about the FCA. I issued my preliminary report to you and the FCA on 21 November 2022 and invited you both to provide any further comments.

What the complaint is about

2. The FCA in its decision letter dated 9 August 2022 summarised your complaint as follows:

You took legal action against a regulated firm for not displaying the account balance on statements that you downloaded from a mobile banking app. The case was set aside because the legal action was taken against the wrong legal entity.

Part One

You are unhappy that the Financial Ombudsman Service (the Ombudsman Service) will not investigate your complaint about the firm.

Part Two

You are unhappy that the FCA will not investigate how the Ombudsman Service has treated you.

Part Three

You are unhappy that the FCA's Supervision Hub (the Hub) has not answered your question, who has compulsory jurisdiction over the use of regulated firms' trading names and trademarks? You would like to

know if it is the Ombudsman Service or the FCA that has this jurisdiction.

Remedy sought

We believe the remedy that you are seeking to resolve your complaint, is to receive an answer to your question that is detailed in Part Three of your complaint.

What the regulator decided

3. In its scope letters dated 8 and 20 July 2022 the FCA set out that it had concluded that it was unable to investigate Parts One and Two of your complaint under the Scheme. It set out that:

This is because the Scheme covers the investigation of complaints that arise in connection with the exercise of, or failure to exercise, any of the FCA's relevant functions.

The 'relevant functions' of the FCA are defined in the Scheme and Part 6 of the Financial Services Act 2012, and broadly speaking cover the FCA's regulatory functions that arise under the Financial Services and Markets Act 2000, or such other functions as may be ordered by HM Treasury.

Part One of your complaint relates to the actions, or inactions, of the Financial Ombudsman Service (the ombudsman service) and is excluded from being considered under the Scheme, as set out in paragraph 3.4(e).

Part Two of your complaint is not being investigated because paragraph 1.1 of the Scheme states that your complaint is outside the scope of the Scheme because it is not a relevant function of the FCA to investigate the Ombudsman Service.

4. In its decision letter dated 9 August 2022, the FCA did not uphold Part Three of your complaint because it believed the Hub had answered your questions. The FCA's decision letter set out that:

I understand that you did not receive the answer that you was expecting, I hope that my letter has helped you to understand why.

The Hub has told you that:

- regulated activities within the FCA's remit are detailed in PERG;
- there is no reference to trademarks within PERG;
- you should seek legal advice about any next steps they may wish to consider; and
- only the Ombudsman Service can say whether it is able to investigate a complaint.

Why you are unhappy with the regulator's decision

5. In your email to my office dated 9 August 2022, you asked me to review the FCA's decision in relation to your complaint. You said that the investigation and outcome was 'neither fair, clear and not misleading'.
6. I will review the FCA's decisions in 'My Analysis' below. The FCA set out the different parts to your complaint into Parts One, Two and Three in its decision letter. To avoid confusion, I will refer to my analysis of the respective parts as Elements One, Two and Three.

My Analysis

Element One

7. In relation to element one of your complaint I am satisfied that the FCA's response was correct in its decision to exclude this aspect of your complaint under 3.4(e) of the Complaint Scheme. The decision of the Financial Ombudsman Service (the FOS), as to whether or not to investigate the complaint you made to it relates to the actions of inactions of the FOS, and as such is excluded from the remit of the Complaint Scheme.
8. I note that in your email response dated 28 November 2022, in response to my preliminary report you set out that I had stated, that the FCA had stated that your '*legal action against a regulated firm was set aside because it was the wrong legal entity*'. You expressed that you did not agree with this statement that the FCA had made and that it was not the wrong legal entity.... You went

onto say that the action was set aside because they (the Firm) ‘*misled the judge into thinking they were operating independently*’.

9. I appreciate that you feel the FCA’s summary of your situation was incorrect, as explained in your email that you believe the actual reason your case was set aside was because the firm misled the judge. Whether or not this is the case, under the Complaints Scheme any finding or fact of a court are to be considered as conclusive evidence or fact, and as such the decision of a court shall be taken as conclusive. As such when considering your complaint, I must accept the decision of the court was conclusive and I am not able to consider this under the Complaints Scheme. If you believe the finding of the judge was incorrect, and you wish to challenge the decision, you will need to seek legal advice about the options available to you as this is not something that the Complaint Scheme can consider.

Element Two

10. This element of your complaint is that you have set out that you are unhappy that the FCA will not investigate how the Ombudsman Service has treated you. The FCA set out that it had not investigated Part Two of your complaint because it is outside the scope of the Complaint Scheme because it does not relate to a relevant function under the Complaints Scheme.
11. Whilst it was not set out in the decision letter, I do note that the Supervision Hub set out the FCA’s remit of the Financial Ombudsman Service in its email to you dated 9 June 2022.

Our remit of The Financial Ombudsman Service

Under the Financial Services and Markets Act 2000, which set up The Financial Ombudsman Service, the FCA is required to take such steps as are necessary to ensure that The Financial Ombudsman Service is, at all times, capable of carrying out its statutory role. This role is to ensure disputes that fall within its remit can be resolved “quickly and with minimum formality by an independent person”. In particular, we are responsible for:

- Appointing and removing the directors (including the chairman) of the Financial Ombudsman Service (in the case of the chairman, with the approval of the Treasury).
- Ensuring that the directors' terms of appointment (and particularly those governing removal from office) secure their independence from the FCA in the operation of the scheme.
- Making rules for the compulsory jurisdiction on complaint-handling by firms, activities covered, complainants eligible, time-limits, limits on awards and levies to cover the establishment and operation of that jurisdiction.

In all other respects, The Financial Ombudsman Service is an independent organisation and the FCA cannot intervene in the decisions it makes on individual complaints. This means we'll be unable to comment on why The Financial Ombudsman Service have been unable to investigate your complaint regarding the use of a regulated firms trademarks. Further information regarding the jurisdiction of The Financial Ombudsman Service can be located in the Dispute Resolution Sourcebook (DISP 2), which forms part of the FCA Handbook.

12. In these circumstances I agree with the FCA that this second element of your complaint is not one that can be investigated under the Complaint Scheme as it does not fall within the FCA's remit of the Financial Ombudsman Service and consequently is not within the of the Complaint Scheme.
13. I do note that the FOS final decision did refer you to direct your complaint to the FCA as it appeared to be in relation to a regulatory matter and the FCA are the industry regulator, and that having done so you have now been told that the FCA cannot look at your complaint. I understand that it feels like you have been passed between the two organisations and that no one is able to assist you. I understand this frustration, however, there are occasions where the FOS does not have the remit to consider a complaint and because the FCA cannot

consider individual matters it does appear that a complainant is left with limited options. In these circumstances I do agree with the FCA's advice (like it suggested to you in its correspondence) that a complainant should seek independent legal advice as to what options are available to them.

14. In your email sent dated 28 November 2022, you said that you do not agree that the remit of FOS or the FCA is '*to put complainants in a position where they are told to go and seek independent legal advice about a matter so fundamental to the fair operation of financial services*'. You consider that this is counter to both schemes and a dereliction of duty.
15. Firstly, I should set out that I can only consider matters relating to the Complaint's Scheme, I do not have the remit to consider matters relating to the FOS scheme. In relation to the Complaint Scheme, the legislative requirements are outlined in Part 6 of the Financial Services Act 2012 where the legislators decided that the scheme would investigate complaints arising in connection with the exercise of, or failure to exercise any of their relevant functions (paragraph 1.1) and expressly excludes any complaints about the FCA's performance of its legislative function (paragraph 3.4(c)). As such the Complaint Scheme was not designed to be an all encompassing scheme to cover every action of the FCA and it envisaged that there would be matters best considered in other forums, such as the courts. As I have set out in paragraph 12 above I cannot investigate element two of your complaint as it does not fall within the remit of the Complaint Scheme.

Element Three

16. The third part of your complaint to the FCA, as set out in its decision letter to you was that you were unhappy that the FCA's Supervision Hub (the Hub) had not answered your question, specifically, it had not answered who has compulsory jurisdiction over the use of regulated firms' trading names and trademarks? It set out that you also wanted to know if it was the Ombudsman Service or the FCA that had this jurisdiction.
17. I have reviewed the FCA's investigation file into your complaint and the FCA's decision letter to you. I can see that it has repeated extracts from the Supervision Hub's responses to you between 4 June and 15 June 2022 in its

decision letter to you. In its responses the Supervision Hub set out that it could not advise you on why the FOS were unable to investigate your complaint regarding the use of a regulated firms' trademark. When you tried to seek clarification as to whether it was the FCA or the FOS who had jurisdiction over a regulated firm's trademarks, the Supervision Hub replied with an explanation as to where you could find an outline of regulated activities that would fall within the scope of its regulation, and that it had been unable to locate any specific reference regarding regulated firms trademarks within its Perimeter Guidance Manual. In your response to this you re-iterated that the question you were asking was who had the compulsory jurisdiction over how those trademarks are used. The Hub's final response on 15 June 2022 set out that the FCA as the regulator 'do not have the complaint resolution powers to investigate consumer's individual complaints about an authorised firm.' It went on to state that it could therefore not investigate your complaint about Firm X and Firm Y and their use of trademarks.

18. It is my opinion that the Supervision Hub responses did not fully answer the questions you had asked in the decision letter and as such I do not agree with the FCA. For this reason, I **uphold** this element of your complaint. Your question, as written in the FCA decision letter, was not whether it could investigate your complaint about Firm X and Firm Y's use of trademarks, rather it set out that you were trying to establish which organisation, (the FCA or the FOS) had the jurisdiction over how trademarks are used.
19. The FCA in response to my preliminary report have accepted and agree with my decision to uphold this element of your complaint, and have advised that they will provide you with further information following the issue of this my final report. I welcome the FCA's acceptance and the offer to furnish you with additional information.
20. I appreciate that there might have been some insight from other communications you had with the FCA that you may have wanted the FCA to consider a complaint about Firm X and Firm Y's use of trademarks but that is not what the Complaint's Team set out as the questions you raised to the Supervision Hub and as such the answers you received did not answer the questions raised and set out in the decision letter.

21. I do understand that it was not the place of the Supervision Hub to say what is within the jurisdiction of the FOS and that may have limited the answer it could provide about the jurisdiction of the FOS. However, I believe it could have provided you with much clearer information about what the FCA itself can look at with regards to firms trademarks, names and logos from a financial service industry regulator perspective.
22. I consider that the answers provided to your complaint were too narrowly construed and that the Supervision Hub missed the opportunity to provide you with relevant information that could both have informed you about the work it does that relates to trademarks.
23. As part of my investigation into your complaint, I went back to the FCA with some queries relating to the use of trade names and trademarks by FCA registered organisations and whether the misleading use of these was a relevant concern to the FCA. The FCA provided me with some useful insight into this which I will now summarise for you below which I think will help you to understand the extent to which the FCA has a function in relation to the use of trade names by firms.
24. The FCA has set out to us that with respect to trading names, these are provided to the FCA, by firms, and form part of the data that firms attest to on an annual basis, as part of the Firm Details Attestation process.
25. The FCA informed us that it recently reaffirmed how trading names can be used in regulatory roundup and on its website, at: <https://www.fca.org.uk/firms/firm-details/trading-names>. I note that this update took place on 22 October 2022, this was shortly after the FCA had issued its response to your complaint and queries in relation to trading names, and around the time that I requested further information from the FCA in relation to your complaint. In your response to my preliminary report you set out that the fact that the FCA had only just published this information about trading names in 21 October should indicate that my analysis of the situation is wrong.
26. In my preliminary report I invited the FCA to provide me with further details about factors influencing the timings behind the update in its response to my preliminary report. It has done so and set out that it has been working on this

topic, including the information for the website, for some time and it has seen examples of firms across multiple portfolios registering names in the wrong circumstances and or/using them in a way which may mislead consumers. The FCA sought to address this harm by issuing focussed communications during October 2022 which coincided with a relevant second Supervision Notice and it said the timing of the publication was coincidental.

27. Having carefully considered both yours and the FCA's response I fully appreciate why you consider the timing in relation to your complaint is relevant, but I do feel that the FCA's explanation around the timings of this release are reasonable, this is because through my experience in dealing with the FCA, I know that notices and communications of this sort take time to be written and finalised and as such would have likely been the result of multiple instances with multiple firms and was not a reflexive response specifically to your complaint.
28. The FCA explained that firms cannot use certain sensitive terms in their trading (or registered) names, without seeking the view from the FCA and agreement from the Secretary of State. The FCA has automated processes to identify when a firm attempts to submit a name including any of these terms, to prevent any of these names being added to the Register without the appropriate approvals.
29. The FCA has also set out that it does have concerns about some firms misusing trade names, and where it has identified firms that appear to be misusing trading names, it has intervened using its powers. This included removing trading names from the Financial Service Register and in a more serious case, also requiring an authorised firm to cease conducting its regulated activities without the FCA's prior written consent.
30. The FCA has also advised us that it will be increasing its focus on this area and will intervene with firms where it identifies the misuse of trading names.
31. From the information the FCA has provided it is clear that there are circumstances where the FCA as regulator will look into issues relating to the use of trade names. These actions may stem from information the FCA receives from consumers like yourself who identify issues and that information is passed onto the Supervision Hub.

32. The FCA welcomes information from people who report concerns. However, the FCA does not generally say what action has been taken in response to the information that it receives. This is because section 348 (s.348) of the Financial Services & Markets Act 2000 (FSMA) classes some information the FCA holds about firms as confidential and restricts how that information is dealt with. In addition to this, any information that is not restricted by s.348 FSMA may be restricted due to the FCA's policy on sharing information about regulated firms and individuals, who also have legal protections. Under this policy, the FCA will not normally disclose the fact of continuing action without the agreement of the firm concerned. [There is a good explanation of the statutory and FCA policy restrictions on information sharing at <https://www.fca.org.uk/freedom-information/information-we-can-share>.] This means that, there is no general right for members of the public to know the outcome of reports that they make.
33. Like the FCA, I am required to respect confidentiality. This means that sometimes I cannot report fully on the confidential material to which I have access. 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. Sometimes this means that all I can say to complainants is that having studied the confidential material, I am satisfied that the FCA has (or has not) behaved reasonably – but I am unable to give further details. This can be frustrating for complainants, but it is better that I am able to see the confidential material.
34. I consider that from the information available to me that the information you provided as part of your initial complaint to the FCA was passed onto the Supervision team, which was reasonable in the circumstances and that I would not expect you to receive any outcome report following this.
35. As I have set out, I have **upheld** this element of your complaint that the Supervision Hub failed to fully address your questions, I consider that I have provided some relevant information that I consider the Supervision Hub or the Complaints Team could have provided to you to explain the FCA's involvement with firms use of trademarks to assist your understanding of its role better. However, I would **suggest** that if the FCA has any additional information or

resources it would like to share with you it could do so along with providing you with an **apology** for the frustration you have experienced trying to obtain an understanding of the FCA's function in relation to trade names and trademarks. In its response to my preliminary report the FCA has agreed with this suggestion and set out upon the issuance of this final report it will provide you with an apology and will provide you with the further information as set out above.

36. In these circumstances where the FOS has set out that your complaint does not seemingly fall within its remit to consider as per its decision letter on 23 June 2022 and where the FCA has advised that it cannot consider your individual complaint I do consider that the Supervision Hub was correct to set out that you would need to seek independent legal advice about what your next steps may be.

My decision

37. This is my final report about your complaint.
38. I have found that Element One is excluded under the Complaints Scheme. I have not investigated Element Two. I have upheld Element Three of your complaint and I am pleased that the FCA has agreed to follow my suggestion to provide you with an apology and has offered to provide you with further information FCA's function relating to trading names and trademarks.

Amerdeep Somal

Complaints Commissioner

16 January 2023