

14 November 2022

Final report by the Complaints Commissioner**Complaint number 202201167***The complaint*

1. On 9 August 2022 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

Part One - You are unhappy with the treatment and services provided by your building insurance provider and how the Financial Ombudsman Service have handled your complaint about this matter.

Part Two - You are unhappy with the responses provided by the FCA's Executive Casework Unit Team and the action they have taken. To resolve this part of your complaint, you are seeking that the FCA provides you with a response to a series of questions you have provided.

What the regulator decided

3. The FCA partially upheld your complaint, they advised you:

In our letter we explained that we could not investigate Part One of your complaint under the Complaints Scheme. As this part of your complaint related to the actions or inaction of the Financial Ombudsman Service it was excluded from being considered under the Complaints Scheme, as set out in paragraph 3.4(e).

You are unhappy with the responses provided by the FCA's Executive Casework Unit Team and the action they have taken. To resolve this part of your complaint, you are seeking that the

FCA provides you with a response to a series of questions you have asked. I have reviewed the correspondence you have had with the Executive Casework team. I can see that there was a delay in providing you with a reply between 14 October 2021 and 5 April 2022 (following your chaser emails). This delay is not the level of service we expect to offer and so I have upheld this element of your complaint.

I have also reviewed the information you were provided with. I can see the team referred your request for information to the Freedom Of Information team; explained that the information you provided could be passed to the relevant supervisory team but you would not be updated; explained the Financial Ombudsman Service is operationally independent of the FCA and the FCA cannot get involved in the decisions the Financial Ombudsman Service makes on individual complaints; provided details about the status of a firm carrying out loss adjusting on behalf of a relevant insurer; and provided examples of the types of actions the FCA can take.

I appreciate the team did not respond to all your points and would not answer some of your questions and this must have been frustrating. However, I consider the team tried to respond to you in as much detail as they were able to. Where your questions remain, unanswered this was because these questions were not within the remit of the FCA to respond to.

I have not upheld this element of your complaint.

I have partially upheld your complaint as there was a delay in the response you received following the email correspondence in October 2021. Please accept my apologies for this delay.

Why you are unhappy with the regulator's decision

4. You have asked me to review the FCA's decision.

My analysis

5. Part One:

You are unhappy with the services provided by your building insurance provider which you have advised is likely to cost you £30,000.00. You referred your complaint about your insurance provider to the FOS and you are unhappy with how the FOS handled your complaint about this matter.

6. The Complaints Scheme is concerned with the actions or inactions of the FCA. It is also important for me to highlight, matters which are excluded from the Scheme which I am unable to investigate. Section 3.4(e) of the Complaints Scheme provides that complaints about the actions or inactions, of the Financial Ombudsman Service, The Financial Services Compensation Scheme or the Money Advice Service are excluded from the scheme

7. I can only look at the actions (or the inactions) of the FCA as part of my investigation. Complaints about the FOS are excluded from the Complaints Scheme.

8. The FOS is the legal complaint resolution scheme set up by Parliament under the Financial Services and Markets Act 2000 (FSMA). Its role is to resolve individual complaints between regulated firms and their customers. The FOS is operationally independent from the FCA, which in practice means the FCA has no remit to intervene in the decisions it makes in individual cases.

9. The FOS has an Independent Assessor who investigates complaints about the service one has had from the FOS. They are impartial which means they are independent of the FOS and form their own view without influence. I understand from the information you have provided me with, you are already aware of the role of the Independent Assessor.

10. Part Two:

You are unhappy with the responses provided by the FCA's Executive Casework Unit Team and the action they have taken.

11. I am pleased to see the FCA have recognised the delay in responding to your emails and have apologised and upheld this element of your complaint.

12. Whilst there was a delay in the FCA responding to some of your enquiries, I am satisfied the FCA have provided you with appropriate replies and have taken the necessary action with the concerns you have provided in relation to your building insurance provider.
13. The regulator welcomes information from people who report concerns. However, as you were told, 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, as you were told, there is no general right for members of the public to know the outcome of reports that they make.
14. 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. On occasions, I have persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible. I shall continue to pursue this matter with the FCA.

15. In your case, I am satisfied on balance that the FCA's complaint response, that it would not inform you of any action to be taken, or not taken, in response to the information you provided about your building insurance provider, was reasonable in the circumstances. I recognise that there's a difficult balance to be struck between protecting confidential information to enable us to do our job and encourage potential informants, and the need to give consumers sufficient information and confidence to judge whether or not the regulatory system is operating effectively.

My decision

16. Whilst I know you are disappointed, for the reasons outlined above, Part One of your complaint is excluded from the complaints scheme and I am unable to uphold Part Two.

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Complaints Commissioner

14 November 2022