

04 January 2023

**Final report by the Complaints Commissioner****Complaint number 202201616***What the complaint is about*

1. The FCA set out that your complaint was divided into two parts in its initial letter to you dated 4 March 2022, being:

**Part One**

You made a Subject Access Request for a call recording you had with the FCA's Supervision Team on 2 December 2019 under case reference (omitted reference for anonymity). It is our understanding that this Subject Access request was made on the 4 February 2022 under case reference (omitted reference for anonymity) which was specific to the call recording in question. You are unhappy that you still have not received a response to your request.

**Part Two**

You are unhappy with the advice you received from the Hub under case reference (omitted reference for anonymity) in an email sent to you on 13 May 2019 regarding whether you are able to offer the option to collect instalments from your customers' homes. You believe the advice was wrong and that the FCA agreed when your firm was transferred over from the Office of Fair Trading that your firm will be exempt from any exclusions under your consumer credit permission. You believed that you were able to collect payments from customers' homes. You have explained that this has had a devastating effect on your credit profile.

You have also explained that in the call you had with FCA's Supervision Team in December 2019 you were advised that the FCA was not allowing any of your exemptions as you had to comply with the Senior Management Function permissions for SMF27 not SMF29. You believe on both occasions the FCA

were incorrect and that these mistakes have completely decimated your credit profile and you subsequently had a nervous breakdown and suffered with PTSD because of it.

*What the regulator decided*

2. In its Decision Letter dated 23 August 2022, the FCA set out that Part One of your complaint was not investigated. It set out that the issue raised in Part One of your complaint related to the General Data Protection Regulations (GDPR) which is not something the FCA were able to investigate under the Complaints Scheme because your complaint did not arise in connection with the exercise of the FCA's relevant functions.
3. The FCA upheld Part Two of your complaint setting out that you were right that on both occasions that the FCA had made a mistake. It apologised for the impact that you said the mistakes had had on you and offered its sincere apologies for those failings.
4. The FCA set out that in recognition of the distress caused to you by the incorrect advice and accepting that the incorrect advice did have a high level of impact on you, it would like to offer you an ex-gratia payment of £1,000. It said that it hoped that this went some way in recognising the distress it had caused. It also offered a further £75 ex gratia payment for the inconvenience you experienced because of the time it took the FCA to investigate your complaint.

*Why you are unhappy with the regulator's decision*

5. You wrote to me on 6 October 2022 and said that you wanted to complain to me that the FCA have caused you severe financial loss **(Element One)** and a nervous breakdown with resulting PTSD because of certain individual's actions against you. **(Element Two)**
6. You also set out that you believed the FCA has breached your human rights. **(Element Three)**
7. You further set out that you consider that that the errors they made against you were done in bad faith and that you consider that the ex gratia payment of £1075 that the FCA has offered to you is not an appropriate amount for their

serious errors in judgment against you and that they should pay the compensation amount that you set out to them. **(Element Four)**

*Preliminary points (if any)*

8. I note that you have not specifically asked me to consider Part One of your complaint to the FCA. The FCA set out in its decision letter that it had not investigated Part One of your complaint as it related to GDPR which is not something it could investigate under the Complaints Scheme because that aspect of your complaint did not arise in connection with the exercise of the FCA's relevant function. I agree with the FCA's decision not to Investigate Part One of your complaint to the FCA.
9. In relation to Elements Two and Three of your complaint these are points that you have raised in your complaint email to me dated 6 October 2022. These aspects of your complaint were not specifically referred to in the FCA's Decision Letter. Under the Complaints Scheme the regulator should have the opportunity to conduct or complete an investigation into a complaint before it is referred to me for consideration, this does not appear to have happened at this point in time. In relation to Element Two it does not appear that the FCA in its Decision Letter addressed the actions of specific individuals in relation to this being the contributing reason to your nervous breakdown. As such if you would like the FCA to look into Element Two of your complaint you should raise a further complaint element directly with the FCA. If you are unhappy with its response, I will then look at this element.
10. In relation to Element Three this relates to a breach of your Human Rights. Only a court can determine if your human rights have been breached. You may want to consider seeking independent legal advice at your own expense if you consider that there has been a breach of your Human Rights.

*My analysis*

11. It is my understanding that Element One and Four of your complaint are interrelated. Part Two of your complaint to the FCA sets out details about how the FCA provided you with incorrect advice on two occasions. As a result of the incorrect advice, you have set out that you incurred severe financial loss, which you estimated to be in the region of £80,000.

12. Following its investigation into Part Two of your complaint to the FCA, it acknowledged that you had received incorrect advice on both occasions and apologised for this as well as offering an ex gratia payment of £1,000 to you in recognition of the distress that it had caused you and a further £75 ex gratia payment for the delays in completing its investigation into your complaint. You have said that you do not consider this to be an appropriate amount.
13. Firstly, I welcome the FCA acknowledging its errors in its interactions with you and that it has already apologised for these. The FCA has set out the details of the errors to you and when they were made in its Decision Letter. As such, I do not consider there is any value to me repeating these details in this report.
14. I can confirm that I have been through the FCA' investigation file and I can see the enquiries it made of the relevant departments and that I have reviewed the information provided and I am satisfied that the Decision Letter has correctly captured your interactions with the FCA and the errors that it made in its communications with you.
15. I note that you set out that you consider that the errors that were made by the FCA were done so in bad faith. From the information available to me, I did not see any evidence that the incorrect information was provided to you in bad faith rather it appears that the errors occurred because of confusion over terminology. As such I consider that it was reasonable that the FCA did not award you compensation for financial loss and instead offered you an ex gratia payment in recognition of the inconvenience you experienced as a sole trader on behalf of the Firm X (name omitted for anonymity).
16. In its decision letter the FCA set out in its recommendation section that, where the FCA concludes that a complaint is well found, it will decide what remedy is appropriate considering the factors set out in 7.14 of the Complaints Scheme. I note that it is not clear in the decision letter or in the information I have reviewed that the factors in 7.14 of the Complaint Scheme have been taken into account.
17. Consequently, I am somewhat confused as to why the FCA referenced 7.14 of the Complaint Scheme to you in its decision letter when this does not appear to have factored into the FCA's decision in what remedy was appropriate for your complaint.

18. However, the FCA has set out a detailed explanation about its decision not to make an ex gratia payment for financial loss to you but that it has instead made an offer to you for an ex gratia payment for inconvenience.
19. I know that you do not agree with the FCA's decision not to make an ex gratia payment for your financial losses, as you have advised that you have lost £80,000 because of the incorrect advice the FCA gave you. I have reviewed the correspondence you had with the FCA in relation to this and the enquiries the FCA made of you about your firm's finances and the £80,000 losses. You were not able to provide this. Whilst I appreciate that you have set out your reasons for why you do not have the information available to you, I do still consider that it was reasonable that the FCA required you to provide information to consider your claim for financial loss. As such I am satisfied that it was reasonable that the FCA did not offer you an ex gratia payment for financial loss.
20. On that basis I consider that in recognition of the mistakes that the FCA made which you have set out have that have led you to have a nervous breakdown, it was reasonable and appropriate for the FCA to make you an ex gratia payment for distress and inconvenience. I note that the amount that it has offered you is at the higher end of ex gratia payments that the FCA offers for distress and inconvenience and that I do consider in view of all the information available to me it was a reasonable offer.
21. As such I have not upheld Elements One and Four of your complaint as I consider that the FCA was correct to uphold Part Two of your complaint to it, and that its assessment of your situation was appropriate and reasonable. I consider the ex gratia payment was reasonable and was correctly given for inconvenience only.
22. As set out in my preliminary points section above, I have not investigated Elements Two and Three set out in your complaint to me. I do not consider that the FCA has yet had the opportunity to address these points and as such I would recommend that you directly raise these with the FCA. From the correspondence I have received from you it appears that you may have already started this process since I issued my preliminary report and are now waiting for the FCA's response. If following the FCA's investigation of these elements you

remain unhappy with the FCA decision, you can then return to me in relation to these elements and I will then consider the points myself as a new complaint.

*My decision*

23. This is my final report about your complaint. For the reasons set out above I have not investigated Elements Two and Three of your complaint and I have not upheld Elements One and Four of your complaint.

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Complaints Commissioner

04 January 2023