

06 January 2023

**Final report by the Complaints Commissioner****Complaint number Case Ref 202201633***The complaint*

1. You asked me to investigate a complaint about the FCA's lack of disclosure of information to the public about its regulatory oversight of Firm X.

*What the complaint is about*

2. The FCA summarised your complaint as follows:

You are unhappy that the FCA has been unable to provide you with supervisory information due to confidentiality restrictions. You feel the FCA is avoiding disclosing matters that are having a material financial impact on consumers.

*What the regulator decided*

3. The FCA did not uphold your complaint. It explained that:
4. 'The FCA does not generally say what action has been taken in response to the information that we receive. 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 an 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 there is no general right for members of the public to know what action if any the FCA takes. It is clear from the correspondence that you feel

very strongly about the situation with Firm X and you are seeking to understand why the Financial Ombudsman Service has not made a super-complaint to the FCA. In the decision letter for complaint 208210754, the Complaints team explained that it is the decision of the Financial Ombudsman Service Board whether to refer a complaint under section s.234D of FSMC (otherwise known as a 'super complaint').

5. I recognise that you are frustrated as you are seeking information from the FCA to help you (and the individuals you represent) to understand the actions of the FCA in relation to Firm X and to enable you to take the matter to court. Whilst I can sympathise with your position this does not mean that confidential information can be shared with you.
6. I realise that this leaves you with concerns and unanswered questions. I can see that the information you provided to the FCA has been passed to the relevant supervisory team. Although I cannot provide you with further details, I am satisfied the FCA has behaved appropriately and has not ignored the information you have provided and has given it proper consideration'.

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

7. You have said of the FCA: 'Their insistence of using Section 348 of FSMA to avoid providing any indication of action leaves our group in limbo' and 'gives no regard to other means of disclosure, e.g. Section 241a of the Enterprise Act, which was specifically introduced to assist where legal options were being considered. Where is the consideration? There isn't any from what we can see because no one at the FCA will tell us anything. Plus, it should not be up to me to put other options forward – as a full considered response should do that by default'.

*My analysis*

8. Like the FCA, I appreciate your frustration that you have not been told what action, if any, the FCA has undertaken with respect to the concerns you have raised with it.
9. 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 Firm X, 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. However, the FCA is right that it does not generally say what action has been taken in response to the information that it receives, for the reason it gives above.

*My decision*

For the reasons given above I do not uphold your complaint.

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Complaints Commissioner

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