

27 February 2023

Final report by the Complaints Commissioner**Complaint number 202201671***The complaint*

1. On 7 December 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

During a call on 1 August 2022 with the Supervision Hub the supervisor that you spoke to expressed an opinion about Firm X and the FCA Principles but would not confirm this opinion in an email.

Part Two

You are unhappy that we are unable to provide details of how the new Consumer Duty rules being implemented would apply to the Financial Ombudsman Service.

Part Three

You are unhappy that a manager did not call you back when requested and subsequently you have questions that remain unanswered.

Part Four

The Supervision Hub failed to pass your complaint to the Complaints Department

To resolve your complaint, you are seeking a response to the questions you have raised.

What the regulator decided

3. The FCA told you:

I partially upheld Part One of your complaint because the supervisor stated they would put their reasons for directing you to Principles 6 and 7 in an email to you and they did not do that. I do not, however, believe the supervisor gave an opinion about your issue with Firm X during the two calls on 1 August 2022.

I partially upheld Part Two of your complaint because the supervisor on 2 August 2022 did answer your question but did not provide a detailed explanation.

I have upheld Part Three of your complaint because when the manager called you back on 4 August 2022 they stated they would call you back in the next 2 days and this did not happen.

I have not upheld Part Four of your complaint because the Supervision Hub did refer your complaint to the Complaints Team on 1 August 2022.

Why you are unhappy with the regulator's decision

4. You have asked me to listen to the telephone call you had with the FCA on 07 December 2022, which details why you are referring your complaint to my office. During this telephone call you raised the following:

Part One

Whilst you noted the FCA decision letter agreed you had not received an email confirming your conversation on 1 August 2022 in relation to FCA Principles 6 & 7, this has still not been provided.

Part Two

You have not had a straight answer about the new Consumer Duty rules, what the FCA have told you contradicts what FOS have said, unless it is incorporated into DISP rules specifically, the FOS will not consider them.

Part Three

Since first contacting the FCA it has taken 5 months to get a response to your complaint. The number of calls and emails to chase this up has been excessive, especially as the FCA have known you have dyslexia. As a result, you have incurred an unreasonable and excessive amount of inconvenience and stress. You cannot see how the offer of £50 equates to the failures or how it acts as a deterrent to the FCA to stop these failings from happening.

My analysis

5. I have reviewed the three parts of your complaint you raised during the telephone call on 07 December 2022.

6. Part One

I have listened to your telephone call on 1 August 2022, with the Supervision Hub. The advisor did agree they would send you an email to confirm your conversation relating to the FCA Principles 6 and 7. It was disappointing the FCA Complaints Team acknowledged this was not done but did not provide the information in its decision letter. I am pleased to see following your telephone call with the Complaints Team on 7 December, you have now been sent an email from the FCA which reflects this conversation. I uphold this part of your complaint.

7. Part Two

You remain unhappy with the response you have received from the FCA and believe you have still not received a straight answer as to whether the new Consumer Duty rules will be incorporated into the FOS DISP rules. It is my view the decision letter you have received from the FCA does answer this question. The FCA advised you:

Furthermore, to answer your question more fully here is a link to DISP3.6 Determination by the Financial Ombudsman Service.

<https://www.handbook.fca.org.uk/handbook/DISP/3/6.html>

Within the above link DISP 3.6.4 covers what is fair and reasonable in all the circumstances of the case and lists what the Financial Ombudsman Service will take into account.

The new Consumer Duty will therefore be taken into account by the Financial Ombudsman Service with any event that occurs after the Consumer Duty rules come into effect in July 2023.

Whilst I note you want the new Consumer Duty Rules to be specifically detailed in the DISP rules, the information above confirms what the FOS is expected to consider by the FCA, which would include the new Consumer Duty rules. As a result, I am unable to uphold this part of your complaint.

8. Part Three

During your telephone call with the Supervision Hub on 1 August 2022, you raised a complaint. You were advised on subsequent calls with the Supervision Hub the complaint had been passed onto the Complaints Team. I have listened to the telephone conversation you had with the Complaints Team on 25 August 2022, the investigator asked if you wanted to set up a new complaint, you advised one should already be registered and if it was not then it is just something else that had not been done. The investigator advised there was no active complaint set up. The FCA have since confirmed the Supervision Hub did pass on the complaint, however it was not actioned by the Complaints Team.

It is clear from the above there have been failings in the FCA processes, as a result I uphold this part of your complaint. I **invite** the FCA to confirm what processes are in place to ensure complaints lodged with other teams get actioned and what follow up measures are in place.

You have said you cannot see how the offer of £50 equates to the failures or how it acts as a deterrent to the FCA to stop these failings from happening. The £50 the FCA have offered is in relation to the delay in dealing with your complaint which is in line with the ex-gratia table on its website [Ex-gratia payments for complaint handling delays | FCA](#)

I **recommend** the FCA apologies for the breakdown in its processes resulting in your complaint not being set up and offers you a further ex-gratia payment of £50 in recognition of its failings which has caused you unnecessary stress and inconvenience.

9. In response to my preliminary report, you have told me your question remains unanswered as to why the new Consumer Duty rules are not being fully

incorporated into the DISP rules. Furthermore, the FOS can tell consumers they are not considering the Consumer Duty rules as they are not in their DISP rules.

10. In response to your question, the FCA have told me:

DISP 3.6.4 does not list the industry rules, guidance and standards but the Ombudsman is expected to take them into account in determining what is fair and reasonable.

The FCA does not need to embed any new rule within DISP because when the New Consumer Duty comes into force it will be covered by DISP 3.6.4 and the Ombudsman will take it into account accordingly.

Whilst you may not agree or like this answer, I do believe the FCA have answered your question, the FCA will not embed the new Consumer Duty Rule within DISP as it is already covered under DISP 3.6.4 which FOS will consider.

I am pleased the FCA have accepted my recommendation to offer you a further £50 in recognition of its failings which has caused you unnecessary stress and inconvenience and has apologised for the breakdown in its process. You have told me you are unhappy with this amount as it is not proportionate and reflective of the FCA failings. I am sorry you are unhappy with this amount; I believe the amount is fair and reasonable.

The FCA have shared with me its processes it has in place to ensure complaints lodged with other teams get actioned. Your complaint identified a gap in the existing processes, as a result the FCA have implemented a new element and set of controls to ensure this set of circumstances will not have the same outcome in future. Whilst I appreciate this does not help you and will be of little consolation to you, I am pleased the FCA have taken learnings and implemented process changes to avoid a repeat of your experience in the future.

My decision

11. For the reasons outlined above, I uphold Parts One and Three of your complaint, I do not uphold Part Two.

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Complaints Commissioner
27 February 2023