

08 March 2023

Final report by the Complaints Commissioner**Complaint number 202201680***The complaint*

1. On 19 December 2022 you asked me to investigate a complaint about the FCA. I sent my preliminary report to both you and the FCA on 13 February 2023 and you have both had the opportunity to provide your responses.

What the complaint is about

2. The FCA summarised your complaint in its decision letter dated 23 September 2022 saying that you were unhappy with the way your application for authorisation was handled. The FCA set out the detail of your complaint into 8 parts.

Part One

You feel that you were treated unfairly, and the case handler seemed biased towards Firm X from the outset. You feel the case handler dismissed your statement that many of the things Firm X are claiming did not happen. You state you were spoken to in an unprofessional, disrespectful, and condescending manner which made you feel anxious. You state the case handler often got the names of networks mixed up during conversations.

Part Two

You state that you were given unreasonable timescales to complete tasks for your application. For example, on 26 November 2021 at 13:07 the case handler requested that you send over some information by close of business on that day.

Part Three

You state there were numerous times that the case handler said that they would provide updates but didn't.

Part Four

The case handler called you on 8 February 2022, advising you to withdraw your application and questioned your suitability, honesty, and integrity. This was due to a reference the case handler states he received from your previous network, Firm X. Firm X state that they terminated you on 25 February 2021. In the documents sent in the DSAR, there is a resignation letter from you to Firm X on 22 February 2021 that predates their letter of termination.

Part Five

The case handler told you during a phone call that Firm X had put in the reference that you had a panel removal from Firm Z in 2017 and Firm U in 2018. You state this is not true. You have an email from Firm U stating that this is not true, and you are waiting for the same from Firm Z.

Part Six

Following your call with the case handler where it was recommended you withdraw your application you were sent an email. You are unhappy that it stated you agreed that you 'should have disclosed information concerning the reasons why Firm X decided to dismiss' you as an AR. You state this is not true, as you were not dismissed by Firm X. You state that Firm X used a new style Regulatory Reference which is not applicable to an AR. You query why the case handler did not pick this up.

Part Seven

You highlighted some of your concerns to the case handler on 8 February 2022, but it was implied that your feelings towards how the case was handled was a result of you receiving an unwanted

outcome. You state this is not the case, as you contacted the FCA on Friday 21 February at 12:33, call reference number 208026880, where you highlighted several concerns.

Part Eight

You feel the case handler had a bias towards Firm X as the information requested by the case handler was not worded objectively and was worded as though the accusations from Firm X are true. You also state that the case handler had said they had no contact with Firm X prior to the reference request, whereas you can see that they did.

You feel that the reference from Firm X is not credible and question why the case handler did not investigate this. You also state that in the DSAR, there is a mention of an investigation in 2018 but question why the case handler did not follow up on the outcome to the investigation.

In your email of 20 July 2022 you added, 'I have noticed an error on part seven of my complaint. I made the phone call to the FCA on Friday 21st January and 12:33, not 21st February to highlight a number of my concerns about the case handler. I feel this is important that the date is correct, as this proves that I'd highlighted my concerns to the FCA prior to my telephone conversation with the case officer on 8th February, and my concerns weren't due to the outcome of the application as the case officer said it was.

What the regulator decided

3. The FCA upheld part three and seven of your complaint and partially upheld part one of your complaint. The Complaints Team set out that although the manager had apologised to you already, it would also like to apologise for the distress dealing with this matter caused you.
4. The FCA did not uphold parts two, four, five, six and eight of your complaint.

Why you are unhappy with the regulator's decision

5. In your email to the FCA in response to its decision letter you set out that there were eight parts to your complaint in the FCA's decision letter and responded to each point.
6. At the end of your response to the FCA decision letter you set out that you are not in agreement with the FCA and its investigation for a number of reasons. You also questioned that given the FCA upheld 2 parts of your complaint and partially upheld 1 part, whether an apology was adequate.

Preliminary points (if any)

7. Investigations under the Complaints Scheme are paper based reviews considering any documents supplied by the complainant, and any relevant documents held by the relevant regulator (Paragraph 6.3 of the Complaint Scheme).
8. Paragraph 3.6 of the Complaint Scheme states that the regulators will not investigate a complaint under the Scheme which they reasonably consider could have been, or would be, more appropriately dealt with in another way (for example by referring the matter to the Upper Tribunal or by the institution of other legal proceedings).

My analysis

9. The FCA set out your complaint into eight parts and you have responded to each part. To differentiate my analysis from that of the FCA in its decision letter, I will describe the eight parts as elements, the number of each element will correlate to that in the FCA decision letter and your response.

Element One

10. The FCA partially upheld this part of your complaint. You felt that you were 'treated unfairly' and that you were 'spoken to in an unprofessional, disrespectful, and condescending manner which made you feel anxious'. The FCA investigation found that you had raised criticism in a call on 21 January 2022 and again on 16 February 2022 and that Mr A's manager wrote to you on 18 February 2022 (following a call with you) acknowledging the standards of the call fell below the expected high standards and apologised for this.

11. The FCA's decision letter noted that as part of its investigation the FCA had reviewed email exchanges between you and the case officer, it set out that the calls in question were not recorded and as a result the FCA could not comment on the way the calls were conducted.
12. In your response to the FCA's decision letter dated 15 December 2022, you set out that you had not known that the calls were not recorded and that you would expect all calls to and from the FCA to be recorded. You have asked for an explanation as to why all these phone calls are not recorded. In my preliminary report I invited the FCA to provide you with some information about its call recording policy to help address this query.
13. The FCA in its response to my preliminary report advised that it had spoken with the authorisations team who had set out:

We do not have a policy to record all calls between FCA case officers and applicants during the authorisations process. Some calls and/or meetings between FCA case officers and applicants are recorded. Where we intend to record a call and/or meeting, we make a prior arrangement with applicants. Where calls and/or meetings are recorded, we always notify all parties.
14. You also set out in your response to the FCA decision letter that you do not believe that the FCA could make assumptions that Mr A did not treat you unfairly and show bias from only looking at the emails.
15. Having reviewed the file into your complaint and the decision letter I believe that the FCA has in fact drawn the conclusion from the emails and notes that you were not treated fairly and that is why the FCA partially upheld this complaint and went onto cover the related bias allegation in Part Eight of its decision letter.
16. I consider that the FCA was correct to **uphold** this element of your complaint, however I think it should have been fully upheld, not partially as set out by the FCA. Whilst it only upheld the unfair treatment aspect of this complaint, I feel the issue of bias was dealt with in part eight of the decision letter not part one and as such it should have been separated out from element one and the

findings related to that specific aspect should inform the decision of part eight and not part one.

17. In response to my preliminary report the FCA have confirmed that they are happy to amend the outcome of Part One of its decision letter to Upheld, as it agrees that the bias aspect of this element is address in Part Eight of its decision letter. I am pleased that the FCA has agreed to update its findings.
18. Whilst I understand you are frustrated that the call recordings do not exist, I do consider that the FCA have conducted its investigation appropriately and drawn a reasonable position from the information available from the paper based evidence. I am aware that you have set out that you have witnesses who heard the calls and can corroborate what you are saying about the calls. Whilst this might be the case, as set out in the preliminary points above, the Complaints Scheme is not like the courts, it conducts paper based investigations, it does not have the remit to take and consider evidence from witnesses.

Element Two

19. In its decision letter the FCA did not uphold this element of your complaint, it set out that *'Although the timescale given was short, I do not feel this was detrimental to you as you were able to respond within the timescale. I consider the information requested should have been available to you if you were ready, willing and organised with your application'*.
20. Your response to this was that you felt that the suggestion that you should be ready, willing and able to provide information within a space of a few hours was 'ludicrous' and that you found the response was very condescending.
21. Having reviewed the information available to me, I agree that the position set out in the Decision Letter was not necessary and I appreciate why you are upset with the FCA's position as it was set out in the FCA's decision letter. The complaint was not that it was an impossible timescale, rather it was that it was unreasonable. The fact that you managed to comply, does not make it reasonable timeframe. I do not consider the provision of a few hours to comply with providing information demonstrates a level of fairness that I would expect from the FCA when liaising with firms and individuals.

22. In addition to this from my review of the information on the case file it appears the Mr A's manager also considered that the deadline that Mr A had set for you was unrealistic and apologised to you in his call on 18 February 2022. On this basis the original team who set the deadline have themselves acknowledged that it was not appropriate to set such a short deadline. As such I disagree with the FCA's decision letter as I feel that that this element of your complaint should be **upheld**. In my preliminary report I **recommended** that the FCA should apologise for the upset it caused you by the position set out in its decision letter which did not appear to recognise that there was already an acknowledgment of error with the apology already provided by Mr A's manager. I am pleased that the FCA in its response to my preliminary report have advised that they have accepted my recommendation and that following the issuance of this, my final report, they will issue an apology to you.

Element Three

23. This element of your complaint relates to the case handler saying they would provide you with updates but they didn't. The FCA upheld this element of your complaint and your response acknowledged this and have not raised any further points on this. As such I have **not investigated** this element of your complaint as I consider that you are satisfied that the FCA has reached the correct decision on this element.

Element Four

24. I agree with the FCA decision letter that this element of your complaint comes down to different interpretation of events relating to your resignation / termination of your employment from Firm X. As part of the application process it is entirely appropriate for the FCA to request information from firms about their employees as part of the application process and to take the information provided into consideration. Whilst you have said that you provided evidence that you felt supported your interpretation of the events, this matter remained unresolved and you were taking legal action against firm X to resolve this. From the information available to me, this was a matter that needed to be resolved in another forum before the FCA could conclude which interpretation of events could be relied on. As such I consider that it was reasonable and appropriate

for Mr A based on the information available to him, to have provided you with the opportunity to withdraw the application, so that you could re-apply once the legal action between you and Firm X concluded. I do not agree with your view that this was the FCA treating you as guilty until proven innocent, rather I consider that it was the FCA using its discretion to afford you the opportunity to get the relevant evidence to support your interpretation of the events through the legal action you were taking. As such I do **not uphold** this element of your complaint.

Element Five

25. Part five of the decision letter looked at the fact that you disputed the fact that in the call on 8 February 2022, Mr A set out that Firm X had put in its reference that you had a panel removal from Firm Z in 2017 and Firm U in 2018. You had told Mr A that this was not correct.
26. I do consider that this element, like element four above stems from differing perspectives of events surrounding the removal/suspension from panels that took place during your employment with Firm X. I note that in your response to my preliminary report you have restated your perspective around these matters.
27. I note that you have said that you informed Mr A on the call on 8 February 2022 that you had an email from Firm U that confirmed that it was not true that you had been removed from the panel. I do feel that this should have prompted Mr A to request a copy of this information before deciding that you should withdraw your application. However, without a call recording available I have not been able to verify the content of that call and whether or not a request or offer of information was made during the call for the email from firm U.
28. It is my understanding that you had already undertaken legal advice in relation to this matter and this ongoing at the time of your call with Mr A. On this basis I feel that the position taken by Mr A was appropriate in the circumstances, whilst I think you had raised an important issue and Mr A should have perhaps requested and reviewed further information about the difference in dates and actions in relation to the panels that you offered in relation to Firm U. It seems apparent that the dispute was unresolved at that time and needed to be resolved by the relevant parties through the relevant processes before the FCA

could conclude whether your application should be accepted under the suitability and fitness tests. As such the decision to suggest that you should withdraw your application and apply once these matters were resolved appears to be appropriate in the circumstances. For the above reasons, I have **not upheld** this element as I consider that it was the position taken by Mr A was acceptable in view of the ongoing and unresolved legal dispute you had with Firm X about events relevant to your application.

29. Whilst I have not upheld this element I note that in my preliminary report I set out that you had queried that the FCA decision letter had said that you had been given the opportunity to present any relevant evidence.
30. Following my preliminary report, the FCA provided some further explanation as to why it considered that you had the opportunity to present any relevant evidence, including that it did consider that you had the opportunity to present any relevant evidence from the time you made the application up until the point you withdrew the application. With regards to the email of 8 February 2022 the FCA acknowledged that Mr A did not ask for any further information, however the FCA felt that you had sufficient opportunities to provide any relevant information to the application and that the issues with your application had been discussed during the call on 8 February 2022.
31. Whilst this has not altered my position in relation to this element, I understand why this brief statement in the decision letter frustrated you and I do feel that it would have been helpful for the FCA to provide a little more context in its decision letter about this statement about you having the 'opportunity to present relevant evidence'.

Element Six

32. In relation to the follow up email to the call on 8 February 2022, you felt that the email was not an accurate reflection of the call that took place between you and Mr A and that he had failed to pick up that you had directed him to the fact that Firm X had used a new 'regulatory reference which is not applicable to an AR'.
33. Unfortunately, as you are aware there is not a call recording of the conversation that was the subject of the follow up email, so it is not possible to verify whether or not the email reflects the call that took place. I acknowledge that you clearly

had a different recollection, and I think it was right that the FCA apologised if the wording of the email had upset you. I do however feel that the position that the FCA's set out in its decision letter, being that it considered that the email reflected the understanding of the call from Mr A's position and was not a legally binding document was reasonable in the circumstances.

34. In relation to you advising that Firm X had used the wrong regulatory reference, which is not applicable to an AR, I consider that the decision letter attempted to set out that this issue was a matter between Firm X and Firm Y and not the FCA and as such it was not relevant to the decision that the FCA had made in relation to your application.
35. In view of the above I have **not upheld** this element of your complaint.

Element Seven

36. The FCA upheld this element of your complaint. Whilst you have accepted this point, I take on board that you are still upset that the FCA suggested that the only reason for your complaint and views are because you did not get the outcome you expected. As you have not questioned the FCA's decision in relation to this element I have **not investigated** this element of the complaint in this review.

Element Eight

37. You believe that the case handler Mr A was biased towards Firm X. You have outlined that the information requested by the case handler was not worded objectively and you also think that the case handler was incorrect when he told you that he had no contact with Firm X prior to the reference request.
38. In its decision letter the FCA set out that you had not provided evidence of prior contact with Firm X or details of the information you received under the DSAR referenced. In your response to the FCA decision letter you questioned how the FCA know whether you were given the opportunity to address these concerns given the calls were not recorded and Mr A immediately dismissed these.
39. Also, in your response to my preliminary report, you questioned why I or the FCA talk about you providing items, you have set out that the DSAR request was made by you to the FCA who then sent you the documents that included

notes from Firm X detailing your history with them. You then set out how it was these notes that you say supports your version of events in relation to the events in 2018.

40. It is my understanding that the FCA knows that it provided information to you in a response to a DSAR request that you made. I consider that the point made on page 13 of the decision letter that you had not provided details of the information you received under the DSAR, is that you had not extracted the relevant information and highlighted the specific details from the DSAR information you referred to and provided it to support your assertions.
41. From the information available to me it is not apparent that there was a bias towards Firm X but that does not mean that you did not feel that one was conveyed in your calls with Mr A. Given the call recordings are not available, I cannot conclude whether or not there was any apparent bias in the calls and I cannot conclude whether you were given the opportunity to address your concerns about Mr A having prior contact with Firm X.
42. This element again comes down to the documentary evidence available as a result of the calls recordings not being held. From the information available it is not apparent that you have provided any evidence of the prior contact with Firm X. As such I do consider that the position set out in the decision letter was reasonable that having received information from Firm X, Mr A was required to assess and act on the information that had an impact on the authorisation application, I can see that there was consideration of this information. What I can see from the information available to me is that it was set out that your options in view of the information received were to withdraw or likely have the application refused, and you were advised that you would be able to apply again if you could provide evidence that these issues had been resolved and you met the relevant standards requirements for authorisations. I consider that this was a fair and reasonable approach in view of the situation.
43. I do **not uphold** this element of your complaint as there is no bias evident in the information available to me and I consider the decision the FCA came to was reasonable in view of the information available to it at that time.

My decision

44. In summary, I have **upheld** elements one and two of your complaint. I have **not upheld** elements four, five, six and eight. I have **not investigated** elements three and seven. I have also **recommended** in relation to element two that the FCA should provide you with an apology as detailed above. I am pleased that the FCA has advised that it has accepted this recommendation and will action following the issuance of this report.
45. This is my final report about your complaint and concludes my investigation.

Amerdeep Somal

Complaints Commissioner

08 March 2023