

20 April 2023

Final report by the Complaints Commissioner**Complaint number 202201704***The complaint*

1. On 23 January 2023 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 FCA's refusal to assist a vulnerable individual with their issue with a regulated firm.

On 8 November 2022, you requested the FCA's assistance and provided us with details of [x]'s issues regarding a firm. On 9 November 2022, you were assured that the FCA would get back to you as soon as possible. Despite further chases for information, you have not received a response.

Part Two

You are unhappy with the FCA's ongoing failure to properly supervise a regulated firm.

What the regulator decided

3. The FCA did not uphold your complaint.

Why you are unhappy with the regulator's decision

4. In respect of Part One you have said to me that

'FCA's failure to respond after promising they would left [my client] (coping with dementia and the recent death of her son) in a frightened, bewildered and terrible state that I had difficulty in dealing with. It cannot be acceptable that FCA can say in their letter of 16th December that they "do

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not have statutory power to investigate complaints from individual consumers" some five weeks after providing [my client] with the false hope that they would on 8th November.' I will review this as Element One in my report.

5. With respect to Part Two, which I will review as Element Two in my report, you have said to me:

It is an indisputable fact that FCA have failed in their statutory duty to access the firm's conduct in consideration of either granting them permanent authorisation or withdrawing their temporary authorisation by no later than April 2020. Nearly three years on and unquantifiable consumer detriment later they have STILL not done so. All I want FCA to do is acknowledge that they have failed in their obligation to protect consumers and do better.

My analysis

Element One

6. You have been corresponding with the FCA on behalf of vulnerable customers over several years in connection to Firm X, a claims management company which currently has requirements imposed on it by the FCA and which it is appealing at Upper Tribunal in 2024.
7. During your correspondence with the FCA, you have asked it on occasion to intervene and assist your clients directly in connection with Firm X.
8. At times, the FCA has assisted you in some way, and other times it declined to do so and explained 'The FCA's role is to focus on conduct issues with firms and we do not have statutory power to investigate complaints from individual consumers, with that role belonging to the Financial Ombudsman Service'.
9. You complained about this in 2021 and in my published report on your complaint (<https://frccommissioner.org.uk/wp-content/uploads/FCA001177-Issued-22-September-2021.-Published-19-October-2021.pdf>) I said 'The FCA assisted two other consumers previously because the staff were acting from good intentions and went over and beyond the role. Whilst it would be helpful if the FCA could do so again for your client, the FCA is right to say that this is not

its role. The FCA has however, taken account of the information you have provided. Given the circumstances I cannot uphold the complaint'.

10. I now turn to your current complaint. By way of general background, as you are already aware, because both the FCA and I have told you so in the past, this Complaints Scheme is concerned with the actions or inactions of the FCA. It cannot deal with complaints against banks, individual firms [or against the Financial Ombudsman Service (FOS)], nor is it a redress service for individual consumer complaints. The Financial Services and Markets Act 2000 explicitly provides for a consumer redress service separated from the FCA.
11. That does not mean that the FCA cannot investigate concerns arising from information about individual complaints, but it investigates for the purpose of considering whether or not regulatory action is justified, rather than whether or not the individual requires redress. The fact that a regulated firm may have done something which justifies redress does not automatically mean that regulatory action is justified – that would depend upon the scale of the problem, and the risk of recurrence.
12. 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.
13. There are exceptions when the FCA may, circumstances depending, provide feedback on actions it has or has not taken in response to concerns raised by members of the public or firms. This had happened in connection to some of your concerns, and when I reviewed case FCA001177 in 2021 I noted that the FCA did not have an obligation to continue to assist you or provide you with feedback on the basis that it had done so before on a voluntary basis.
14. Since I published my report on 22 September 2021, you continued to correspond with the FCA on related matters.
15. The evidence speaks to a relationship developing between the FCA and you over several years in which no clear parameters or boundaries appear to have been established with the passage of time about feedback from the FCA, with the onus being on the FCA to have (and failed to) establish it, in my view.

16. Given that there have been instances where the FCA has assisted your clients and others when it has not in connection with Firm X, any evolving correspondence on related matters requires, in my view, careful managing for the purposes of clarity, transparency and expectations management. This should have been conducted by the FCA, but I do not find that it has been to a satisfactory level.
17. On 8 November 2022 you emailed the FCA on behalf of your client to inform it of what you alleged was inappropriate actions of Firm X and asked the FCA to intervene as you thought the FCA might be able to resolve the issue quicker than the formal complaint route.
18. On 9 November 2022 the FCA responded to thank you for sending the information over and that it would 'get back to you as soon as possible'. It did not do so until 16 December 2022 after multiple chasing emails from you. On that date it wrote to both you and your client to say that its role was not to get involved in individual disputes and you should approach the FOS.
19. Your view is that the FCA could have sent this response much sooner, and that in fact by saying it would get back to you the FCA created a false expectation in your client between 8 November 2022 and 16 December 2022 that it would assist her.
20. The FCA decision letter dated 23 January 2023 on your complaint does not address this point at all, even though you made it in your original complaint to the FCA dated 6 December 2022. Instead, it focuses on other matters, such as your abusive language in an email chasing the FCA for a response on 3 December 2022, which was a continuation of a breach of the FCA's unacceptable behaviour policy which it had warned you about in 2021. The FCA said this precipitated it not to contact you until 16 December 2022, when it wrote to both you and your client. Whilst I am of the firm view that FCA staff should not be subjected to abusive language as they were by you in correspondence, and I agree that the FCA should not be obligated to correspond with you if you breach its unacceptable behaviour policy, nevertheless, the FCA does have the option to email your client, which it finally did on 16 December 2022, and which,

in my view, it could have done sooner, especially given it knew she was a vulnerable individual.

21. My view is that:
 - a. given that the FCA had both involved itself and not with issues connected to clients and Firm X before, with consequent feedback to you, and;
 - b. given that the FCA did not respond to you on 9 November 2022 to say that its role is to focus on conduct issues with firms and it does not have statutory power to investigate complaints from individual consumers and to direct your concerns to the FOS; but instead said it would 'get back to you',
22. It is not unreasonable for you and your client to have been left with the impression that the FCA might be considering assisting your client in this case.
23. I am unable to identify a good reason why the FCA responded to your request on 8 November 2022 that it intervene on behalf of your client with Firm X that it would 'get back to you'. Whilst that is not a promise that it will take action to assist your client, it is however a response which poorly manages expectations, which is even more unfortunate given your client is a vulnerable individual. This is even more so the case given you had had assistance from the FCA before, so it is not unreasonable to assume assistance might be forthcoming again unless the FCA explicitly messages to say it will not intervene.
24. In my view it is best practice for the FCA to acknowledge information received about regulated firms and requests for information by providing the information in paragraphs 10-12 immediately, and indeed, I have seen examples that it generally does so, particularly so in the Supervision Hub area which deals with most contact of this nature. So, I am unsure why this did not happen here, and I see no good reason why the FCA did not.
25. Whilst you have been told in the past on occasions that the FCA does not assist with individual complaints, in my view it is not a good idea for the FCA to reply to a request for intervention with the response that 'it will get back to you' when what it actually means is that it will not intervene. I expect clearer, more transparent messaging from the regulator and this has not happened here. I am also not clear why it took the FCA over one month to finally reply to you that it would not intervene.

26. In conclusion, my view is that on the balance of the evidence before me, the FCA did not respond clearly, fully, transparently and helpfully to you on 9 November 2022. It took the FCA over one month to send you what it usually sends as a standard response almost immediately (covering the points in paragraph 9-12 above) about information received from members of the public. There is no good reason for this delay.
27. Given your past interactions with the FCA when at times it assisted your clients, it is not unreasonable for you and your client to have had an expectation that the FCA might assist in this case as well, given the FCA did not decline to intervene in response to your request, even though it could have.
28. You brought this up with the FCA Complaints Team, but it did not address this point in its decision letter on your complaint dated 23 January 2023. In my view it should have.
29. This has been an unsatisfactory experience for you from the start of your contact with the FCA on 8 November 2022 about your client until now. For the reasons above, I uphold your complaint, and I make the following recommendations:
 - a. Given that you continue to correspond with the FCA on behalf of your clients in connection with Firm X, I recommend that the FCA takes steps to establish the parameters of its engagement with you, and to communicate these clearly, and at each point of contact with you. Given the background to your interactions as described above, it would be helpful if the FCA provided you with clear, timely messaging about what it intends to do when you approach it with information about your clients in future. The FCA has responded to say that establishing pre-set parameters is impractical and possibly unworkable, however it has stated that any further contact from you in respect of this firm, either on your own behalf or on behalf of consumers, should go through the normal consumer channels. Should the Supervisory Team need to make contact with you it will ensure you are kept up to date.
 - b. More generally, I recommend that the FCA is clear with all complainants about its statutory role in its responses when asked to intervene in their

disputes with firms. Simply saying 'I will get back to you' and then not providing updates for over a month is unsatisfactory for the reasons I give above. The FCA's position is that it cannot intervene in the individual disputes which consumers have with regulated firms. It will, therefore, refer consumers to FOS in most cases. However, in some situations the FCA does try to assist consumers, as in this case. If the FCA cannot assist or the FCA r assistance ends, it accept that it should clearly communicate this. The FCA believes that in any eventuality, in cases where it says it will be in touch again, it should provide a timescale for any response and provide updates in line with this. The FCA accepts that failing to provide a response for over a month as in this case is not the level of service it strives to provide. Therefore, the FCA accept this proposed recommendation. I consider the FCA's response appropriate.

- c. I recommend the FCA apologises to you and your client for the distress and inconvenience caused to you and your client due to its unsatisfactory response to you on 9 November 2022. The FCA has accepted this recommendation.
- d. I recommend the FCA also apologises to you and your client for the way it handled your complaint on this matter: which was not to address it all. The FCA has accepted this recommendation.
- e. I recommend the FCA offer your client an ex gratia payment of £100 for the distress and inconvenience it has caused her so far. The FCA has accepted this recommendation.

Element Two

- 30. I appreciate you have expressed concern that Firm X continues to have temporary authorisation permissions, but, as can be seen from the FCA Register and as you have been told, apparently by the vulnerable consumers you are assisting, the firm and the Upper Tribunal, the FCA had taken your concerns seriously and imposed requirements on the firm in 2021 and issued a Second Supervisory Notice on {xx} 2022 (this notice has now been published on the FCA Register and you may review it in detail if you wish) The FCA also explained to you that 'the requirements on the FS Register for [x] remain in

force and any breach of requirements is taken very seriously. Further, we have passed on your concerns onto the relevant supervisory team for this firm.'

31. I can confirm that from the evidence I have reviewed, the FCA has given the information you have provided appropriate consideration, although like the FCA I am bound by confidentiality restrictions about what I can disclose to you. You are unhappy with the FCA's ongoing failure to properly supervise a regulated firm. However, from the evidence before me I am satisfied that this is not the case. 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 which is the case here.
32. 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. In this particular case, some further information had been made public by the FCA, as the firm is now subject to "Wind down requirements", as can be seen on the firm's FCA Register entry, which you are able to review, but I am unable to give further details beyond this. This can be frustrating for complainants, but it is better that I am able to see the confidential material.
33. I do not uphold this element of your complaint.

My decision

34. I uphold Element One of your complaint and make five recommendations. The FCA has accepted four of these fully and has accepted a modified version of the recommendation at paragraph 29a above which I accept as appropriate.
35. I do not uphold Element Two of your complaint.

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Complaints Commissioner

20 April 2023