

20 April 2023

**Final report by the Complaints Commissioner****Complaint number 202201710***The complaint*

1. On 30 January 2023 you asked me to investigate a complaint about the FCA. This complaint followed on from a previous complaint you made to my office under reference 202201616. In my report for this complaint, I suggested that you could direct one element of your complaint back to the FCA to consider at stage one as I felt it had not yet been considered by the FCA. You referred the element to the back to the FCA which is the subject of its report.

*What the complaint is about*

2. In its decision letter dated 30 January 2023 the FCA set out your complaint as follows:

Our understanding of your complaint is that you are unhappy with the actions of a supervisor at the FCA. You say their actions (which have already been investigated under a previous complaint 208060398), have caused you to have a nervous breakdown, and you now live with PTSD. This has been referred to as Element Two by the Office of the Complaints Commissioner (OCC) in her report of 19 January 2023, who concluded that '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'.

To resolve your complaint, you are seeking £75,000 to compensate for the impact this has had on your health.

### *What the regulator decided*

3. The FCA set out the following in its decision letter dated 30 January 2023:

After carefully considering the additional information you have provided, we have concluded that this is a complaint that has already been considered under the Complaints Scheme, so we won't be considering it again.

Paragraph 7.8 of the Scheme provides that:

*'... the Complaints Commissioner will produce a final report after taking into account, at their discretion, any disagreements or comments notified to them. The final report will conclude the investigation procedure and the complaint will then be regarded as closed by the Complaints Commissioner and the regulators.'*

The Complaints team has considered the complaint about the advice you received under reference xxx1. This was about the advice you received from the Supervision Hub regarding your permissions to collect payments. The complaint was upheld, and we offered you an apology and a payment of £1,000 to recognise the inconvenience and the impact our actions caused for your health.

You referred the complaint to the OCC, who concluded that the impact on your health (Element Two) did not appear to have been considered by the FCA and could be referred back for our consideration.

I have reviewed the case files, and I can see under both complaints made to us previously (xxx1 and xxx2) you made us aware of your health. We were aware of your PTSD diagnosis when investigating both complaints and so I'm satisfied this was taken into consideration when investigating them. In the decision letter under reference xxx1, we explained the following:

*"...it does not appear that it would be possible to quantify what, if any, financial loss you suffered as a result of the FCA's incorrect advice. I also note that you are seeking a large settlement... I consider it is neither feasible nor appropriate to make any offer related to the financial loss which you say you have suffered through the Complaints Scheme.*

*However, 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, we would like to offer you an ex-gratia payment of £1,000. I hope this goes some way in recognising the distress we have*

*caused.”*

Based on the above, I'm satisfied that our offer of £1,000 took into consideration the impact our error had on you and your health, more so than the financial impact on your business.

Given the above, we will not be investigating these matters again as we have considered the impact on your health when investigating your previous complaints, but I would like to reiterate our apologies for the distress that has been caused.

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

4. In your email to my office on 30 January 2023 you set out that the FCA has made a decision not to remedy their employees actions against you as regards the nervous breakdown and PTSD I now suffer with. (Element one)
5. In addition to this you also set out that you believed the FCA had withheld 2 emails that they have destroyed about my complaint that they failed to give you of the bad faith (Element two)

*Preliminary points (if any)*

6. Element two relates to your subject access request that you made to the FCA. You claim that the FCA has withheld or destroyed two emails that you sent to the FCA and are relevant to your complaint.
7. Under the Complaints Scheme I can only consider complaints relating the FCA's relevant function. Responses to subject access requests are not a relevant function of the FCA as such I do not have the remit to consider this complaint element under the Complaint Scheme.
8. If you have concerns about the FCA withholding or destroying information, you may want to contact the Information Commissioner's Office (ICO) to raise your concerns about these matters.
9. I note that in your correspondence following the issue of my preliminary report you have set out you do not consider that I have been able to consider your complaint that the FCA failed to give me the two emails in bad faith, in light of the fact that I have not been supplied all of the data to make a proper decision. You questioned whether I would agree to look into this matter when all of the information is supplied by the FCA.

10. As with all complaints if you provide information at a later date that I consider relevant and changes the position I have set out in an earlier decision, I may re-investigate a complaint. But this will be done so on a case by case basis and I cannot categorically state that I would re-open a complaint if further information was received.

*My analysis*

11. I want to note that I am very sorry to hear about the health issues that explained that you have been experiencing.
12. In my report issued 4 January 2023 for complaint 202201616 I outlined that element 2 of that complaint was that you had 'a nervous breakdown with resulting PTSD because of certain individual's actions against you'. At the time of writing my previous report having reviewed the FCA decision letter and the FCA investigation file it was not clear to me that the 'actions' of the FCA had been fully considered.
13. In view of the FCA's decision letter dated 30 January 2023 and my further review of your previous complaint investigation files, I have now reassessed my understanding of this element of your complaint. I can see that the FCA did in fact set out that the matters relating to your nervous breakdown and PTSD were considered in its 23 August 2022 decision letter to you and referenced that these matters had previously been considered in an earlier complaint in June 2021.
14. Consequently, I consider that the FCA was correct not to investigate element two of your previous complaint, because it had already been investigated by the FCA who issued a decision letter with its finding on 4 June 2021.
15. It has already been considered and the FCA was right not to investigate it again.
16. Finally, in your email to my office dated 19 April 2023, you questioned which body could look into this complaint element and who could you report the FCA to about the anxiety, stress and harassment the FCA have caused you. I am afraid I cannot provide you with any guidance about your circumstances or further actions you could take. However, you may find want to visit the Citizens Advice Bureau site <https://www.citizensadvice.org.uk/> to see if you can find any

information to assist you, or you may want to seek advice from a solicitor about what legal steps may be available to you (at your own expense).

17. If you wish to challenge my decision, you can apply to the High Court (at your own expense) to seek leave to apply for a judicial review of the Commissioner's decision. The Court itself has to give leave before it considers whether or not there should be a judicial review of the decision. An application for leave to apply for judicial review must be made to the Administrative Court Office at the Royal Courts of Justice within three months of the date of the Commissioner's decision letter. A complainant who wishes to consider doing this may wish to seek their own legal advice (which will be at their own cost) before approaching the High Court, since complex legal issues may arise.

*My decision*

18. This is my final report about your complaint.

Amerdeep Somal

Complaints Commissioner

20 April 2023