

07 June 2023

**Final report by the Complaints Commissioner****Complaint number 202201735***The complaint*

1. On 21 February 2023 you asked me to investigate a complaint about the FCA. I issued my preliminary report to you and the FCA on 19 April 2023. You provided your further comments on 3 May 2023.

*What the complaint is about*

2. The FCA set out in its decision letter dated 19 January 2023, that its understanding of your complaint was as follows:

## Part One

You feel the FCA has opaque operating processes, despite the FCA's contention that it supports openness and transparency. You say it has been designed to prevent scrutiny of the FCA's decision-making.

## Part Two

You are also unhappy that the FCA will not help individuals with their complaints about firms. You believe this is discriminatory for the FCA to act only for groups of people who have suffered rather than individuals. To resolve your complaint, you are seeking for the FCA to assist you with your complaint about a firm.

*What the regulator decided*

3. In its decision letter the FCA set out the following decisions:

## Part One

Paragraph 3.5 of the Complaints Scheme provides that we will not investigate complaints that we reasonably consider amount to no more

than dissatisfaction with our general policies or with the exercise of, or failure to exercise, a discretion where no unreasonable, unprofessional, or other misconduct is alleged.

This part of your complaint relates to the transparency of our regulatory decision-making, but without specifying any unreasonable, unprofessional, or other misconduct being alleged. Accordingly, this is not something we will investigate under the Scheme.

#### Part Two

Part Two of your complaint relates to the FCA not assisting you with a complaint you have against a firm. That is not something we are able to investigate under the Complaints Scheme because investigating individual complaints is not in connection with the exercise of the FCA's relevant functions.

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

4. You wrote to me on 21 February 2023 and set out in detail your complaint about the FCA's decision letter in response to the complaint you made to it. You highlighted the three main elements of your complaint which are set out in paragraphs 5-7 below.
5. Despite its contention that it supports openness and transparency, the FCA's operating processes result in a high degree of opaqueness. This appears to be designed to prevent scrutiny by the general public and others of the quality of its decision-making. (Element One)
6. I request the Commissioner to agree with my complaint against the FCA and oblige them to assist me obtain redress of the amount lost by the trustees resulting from the Bank's breaches of contract, as their Mission Statement promises they will. (Element Two)
7. The FCA's Complaints Scheme is not fit for purpose and should be reviewed. (Element Three)

#### *Preliminary points (if any)*

8. In your letter to my office, you have set out that your complaint stems from a report that you submitted to the FCA in August 2022 advising it in relation to

allegations of gross misconduct by Bank X officers, and breaches of several FCA Rules. You requested that I read the report and associated documents. I have not received a copy of this report in the documents supplied by the FCA in relation to this complaint. As such, I did not read the report in preparing my preliminary report as it appeared that I was able to address the complaint points raised with the information that had been provided to me.

9. In your response to my preliminary report you helpfully outlined a summary of the details of that report which detailed the bank's alleged breaches of FCA Rules which you drew to the attention of the FCA (I note that the FCA has also provided me with a copy of the full report and attachments which I have now reviewed). You detailed that in 2019 the Bank has issued a Final Response Letter (FRL) to you in relation to a dispute you had with them. You outlined quotes from the FRL in which the bank upheld your complaint. You then went onto explain that the Bank had also set out in the FRL that it was not liable for any damages. You disagreed with this and took the Bank to the County Court (following an unsuccessful complaint to the Financial Ombudsman Service). You provided a brief summary of the events in which you detailed the Bank engaged solicitors and a barrister who advised the Bank to resile from its original admission of mis-selling and claim afresh that the product had in fact not been mis sold. You consider that the banks deciding to accept this advice and going along with it in court represented a serious breach of the FCA's Rules.
10. You and the Bank settled the matter with an out of court settlement. In your report to the FCA you set out:

..... the Bank recognized that they were doomed to lose the action in the County Court and agreed an out of court settlement proposed by me. The settlement sum has now been paid, a Settlement Agreement concluded, and the last two heads of my four-part complaint against the Bank are now resolved. The remaining two heads, relating to damages suffered by the trust, are still outstanding.
11. I note that whilst you state that it concluded two parts of your complaint you did not appear to provide a copy of your settlement agreement or the details of the

settlement agreement in your report, so it is not possible to know what this covered and provided.

12. Your response to my preliminary report was extensive and you many various comments, observations and asked a number of further questions which you requested I answer in my final report. I note that where appropriate to my review of your complaint I will address some of these points and questions but not all of them. Whilst it is important to address complaints, this has to be balanced with practicalities and appropriate use of time and resources. As such it is often appropriate for the FCA and me to consider the crux of a complaint and not respond to each and every additional question, criticism and points set out to us that are related to but are not the key issues of a complaint.

### *My analysis*

#### Element One

13. In your complaint to me you have set out your belief that the FCA lacks transparency. This is because of the FCA refusing to advise you about your 'own reference to them about Bank X.' You were frustrated that the FCA refused to advise you of its intentions, and you set out to the FCA that this was unreasonable. You set out that you 'submit that it is ludicrous to contend that advising a complainant that the FCA intends to, or intends not to, take action involves disclosing confidential information relating to the firm.'
14. Generally, I cannot agree with your submission, and I do not find the FCA's position unreasonable. It is at the FCA's discretion and within its policy whether updates on reported concerns can be provided. It must be noted that the FCA welcomes information from consumers 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. 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 a good 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 that, as you were told, there is no general right for members of the public to know the outcome of reports that they make.

15. The FCA generally does not make public the fact that it is investigating (or have investigated) a particular firm or individual. The FCA sets out that there are several reasons for not making this information public firstly to protect the effectiveness of its investigation, as publicity might encourage people to destroy or hide evidence, and secondly because announcing an FCA investigation can damage reputations. In addition to this the FCA must follow formal procedures before it can say publicly that a firm has breached our rules.
16. I note that you have highlighted in your response to my preliminary report that on the FCA's webpage in the section 'about [Information we can share](#)' it states that it can share information it has created rather than just received and that includes its opinion on whether a firm is complying with its rules. I acknowledge this point but note on the same webpage it proceeds to say that they do not usually make public the fact that they are investigating a firm and go onto say that if it cannot say that it is investigating someone, they also cannot say they are not. So, the correct answer in those circumstances is to say that the FCA can neither confirm nor deny.'
17. In your complaint letter you set out two cases where the FCA has issued public statements about its investigations and resulting action. In both these examples the FCA had completed its investigations and had followed its formal procedures before it made a public statement. The FCA receives high volumes of complaints about financial service providers, small and large. It is right that there are formalised processes and procedures for when the outcomes of investigations are made public through a press release or by publishing decisions on the FCA register about a firm which is publicly available.
18. In relation to my position under the Complaints Scheme, 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. 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 – but I am unable to give further details. This can be frustrating for complainants, but it is better that I am able to see the confidential material. On occasions, I have persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible. I shall continue to pursue this matter with the FCA and encourage transparency.

19. So, whilst I encourage the FCA to always be as transparent as is possible, I do consider from the information made available to me that the FCA not providing you with specific feedback on the report you provided was reasonable, if the information was passed onto the relevant supervision team to review alongside any other information it may have received, considered and where appropriate taken regulatory action against the firm. I did not need to seek additional information from the FCA on this occasion. As such I have **not upheld** this element of your complaint.

#### Element Two

20. You have set out that you believe that I should oblige the FCA to assist you to obtain redress for the amount lost by the trustees as a result of the Bank's breaches of contract, as their Mission Statement promises they will. I do not have the remit to oblige the FCA to follow any recommendation that I make, in those cases where I consider it appropriate to make a recommendation, and it is within my discretion to do so.
21. The FCA set out in its decision letter that it was unable to investigate this element of your complaint which I have considered in two parts. Firstly, it said that it fell outside the remit of the Complaints Scheme because it did not relate to any of the FCA's relevant functions. Secondly, it set out that 'investigating an individual's complaint is not listed as a relevant function under any Act, any complaint relating to us not investigating an individual complaint will fall out of

scope of the Complaint Scheme, as there is no requirement for us to do so under any law.'

22. I will deal with the first part of the FCA's reasoning, that your complaint does not relate to any of the FCA's relevant functions. Following receipt of the decision letter from the FCA setting this out, you wrote back to the FCA and questioned where you could find a proper definition of the 'relevant functions.' The FCA responded to you on 3 February 2023 setting out that there is no such definitive list that sets out exactly what the FCA's relevant functions are.
23. The FCA's use of, matters not falling under its relevant functions, as a reason to not investigate complaints has concerned me in previous matters and I have made similar inquiries about which of the FCA's functions are defined as 'relevant.' The response received provided very similar information as was provided to you. I agree that it is not appropriate or reasonable to expect any complainant, even one like yourself with a legal background to review all the Acts and Regulations set out by the FCA that may contain relevant functions. You have suggested that this was an attempt by the FCA to 'bury you in paper.' Whilst I do not think this is the case, I do think it is indicative that the FCA do not have a definitive list of its relevant functions and currently does not have the resources available to produce such a list which would be a substantial task. My view is that whilst a list is not in existence, which means the FCA cannot direct you to one, it is unhelpful as it is understandable that you would wish to see and understand why the FCA has placed reliance that your complaint does not fall under the relevant function.
24. The second part to the FCA's reasoning followed on from this first part being the FCA's relevant function. The FCA argued that 'investigating an individual's complaint is not listed as a relevant function under any Act, any complaint relating to us not investigating an individual complaint will fall out of scope of the Complaint Scheme, as there is no requirement for us to do so under any law.'
25. Again, without a definitive definition of the relevant function and without outlining exactly what each law and regulation does set out as the FCA's relevant function, I find it hard to accept the statement that 'there is no requirement for us to do so under any law.' However, it is the FCA's statement around an

'individual complaint' where I do consider that the FCA was correct that it could not consider your complaint.

26. This Complaints Scheme is concerned with the actions or inactions of the regulators and in your specific case, 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.
27. 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 or firm requires redress. The fact that a bank 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.
28. I am sorry, but the remedy you seek that your losses are reimbursed by Bank X, is not available to you under the Complaints Scheme. I am sorry that your complaint to the FOS was not successful and that you were unhappy with its decision. You have informed me that you went to the Independent Assessor who investigated the FOS investigation and that she was limited by her terms of reference. However, this does not change the fact that the remedy you seek is not available under the Complaints Scheme, and for this reason I am **not able to investigate** your complaint. As you have not been able to pursue this matter successfully with the FOS you may wish to explore what other avenues might be open to you, such as legal proceedings. I note that you have already commenced legal proceedings in relation to two heads of your complaint that related to your personal tax liability, which you have settled outside of court. The trustees may wish to seek legal advice about what if any further action is available to them in relation to the outstanding complaint points that were not the subject of your previous proceedings, as I have set out above this is not something which is available under the Complaints Scheme.

Element Three



29. You have set out that you are ‘not impressed’ with the FCA’s Complaint Scheme and that you do not consider that it is fit for purpose and should be reviewed.
30. The remit of the Complaints Scheme does not provide the mechanisms for me to investigate a complaint about the Complaint Scheme itself, rather it provides a scheme to investigate complaints about the actions or in actions of the regulators. As such I have **not investigated** this complaint element.
31. This being said, what I can set out to you is that a joint consultation on the Scheme was launched by the regulators in July 2020, which is not yet finalised. In discussions with the FCA it has informed me that it is currently working to finalise the consultation response and a revised Complaints Scheme. The FCA has said that The Financial Services and Markets Bill 2022-23 currently going through Parliament contains provisions relating to the accountability of regulators and its view is that it would be most appropriate to finalise changes to the Complaints Scheme after this process has concluded.
32. In the meantime, if you have particular concerns about the Complaint Scheme and or the legislation that sits behind the Complaints Scheme, you could write to your Member of Parliament to look into these matters. This could include raising matters with the Treasury Select Committee who can raise questions directly to the regulators. Both the FCA and I have appeared before the Treasury Select Committee this year where questions were raised about Complaint Scheme’s effectiveness and what improvements could be made. For your ease of reference here are the links to my most recent appearance at the Treasury Select Committee on 15 June 2022  
<https://committees.parliament.uk/event/13787/formal-meeting-oral-evidence-session/> and to the follow up correspondence I sent to the Committee  
<https://committees.parliament.uk/publications/23022/documents/168750/default/>  
. There have been two recent appearances by the FCA to discuss its work being on 7 November 2022  
<https://committees.parliament.uk/event/15044/formal-meeting-oral-evidence-session/> and on 8 March 2023  
<https://committees.parliament.uk/event/17632/formal-meeting-oral-evidence-session/>. I am pleased to note that in your response to my preliminary report

you have set out that you intend to take this matter up with your MP. That is always an option open for you to explore.,

*My decision*

33. In summary, I have not upheld Element One of your complaints and I have not investigated Elements Two and Three. This is my final report.

Amerdeep Somal

Complaints Commissioner

07 June 2023