

31 May 2023

**Final report by the Complaints Commissioner****Complaint number 202201745***The complaint*

1. On 28 February 2023, you asked me to review a complaint against the FCA. I issued my preliminary report on 20 April 2023 and you provided your response to me on 1 May 2023. I note that you have also copied my office into further correspondence with the FOS about the matters covered in your complaint to my office.

*What the complaint is about*

2. In its decision letter dated 19 January 2023 the FCA set out that your complaint is as follows:

My understanding of your complaint is that you are unhappy with the Financial Ombudsman's Service's definition of the term 'balance sheet'. You feel it has a different 'Balance Sheet' Valuation than any other financial institution. You have had several communications with the Financial Ombudsman Service which you feel proved inconclusive.

To resolve your complaint you would like the FCA to determine what constitutes the term 'Balance Sheet' for a company.

*What the regulator decided*

3. The FCA concluded that your complaint was excluded under the Complaint Scheme and as such did not investigate your complaint. This is because your complaint did not arise in connection with the exercise of, or failure to exercise any of the FCA's relevant function. Rather your complaint relates to the actions, or inactions of the Financial Ombudsman Service and is excluded from being

considered under the Complaint Scheme, as set out in paragraph 3.4I of the complaint Scheme.

4. In its decision letter the FCA also provided further context below as to why it cannot look at complaints against the Financial Ombudsman Service setting out the role of the FCA generally, its role in oversight of the FOS and the role of the FOS.

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

5. You have advised that you are not happy with the FCA's decision letter and that you would like us to review the decision. You have explained that you believe there has been a gross failing of financial law and provided a simple analogy to explain your point. You said that a balance sheet is the same as owning a house with a mortgage - if you sell the house you have to pay off the mortgage because it's a liability, you say that under the Financial Ombudsman Service (the FOS) equation of a 'balance sheet' does not recognise any liabilities in this scenario.

*My analysis*

6. Your complaint stems from issues you have interacting with the FOS as an advisor to SME's. You consider that the FOS has a different definition of a 'balance sheet' than any other financial organisation.
7. I note that you have provided a clear hypothetical example of why your understanding of the FOS definition is different to your understanding of a balance sheet. At the time of writing my preliminary report I noted that from the information provided to me by the FCA and by yourself, it did not appear that you had provided any details of a specific matter you have raised with the FOS that confirms that it has a differing definition to yours and will not accept your position. As such I did not consider that you or your SME had at that time been directly affected by the actions or inactions of the FOS or the FCA and it was not clear what if any inconvenience, distress or loss this issue has specifically caused to you or the SME you are representing. In your response to my preliminary report you have set out that you were pursuing this matter on behalf of an SME that had failed in its claim for Business Interruption insurance due to its policies not being the accepted wording. You have explained that the

business applied to the FOS under the acceptance criteria of meeting 2 out of the 3 requirements, but that the business was not accepted by FOS due to its assets balance sheet being more than £xxxxx. You say this was because FOS did not allow the liabilities to be deducted. I thank you for providing the context on the situation and how the business was affected.

8. It is clear that this complaint clearly relates to the actions or inactions of the FOS and not the FCA, as such it remains my position that I agree with the FCA that it is **excluded** under 3.4(e) of the Complaint Scheme.
9. The resolution you are seeking from this complaint is to have the FCA determine what a 'balance sheet' is for a company. This appears to relate to the FCA's legislative function, being the FCA's role making and setting rules, guidance and regulations. As such this aspect of the complaint is also **excluded** under the Complaint Scheme as complaints in relation to the regulators legislative functions as defined in the Financial Services Act 2012 are excluded.
10. This being said I am pleased that it appears that to assist you the FCA has set this out the definition of a 'Balance Sheet' as set out in the FCA's handbook, which includes both assets and liabilities. The FCA quoted the following definition from its handbook:

This data item provides the FSA with a snapshot of the assets and liabilities of a firm, and details of items which although not on the balance sheet, nevertheless will have a potential impact on the financial health of the firm if they were to crystallise.

11. In your complaint to the FCA, you set out that to resolve your complaint you wanted to the FCA to correct the FOS's difference in its definition which you say only captures gross assets.
12. This again is not something which I can consider under the Complaints Scheme. The FOS is operationally independent from the FCA. In practice, this means that the FCA has no remit to intervene in decisions the FOS makes in individual cases submitted for resolution under the ADR scheme operated by the FOS, so as I have stated earlier, the actions and inactions of the FOS fall

outside the scope of the Complaints Scheme. This is because the Complaints Scheme is concerned with the actions and inactions of the FCA and other financial regulators.

13. I would note that if you decided to pursue a specific matter and the FOS did not accept your definition of a balance sheet, this matter would likely still not be one for the Complaints scheme to consider. In order to challenge an individual FOS decision an individual can lodge an appeal with an Independent Assessor. However, ultimately if you consider as you have set out that there is a gross failing of law, it may be that you should consider what legal action is available to you to challenge this point of law.
14. Finally, I note that you have copied my office into additional correspondence you have sent to the FOS highlighting your concerns around this matter, and that you have copied in a peer in the House of Lords. I am pleased to see that you are continuing to seek further answers in relation to this matter and hope that you receive satisfactory assistance and responses trying to resolve this matter.
15. Unfortunately, for the reasons set out above I am not able to look at your complaint under the Complaint Scheme.

*My decision*

16. I know that you will be disappointed that I have found that your complaint is **excluded** under 3.4(e) of the Complaint Scheme. This is my final report about your complaint.

Amerdeep Somal  
Complaints Commissioner  
31 May 2023