Complaints Commissioner

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Final report by the Complaints Commissioner

Complaint number 202201756, 202300265, 202300420, 202300421 and 202300422

The complaint

1. On 10 March 2023 you asked my office to review four complaints about the FCA. On 26 June 2023 you submitted a further complaint. As all the complaints are related, I am issuing a single report, covering all of them. An additional complaint was submitted on 7th November 2023. I have considered all your complaints together and I am responding to the final complaint separately, but at the same time for clarity and completeness.

2. As the five initial complaints you submitted to the FCA overlap, I have categorised and reviewed them by topic, rather than following the structure used by the FCA. You can see the topics in the headings in the ‘’My decision – a summary’’ section below.

3. Additionally, as the complaints are complex and each contains numerous complaint points, I have set out a summary of each complaint and all complaint points submitted to the FCA, its responses, and then your complaint points submitted to my office separately, in Annex 1.

Preliminary points

Reissuing the Preliminary Report

4. As stated in my cover letter, I am reissuing the Preliminary Report into the complaints covered here. This is because, as a result of the investigation undertaken by my office, it had become apparent that the FCA’s Complaints Team did not have, and therefore, I was not given, all the correct information about some of the issues you raised.

5. Once all the relevant information was provided to my office, the contents of the Preliminary Report had to be changed, giving rise to the need to allow both you and the FCA to submit comments on the position as it is now.

Remit and Confidentiality

6. It is important that I make clear that, under the remit of the Complaints Scheme, I cannot comment on the interpretation of the Consumer Rights Act 2015 or the fairness of terms and conditions. The correct channel for challenging these is through the courts and tribunals.

7. I can, however, comment on the way your firm was communicated with, whether all of your concerns have been addressed sufficiently or at all, and whether the regulator acted reasonably in all of its dealings with you.

Compensation offered by the FCA to your firm for distress and inconvenience

8. I note your comment about the FCA's offer of a £50 distress and inconvenience payment and I **invite** the FCA to comment on it. You stated:

> *"The issue related to the offering of compensation to the directors as individuals and not to the business. The damage caused by the FCA failings impacted the business. Although the directors bore the brunt of the dealings with the FCA, the impact was felt across the business and its personnel. On this basis the offers of monetary compensation should not have been made to officers of the business."*

9. The FCA has confirmed in its response to my Preliminary Report that offering the payment to a representative of the business was an oversight on its part as the complaint relates to the business. Should your firm accept the offer, the FCA would be happy to pay the money to the business, rather than the individuals who submitted the complaint.

Comments on my preliminary report

10. I have received comments both from you and the FCA and I have addressed these throughout the report, as appropriate.

My decision – a summary

Topic one - The VREQ

11. I **uphold** your complaint about the handling of the November 2021 VREQ (the VREQ) following satisfaction of all the points contained in it and the failure of the FCA to either notify you of the need for you to apply to lift it or for the FCA to remove it from the Register of their own volition. In February 2022 you were told there was nothing more for you to do and you reasonably understood that this meant the matter was at an end.

12. It appears that the FCA has no written policies and procedures in place in relation to VREQs that are used across the organisation as a whole on a consistent bases. Different departments within it may treat VREQs differently as a result and different firms receive different treatment.

Topic two – FCA motivation

13. I **do not uphold** your complaint about the FCA's motivations for ongoing supervisory work. Based on my review, I find that the FCA was not motivated by anything other than carrying out its BAU regulatory work, utilising information known to it, applying its own interpretation of the rules and utilising the various tools at its disposal. I do not consider that the tone of the emails and letters sent by the FCA are threatening. The ongoing supervisory work by the FCA was carried out in the ordinary course of its work, not because you had raised complaints and concerns and did not constitute bullying.

Topic three - New queries raised by the FCA

14. I **do not** uphold this complaint. In addition to the above, the FCA is entitled to carry out work to further its objectives. This includes raising queries with firms, from time to time, about the information contained on their websites or in their terms and conditions etc. Firms are required to understand and operate within the rules and cooperate with the regulator in a timely manner. When the FCA reviews websites or documents, it does not "sign off" on these, as a whole and additional points may arise in the course of its regulatory work or through changing legal requirements or market practices etc. Should a dispute arise about the interpretation of rules, there are channels available to firms to resolve

these, including seeking independent legal advice and going to the First Tier Tribunal, if appropriate.

Topic four - "Procedural/ scoping points"

15. The FCA should ensure it reviews complaints holistically and takes a joined-up approach when several complaints relate to the same issues, even if raised by different individuals within a complainant firm, notifying individuals it is doing so. If this cannot be done, decisions should be consistent across the same or similar complaint points.

16. As your first two complaints were not dealt with at the right time and one element was investigated in one complaint but the same element under a different complaint was not, this led to further complaints and a difficult relationship with the FCA. Whilst I note the FCA's comments about why it did not link your complaints, it did uphold your complaint point about not acknowledging or investigating the first two complaints in line with its own internal processes and SLAs, therefore I also **uphold** this complaint.

Topic five - "Complaints about other firms"

17. The FCA was correct to conclude that it cannot review complaints about other regulated firms or disputes between firms, but it should have been clearer and explained that information it receives from firms is logged and appropriately considered as part of its ongoing supervisory work. I **do not uphold** this part of your complaint.

My analysis

Topic one – The VREQ

Imposition and general process for VREQs

18. In order to assess this element of your complaints, I have reviewed the FCA's complaint file and all relevant supporting documents, including the correspondence sent to you by the FCA on 5 November 2021 and the email you received from the FCA on 2 November 2022.

19. I have also read s55L (5) (a) of the Financial Services and Markets Act 2000, which deals with the imposition of requirements on firms. This does not provide detail about the process itself, such as the fact that it is possible to object to the

publishing of a VREQ on the Register. The letter of the 5 November 2021 did not specify that the VREQ would be published on the Register, or that you could object to its publication, nor did it explain the process for having the VREQ removed once it is satisfied.

20. This, and the absence of consistent policies, means that some firms may be told: that a VREQ will be published unless they object to it; the circumstances in which it will be published; that they can request for it to be removed from the Register once it is satisfied or complied with;, and some may not be told some or any of these things. This is clearly unsatisfactory: there appears to be a lack of consistency, transparency and due process in the way the FCA deals with VREQs. Additionally, such inconsistencies may give rise to new issues being incorrectly linked to old VREQs, the requirements and terms of which were satisfied, but which have not, for procedural reasons, been removed from the Register.

21. Your firm was not advised by the FCA that it can object to the publication of the VREQ at the time it was proposed by the FCA in November 2021.

Lifting the VREQ

22. Based on the correspondence on file, you appear to have satisfied the requirements of the VREQ in February 2022. You confirmed to the FCA, by way of an email, that you had taken the last steps by removing the "No win no fee" tags from your websites, as agreed. The FCA accepted this and responded on 24 February 2022, stating that *"[we] have now closed our file on this particular issue and* ***do not require any further correspondence on this matter at this time*** *[my emphasis]".* This email was clearly indicating that the requirements of the VREQ had been satisfied and that the file was closed. It was entirely reasonable for you to conclude, as you did, that there was nothing further for you to do on this point and that the VREQ had been satisfied. There was no mention of you needing to apply to have the VREQ lifted or removed from the Register nor to do anything else.

23. The email confirms that you were deemed to have complied with the relevant requirements and the case related to the issues identified in the VREQ was closed. The FCA, following correspondence with my office, now accepts that

this email evidences the view that at that time they considered that the VREQ was satisfied.

24. Despite this, the FCA was communicating with you as if the VREQ had not been satisfied, as set out in some detail in the following paragraphs.

25. An email was sent to your firm on 4 April 2022 by the Financial Promotions Enforcement Taskforce *"advising you that the VREQ was still on the FS Register and you could request, under s55U(3) FSMA, that the FCA lift the requirement."*

26. The April 2022 email informed you that you would have to submit an application to have the VREQ lifted from the Register, and you have effectively been told by the FCA that, had you applied for it to be removed from the Register any time before the new concerns were identified, it would have been done. This means that, for reasons I will set out below, the VREQ remains on the Register unnecessarily, over two years later.

27. Unfortunately, the FCA's email of 4 April 2022 went into your spam folder instead of your inbox and was not discovered by you until April the following year. It is unclear how you discovered this email, but you were surprised that you were expected to take this step, because of what you were told in February 2022. Nevertheless, you promptly requested for the VREQ to be removed on 11 April 2023.

28. However, the FCA had already contacted you before your request of the 11 April 2023, setting out a number of new concerns about the content of some of your websites. These concerns were unrelated to the issues that gave rise to the VREQ. The FCA's correspondence is detailed, it refers to a number of different new issues and lists the ones raised with you in previous years, including the ones raised in the VREQ, asserting that these are "current".

29. On 14 June 2022 you received an email which was raising questions about financial promotions and information on your websites, as set out above, linking these *to "the **current VREQ** [my emphasis] in place".* Having reviewed the complaint file, the FCA's website and the Handbook, it was not clear whether it is appropriate for the FCA to reference the satisfied VREQ in this manner i.e.

seeking to apply it to new circumstances. So, my office asked questions about the process to clarify this point.

30. As stated, I have not seen any information on the FCA's website or in the Handbook that sets out the VREQ process and/ or the relevant information firms must consider, for example, whether to agree or object to a VREQ proposed by the FCA, or whether to agree or object to the publication of a VREQ on the Register.

31. I understand that various teams within the FCA are able to impose VREQs. The FCA, in response to my queries, initially stated that there is no set process for the different teams to follow when adding or removing a VREQ to/ from a firm's Part 4A permissions and the Register. I was also told that there is nothing explaining the information they must provide nor when they must do this. I have also identified an inconsistency in the terms being applied to the VREQ process, which may lead to confusion.

32. However, in response to the second Preliminary Report the FCA has told me on 27 June 2024 that *"The Interventions Powers and Governance 'Superguide' explains how we exercise our intervention powers. We have also produced a separate guide to the process for agreeing voluntary requirements (the VREQ Process Guide). These guides set out the process for agreeing the terms of a VREQ and steps to take once a VREQ has been agreed. These documents are available to all staff, via our internal intranet pages. It also includes a set of Frequently Asked Questions (FAQs) that can be provided to Firms."*

33. The FCA is correct in its assertion that it is the responsibility of firms to make themselves aware of all relevant rules and procedures that apply to them and/ or seek advice where necessary. But it is also necessary for the regulator to ensure that it is consistent and transparent in its approach and application of its powers and to make all the relevant information available to all firms equally to enable them to understand the process. In any event, its communications must be clear and not suggest that a matter is complete and not requiring further action where this is, in fact, not the case.

34. In my view the information you were eventually given about the process was misleading in its own right, including the fact that you were told you have to

apply to the FCA to lift the VREQ from the Register, when in fact the FCA can remove it on its own accord. It is not clear why the FCA did not provide you with the correct information at the outset or at least in response to your complaint, or why it did not remove the VREQ of its own volition.

35. I note from the complaints I see that small firms do struggle to keep up with all their regulatory obligations, often not for lack of willingness and effort on their part. Therefore, if the FCA is able to provide some support by including key information in correspondence with firms before a VREQ is agreed and at key stages such as when all the actions are complete, it is clear that this would be of great help to firms and may reduce the number of regulatory issues and complaints against the FCA arising going forward. This information should also be readily available on its website.

"Extending" the VREQ

36. In addition to the issues identified with the lack of consistent process for issuing, publishing and removing a VREQ from the Register, based on the correspondence I have seen in the complaint file, it was also suggested to your firm that, following the lack of request to remove the existing VREQ, it remained "current" and, as the FCA had new concerns, the initial VREQ would be once again relied on to require your firm to resolve the new issues, effectively "extending" it.

37. The FCA's correspondence suggested that using a VREQ that was satisfied, but which was not lifted from the Register, in this manner is an option open to the FCA, but I **requested** it to confirm if this is correct. I asked it to provide a brief explanation and supporting legislation/documents/ links/ policies and procedures by way of a response to the first Preliminary Report to ensure that I understand the matter correctly.

38. The FCA's response explained that a lot depends on the actual wording of the VREQ, but once it is satisfied, it cannot be applied to new issues. A satisfied VREQ might inform future work by the FCA, but that is as far it can be relied upon. I was also told that *"Although it is a matter of discretion, in practice it is unlikely that we would seek to retain a satisfied VREQ on the FS Register."* Yet,

in your case, the FCA insisted that the satisfied VREQ could not be removed unless requested by your firm and that it could be used to cover new issues.

39. It appears that some FCA staff are not clear on the limitation of this VREQ and some others are treating the satisfied requirements of the VREQ as if they had not been satisfied, to ease the administrative burden. Evidence that points to this include internal communications, the 14 June 2022 email and a letter dated 5 April 2023, in which your firm is told *"While we had written to you to suggest you apply to have* ***the VREQ*** *removed, this was not actioned by [your firm] and the VREQ* ***therefore remains on [your firm's] permissions making it current, not historical as you suggest****.* ***These requirements remain in place and will continue to be until the Firm requests they are removed and is able to satisfy the FCA that they can be lifted*** *[my emphasis]."*

40. Furthermore, the FCA's final decision about your complaint states that "*I appreciate the email from the Financial Promotions Enforcement Taskforce on 24 February 2022 suggested the VREQ was complied with and closed.* ***It is not, however, until you applied for the VREQ to be lifted in April 2023 that the FCA can review whether the VREQ has been complied with and can be lifted*** *[my emphasis]."*

41. These assertions did not seem consistent with what you were told previously. The FCA, in February 2022, was of the opinion that the requirements of the November 2021 VREQ had been satisfied as you had done what you had been asked to do and no ongoing harm would occur from the issues detailed in the VREQ. Furthermore, the FCA's email in February 2022 told you that the file is ''closed'' and that they "***do not require any further correspondence on this matter*** *[my emphasis]."* It was not unreasonable to conclude on your part that there were no further steps to take to bring this case to an end. You were told you did not need to do anything else; it seems unreasonable to then expect your firm to submit an application to remove the VREQ from the Register. You may also have reasonably concluded that they would have removed it on their own volition.

42. Following repeated enquiries by my office, the FCA has indeed confirmed that:

"…*we may on our own initiative (i.e. without application from the Firm) vary or cancel a requirement. Examples of situations where we might do this include where we feel some of the grounds/harms relating to the requirements no longer apply.*

43. *So, in summary **we may** either **lift the requirements** in response to an application from the firm or **of our own volition** [my emphasis]."*

44. The information your firm was given by the FCA, and the Complaints Team previously is incorrect. This creates a wholly unsatisfactory situation for your firm, because you were told by the FCA that the VREQ had been satisfied and that no further action was necessary, then you were told that it was still current as it was on the Register before finally the FCA had confirmed to me that the 2021 VREQ cannot be relied upon in relation to concerns that postdate its satisfaction.

45. Therefore, whilst the VREQ may be current because it is on the Register, it cannot be relied upon as leverage to address new concerns and it could have been removed by the FCA under its own volition, or in response to your request. Neither has happened and the VREQ remains on your firm's records on the Register, two years later.

46. In light of the additional information that has come to light during my investigation and in response to the first Preliminary Report, I now **uphold** this element of your complaint because:

    a. the VREQ of November 2021 was not one (as claimed by the FCA, to justify adding later issues to it);

    b. the FCA had confirmed to you on 24 February 2022 that the requirements of the VREQ had been satisfied and you were told you did not need to do anything further (therefore you would not even think to look into whether you had to ask for it to be removed from the Register);

    c. despite all this, the FCA went on to rely on the VREQ when attempting to address concerns that postdate the confirmation above;

    d. further, the FCA refuses to lift the 2021 VREQ from the Register on the basis that it is current, and insists that it will not be removed until new

concerns raised by it are addressed, telling you that the VREQ cannot be lifted until you ask for this to be done, but telling me that it cannot rely on the VREQ to address new issues and that it can take initiative and remove it from the Register itself, without a request from you;

e. according to the information it had provided in response to my queries, the FCA did not provide you with all the relevant information about the VREQ process and you were given incorrect information by the Complaints Team (who in turn appear to have been given incorrect information by other teams) in its response to your complaint.

47. I **recommended** that the FCA looks into this situation, reviews my understanding which was formed based on the responses it provided to my questions, and then provides a full, clear explanation, both to you and me, as to what the correct position is for your firm in relation to the VREQ and takes corrective action to rectify any errors or omissions. It was not clear to me why this remains in place.

48. I also **recommend** that the FCA sets out a clear policy in relation to imposing, publishing and lifting VREQs so that: a) there is consistency of approach across teams and b) the position is clear and transparent for firms and the public.

49. This is especially relevant as, without consistency and clarity, the information displayed on the Register about VREQs could be incorrect and misleading, potentially causing harm to firms if consumers (or FCA staff) believe a VREQ is still relevant when in fact it has been satisfied.

50. Finally, I **recommended** that training is provided to all staff who might issue VREQs on the use of the relevant terminology, as well as the process to be followed.

Responses to my Preliminary Report

51. Your comments in response to my Preliminary Report have been noted and are addressed in this report where appropriate.

52. In response to my Preliminary Report the FCA provided the following comments:

"The VREQ was effective from 12 November 2021 and the terms of the VREQ were published on the Firm's entry on the Financial Services Register (the Register). The terms of the VREQ provided that the requirements would remain in place until we were satisfied that they could be lifted.

On 10 December 2021 a representative of the Firm contacted us to confirm the steps that the Firm had taken to comply with the VREQ. In response, on 24 February 2022, we confirmed that we would close our file on this matter. This indicated that we were satisfied that the requirements could be lifted.

In April 2022, we sent an email to the Firm setting out how the Firm could apply to have the requirements lifted and the VREQ removed from the Register. We understand Ms B did not see this email in her inbox until April 2023. In April 2023, Ms B applied for the requirements to be lifted and for the VREQ to be removed from the Firm's entry on the Register.

Unfortunately, the requirements were not lifted and the VREQ was not removed from the Register in circumstances where they should have been [my emphasis].

This has now been corrected and the requirements were lifted and the VREQ removed from the Firm's entry on the Register on 16 May 2024.

We will write to [the Firm] with an apology, following receipt of the final report."

53. I also **recommended** that the FCA sets out a clear policy in relation to imposing, publishing and lifting VREQs so that:

    a) there is consistency of approach across teams and

    b) the information displayed on the Register is clear and correct for the benefit of firms and the public.

54. This is especially relevant as, without consistency and clarity, the information displayed on the Register about VREQs could be incorrect and misleading, potentially causing harm to firms if consumers (or FCA staff) believe a VREQ is still relevant when in fact it has been satisfied.

55. I note that the FCA states in its response dated 27 June 2024 that it in fact now has an "Interventions Powers and Governance 'Superguide" and a "VREQ

Process Guide" in place. In addition, they say that these will improve as a result of my recommendations.

56. It appears that the current guides and processes are not sufficient or are not being widely used, which means it is imperative that the FCA updates these as set out in its response to my Preliminary Report and ensures it makes all its staff aware of the existence of these documents and requires their use when processing a VREQ.

57. This case has been marred by difficulties in establishing the facts and whilst the FCA has now accepted that the VREQ could have been lifted by it and should have at the latest been lifted when you asked for it in April 2023, both you and I were also told differently on a number of occasions by different teams within the FCA.

58. The FCA had the chance to remediate its errors on a number of occasions, including when you raised a complaint and when I made my initial queries. You were still being told by its teams in February 2024 that the VREQ will not be removed from the Register until you address all the current concerns that have been identified and raised with you. I expect that a complete, possibly step-by-step process applicable across the entire organisation would help to prevent such issues occurring in future, improving the process for the benefit of both firms and the FCA.

59. Finally, in response to my recommendation that training is provided to all staff on the use of the relevant terminology and VREQs, as well as the process to be followed, the FCA confirmed that *"The Interventions Team within Enforcement provides training to our supervision teams and other key stakeholders on use of our supervisory powers including on an own-initiative or voluntary basis. We will continue to offer this training."*

60. As with the previous point, my findings in this case seem to suggest that even if there is training, it is either not effective or it is not being taken up widely. The FCA's response seems to suggest that the training is optional as it is being "offered". If this is the case, I **recommend** that the FCA reconsiders whether this is sufficient and whether it should be made compulsory for all staff who deal with VREQs.

Topic two - FCA motivation

61. You have indicated your concerns that the FCA targeted your firm because you had challenged it and raised complaints. I have reviewed all the relevant files and I do not find that the actions of the FCA are fuelled by their "dislike of being challenged", nor do I find that your firm is being unfairly targeted. The FCA had announced in PS21/18: Restricting CMC charges for financial products and services claims | FCA that it would continue to monitor various aspects of this segment of the market, so it appears that Claims Management Companies (CMCs) generally were being monitored during this time and your firm was not being singled out.

62. Furthermore, I have reviewed the FCA's files. It is clear from the emails and documents on file that the FCA has contacted your firm from time-to-time in order to carry out its supervisory functions. I have not seen any evidence that any of the work that is being carried out is because the relevant team is aware of your complaints, and it is taking retaliatory steps. On the contrary, there is evidence that work was undertaken independently of your complaints. I note your request for information about how/whether other firms similar to yours are reviewed in the way your firm has been reviewed, but this is not information available to me and given the findings of this report, I do not believe it is strictly relevant.

63. However, the emails I have read indicate that there was a fracture in communications with the FCA and your firm seems to have lost trust and confidence in the way in which the FCA deals with your firm. This in turn influenced the way in which you responded to communications.

64. For example, there was a telephone call between your firm and a member of staff at the FCA on or around 4 November 2021, which you felt to be patronising, dismissive of your experience and apparently implying intentional wrongdoing on the part of your firm. You had tried to explain that the issue being discussed arose through human error.

65. A later email from your firm, dated 16 November 2022, in response to the correspondence from the FCA on 2 November 2022, which raised further queries and questions about issues you believed to have been settled (in previous reviews), you stated to the FCA *"We fundamentally disagree with your review of our agreements, and we have an issue with the reasoning behind your comments. You advise that it is only a court who can decide upon the fairness of our agreement, yet it is your own assertions that our agreements are unfair and likely to cause consumer detriment. There is no evidence of any complaints whatsoever, as to your allegations of unfairness or consumer detriment there are no such allegations. There will be a very short reply to your request for statistical information about detriment, in short there is none."*

66. The FCA emails which I have reviewed are professional and business like, if somewhat blunt and to the point. They demonstrate an attempt to resolve the issues identified for the benefit of consumers. On the other hand, the tone and wording of the above email and other related emails from your firm shows that there continues to be an issue with trust and confidence in the FCA.

67. I have not seen any evidence of lack of impartiality on behalf of the FCA throughout these files. The files show that the FCA intends to have an open line of communication between your firm and the relevant departments, with whom you need to continue to engage to ensure that your firm meets relevant regulatory requirements. For these reasons I **do not uphold** your complaint.

Topic three - New queries raised by the FCA

68. In 2022 the FCA raised queries in relation to the compliance of certain statements on your website and terms and conditions. You state that if there were any concerns about your website and terms and conditions, the FCA should have raised these at the same time as the VREQ of November 2021.

69. The FCA must take action to protect consumers and the integrity of the financial services system on an ongoing basis. It is important to understand that the FCA do not sign off or approve documentation, financial promotions, websites etc and also that regulatory and supervisory practices and standards change and develop over time. The FCA is responsible for ensuring on a continuing basis that firms are as compliant as possible when it becomes aware of issues. It is

necessary for your firm to co-operate with the FCA and to ensure that you understand and comply with all the rules and requirements that apply to you. It often operates on the basis of thematic reviews with different issued being reviewed each time.

70. I cannot share the documents or information I have reviewed, but I can confirm that, based on the files, the contact you had with the FCA raising various issues was part of its BAU work in this area.

71. It is the FCA's responsibility to assess information available to it from different sources, identify matters it believes to be of concern in its own interpretation of the rules, and take supervisory or enforcement action if it thinks it is appropriate.

72. If a firm disagrees with the FCA's interpretation of its terms and conditions or compliance with the relevant rules, the firm is entitled to challenge the FCA's position. In my view, you should be able to make reasonable points in response, and the FCA should consider these. Ultimately though, if agreement cannot be reached, such matters can only be finally determined through a court or tribunal. As stated above, the assessment of such questions is not within the scope of the Complaints Scheme.

73. I note your point that you consider it odd that your terms and conditions were apparently not criticised by the FCA at the time of your authorisation yet were commented on later but based on the evidence I have seen, in raising these queries the FCA is simply carrying out its supervisory functions in an area that is fluid and evolving, influenced by several factors. Based on my experience, and in particular, the point about thematic reviews above, I do not think this is unreasonable, nor do I see it as evidence of incompetence on the FCA's side.

74. For these reasons, I **do not uphold** this element of your complaint.

Topic Four - Procedural/ scoping points

75. You raised concerns about one particular email and surrounding issues in two of your complaints to the FCA (namely Complaint one - Part two and Complaint two - Part one). These were the same complaint in substance.

76. The FCA considered Complaint one – Part two and it did not uphold it. However, in response to Complaint two – Part one, you were told in a "scoping

letter" dated 11 August 2022, that this complaint is excluded. The letter explained that:

77. *"After carefully considering the information, you have provided, we have concluded that this is not a complaint we would investigate under the Complaints Scheme.*

78. *Paragraph 3.6 of the Complaints Scheme provides that we will not investigate complaints that we reasonably consider could have been, or would be, more appropriately dealt with in another way."*

79. This decision appears to have been made because you mentioned taking advice about referring some elements of your concerns to the Competition and Markets Authority in your email. The writer concludes by stating that *"If you do refer your complaint about this allegation to the Competition & Markets Authority, then it would be better for them to investigate rather than two investigations into the same allegation. If you have decided not to refer the matter to the Competition & Markets Authority, then please let me know and we will re-open the investigation into this element of your complaint."*

80. However, its "Scoping letter" in relation to Complaint one – Part two (the same issue) did not exclude the complaint which is the same in its substance.

81. For clarity, the wording, respectively for each complaint is as follows

    Firm X *"appear to be using the FCA as 'their attack dog'. You allege the sending of an email by the FCA and reference to a VREQ in place was meant to be threatening"* and, *"the FCA acted in haste and for the benefit of Firm X in the email of 14 June 2022. You explained, 'What is notable however is our complaint followed contact from your Mr W in an email dated 14 June 2022. We believe that Mr W was acting upon an instruction from someone within your organisation that had received a complaint from Firm X. We feel that Mr W was very quick to act upon a complaint received from the financial institution without properly reviewing matters, and before making contact with ourselves. We feel Mr W's email to us was an immediate knee jerk reaction to Firm X's complaint..."*

82. I do not see how either matter would have been for the CMA to consider, at least not to the exclusion of the FCA so far as the points related to the remit of

the FCA. This is a question that the FCA should have considered and responded to, as indeed it did (in relation to the same issue) in its response to Complaint one, Part two.

83. Therefore, **I find that the FCA should not have excluded Complaint two, Part one**.

84. It appears that, in effect, the FCA issued two "Scoping letters", on the same day, in response to the same substantive issue, drafted by the same individual (and reviewed by the same supervisor), with two different outcomes.

85. I note the FCA's comments that these were two complaints submitted by two separate individuals and the situation is somewhat unusual, with one having more detail than the other, the fact of the matter is that these were complaints from the same firm, about the same issues, reviewed and quality checked by the same people. At the very least enquiring whether the complainants (representing the same firm) wanted to have their substantially identical complaints about the way in which their firm was being treated investigated together would have prevented some of the difficulties that arose.

86. In response to the first Preliminary Report, where the above points were also set out, the FCA had *"partially accept[ed] the recommendation…because we could have continued the investigation until the CMA had confirmed that they could consider the relevant complaint."*

87. Whilst I have taken into account the points raised, I still **uphold** this complaint and **recommend** that the FCA takes steps to consolidate, and cross-reference linked complaints to prevent situations such as this one from arising again.

Topic five - Complaints about other firms

88. The FCA had set out in its response to this complaint (which relates to another regulated firm) that it does not investigate complaints about the firms it regulates, that this is the role of the Financial Ombudsman Service ("FOS").

89. Neither the FCA nor my office can investigate complaints about the conduct of regulated firms, or indeed the FOS itself, as these do not fall within the remit of the Complaints Scheme.

90. Despite this, the letter further explains that *"The FCA does take seriously the information provided about firms it regulates. For example, we require firms to categorise all the complaints they receive and to report this to us regularly. We use this, along with information from other sources, including any information that the Financial Ombudsman Service may share with us, to build a picture of where firms may be failing to meet the required standards. The FCA will then take appropriate action if necessary."*

91. To be able to assure myself, and you, my predecessor therefore required the FCA to confirm by way of a response to the first Preliminary Report, that the information you provided and the concerns you raised in relation to Firm X and its conduct were dealt with in line with its usual procedures. I asked for a copy of the referral emails/ notifications and the confirmation that this was received/ logged appropriately by the FCA. By way of a response, the FCA provided the correspondence which confirms that the concerns you raised were in fact logged and referred to the relevant department internally for their consideration. As such, I **do not uphold** this part of your complaint.

92. Please note that, as with other confidential information, I am unable to share with you the detail provided, due to confidentiality restrictions under section 348 of the Financial Services and Markets Act 2001 and for policy reasons.

My decision

93. I am pleased that with the help of the FCA we were eventually able to establish the facts and the correct position in relation to the 2021 VREQ. The Register has been amended and the FCA will be writing to you separately in relation to this.

94. However, as can be seen from this report, it has taken a significant amount of time and effort and several rounds of questions from my office to achieve this result. The FCA had several opportunities to identify its errors and put them right, starting with your initial request of April 2023 to remove the 2021 VREQ from the Register, each of your complaints to it and each set of questions from my office.

95. In light of all the facts of this complaint, I find that it is appropriate to recommend that the FCA make an offer of payment for the delays in recognising and rectifying errors on its part. I **recommend** the FCA offers your firm a payment of £1250.

Rachel Kent
Complaints Commissioner
19 July 2024

Annex 1

I have set out each of your complaints to the FCA and indicated the topic point I have allocated each point in bold.

Complaint one (FCA 208442639):

What the complaint is about

96. Your first complaint, submitted to the FCA on 16 June 2022, raised concerns about the way in which a regulated firm, Firm X, had dealt with "X clients".

97. In **Part one** you alleged that Firm X had only offered to remediate clients following a drawn out 10-year battle from CMCs and solicitors and were now intending to shut down support to affected clients. (**"Complaints about other firms).**

98. In **Part two** you alleged that *''Firm X should not be permitted to use the FCA to shut down legitimate challenges when clearly their agenda is to limit both the number of claims and the value of compensation paid. I am so incensed that you, the FCA have participated in this agenda".*

99. The above allegation was prompted by an email that was sent to your firm on 14 June 2022 ("**the 14 June email and the FCA's motivations")**.

What the regulator decided

100. The FCA excluded Part one and some of Part two of your complaint, which referred to Firm X, stating that, as a result, it falls outside of the scope of the Complaint Scheme.

101. It did not uphold your complaint about the 14 June 2022 email, stating that *"Neither the email's language nor tone is threatening. The email is set out in a manner which allows the recipient to understand why the questions are being asked to avoid confusion.*

The email is consistent with how we would expect to communicate with firms over such issues and your firm has not been treated any differently to any other firm."

Why you are unhappy with the regulator's decision

102. In your complaint letter to my office, you state *"It is our contention that the FCA reacted to pressure from [Firm X] to silence us to the detriment of consumers who are entitled to (and still waiting for) substantial damages…. We believe that the FCA were complicit in attempting to allow Firm X's wrongdoing by seeking to validate these unlicensed credit agreements. This was only halted by a challenge in the Upper Tribunal.*

103. *The FCA have acted as judge and jury in asking us to remove alleged misleading information without assessing the full facts (some facts that had already been provided by us and they were aware of due to the aborted validation process).*

104. *When we complained that the FCA had shown bias towards the financial institution we were advised that this complaint was outside of their complaint's jurisdiction."*

Complaint two (FCA 208433087):

What the complaint is about

105. In **Part one** of this complaint, you alleged that "'*What is notable however is our complaint followed contact from [the FCA's staff member] in an email dated 14 June 2022. We believe that [FCA staff member] was acting upon an instruction from someone within your organisation that had received a complaint from [Firm X]. We feel that [FCA staff member] was very quick to act upon a complaint received from the financial institution without properly reviewing matters, and before making contact with ourselves. We feel [FCA staff member']s email to us was an immediate knee jerk reaction to Firm X's complaint when there was no complaint to be answered as far as we are concerned*."

106. In **Part two** you alleged that the FCA *"are not concerned with how Firm X dealt with vulnerable consumers and are allowing Firm X to deal with vulnerable consumers without the provision of professional advice."*

107. In **Part three** you raised concerns that the *"FCA and the Financial Ombudsman Service appear to be assisting some financial institutions by not investigating their complaints thoroughly before contacting your firm and asking questions."*

What the regulator decided

108. In its letter dated 11 August 2022, the FCA excluded Parts one and two of this complaint.

109. In relation to Part three, the FCA apologised that *"you feel the FCA has not investigated financial institutions thoroughly before contacting your firm and asking questions"* but it did not uphold your complaint.

110. The FCA stated that as the industry regulator, it publishes rules and guidance about how regulated firms must conduct themselves and the FOS *"makes sure it happens when complaints are brought to them."*

111. Furthermore, the FCA confirmed that it cannot comment on how the FOS investigates complaints about firms, nor can it consider complaints about the FOS itself as this does not fall within the scope of the Complaints Scheme.

112. Finally, the FCA confirmed that it does not always make it public knowledge when it investigates firms or individuals, or when it takes action against them, for policy and legal reasons.

113. I note the FCA apologised for the delay in acknowledging and investigating your complaint and offered a £50 ex gratia payment for the distress and inconvenience caused by this.

Why you are unhappy with the regulator's decision

114. It is my understanding that the points set out in response to Complaint one apply to this complaint.

115. Additionally, you stated in relation to their offer of compensation, *"We do not want compensation, we merely require the Regulator to act in a fair, unbiased and impartial manner when dealing with our companies."*

Complaint three (FCA 208442603):

What the complaint is about

116. You submitted your third complaint to the FCA on 28 July 2022, sending it to the Chief Executive of the FCA. This complaint relates to the lack of acknowledgement you received in elation to your previous two complaints.

117. In further correspondence related to this complaint, you stated *"There is no sanction for the FCA's failure to comply with its own rules other than a five letter word 'sorry'. In contrast to this, should a business miss a return date or fail to adhere to the rules there follows at the very least a hefty financial penalty."*

What the regulator decided

118. The FCA upheld this complaint, explaining that the failure to acknowledge your previous complaints was down to human error and it apologised for this.

Why you are unhappy with the regulator's decision

Your comments set out in the paragraphs above apply to this complaint generally.

Complaint four (FCA 208715343):

What the complaint is about

119. In this complaint *"You allege that the supervisory work being undertaken by the FCA is bullying."*

120. In **Part one** of this complaint, you state that the fact that you raised complaints against the FCA has *"made your firm a target with FCA, and the recent interaction in relation to your Terms & Conditions is a distraction as to the making of a final decision of your complaints.''*

121. *You have alleged ''the FCA's conduct, and behaviour is discriminatory and vexatious and you believe there is a pattern of constant and unjustified criticism of your businesses."*

122. In **Part two,** you *"claim you have evidence of a lack of impartiality by the FCA when complaints are made by financial institutions against your businesses. You believe that instead of taking enforcement action against the perpetrators of mis-selling the FCA chooses to target yourselves (and other regulated claims management companies in this industry) which is the basis of one of your previous complaints."*

123. In **Part three** of this complaint, you set out *"that you disagree with the FCA review of your agreements and are unhappy with the reasoning behind FCA comments. You want to know why it has taken the FCA over 3 years to raise*

issues with your agreements as you consider these have been assessed at authorisation and in subsequent interaction with the FCA.

124. *The remedy you are seeking ''is a detailed response and advise if you consider that the person(s) handling our application were competent and fully understood our business model, if they did why was this problem with our agreements not raised as an issue during the application process and the website review'."*

What the regulator decided

125. The FCA did not uphold any of your complaint points and explained that it had *"reviewed the work by the Contracts Team and have not identified any discriminatory behaviour.*

126. *[It] did not uphold Part Two of your complaint. This is because there is no evidence that your firm has been treated any differently to any other firm and your firm has been treated as we would expect.*

127. *[It] did not uphold Part Three of your complaint. This is because post authorisation, the FCA supervises firms against an ever changing financial landscape to ensure their practices continue to meet our high level principles."*

Why you are unhappy with the regulator's decision

128. "One issue that we wish to raise is that we were specifically told that we must add our FCA authorisation to all websites including those only offering unregulated services. The guidance within this year's Portfolio Strategy now advises the exact opposite."

129. Additionally, you informed me that your business terms and conditions were reviewed for fairness when you applied to be authorised by the FCA, several times since then and additionally, they were also reviewed when you applied for the "Trading Standards Buy with Confidence scheme... A few minor changes were requested but overall, they were deemed of a good standard", therefore there is no reason for the FCA to be raising concerns.

130. It is also your contention that *"if the said terms [and conditions] are deemed unfair then the FCA have been complicit in alleged consumer detriment by allowing us to use these terms of business for over three years."*

131. You state that your *"experience is that because we are CMCs the FCA automatically assume wrongdoing on our part."*

132. *"CMCs are criticised for missing deadlines and are given tight timelines to respond to FCA enquiries. However, our experience is that the FCA act with impunity when they fail to respond to us in an expedient manner (or sometimes not at all). The letter also fails to point out that the FCA operates multiple reporting platforms and complying with regulatory reporting requirements can be quite complex for some small businesses."*

    You are also concerned about the *"constant re reviews of our financial promotions and terms of business"* and you your view, these new reviews, with each raising separate concerns that were not picked up in the previous review of the same materials, "*appear to us to be a systemic attack on our businesses."*

Complaint five:

What the complaint is about

133. As set out above, you also contacted my office on 26 June 2023 to refer a further complaint to me as you were not satisfied with the FCA's response.

134. This complaint was summarised by the FCA as "*You are unhappy that your firm was not notified the VREQ would be published on the firm's entry on the Register and if you had been aware of this you would not have agreed to the VREQ."*

What the regulator decided

135. The FCA did not uphold your complaint, stating *"Although you were not explicitly told the VREQ would be published on the FS Register the publication of it is governed by law unless there is a good reason not to publish it or the firm request it is not published.*

136. *I have seen no evidence of the firm requesting the VREQ is not published on the FS Register.*

I appreciate the email from the Financial Promotions Enforcement Taskforce on 24 February 2022 suggested the VREQ was complied with and closed. It is not, however, until you applied for the VREQ to be lifted in April 2023 that the FCA can review whether the VREQ has been complied with and can be lifted."

Why you are unhappy with the regulator's decision

137. In your complaint to my office, you state that *"The VREQ related to one minor breach in relation to financial promotions which in no way affects or restrict the services we can provide. I feel that they are clutching at straws here as they failed to notify us, they would publish the VREQ. I suspect that the reason for this is that we would have refused to accept the VREQ having regard to all the circumstances. I feel it is highly unlikely that the FCA would have proceeded with enforcement action for such a minor breach."*

138. You further go on to say that the FCA's response is "ridiculous" as you would not have been able to request for the VREQ not to be published as you were not advised that it would be.

139. Finally, you state that *"The VREQ was **not** a generic VREQ in terms of our financial promotions. It was specific to our use of the No Win No Fee moniker without the correct caveats. This was an issue of human error in that we had missed a reference when reviewing the website content."* And by the time you discovered that the email from Enforcement ended up in your "Spam folder", all issues had been resolved.