

02 October 2023

Final report by the Complaints Commissioner**Complaint number 202201769***The complaint*

1. On 24 March 2023, you asked me to review a complaint about the FCA. I apologise for the delay in issuing this preliminary report to you.

What the complaint is about

2. The FCA summarised your complaints follows:

Application 0003166001 was submitted on 5 April 2022 in relation to the authorisation of X Financial Services Ltd. The application is now withdrawn and you are unhappy with the delay you experienced and the manner in which the application was processed.

3. The FCA then expanded on your complaint and listed five parts. In summary, these relate to your allegation that you have experienced direct discrimination and disability discrimination since you submitted your application on 5 April 2022; that the FCA does not 'promote equal opportunities' or that as 'British Asians, we are not offered the same opportunity to grow and flourish in this country'; that your application has been pre-determined and that the 'FCA does not want me to become directly authorised'; that the FCA has treated you in a manner which has left you feeling 'victimised, harassed, and discriminated against'; and that 'You are unhappy with the options you have been given to continue with the application'.

What the regulator decided

4. The FCA did not uphold your complaints. The FCA Complaints Team reviewed each of your allegations and reviewed the timeline of events and correspondence related to your application. I attach a copy of the FCA decision

202201769

letter as an appendix to my report. It is not my intention to repeat the FCA findings here, but I do plan to use them as a base on which to continue with the review of your complaint.

Why you are unhappy with the regulator's decision.

5. You referred your complaint to me on 24 March 2023 as follows:

I am humbly asking you to review the decision of the FCA regulator in relation to my complaint as referenced above.

It is clear from the response of the FCA using Mr Nikhil Rathi and his speech on Prime Minister Rishi Sunak to justify that the FCA is not discriminatory. This is truly condescending and evidences further my complaint. The Government on the Gov website clearly states:

How you can be discriminated against

Discrimination can come in one of the following forms:

- direct discrimination - treating someone with a protected characteristic less favourably than others
- indirect discrimination - putting rules or arrangements in place that apply to everyone, but that put someone with a protected characteristic at an unfair disadvantage
- harassment - unwanted behaviour linked to a protected characteristic that violates someone's dignity or creates an offensive environment for them
- victimisation - treating someone unfairly because they've complained about discrimination or harassment

Source: <https://www.gov.uk/discrimination-your-rights/how-you-can-be-discriminated-against>

Gov.UK (24/03/2023)

I will now be writing to the Prime Minister highlighting this issue.

6. On 17 May 2023 you wrote further to say:

In terms of my complaint to the FCA may I draw attention to the fact that I had asked the FCA to confirm how many ethnic advisors had networks to prove that this is an industry that offers equal opportunities and the response given was that the FCA could not individually name firms as this would be a breach of the DPA. Clearly, I was not asking for names when I asked this question. This combined with the response email stating Nikhil Rathi's endorsement of the PM was nothing to do with my complaint and was clearly both unnecessary and in my strongest of opinions condescendingly rude and racially discriminatory.

I would also like to draw your attention to the response that I have received back from HM Treasury following on from my letter to the Prime Minister regarding this matter. (Please see the attached).

The FCA's handling of my application has caused me and continues to cause me undue stress, worrying and the contemplation of leaving an industry that has provided for myself and my family for over the last 23 years. This complaint is not to 'lash out', but to seek justice for what is in my opinion clearly a broken down system. This is not fair regulation but more so a dictatorship ruling advisors with an iron fist with the fear for reprisal when making a complaint against them.

I had even tried to arrange a meeting with Mr Rathi in the hope of providing constructive criticism and the opportunity for him to speak with an advisor representing the industry that he is governing to help potentially bridge the growing gap between the advisor and the regulator, this too fell on deaf ears clearly indicating that an advisors opinion simply counts for nothing with the FCA.

Since the time of this application I have spoken with numerous networks and discussed the opportunity of becoming directly authorised and it is clear from my conversations that working with the FCA is nay impossible and that I am most likely better off as an AR! This was one of my reasons for highlighting the matter with the PM. How can an industry flourish when there is so much 'red tape', making small business owners look to give up let rather than to take on advisors to grow and flourish. In an 'elitist

society', only the rich get richer and only the 'big boys' count. This is sheer financial and political suicide for an economy.

The fact is you need the small businesses to grow and help expand an industry whereas a large corporate is already saturated. The economies of scale come at a cost and that cost is often diluted service resulting in more complaints. Not only this, it also takes away entrepreneurship by doing so. It is a fact of life that all things come to an end and we seek new beginnings. By cutting off the new beginnings you are left with a stagnant society that has nothing to offer and eventually leads to its own death by recourse of these actions.

There are communities out there that are not even represented and as advisors the 'red tape' prevents us from doing so. These communities then go elsewhere i.e., abroad and invest their money there. This in turn affects the economy and to a great extent those communities who are torn deciding how this country offers them anything when such things happen, can the FCA not appreciate this and does this meet their latest rules regarding consumer duty?

This is merely the tip of the iceberg in what I was looking to discuss with Mr Rathi. I am not offering 'free advice' and in hindsight maybe it was better that Mr Rathi did not see fit to offer me 'the time of day', as my advice is for the benefit of others and not financially motivated only for myself.

Thank you for taking the time to read this and allowing me the opportunity to get this 'off my chest'.

7. On 18 July 2023 you emailed me to explain the problems you were having with your network.

Preliminary points (if any)

8. For the sake of completeness, although I cannot review any correspondence you have with HM Treasury, I note that the letter you attached for my review from HM Treasury directed you to complain to me and did not offer any opinion on your case.

My decision

9. I am sorry to hear that you have had a bereavement and that you have felt stress in recent months.
10. I have reviewed the FCA investigation file, and the FCA decision letter (the latter is attached) on your complaint, which highlights the key events and pieces of correspondence connected with your now withdrawn application for authorisation. Although the FCA said to you that you had provided no evidence to substantiate the allegations in your complaints as set out in paragraph 3 above, it nevertheless conducted a thorough review of its contact with you, as evidenced in the attached decision letter.
11. You have referred the complaint and the FCA decision letter to me, and you have continued to maintain that you have been directly discriminated and victimised by the FCA in its dealings with you. You have not, however, provided any evidence to support your allegations. In the absence of evidence from you and based on my review of the FCA case and the evidence before me, I do not think it is unreasonable for the FCA not to uphold your complaint, and I also do not uphold your complaint. You have said you have been too ill to provide evidence. I am sorry to hear that you are ill, however, in the absence of evidence my decision remains the same.
12. You have alleged that the FCA is generally discriminatory because you do not believe there are a great number of ethnically diverse financial advisers. You have asked the FCA to provide you with information on how many there are. The FCA has responded to you that it does not record the ethnicity of the firm owners or employees of the 50,000 firms it regulates. I appreciate you consider it should, however that is not a matter for the complaints scheme.
13. You have also raised a number of points about the difficulty and 'red tape' small businesses encounter in trying to 'set up shop'. This is not something that you raised in the first instance with the FCA complaints Team, nor was it investigated by the FCA. It is not however a matter that can be reviewed under the Complaints Scheme. Having said, it may be the case that the FCA monitors such feedback and I invite it to suggest where you may usefully direct your

feedback if it does. The FCA has responded that you should provide your feedback to the Supervision Hub.

14. Finally, in response to my preliminary report you have said that your complaint is also about the fact the FCA misled you about the possible refund of application fees. This is not a complaint point you raised with me on 17 May 2023 (see paragraph 6 above). I am afraid that you are now out of time to refer this complaint to me and I will not be reviewing it. I appreciate this may be disappointing to you; however, it is not practical for the Complaints Scheme to have an indefinite open time frame for lodging complaints. That is why the Scheme requires complainants to lodge a complaint within three months of receiving the FCA's decision letter. This ensures that an investigation into the complaint can be conducted at the time of, or close to the originating events of a complaint. The Complaints Scheme does not have unlimited resources; however, I always carefully consider cases to ensure that it has been used appropriately and not being used to avoid addressing complaints, and I confirm I have done so in this case. I appreciate you that you have told me that you have experienced bereavement and dealt with ill health, however, I am conscious that you did refer a complaint to me and you did set out the grounds for it on 17 May 2023. In my view if there were other aspects you wished reviewed you could have referred to these. I am sorry to disappoint you but I will not be taking this matter further for the reasons described above.

Amerdeep Somal

Complaints Commissioner

02 October 2023