

08 September 2023

Final report by the Complaints Commissioner**Complaint number 202300003***The complaint*

1. On 30 March 2023 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. This complaint is connected to the matters raised in complaint FCA00756 (published on my website <https://frccommissioner.org.uk/wp-content/uploads/FCA00756-Issued-12-May-2021.-Published-01-June-2021.pdf>), and also in complaint FCA001421 issued 10 January 2022 which I did not publish.
3. The FCA had placed an internal email divert on some of your emails. The appropriateness of the FCA diverting your emails is a matter for the Complaints Scheme if it caused an inappropriate impact on correspondence relating to the FCA's exercise of its relevant functions.
4. In particular, in my previous report I raised the issue of whether the FCA's diversion of some (but not all) of your emails has potential to lead to 'unintended consequences' in relation to the FCA's exercise of relevant functions (i.e. the potentiality of emails being mishandled). The FCA's assurance was that it had put systems in place which would prevent such an occurrence.
5. However, that turned out not to be the case. Some emails you subsequently sent to the FCA were diverted and either incorrectly diverted and/or not forwarded to the appropriate area and processed within a reasonable timescale.

What the regulator decided

6. The FCA substantially delayed its decision on your complaint. It took just over a year to respond to you. It upheld your complaint that:

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- a. 'emails which you have recently sent to the FCA have not been acted upon, or have not been acted upon within a reasonable timescale, because they have been diverted to Manager D (who you say no longer works for the FCA)'; and
 - b. An email of 10 March 2022, sent to firm.queries@fca.org.uk was not processed appropriately'.
7. There were some additional elements of complaint it did not investigate as it felt these had been addressed previously.
 8. The FCA offered you £150 for the delay, an apology and £500 for the errors in dealing with the diverted complaints. It also said it would lift the diversion on your emails (though the policy allowing the FCA to apply diverts remains in place).

Why you are unhappy with the regulator's decision

9. You say that the FCA did not address your point about 'an inequality of outcomes between diverted and non-diverted emails' as the emails which are diverted appear to be processed more slowly. With respect to the mishandling of your diverted emails, you have pointed out that 'There is even not a hint of the FCA trying to discover why it happened, what the root causes were, whether it was avoidable, whether anyone was culpable for not acting, or whether there are any lessons to be learned'. (Element One)
10. Delays in complaints handling: you have made the point that the FCA has published guidance on ex gratia payments for such delays and that the delay you have experienced would qualify between £150-£250. You asked the FCA to increase its offer to £250 but you say it did not reply. You feel you should be offered a higher amount such as £500 so the FCA is 'disincentivised from behaving in this way'. (Element Two)
11. You say that this matter has been ongoing for over four years and the FCA has had to apologise on different occasions to you for various 'unintended consequences'. You also feel that the ex gratia compensation offer should have been higher and you asked the FCA for £750. You say it did not respond to your request. You are now asking me to recommend £1,500 (Element Three).

My decision

Element One

12. I have consulted with the FCA to find out what went wrong with the emails which are the subject of this complaint, and what steps have been taken to ensure this does not happen again. The FCA has confirmed (again) that certain procedures and measures are in place to mitigate against the possibility of 'inequality in outcomes' as you put it between diverted and non-diverted emails. Diverted emails are meant to be processed in quite a different manner to the way in which yours were. The FCA attributes this to the fact that the divert on your emails was put in place before the new procedures were instigated. I do not think this explanation is good enough. The FCA ought to have reviewed all its current diverts in emails upon implementing the new procedures. It clearly did not do so, despite giving me assurances during the investigation of case FCA001421 that its revised procedures were sufficiently robust to ensure there would be no impact on correspondence relating to the exercise of its relevant functions. I uphold this element of complaint and I express strong criticism of the FCA for this maladministration which should not have occurred.

Element Two

13. Your complaint has been badly delayed. The FCA has provided reasons why this has happened, citing several other ongoing and previous reviews, however, it has recognised the delay and offered you an ex gratia payment of £150. In my view, given the circumstances of this case, the FCA should have made a better effort to minimise the delay. I uphold your complaint (as did the FCA) and I welcome that the FCA apologised to you, however, I recommend the FCA pay you an ex gratia amount of £250 as remedy. The FCA has accepted this recommendation.

Element Three

14. The FCA has upheld your complaint about mishandling of diverted emails. You have received an apology and you have been offered an ex gratia payment of £500. You have not suffered a direct financial loss, however, you have experienced distress and inconvenience over a prolonged period of time in pursuing this issue. Given the circumstances of the case, I agree with the FCA

that it is right to uphold this element of your complaint, and to offer an apology. However, I feel that an ex gratia payment of £750 is more appropriate and I recommend the FCA offer you this amount. The FCA has accepted this recommendation.

Amerdeep Somal
Complaints Commissioner
08 September 2023