

04 July 2023

**Final report by the Complaints Commissioner****Complaint number 202300077***The complaint*

1. On 19 April 2023, you asked me to review a complaint about the FCA. This overlapped with my final report issued in relation to complaint number 202201710. On 7 June 2023 I issued my preliminary report for this complaint to both you and the FCA.

*What the complaint is about*

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

You have alleged that the FCA has destroyed information relating to an application that you made in 2015. You believe you have evidence of this as the information was not provided to you in a Data Subject Access Request (DSAR).

To resolve your complaint, you have said that you would like to know who destroyed the information and when this happened.

*What the regulator decided*

3. The FCA set out that it had concluded that this is not a complaint that can be investigated under the Complaints Scheme (the Scheme). This was because your complaint relates to how a DSAR has been processed and the information that was provided to you as part of the request. That is not something the FCA is able to investigate under the Scheme because it is not in connection with the exercise of the FCA's relevant functions.
4. It also set out that in addition to this, Paragraph 3.6 of the Scheme provides that it will not investigate complaints that it reasonably considers could have been, or

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would be, more appropriately dealt with in another way, the FCA then set out that your complaint would be more appropriately dealt with by the FCA's Information Disclosure Team (IDT).

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

5. In your emails to my office dated 19 April 2023, you have complained that I was not supplied with all your emails about the matter to make a proper decision and you have asked the FCA why they didn't give me all your data and what has transpired but they have failed to respond or give me this data to make a fair judgement. You asked whether I would agree to look into this matter when all the information has been supplied. (Element One)
6. In in a further email on the same day you set asked what body could look into your complaint for you if it could not be looked at under the FCA complaint scheme. (Element Two)

*Preliminary points (if any)*

7. As I set out above, I believe that there has been a cross over of the FCA decision letter dated 19 April 2023 and my final report for Complaint number 202201710 which was issued on 20 April 2023. As a result, I included the comments you made in relation to the FCA's decision letter in my last Final Report and provided some comments to those points. Having now received a copy of the FCA decision letter and considered the comments from your emails alongside it, I do consider that my previous comments were appropriate and will repeat parts in my analysis below.

*My analysis*

Element One

8. I appreciate that you believe that the FCA did not provide me with all documents from your correspondence with the FCA at the time of the events that led to your complaints to the FCA and then to my office. In particular you consider that the FCA has deliberately omitted emails that you sent to the FCA.
9. Whilst I understand that you have concerns that the information may have been omitted in bad faith, I do agree with FCA's position set out in its decision letter on 19 April 2023. This element relates to your subject access request that you

made to the FCA. You claim that the FCA has withheld or destroyed emails that you sent to the FCA and were relevant to your previous complaint.

10. Under the Complaints Scheme I can only consider complaints relating the FCA's relevant function. Responses to subject access requests are not a relevant function of the FCA as such I do not have the remit to consider this complaint element under the Complaint Scheme.
11. I also agree with the FCA setting out that your complaint would be more appropriately dealt with by the FCA's Information Disclosure Team (IDT), who they have said you are already in contact with, as part of the current request they have from you.
12. The FCA set out in its decision letter that following that if you remain unsatisfied how the DSAR was processed, you should contact IDT for a review of the DSAR. You can then refer the DSAR to the Information Commissioner's Office (ICO) if you remain dissatisfied after IDT has reviewed the request and responded to you. As such I have not Investigated this element of your complaint.
13. I note that you asked whether I would agree to look at this matter when all the information had been supplied. As previously outlined to you whilst I have already made my final decision in relation to your previous complaint, if following your pursuit of this issue you locate additional relevant information, I will review the information and assess whether or not I need to reopen my investigation into your previous complaint.
14. I know that this will disappoint you but I have not investigated this matter as I do consider that it is more appropriately dealt with elsewhere.

#### Element Two

15. In your email to my office dated 19 April 2023, you questioned which body could look into this complaint element and who could you report the FCA to about the anxiety, stress and harassment the FCA have caused you. As I have previously set out to you, I am afraid I cannot provide you with any guidance about your circumstances or further actions you could take. However, you may find want to visit the Citizens Advice Bureau site <https://www.citizensadvice.org.uk/> to see if

you can find any information to assist you, or you may want to seek advice from a solicitor about what legal steps maybe available to you (at your own expense).

16. If you wish to challenge my decision, you can apply to the High Court (at your own expense) to seek leave to apply for a judicial review of the Commissioner's decision. The Court itself must give leave before it considers whether or not there should be a judicial review of the decision. An application for leave to apply for judicial review must be made to the Administrative Court Office at the Royal Courts of Justice within three months of the date of the Commissioner's decision letter. A complainant who wishes to consider doing this may wish to seek their own legal advice (which will be at their own cost) before approaching the High Court, since complex legal issues may arise.

*My decision*

17. As set out above I have not investigated your complaint. This is my final report about your complaint.

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Complaints Commissioner

04 July 2023