

24 July 2023

**Final report by the Complaints Commissioner****Complaint number 202300201***The complaint*

1. On 15 May 2023 you asked me to investigate a complaint about the FCA.

*What the complaint is about*

2. The FCA summarised your complaint as follows:

My understanding of your complaint is that you are unhappy with the actions of Firm X and the Financial Ombudsman Service.

**Part One**

You are unhappy that the Financial Ombudsman Service were unable to consider your complaint.

**Part Two**

You are unhappy that Firm X referred you to the Financial Ombudsman Service as you believe they should not have done this due to DISP 2.7.3.

To resolve your complaint, you are seeking for the FCA to investigate Firm X.

*What the regulator decided*

3. The FCA did not investigate Part One or Part Two of your complaint, it said:

**Our response to Part One of your complaint**

After carefully considering the information, you have provided, we have concluded that we cannot investigate this part your complaint under the Complaints Scheme.

This is because the Complaints Scheme covers the investigation of complaints that arise in connection with the exercise of, or failure to exercise, any of the FCA's relevant functions.

The 'relevant functions' of the FCA are defined in the Complaints Scheme and Part 6 of the Financial Services Act 2012, and broadly speaking cover the FCA's regulatory functions that arise under the Financial Services and Markets Act 2000, or such other functions as may be ordered by HM Treasury.

Your complaint relates to the actions, or inactions, of the Financial Ombudsman Service and is excluded from being considered under the Complaints Scheme, as set out in paragraph 3.4(e).

I am sorry to hear that you are unhappy with the decision you have received from the Financial Ombudsman Service. If you wish to complain about the decision then you should follow the complaint process for the Financial Ombudsman Service. Please see here for details:

<https://www.financial-ombudsman.org.uk/consumers/how-to-complain>

### **Our response to Part Two of your complaint**

After carefully considering the information, you have provided, we have concluded that we cannot investigate this part of your complaint under the Complaints Scheme.

This is because the Complaints Scheme covers the investigation of complaints that arise in connection with the exercise of, or failure to exercise, any of the FCA's relevant functions.

The 'relevant functions' of the FCA are defined in the Complaints Scheme and Part 6 of the Financial Services Act 2012, and broadly speaking cover the FCA's regulatory functions that arise under the Financial Services and Markets Act 2000, or such other functions as may be ordered by HM Treasury.

Your complaint relates to the actions of Firm X. That is not something we are able to investigate under the Complaints Scheme

because your complaint is not arising in connection with the exercise of the FCA's relevant functions.

It may be helpful if I explain that the FCA is unable to intervene in individual complaints about the firms we regulate. I am sorry to hear that you have been unable to resolve your dispute with Firm X and that you believe they have acted illegally and affected your right to claim.

Although we cannot intervene and assist you, if you wish to provide any information to the supervisory team to consider then please reply to this email and I will forward the information to them to consider. The team will not be able to assist you in your dispute but will be able to use the information to inform their supervision of the firm.

The team are unable to provide you with any feedback or updates.

Please see here for further details:

<https://www.fca.org.uk/freedominformation/information-we-can-share>

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

4. You have asked me to review the FCA's decision, you have told me:

I complained to FCA about who should be responsible for one year of waiting time, as I lost any other legal action opportunity against Firm X, like a court claim.

The FCA did not correctly understand my complaint and have not addressed my concerns regarding Firm X's illegal actions and their impact on my rights to claim. **(Element One)**

The delay in the investigation of my complaint by the Financial Ombudsman Service and their conclusion that I am not an eligible complainant has caused me financial damage and made it difficult for me to file a court claim within the limited time frame

I am requesting that you review my complaint and investigate the actions of Firm X and the Financial Ombudsman Service. I believe that their actions have affected my rights as a consumer, and I am seeking a fair resolution to my complaint. **(Element Two)**

## 5. Element One

You have told me the FCA have misunderstood your complaint and have not addressed your concerns regarding Firm X's illegal actions and their impact on your rights to claim.

The investigator at the FCA was correct to say that the subject matter of your complaint is excluded from the Scheme. Part 6 of the Financial Services Act 2012 (the Act) requires the regulators to maintain a complaints scheme for the investigation of complaints "arising in connection with the exercise of, or failure to exercise, any of their relevant functions". The "relevant functions" of the FCA are their functions other than their legislative functions. Individual complaints about firms are therefore **excluded** from the Scheme.

Whilst the FCA have not investigated your complaint, I can see from reviewing the FCA file you have sent in further information about Firm X for the FCA to pass to its supervisory team to review.

## 6. Element Two

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. The actions and inactions of the FOS fall outside the scope of the Complaints Scheme.

It is clear 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.

### *My analysis*

7. Whilst I know you will be disappointed, for the reasons outlined above, I am unable to investigate both elements of your complaint as they are **excluded** from the complaints scheme. I am not sure if you have sought independent legal advice, if not it may be worth getting some advice to see if you can still pursue your complaint through a court claim based on the referral to FOS from Firm X and the date of the FOS decision letter.

8. In response to my preliminary report, you have highlighted parts of your complaint you believe fall under the remit of the Complaints Scheme. This Complaints Scheme is concerned with the actions or inactions of the FCA. It cannot deal with complaints against banks, individual firms [or against the Financial Ombudsman Service (FOS)], nor is it a redress service for individual consumer complaints.

*My decision*

9. Whilst I know you will be disappointed, for the reasons outlined above I am unable to investigate your complaint.

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Complaints Commissioner

24 July 2023