

12 September 2023

**Final report by the Complaints Commissioner****Complaint number 202300211***The complaint*

1. You wrote to my office on 22 May 2023 to complain about the FCA's decision letter dated 17 May 2023.

*What the complaint is about*

2. FCA set out in its decision letter that your complaint was as follows:

you are unhappy with the inactions of the FCA after your independent financial adviser, Firm X, failed to answer your data subject access request (DSAR).

As a result of Firm X's delays in answering your DSAR, there was a delay in being able to refer the complaint to the Financial Ombudsman Service. Your complaint was eventually upheld by the Financial Ombudsman Service, however less than 2 weeks later Firm X went into administration, so your award was not able to be paid.

You referred your complaint to the Financial Services Compensation Scheme (FSCS), however you received less than what you would have had you had the award made by the Financial Ombudsman Service.

You are unhappy with this, as the FCA said in a press release that they would take action against IFAs who do not release client information within 4 weeks. You believe that had the FCA acted sooner against Firm X, you would have been able to get the full award made by the Financial Ombudsman Service.

To resolve your complaint, you are seeking for the FCA to pay the difference in compensation amounts.

*What the regulator decided*

3. The FCA did not uphold your complaint. It set out that this was because the FCA wouldn't have been able to take any action regarding the delay in releasing information, as that was a matter for the ICO to deal with. As Firm X are now insolvent, it would have been unlikely that there would have been sufficient funds for the award to have been paid, even if the award was made earlier.

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

4. In your complaint to my office, you set out that your complaint was about the FCA's failure to do anything for 2 years when your IFA failed to provide any paperwork regarding your case which you feel has resulted in your receiving a substantially smaller payout than would have occurred if the paperwork had been provided and was available for the FOS to consider in relation to your complaint.
5. You disagree with the FCA's decision letter setting out that the ICO was responsible for ensuring that the firm provided you with the documents. (Element One)
6. You also raised your concerns that the FCA should not have continued to give accreditation to Firm X during the period that it refused to provide you with the information you had requested which the FCA were aware of. You are unhappy that the firm appears to have been allowed to merge into a larger company, with people keeping their jobs, including positions on the board of the company when the firm went into liquidation following you winning your case against Firm X with the FOS. (Element Two).

*My analysis*

Element One

7. Firstly, it is very unfortunate that you have not been able to get the award made by the Financial Ombudsman Service and that the amount of compensation that you received from the FSCS did not meet the amount that you wanted to receive. I am very sorry that you have found yourself in this situation.
8. This element of your complaint relates to the FCA's failure to do anything when Firm X did not cooperate with your information request for two years. I agree

with the FCA's decision letter which set out that Firm X's obligations under the GDPR fall under the jurisdiction of the Information Commissioners Office. As such the FCA were not in a position to interfere in relation to the delay in Firm X providing you with the requested information until the ICO concluded its investigations. I have reviewed the FCA's decision letter and I am satisfied that its position in relation to this element of your complaint was correct. As such I do not uphold this element of your complaint.

#### Element Two

9. In your complaint letter to my office, you have raised concerns that were not addressed in the decision letter from the FCA. You have raised concerns that the FCA's continued accreditation of Firm X during the period that it refused to provide you with the information you had requested which the FCA were aware of. Related to this point you have outlined that you are unhappy that the firm appears to have been allowed to merge into a larger company, with people keeping their jobs, including positions on the board of the company when the firm went into liquidation following you winning your case against Firm X with the FOS.
10. On 4 September 2023 you wrote to my office to provide your comments to my preliminary report. In this you raised some additional questions which are related to this element and as such were not addressed in the decision letter. In particular you questioned, that in two years what the FCA did to ensure that Firm X operated within their guidelines of financial fair play. You also noted that you had been told that the ICO was able to make a rather punitive fine and questioned whether any fine was made to Firm X in the two years it took them to provide the requested paperwork.
11. I consider that in line with paragraph 6.12 of the Complaints Scheme that if you would like this complaint element to be considered along with the additional points raised in your response to my preliminary report that it would be desirable to allow the FCA the opportunity to address this complaint point before you bring the complaint to me for consideration. As such I have **not investigated** this element of your complaint.

12. I have noted that it does not appear that the FCA followed its usual process in issuing a scope letter to you to confirm that it had captured all your complaint elements and it may be that if it had that you might have raised this element to the FCA to investigate as well. If you do decide to make a further complaint in relation to this element and following the FCA's decision letter you are still not satisfied with its decision, as I have not investigated at this time you will be able to bring the further complaint to my office. You should bear in mind that in letting you know that it is open to you to refer this element to the FCA to first decide upon, I am not making any indication as to what the FCA might decide, or indeed I may decide, should you then bring this to me if you are unhappy with the FCA decision. You should bear that in mind in deciding how to proceed.
13. I note that in response to my preliminary report the FCA did acknowledge that it did not issue a scoping letter to you, and that this was to avoid further delays to addressing your complaint. I appreciate the explanation and I welcome the fact that in its response the FCA have said that it acknowledges your new allegation and set out that should you wish to raise your concerns with them you may do so in any of the usual ways.

*My decision*

14. In summary I know my decision will disappoint you, like the FCA I have not upheld element one of your complaint because the FCA were not in a position to interfere in relation to the delay in Firm X providing you with the requested information until the ICO concluded its investigations. I have not investigated element two of your complaint because the FCA has not had the opportunity to address the points you raised in relation to element two, so you should raise a further complaint to the FCA if you would like it to address this aspect of your complaint. This is my final report about your complaint and concludes my investigation.

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Complaints Commissioner

12 September 2023