



09 October 2023

## Final report by the Complaints Commissioner

### Complaint number 202300239

#### *The complaint*

1. On 21 June 2023, you asked me to review a complaint about the FCA.

#### *What the complaint is about*

2. The FCA summarised your complaint as follows:

##### Part One

You say it is unfair that the ex-gratia award outlined by the Complaints Commissioner in her Final Report was deducted from the outstanding penalty owed by you to the FCA, as it was confirmed in the Commissioner's report that the ex-gratia award should not be offset with the debt owed.

##### Part Two

You also disagree with the FCA deducting the value of the costs award made by the Upper Tribunal from the outstanding penalty.

To resolve your complaint, you are seeking for the awards to be paid directly to you and not be deducted from your penalty.

#### *What the regulator decided*

3. The FCA did not uphold your complaint. It said:

You previously raised a complaint to the FCA about its handling of the investigation into your conduct which resulting in the FCA imposing on you a financial penalty of £60,000.

The complaint was referred to the Complaints Commissioner, who recommended £1,000 ex-gratia payment for the delays in the complaint

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handling, and £3,000 ex-gratia payment in recognition of the failures of the FCA. You had also referred the FCA to the Upper Tribunal, which awarded you £4,440.55 for costs incurred in relation to the FCA's action against you. The award made by the Upper Tribunal was deducted from your penalty.

The FCA accepted the Complaints Commissioner's recommendation in relation to the amount of the ex-gratia award but disagreed that a separate payment should be made to you in respect of this, so instead it was deducted from the financial penalty imposed on you in the same way as the costs award.

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

4. You referred the complaint to me and said you understand my recommendations are unenforceable, however you have heard from other sources that my role may be changed to allow me posers to direct, and if so, that I might revisit your original complaint FCA001645 issued 13 June 2022.

*My analysis*

5. I issued a report on your complaint which can be accessed here :

<https://frccommissioner.org.uk/wp-content/uploads/FCA001645-Issued-13-June-2022.-Published-07-July-2022.pdf>

and the FCA's response is here:

<https://www.fca.org.uk/publication/corporate/response-complaints-commissioner-report-205747176.pdf>

6. The FCA did not fully accept my recommendation and 'concluded that offsetting the payment due to the complainant in respect of this complaint against the financial penalty ordered by the Upper Tribunal against the complainant is the appropriate outcome.'
7. As you are aware, I do not have the power to direct, only to recommend, and in this instance, the FCA did not fully accept my recommendation.

8. My powers have not changed since I issued the report above. Therefore, I am sorry but there is nothing else I can do for you under the Complaints Scheme. Once I make a recommendation on a complaint, the FCA either accepts it or it does not. That marks the end of the complaint process.
9. The Complaints Scheme will in fact change from 1 November 2023. You can access details here:  
<https://www.fca.org.uk/publication/corporate/complaints-scheme-november-2023.pdf>
10. Whilst there are some changes to the Scheme, there have not been any changes to my powers to direct.

*My decision*

11. I am unable to investigate your complaint for the reasons given above.

Amerdeep Somal

Complaints Commissioner

09 October 2023