

29 September 2023

**Final report by the Complaints Commissioner****Complaint number 202300264***The complaint*

1. On 4 November 2022 the FCA issued a decision letter 208191685 on a complaint you had submitted which you referred to me. The FCA summarised the complaint as:

## Part One

You are alleging that the FCA have failed to protect your client (Mr. A) and you were misadvised by both the FCA and the Financial Ombudsman Service (The Ombudsman Service) to take the Respondent X to Court. As a result of the above advice and subsequent legal proceedings, this has resulted in you and your client being out of pocket.

## Part Two

You have subsequently concluded that the FCA have acted in bad faith by not holding the Ombudsman Service to account on their miscalculated award.

2. The FCA did not uphold your complaint. You referred it to me, however, you said the 'pivotal issue is the Authority (FCA) had entered into some form of communication with the firm and kept it a secret from me'. You say if you had known about this you would not have instigated court proceedings against the firm (presumably because you would have expected a resolution of through this channel rather than going to court).
3. This was not a complaint which the FCA has investigated. Under the Complaints Scheme (see <http://frccommissioner.org.uk/complaints-scheme/> for further details), the FCA usually do their own investigation first, as that is usually the best way of resolving matters. For that reason, I suggested the FCA conduct its own review first into this allegation, and the FCA agreed to do so.

4. On 22 June 2023, the FCA issued its second decision only on this element of complaint, and did not uphold it.
5. You then referred the complaint to me.

*My analysis*

6. The background to this complaint is that you own a claims management company and represented an individual's complaint against his IFA Y, first at the Financial Ombudsman Service and then in court.
7. I should say that in reviewing this complaint, I have not reviewed either the particulars of your FOS case or your court proceedings as that is excluded under the Complaints Scheme (the Scheme) under paragraph 4.3.
8. You have alleged that the FOS did not determine your client's losses by way of 'liquidated' damages as a court would, but by way of formula, which you feel disadvantaged your client.
9. You then approached the FCA with your concerns. What you wanted the FCA to do was to 'mediate' between IFA Y and your client. You have said that the IFA Y did not pay the FOS award. The FCA has said repeatedly that 'the Ombudsman Service told the FCA in this case, that they do not agree that the award is unpaid and will not agree until both parties can agree an amount of the award'.
10. You have also said that you found out somehow that the FCA was in discussion with the FOS and the IFA Y and if you had known the FCA was 'mediating' you would not have instigated court proceedings which left you out of pocket as you would have left it to the FCA to sort the matter out.
11. I have made general enquiries of the FCA to ascertain how it handles cases where there is a FOS award. The FCA has also explained the process to you, namely that:
12. The FCA does not have powers to enforce an Ombudsman Service decision. If the FCA feels that a FOS award has not been complied it may open enquiries with the firm as that may indicate a firm's unsuitability or financial inadequacy, and the FCA may in some cases also take regulatory action against the firm: but that does not mean that this will lead to redress for the complainant.

13. The FCA is correct when it says that due to confidentiality reasons it can't disclose what enquiries if any it had with the firm, and that these are not an alternative resolution method for your client to the FOS or the courts. It is also worth noting here that the FCA's position that that the FOS does not agree that the award is unpaid.
14. I appreciate you would like the FCA to go further than it has done in resolving your dispute, but that is not a reason to uphold your complaint, and for the reasons above, I do not uphold your complaint.

My decision

15. This is my final report about your complaint and concludes my investigation.

Amerdeep Somal

Complaints Commissioner

29 September 2023