

01 September 2023

Final report by the Complaints Commissioner**Complaint number 202300273***The complaint*

1. On 29 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:

To summarise my understanding of your complaint, you are unhappy with the FCA's rules and oversight in relation to how firms should handle complaints. You say even though the Firm X has technically ticked each box on paper when handling your complaints, the matters still remain unresolved – so you need to repeat the complaint again to the firm. You would like a constructive conversation about how complaint handling can move from a tick box exercise to an outcome driven guide to what needs to change in a firm.

What the regulator decided

3. The FCA did not investigate your complaint, it said:

After carefully considering the information you have provided, we have concluded that we cannot investigate 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.

In addition, expressly excluded from the definition of 'relevant functions' is anything arising from the FCA's exercise of legislative functions or standards review functions. 'Legislative functions' of the FCA include making of rules, and the issuing of general guidance.

Your complaint relates to the rules set out under DISP of the FCA, which is an exercise of our legislative functions. Therefore, this part of your complaint is excluded from being considered under the Complaints Scheme, as confirmed in paragraph 3.4(c) of the Scheme.

In addition, paragraph 3.3 of the Scheme explains that "complaints be made within 12 months of the date on which the complainant first became aware of the circumstances giving rise to the complaint".

Noting the information you provided in your complaint, the circumstances giving rise to this complaint would appear to be matters you were first aware of more than 12 months before you raised this complaint on 19 June 2023.

Whilst I have not investigated your complaint you may find the following information helpful:

In terms of the role and remit of the FCA, we're responsible for regulating firms in the UK who provide financial services and products in relation to regulated activities (the term we give to the business we allow a firm to do) with regards to their conduct, and with regulating the UK financial markets.

To do this we must remain impartial, and this means we are unable to investigate or intervene in individual matters, and we do not have dispute resolution powers for individual complaints. The Financial Ombudsman Service has dispute resolution powers and are set up to resolve complaints between regulated firms and their customers.

If you are unhappy with a regulated firm, such as Firm X, you can raise a complaint directly to them. Once eight weeks have passed, or you

receive a final response letter – whichever is sooner – you may be able to refer the complaint to the Financial Ombudsman Service. Even if you feel the complaint hasn't been answered properly, the next step would be to contact the Financial Ombudsman Service, rather than raising the complaint again to the firm.

The Financial Ombudsman Service has a two-stage process. So if you disagree with an investigator's outcome, you can ask for an ombudsman to make a final decision, which becomes binding if you choose to accept it. If you don't accept the final decision, you may wish to seek independent legal advice. You can read more about the Financial Ombudsman's complaint process at:

<https://www.financial-ombudsman.org.uk/consumers/expect>

Why you are unhappy with the regulator's decision

4. You have asked me to review the FCA's decision.

Preliminary Points (if any)

5. It is important for me to highlight, matters which are excluded from the Scheme which I am unable to investigate.

Section 3.4 (c) of the Complaints Scheme provides:

[Exclusions to the Scheme](#)

3.4 Excluded from the Scheme are complaints:

- c) in relation to the performance of the regulators' legislative functions as defined in the 2012 Act;

My analysis

6. You have an ongoing complaint with Firm X which has been going on for 9 years.

You have told me:

This complaint is about the complaints procedure and the execution of that to deliver the service both the ombudsman and the FCA are on designed to oversee.

For the specific case, yes the ombudsman are repeating their engagement in the process now. So that is under control.

My understanding is the FCA is responsible for ensuring the complaints process is followed and is fit for purpose. This is not the case and the issue that triggered the realisation of the was the premature closure of a complaints by Firm X against my request as the quality of the complaints inferred resolution was not verified. **(Element One)**

To this end the loophole used to deny upholding this complaint should be reviewed along with the communication with myself that eludes to action being taken that is confidential when in fact I'm now being told nothing is going to be done because of the 12 month rule.

(Element Two)

This is disappointing that I can demonstrate such a failure within your remit as this is an insurance product and you actively work to mislead me then dismiss the case. At which point do consumers get heard.

Element One

7. 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.

The FCA does have a statutory duty to secure an appropriate degree of protection for consumers. It does so by regulating the financial industry through the setting of standards which firms must meet, and by taking enforcement action where that is justified. It does not investigate individuals' complaints against the firms it regulates: that is the role of the FOS.

The FCA investigator was right not to investigate your complaint under the Complaints Scheme. This is because your complaint relates to the performance of the regulators' legislative functions as defined in the 2012 Financial Services Act (including making rules and issuing codes and general guidance).

Element Two

8. I can accept complaints which are out of time if I feel there is good justification. Having said that it is not practical for the Complaints Scheme to have an indefinite open time frame for lodging complaints. That is why the Scheme requires complainants to lodge a complaint within twelve months of becoming aware of the circumstances giving rise to their complaint. This ensures that an investigation into the complaint can be conducted at the time of, or close to the originating events of a complaint. The Complaints Scheme does not have unlimited resources; however, I always carefully consider cases where paragraph 3.3 has been used to ensure that it has been used appropriately and not being used to avoid addressing complaints.
9. It should be noted the outcome of your complaint would not differ if you had referred it within time, as confirmed above, your complaint is excluded from the complaints scheme, so neither the FCA nor my office would be able to investigate your complaint regardless of when you logged it.
10. You have told me you have an ongoing complaint with FOS about Firm X and this part of your complaint is under control.

My decision

11. For the reasons outlined above, Element One of your complaint is excluded from the Complaints Scheme and I have not investigated Element Two.

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Complaints Commissioner

01 September 2023