

11 December 2023

**Final report by the Complaints Commissioner****Complaint number 202300432***The complaint*

1. On 5 September 2023, you asked me to review a complaint about the FCA.

*What the complaint is about*

2. In its decision letter the FCA summarised your complaint as the following:

...you are unhappy with how the FCA has supervised Firm X. You say Firm X has violated many rules, and we have not investigated your concerns when you contacted the FCA previously about Firm X. To resolve your complaint, you are seeking for the FCA to investigate Firm X, and to answer your 4 questions in your email of 10 March 2023.

*What the regulator decided*

3. The FCA did not uphold your complaint. In relation to the supervision of Firm X the FCA provided details about the supervisory work that the FCA undertake generally. It went onto say in relation to the concerns you had raised that:

I can confirm that all of your concerns were sent to the relevant supervisory areas. However, the FCA are restricted in providing feedback on information which is given to them in the administration of their supervisory duties as a Regulator for the financial services. This is because the FCA's supervisory work is confidential, due to our obligations around [section 348](#) of Financial Services and Markets Act (*FSMA*) 2000. I also want to draw your attention to certain relevant aspects of the FCA's own policy. This is explained further, [here](#).

Section 348 of the FSMA also classes some information the FCA holds about firms as confidential and places restrictions on how that information is dealt with. Therefore, as the FCA's supervisory work is confidential, we will not provide feedback on what action has been taken (*or not taken*) in respect of the information it has received.

4. The FCA's decision letter also stepped through and provided commentary on a number of points and the four questions you raised in your complaint to them.

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

5. In considering your complaint I have reviewed your FCA complaint form, your follow up complaint email to the FCA and your complaint email to my office.
6. You wrote to the FCA complaining about the FCA's failure to regulate the Firm and that the firm had not complied with the FOS award and that you wanted the FCA to compel the firm to pay out the award.
7. Specifically in relation to the FCA's failure to regulate you set out that you felt that there had been 'no supervision of Firm X by the FCA for 5 years, or that the personnel responsible for monitoring Firm X had turned a blind eye to the major scandals in exchange for bribery'.
8. You referred to three specific alleged 'violations' in your correspondence with the FCA which were:

Firm X kept approximately \$300,000 worth of money that they withdrew from my credit card in their own vault instead of keeping it in a separate bank fund in your country.

Despite the clear prohibition of performing IB? brokerage under the MiFID II in 2018, Firm X continued to maintain its relationship with IB Brokerage companies as if nothing had happened.

In my conversations with the employees of Firm Y, they informed me that my trading accounts were not shown by Firm X as registered with the FCA.

Thus, if Firm X has done such a thing, it means that it did not act as a broker but acted as a direct market maker. It also seems that I ended up doing transactions according to the prices determined by Firm X while I was thinking that I was trading.

9. In your email to my office, you set out that you had complained about Firm X to the FOS, and when your complaint was investigated by Ombudsman, it turned out that this company was not duly supervised by the FCA. You further set out that you had asked the FCA authorities to investigate why proper inspections were not carried out. You felt that the FCA's decision letter provided you with a 'complete scandalous explanation' and you were not satisfied and asked me to investigate your complaint.

*Preliminary points (if any)*

10. I note that the FCA decision letter has addressed a number of individual queries you have raised, including the four questions you requested the FCA answer. My findings focus on what I consider to be the central issues, and not all the points raised. This isn't meant as a discourtesy. But the purpose of my decision isn't to address every single point the FCA or the complainant have raised or to answer every question asked. My role is to consider the evidence presented by them to reach what I think is a fair and reasonable decision based on the facts of the case.

*My analysis*

11. The issue central to your complaint was that the FCA failed to supervise the Firm, specifically in relation to the three alleged 'violations' you details in your complaint to the FCA and whether the FCA had investigated the matters you had reported to it.
12. Firstly, in relation to the specific alleged 'violations' you had detailed in your complaint to the FCA to investigate, these issues were about the actions of Firm X. These do not appear to have formed any part of your complaint to the FOS and as such it is my position that if you have a complaint about the Firm's actions these should be firstly directed to Firm X itself and if you are still unhappy about the Firm's actions then your complaint should be directed to the

FOS to consider if the Firm has not acted appropriately. Whilst information can be provided to the FCA about any alleged breaches of the Firm, this will be passed onto the relevant supervisory team to consider with a view to regulatory action. The FCA would not investigate an individual complaint on these points. As such as these complaints relate to the Firm, these are not matters that I consider are within my remit to investigate under the complaint scheme.

13. Whilst this is my position, I have reviewed the response provided by the FCA in its decision letter. I acknowledge and welcome that the FCA has in its decision letter provided you with some relevant general information on the points you raised to provide you with some general understanding about the issues. I have reviewed these responses and I consider this was an appropriate and reasonable response to the points you raised.
14. With regards to the FCA's supervision of Firm X, the FCA set out in its decision letter an overview of its role as regulator in supervising 50,000 firms in the retail and wholesale market. It explained that its approach is a 'forward-looking and strategic approach', this requires firms to meet its threshold conditions and require firms to provide attestations, skilled persons reviews and thematic reviews on a regular basis. In addition to this the FCA noted that it appreciates members of public raising their concerns with it, this provides them with intelligence that enables them to supervise the conduct of firms and where firms fail to meet its rules or standards the FCA can hold them to account.
15. In your complaint you have raised concerns about Firm X and the FCA has confirmed to you that it had passed on all your concerns that you had provided to it about Firm X to the relevant supervisory team. The decision letter then set out that much of the FCA's supervisory work is confidential and that it would not be able to provide you with any feedback about what action has (or hasn't) been taken in relation to Firm X following the information you provided.
16. Like the FCA, I am required to respect confidentiality. This means that sometimes I cannot report fully on the confidential material to which I have access. However, as part of the Complaints Scheme, I have access to all the FCA's complaints papers, including confidential material. This is so that I, as an independent person, can see whether I am satisfied that the FCA has behaved

reasonably. Sometimes this means that all I can say to complainants is that, having studied the confidential material, I am satisfied that the FCA has (or has not) behaved reasonably – but I am unable to give further details. This can be frustrating for complainants, but it is better that I am able to see the confidential material.

17. I have reviewed the FCA's files and I am satisfied that the information you provided was passed and considered by the relevant supervision team.
18. As such I am satisfied that from the information available to me it appears that the FCA has acted appropriately in its supervisory role including that the FCA has confirmed that the information that you have provided to it in relation to the alleged failures of the firm have been passed onto the relevant supervision teams. Consequently, I agree with the FCA's decision that this complaint element is **not upheld**.
19. As I have set out in paragraph 6 above, the second element to your original complaint to the FCA was about the Firm's non-payment of the FOS award, although in different emails to the FCA you also referred to the firm's inadequate calculation of the award rather than its non-payment. Whilst the FCA did not scope this point in the complaint in its decision letter, it did touch on this point, under the heading 'FOS decision review', 'The Firm's interpretation of the Ombudsman Service's decision'; 'Delays on funding account' and 'Opt-up to Elective Professional'. The FCA used this part of the decision letter to outline what the FCA Handbook said with regard to Firms complying with an Ombudsman award and that the FCA Handbook set out that complainant could enforce a money award registered by the Ombudsman through the Courts.
20. I said above that the FCA failed to scope this element of complaint, and therefore did not determine whether your complaint was that the firm did not comply with a FOS award, or whether there is a disagreement between you and the firm about what the quantum of the award should be. The exact circumstances make a difference to the additional actions both you and the FCA would need take in addition to any court proceedings which you may choose to undertake. The FCA was not clear about this. If the firm has not paid a FOS award, in other cases I have reviewed, the FCA has informed me that a

complainant ought to ask the FOS to refer the matter to the FCA as the FCA will not take regulatory action only on the basis of a complainant referral (although I should point out any regulatory action may not lead to direct redress for complainants). If there is a dispute between the firm and the complainant about the award, the FCA would not have any have any role in the matter and would take no regulatory action .

21. The FCA usually passes information it receives from members of the public to the relevant supervisory teams involved for their consideration, and it tells complainants that it has done so. In my preliminary report I set out that the FCA had not told you that it had provided the information you supplied to the relevant areas. The FCA clarified in its response to my preliminary report that it did inform you on 13 July 2023 by email that it had passed on the information you provided to its unauthorised Business Department but it noted that it had not mentioned this fact in its decision letter.
22. Whilst I am pleased that the FCA did inform you of this, in my review of your complaint I felt there was conflicting information within the FCA about its process in that there continues to be some indication that it will act on complainant referrals about FOS non-payment of awards and that it will not. I **invited** the FCA to confirm its definitive position and what measures are in place to ensure the process is consistent. In any event, I would have expected the FCA to clarify with you the nature of your complaint about the FOS if it is going to address it, to confirm if it has passed the information you provided to Supervision, and if it is the case that the complaint is about a non-payment of a FOS award, to explain to you that it must be the FOS that makes a referral to it.
23. Connected to this is the FCA Complaints Team extensive coverage of your FOS decision which is wrong (the FCA says 'The Ombudsman Service did not find in your favour': this is wrong. It did. Only the methodology for redress is a matter for discussion); and it also opines about matters related to the delays in funding of your account and op-out. These are not matters which you brought to the FCA as complaint points, so I do not see why the FCA is reviewing them or in what capacity. The alleged delays of funding to your account with Firm X are matters for the FOS.

24. You are unhappy that the FCA has not told you it will take action against the firm, however, I am **not able to uphold your complaint**. From the evidence available to me, I think the FCA has considered the allegations you have made and acted appropriately.
25. In my preliminary report I outlined that I was highly critical of the FCA Complaints Team handling of your complaint and set out the reasons in points listed from a. to f. below. The FCA has provided its response to these criticisms and I have set out its responses below:
- a. It failed to identify the three main concerns you had about Firm X and the FCA's role in supervising these matters in its scoping letter to you;
  - b. It failed to confirm with you if you had a complaint related to a FOS award and if such what it was.

In response to points a. and b. the FCA set out that it had summarised your complaint in its scoping letter to you on 23 March 2023. It set out that you had the opportunity to add, or clarify information if it had misunderstood any of your allegations. The FCA did not receive a response to its scoping letter so it carried on with the investigation based on its understanding. The complaint that the FCA scoped out was focused on the FCA's supervision of Firm X outlining the alleged violations of the FCA. The FCA said that the non-payment of the FOS award was not part of the allegations you made to the FCA.

- c. It provided general information about what to do if the FOS is not paying an award but it did not provide full and clear information about all the steps that need to be taken and how the FCA will act depending on who is referring the matter to them: the FOS or the complainant ( Connected to which I have in any event seen conflicting information and ask the FCA to clarify) .
- d. It appears to review your FOS decision on matters you did not raise (such as the delay in funding to your account) for no good reason or identifiable purpose given that these are matters best dealt with FOS
- e. It got the FOS decision wrong in any event by saying the FOS decision was not in your favour

- f. It failed to tell you that some of the concerns you do actually raise are matters to be dealt with by the FOS.

In its response to my preliminary report the FCA set out that it accepted my criticism in points, d. e. and f. and had taken steps to review the matter with the relevant individuals and confirmed that it would reference these criticisms in an apology letter to you.

- 26. It is my position that had the FCA letter been clearer, it is possible your distress and inconvenience would have been less, although I appreciate your main concern is that the FCA will not tell you what action if any they are undertaking against the firm.
- 27. In my preliminary report I **recommended** that the FCA apologise to you for the lack of clarity of its letter and the handling of your complaint. The FCA has acknowledged that there was a lack of clarity in its letter to you dated 14 April 2023 and that it did not provide you with relevant information regarding the concerns you raised in relation to Firm X's non-payment of the FOS award. I am pleased that the FCA has confirmed that it accepts my recommendation and will be issuing you with an apology letter after this final report is issued to you.
- 28. In my preliminary report I also **recommended** that the FCA explain fully to you, and to me, as per my invitation above, its role with respect to a non-payment of a FOS award as well as how it treats a complainant versus a FOS referral and what actions may ensue from each.
- 29. The FCA has provided me with an overview of its role with respect to the non-payment of a FOS award which I have summarised. It has set out that its standard practice is that it will consider acting on information about a non-payment of an award when it receives a referral from the Financial Ombudsman Service. It confirmed that the action it will take does not enforce the award. A consumer can only enforce the award through the Courts, as per DISP 3.7.13 G of the FCA handbook. Notifications from a consumer about a non-payment of a FOS award are noted on the firm's records with the FCA, and consumers should be informed to alert the FOS.
- 30. The reason why consumers are referred back to FOS is that often consumers have not reached the end of the FOS process and it can speak to both parties



and can often resolve payment issues. If required FOS may issue letters to the firm requesting an outstanding payment is made. If this process is unsuccessful then FOS will provide information to consumers on their option to enforce an award in court.

31. In addition to informing consumer to pursue the award through the courts the FOS will also make a referral to the FCA. This provides the FCA with confirmation that it has exhausted its attempts to have the firm comply with the award and that the firm is then in breach of FCA rules by not complying. The case will be referred to the relevant supervision team for consideration about potential regulatory action only.
32. Finally, I just wanted to note that in your response to my preliminary report you have set out that the FOS have informed you that there is nothing more they can do to assist you and you understand that court action appears to be the only option left available to you to get back the money that you have lost. I wish you the best with this process.

*My decision*

33. This is my final report on your complaint, I am sorry that my decision will disappoint you. As set out above, whilst I have criticised the FCA's complaint handling of your matter, I have not upheld your complaint as I am satisfied that the information you provided was passed and considered by the relevant supervision team.

Amerdeep Somal  
Complaints Commissioner  
11 December 2023