

15 April 2024

Final report by the Complaints Commissioner**Complaint number 202300481***The complaint*

1. On 26 September 2023, you asked my office to review a complaint about the FCA.
2. At this time, I have decided that it is not appropriate for my office to continue its investigation of this complaint. My reasoning is set out in my analysis below.

Your FCA complaint

3. The FCA set out in its decision letter dated 26 September 2023 that your complaint was as follows:

Part One

You feel that the FCA has breached the terms of First Supervisory Notice issued to the firm on 12 April 2023. You claim that the rules governing Supervisory Notice prohibit publication of the matter until after the outcome of the hearing.

To resolve this complaint, you would like to investigate the breach of these terms.

Part Two

In response to the scope letter, Mr X responded and stated 'that the publication of the consumer warning is also a breach of the authority of the court to adjudicate on such matters. You have continued that the FCA gave their opinion of the matter in the consumer warning which in turn informs the judgement of any party who may view it.'

What the regulator decided

4. The FCA set out in its decision letter that it did not uphold Part One of your complaint.

“This is because the FCA followed the correct procedure prior to publishing the Consumer Warning. By publishing the Consumer Warning, the FCA did not publish either of the Supervisory Notices, except to the extent that there was a link from the Consumer Warning to a page on your firm’s website, via which it had already published some or all of the text of one of the Notices, as required to do.

One of the roles of the FCA is to protect consumers. One way we do this is to publish consumer warnings in cases where we have assessed the need to do so.”

5. In relation to Part Two of your complaint the FCA set out that it would not investigate your complainant under the Complaints Scheme which in paragraph 3.6 provides that it will not investigate complaints that we reasonably consider could have been, or would be, more appropriately dealt with in another way. It stated the following:

“Your complaint relates to the FCA infringing on the jurisdiction of the court or somehow improperly affecting the outcome of a court’s decision by publishing the consumer warning. We consider this would be more appropriately dealt with by instituting legal proceedings at the High Court. The FCA noted that you had already made an application to the Tribunal with regards to the publication of the consumer warning and the Tribunal has confirmed your right to a fair trial has not been contravened.”

Why you are unhappy with the regulator’s decision

6. In your complaint to my office you have set out that the FCA:

“has failed to consider section 391 (8) in its decision to give its opinion on the trading name issue, an issue which is to be decided

by the upper tribunal, regardless of what the UTTC has said regarding the applicants right to a fair trial, in that case, the applicant can still appeal the eventual hearing for the same reasons, because a hearing has not taken place of the substantives issues yet, the subject of the consumer warning is still before the tribunal.

We made the complaint, about good faith, bias and unreasonable behaviour. the trading name issue, is a guidance not a rule, it is entirely disproportionate to the aims pursued to issue the FCA's opinion on the matter, when proceedings at the tribunal have already been set down for a hearing. never mind the fact, that what the authority has said in the consumer warning, is contradictory and misleading to consumers in light of the requirement of the firm to send an email to the customers of one of the trading names, where the applicant required consent from the authority on the wording of such a notice, which stated those trading names were operated by third party insolvency practitioners, openly admitted. for the authority not to state that within the consumer warning is accusing the firm of fraud by mis representation.”

Preliminary points

7. Paragraph 3.6 of the Complaint Scheme it sets out the following:

“The regulators will not investigate a complaint under the Scheme which they reasonably consider could have been, or would be, more appropriately dealt with in another way (for example by referring the matter to the Upper Tribunal or by the institution of other legal proceedings).”

My analysis

8. Whilst my office has been reviewing your complaint and obtaining additional information from the FCA to better understand the issues central to your complaint, we have been informed by the FCA that in a matter currently before the Upper Tribunal you have represented the firm in relation to an appeal about the second supervisory notice, and that you relied on the merits of your complaint about the FCA’s consumer warning as to going to the substance of

your appeal. As such the consumer warning which is the subject of this complaint could also potentially be the subject of a matter before the Upper Tribunal.

9. It is my position that, where an issue that is the subject of a complaint to my office is also being considered by the Upper Tribunal, it is more appropriately dealt with by the Tribunal. This is the effect of paragraph 3.6 of the Complaint Scheme.
10. As such, at this time, I do not think that it is appropriate for me to continue my investigation into this complaint. If, once the matter before the Tribunal has been finalised, you consider that any aspect of this complaint is outstanding you may request that I re-open my complaint and I will consider whether or not it is appropriate to do so, taking into account that under paragraph 6.15 of the Complaint Scheme that any finding of fact by the Upper Tribunal which has not been set aside on appeal or otherwise, shall be conclusive evidence of the facts so found, and any decision of that tribunal shall be conclusive.

My decision

11. I have not investigated your complaint as I consider that it is more appropriately dealt with by the Upper Tribunal. If aspects of this complaint are not covered by the decision of the Upper Tribunal, you may request that my office consider reopening the matter.
12. This is my final report about your complaint and concludes my investigation.

Rachel Kent

Complaints Commissioner

15 April 2024