

19 December 2023

Final report by the Complaints Commissioner**Complaint number 202300539***The complaint*

1. On 16 October you asked me to review a complaint against the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

Part one

You are unhappy with the investigation response about Firm X set out by the Financial Ombudsman Service.

Part two

You have outlined some concerns about the firm X, particularly about X taking hidden fees from you.

To resolve your complaint, you would like the FCA to review your X case and refund you one million pounds. You would also like the Gambling association to regulate spread betting firms.

What the regulator decided

3. The FCA explained on 16 October 2023 that 'Part one of your complaint relates to the actions, or inactions, of the Financial Ombudsman Service and is excluded from being considered under the Complaints Scheme, as set out in paragraph 3.4(e).'
4. The FCA declined to investigate Part Two of your complaint. Part two of your complaint relates to concerns about the firm X. That is not something we are able to investigate under the complaints scheme because part two of your complaint is not arising in connection with the exercise of the FCA's relevant functions'.

Why you are unhappy with the regulator's decision

5. You referred the complaint to me and said:

How can the FCA possibly not start to investigate X index with the proof I have provided? If the FCA does not investigate X Index Ltd the FCA are perverting the course of justice. This is a very simple case. It's very clear what X Index Ltd are up to. It does not need the Office of the Complaints Commissioner to tell the FCA that X is not following the handbook. I have given the FCA sufficient evidence to act.

My analysis

6. I can see that you wrote about your concerns regarding firm X to the chief Executive of the FCA on 9 October 2023. His office (ECU) liaised with the FCA Complaints Team, who confirmed they were reviewing a complaint from you and it was decided the FCA Complaints Team would respond to you on behalf of the ECU.
7. The FCA Complaints Team wrote to you on 16 October 2023 but it did not refer to your correspondence to the ECU, which meant you were under the impression it had not been read or acknowledged.
8. I recommend the FCA apologise to you for this omission: had it referred to your correspondence with the ECU you would have been reassured that it had been read. I can confirm that the FCA Complaints Team did read it.
9. I turn to your complaint points. Regarding Part One, I agree with the FCA your complaint is excluded for the reasons it gives and do not uphold your complaint that it can be reviewed under the Complaints Scheme.
10. My comments on Part Two of your complaint are as follows:
11. The FCA appears to be conflating two separate issues: whether it can and ought to investigate your concerns about Firm X, and whether it can provide you with the remedy you require.
12. I agree with the FCA that the remedy you seek under Part Two is not achievable under the Scheme.

13. The FCA does not investigate individuals' complaints against the firms it regulates: that is the role of the FOS. That does not mean that the FCA cannot investigate concerns arising from information about individual complaints, but it investigates those in the context of considering whether or not regulatory action is justified, rather than whether or not the individual requires redress. Any action the FCA may or may not take as a result of the information you provided could not lead to redress for you personally.
14. In your correspondence with the FCA, you have made allegations that firm X is applying hidden fees, and unsubstantiated administrative fees are being applied to your account. The Complaints Team ought to have passed your concerns to Supervision so that the information can be assessed by them or logged against the firm for future reference/assessment. This did not happen.
15. I recommend the FCA provides the information you have supplied to Supervision. Please note the FCA does not generally say what action has been taken in response to the information that it receives. This is because section 348 (s.348) of the Financial Services & Markets Act 2000 (FSMA) classes some information the FCA holds about firms as confidential, and restricts how that information is dealt with. In addition to this, any information that is not restricted by s.348 FSMA may be restricted due to the FCA's policy on sharing information about regulated firms and individuals, who also have legal protections. It is also not the case that the FCA's review will lead to personal redress for you.

My decision

16. You should approach the FOS for a review of your dispute with Firm X:
 - a. The FCA cannot review your personal case against this firm and provide you with the remedy you seek.
 - b. The FCA cannot discuss with you what actions it takes or does not take with respect of this firm.
17. I recommend the FCA apologises to you for not acknowledging your correspondence with ECU. The FCA has accepted this recommendation.
18. Part One of your complaint is excluded from the complaint scheme..

19. With respect to Part Two, I recommend the FCA to send the information you have provided to its Supervision department. As explained above, you will likely not be told what actions the FCA has or has not taken as a result of the information you have provided. The FCA has accepted my recommendation. You have said to me 'If the FCA regulated Firm X correctly I would not have been corrected into losing 1 Million pounds. So the buck stops with the FCA'. I do not uphold this complaint, as it is not a finding I have made.
20. In summary, you should seek redress for your personal losses from the FOS. The FCA will not be involved in your personal dispute with this firm and I have not made a finding that the FCA has not regulated this firm properly. I have sympathy for your situation, but this complaint scheme is not the forum to advance your complaint against the firm.

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Complaints Commissioner

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