

02 May 2024

Final report by the Complaints Commissioner**Complaint number 202300603***The complaint*

1. On 20 November 2023, you submitted a complaint to my office about the FCA.
2. Your complaint is excluded from the Complaint Scheme. I explain why below.

What the complaint is about

3. The FCA describes your complaint as follows:

“You allege that the FCA has failed to regulate a firm because it has failed to comply with decisions made by the Financial Ombudsman Service.

Remedy sought

To resolve your complaint, you want the FCA to ask the firm to comply with the Ombudsman decisions”.

What the regulator decided

4. The FCA did not uphold your complaint. It explained that
 - a. It had forwarded your concerns onto the relevant supervisory team;
 - b. the FCA would not be able to update you what actions if any, will be taken due to confidentiality restrictions;
 - c. the FCA said : “As part of our oversight remit on firms, the Ombudsman Service would normally reference any concerns they had with a firm directly with the FCA, if for example, a respondent firm was not complying promptly with any award or direction made by them”.

Why you are unhappy with the regulator's decision

5. You have said the FCA ought to review the FOS decision itself and investigate the complaint properly. You have also said that the FCA "did not wait to get [the] final decision reference number as requested previously from the Financial Ombudsman."
6. I am very sorry about the distress this matter is causing you but I cannot uphold your complaint.

My analysis

7. The FCA does not investigate complaints about personal disputes between individuals and their services providers: that is the role of the FOS.
8. The FCA does not investigate complaints about the actions or inactions of the FOS, nor is it able to intervene in complaints with the FOS. This is because it is outside the FCA's remit to intervene in the FOS's complaints process or how it makes its decisions on complaints (because that is excluded under paragraph 3.4 (c) of the Complaints Scheme). It did however pass the information on to the relevant team for them to consider.
9. I have also not reviewed the FOS decision you refer to for the reasons above. Whilst I do not know the specifics of your case, and like the FCA, cannot become involved in it, I can outline some general points of process below for your information.
10. The FCA has informed me previously that if the FOS finds against a firm and it does not comply with the award, the FOS would refer this matter to the FCA.
11. In general, the FCA would have to be notified by the FOS before it takes regulatory action. Given this, and the fact that the FCA did in any event, forward your information to the relevant supervision team, I do not think the financial reference number would affect the outcome.
12. The FCA may take regulatory action against a firm if appropriate, but that would not necessarily lead to redress for individual complainants. In the event the firm does not make payment pursuant to the award you believe is due to you, you do have a legal right, as the FCA said, to seek enforcement of the ombudsman's

decision in court pursuant to paragraph 16 of Schedule 17 FSMA. You may wish to consider taking legal advice before pursuing this option.

13. You have asked if the FCA can provide you with a letter stating that the firm has not complied with a FOS award. My office liaised with the FCA on this point and they have answered as follows:

“The FCA does not provide a non-compliance report and we wouldn’t normally be able to assist further in the enforcement. The final decision by the Ombudsman will ask the respondent firm to comply with their money award or direction within a specified timeframe (usually 28 days, although decisions requiring complex calculations – such as pension transfer decisions – may give the firm longer). If the decision has not been complied with within the timeframe in the decision, then the complainant can ask the court to enforce it because the decision is legally binding on the respondent. There is no role for the FCA in adjudicating on whether an Ombudsman’s decision has been complied with or not. The Complainant will have to approach their legal representative on what they have to do.

Where FOS considers an award hasn’t been complied with, its process is to issue a letter to the consumer and the firm. The letter to the consumer will confirm that the firm hasn’t complied with the decision (and that FOS has reported it to the FCA). It then gives some information on the consumer’s option to enforce in court. So in that sense that is something that FOS can provide in relevant cases”.

My decision

14. Your complaint is excluded for the reasons I give above, however, I hope that the information I have provided you has been helpful about the options available to you.

Rachel Kent
Complaints Commissioner
02 May 2024