

26 April 2024

Final report by the Complaints Commissioner**Complaint number 202300634***The complaint*

1. On 08 December 2023, you submitted a complaint to my office about the FCA.

Your FCA complaint

2. You have a personal dispute with insurance company X in relation to a claim you have against it. You submitted a complaint against this company with the Financial Ombudsman Service (FOS). You are not happy with the FOS decision on your complaint. You also allege insurer X discriminated against you on grounds of disability. You would like the FCA to investigate your claim with insurance company X.

What the regulator decided

3. The FCA declined to investigate your complaint because it was not related to its relevant functions. It also provided you with a "Victims Information Support Leaflet which may be able to guide you to someone who can help:
<https://www.fca.org.uk/publication/documents/victim-support-information.pdf>"

Why you are unhappy with the regulator's decision

4. You have asked me to review the FCA decision letter and have provided details about your dispute with the insurer. You have said you are unhappy with the FOS decision.

Preliminary points (if any)

5. My role, as Complaints Commissioner, is to provide an independent assessment of complaints against the Financial Conduct Authority (and the other financial services regulators). I am unable to deal with complaints related

202300634

to any other organisations, including complaints about the actions, or inactions, of the FOS.

My analysis

6. Part 6 of the Financial Services Act 2012 (the Act) requires the regulators to maintain a complaints scheme for the investigation of complaints “arising in connection with the exercise of, or failure to exercise, any of their relevant functions”. In the case of the FCA, the relevant functions are its functions under the Financial Services and Markets Act 2000 (FSMA) other than its legislative functions.
7. The Complaints Scheme cannot resolve complaints or claims by customers against firms that the FCA regulate.
8. The FOS is the legal complaint resolution scheme set up by Parliament under the Financial Services and Markets Act 2000 (FSMA). Its role is to resolve individual complaints between regulated firms and their customers. The FCA also cannot intervene in disputes between members of the public and financial services providers. It does not investigate individuals’ complaints against the firms it regulates; that is the role of the FOS.
9. Further, complaints about the actions, or inactions, of the FOS are excluded from the Complaints Scheme.
10. I understand you are unhappy with the FOS outcome of your complaint; however, this is not a matter for the FCA nor me.
11. However, although I agree that the investigator at the FCA was correct to say that the subject matter of your complaint is excluded from the Scheme, in my view it would have been helpful if further explanation had been offered to you about the distinction between the FOS and the FCA: I hope the information I have provided above has provided further clarity to you why the FCA will not be able to review your claim against insurer X.
12. Furthermore, although the FCA does not intervene in disputes between individuals and firms it regulates, it does gather information for regulatory purposes. Usually, information provided the Complaints Team is passed to the relevant supervisory area for their consideration as part of their oversight of the

firm. This did not happen here, and I **invited** the FCA to explain why. The FCA said that “This was not included in the file we provided to your office on 12 December at 14:15 because we sent the email to Supervision at 15:47 on 12 December.”

13. You have also alleged that insurer X discriminated against you on grounds of disability. The FCA’s response was to refer you to a leaflet about victim support. I do not think that this is an appropriate response. When an allegation is made about a regulated firm to the effect that it is discriminating against its customers, the FCA ought, in my view, to explain its role (if any) in reviewing such matters, and if does not review them as part of its oversight of firms, to provide information about organisations which may be able to take action if appropriate or necessary. I **invited** the FCA to answer this point. The FCA has accepted it should have included more information and has now done so (Appendix 1).

My decision

14. I note you do not agree with my decision, however, your complaint is excluded from the Complaints Scheme for the reasons I give above. Nevertheless, I have pointed out the FCA should have provided you with more information, which it has now done.

Rachel Kent

Complaints Commissioner

26 April 2024

Appendix 1

Extract from FCA letter to the Commissioner 25 April 2024

The information from consumers about any potential discrimination by regulated firms whether provided as part of a direct notification or via a complaint about the FCA's action would be treated as intelligence and used as part of our ongoing supervision of firms.

Whilst we are unable to investigate complaints about firms we regulate, the information we receive from individuals is very valuable to us. Where we find evidence that firms are not complying with our rules or delivering good customer outcomes, we would look to use our supervisory powers to intervene.

We are required to have regard to relevant legislation, including the Equality Act 2010. This Act forms the basis of anti-discrimination law in Great Britain.

Under the Consumer Duty firms must monitor and regularly review customer outcomes to ensure that the products and services they provide are delivering good outcomes and are able to evidence this to us. The Duty also supports firms' compliance with legal requirements under the Equality Act. In line with this, firms are required to monitor whether any group of customers who share any of the protected characteristics under the Equality Act is experiencing different outcomes than other customers and take appropriate action where they do. If we receive intelligence that a firm is discriminating against its consumers, we will use it to inform our supervisory activities.

We do not usually share what action we take against firms as a result of the intelligence we receive. However more generally, if we deem action is necessary, we look to take the most effective and proportionate action. Some of the tools available to us include requiring a skilled person to review a firm's processes, voluntary and mandatory requirements upon firms to stop certain practices, and/or fines or prosecutions.

Furthermore, we have Finalised Guidance for firms on the fair treatment of vulnerable customers FG21/1. The Guidance was issued under section 139A of the Financial Services and Markets Act 2000 as guidance on our Principles for Businesses (the Principles). It sets out our view of what firms should do to comply with their obligations under the Principles and ensure they treat vulnerable customers fairly. Specifically mentioned in Chapter 1 of the Guidance, firms need to ensure they are able to demonstrate how their culture and processes result in the fair treatment of all customers, including those who are vulnerable.