



16 December 2024

Final report by the Complaints Commissioner

Complaint number 202400009 and 202400197

The complaint

1. On 1 April and 24 May 2024, you submitted two complaints to my office about the FCA's handling of your complaint. As both of them relate to the same on-going matter, I have considered them in one report.

Your FCA complaint

2. Your complaint is connected to a matter - the FCA's internal diversion of emails received from you, now no longer in place - which has been the focus of the following reports, some of which are published on our website:

FCA00756 (published)

FCA001421 (not published)

202300023 (published)

202300510 (published)

3. This complaint has a long and complicated background, the core of which concerned your objection to the FCA applying an internal divert on emails you sent the organisation. My predecessor determined that the FCA's application of an internal divert on your emails would only fall under the Complaints Scheme if it was connected to the FCA's exercise of its 'relevant functions' (FCA00756). This was accepted by both you and the FCA.
4. Subsequently, there were occasions when, despite the FCA providing the Commissioner with assurances that its revised procedures were sufficiently robust to ensure there would be no impact on correspondence relating to the

exercise of its relevant functions, the FCA nevertheless again diverted emails from you which were connected to its relevant functions.

5. There was also an occasion when the FCA provided the Commissioner with information related to this matter which was incorrect: the FCA had said that the email diversion, which is the substantive matter at the crux of your complaints, did not breach GDPR rules. The FCA considered it was providing the Commissioner, and you, with accurate information however, it later materialised that this information was not accurate due to what the FCA called an 'honest mistake' rather than deliberately misleading the Commissioner (which my predecessor accepted).
6. The Commissioner questioned the FCA's judgment as well as its actions throughout, including instances of excluding your complaint allegations when it ought not to have, claiming it had apologised to you, when it had failed to do so, and failing to keep the Commissioner updated when it uncovered mistakes related to this matter. This culminated in a finding of maladministration on the part of the FCA for the portion of your complaint which was within the remit of the Scheme.
7. In summary, the Commissioner (my predecessor) has previously upheld parts of your complaint, expressed criticism of the FCA, made a finding of maladministration on the part of the FCA, recommended the FCA apologise to you and offer you an ex gratia payment in recognition of the continuing distress and inconvenience the FCA has put you through, given the compendium of complaints on this matter generally.
8. You have now submitted new complaints connected to this matter to my office, which I summarise as follows:

Element one

Factual accuracy of the FCA statement about the number of affected individuals by GDPR non compliance on the part of the FCA

9. On 4 October 2023, the FCA held an Annual Public Meeting (APM). You questioned the statements made at the APM and in the follow up questions document, namely that there was an implication that there was only one case of a mistake where an individual was impacted by a "GDPR non-compliant central

email diversion” (this being your own case). The FCA excluded this complaint on the basis that you were not directly affected, however, it confirmed to you that “we consider the statements to be factually accurate. There are no other cases of individuals being impacted or affected by GDPR non-compliance within the small number of email diversions that have been deployed at the FCA”.

10. You did not agree it was right for the FCA to exclude your complaint. You are in receipt of correspondence from the FCA FOIA Team dated 28 March 2024 (therefore issued after the FCA’s decision letters to you) which you believe proves the FCA has incorrectly stated that there are no other cases of individuals being impacted as per above.
11. I note that you have submitted this correspondence to me to review, but not to the FCA Complaints Team which responded to you on the substantive matter. Therefore, the FCA has not had a chance to answer this query. You have pointed out that the FCA Complaints Team already had this information. I agree, however, as you did not ask the specific question below, it did not have an opportunity to answer it. In essence you ask the FCA to confirm: “In relation to email diversions that were put in place both pre and post 2021: 1) Has the FCA carried out work to confirm that email diversions applied to any other individuals at all times fully complied with all GDPR Principles including Fairness & Transparency and Confidentiality?” The FOIA Team responded that “we do not hold any specific records relating to a GDPR assessment of email redirections. The same conclusion applies to the email redirection process. The personal data breach which affected you was related directly to your specific circumstances and we again note that the application of email redirections in general are compliant with the requirements of the UK GDPR”.
12. You query how the FCA has reached the conclusion (and the accuracy of that conclusion) that you are the only individual impacted by GDPR non compliance if it has not conducted an assessment of its email diverts. You say : “If the FCA had said this it would have been fine *“i.e. in principle GDPR allows us to divert emails but we are not in a position to say whether our historic email diversions were implemented in a GDPR compliant way because we have never assessed this”*. However, the FCA has chosen to assert that its historic diversions were

GDPR compliant, which is plainly untrue because the FCA has confirmed that it has never assessed this.”

13. As you are aware from previous reports, whilst it is not within my remit to review whether or not the email diversion was compliant with GDPR, I nevertheless expect any statements the FCA makes to complainants to be accurate.
14. Given that the FCA has not had an opportunity to address this matter, I **invited** it to provide comments before I reached a conclusion.
15. The FCA has now responded and the position is as follows:
16. For the purposes of clarity, the statement made at the AGM referred to in paragraph 9 did not confirm that there had been only one instance of GDPR non compliance. When you queried the FCA Complaints Team about this statement and asked if there had been any other emails that were affected, the Complaints Team replied that:
 - a. The statement had been accurate; and
 - b. There were no other individuals/emails affected.
17. I have been provided with the briefing notes for that statement and I can see that there was no information or answer contained in them on the issue of how many individuals/emails were affected and I do not agree the statement was intended to convey information on whether there were other affected emails/individuals.
18. Turning to 16 (b) above, the FCA Data Protection Officer has explained to me that he personally searched the database to see if there were any other individuals affected during the investigation of your complaint 210595906 issued by the FCA on 21 March 2024. The FCA’s Data Protection Officer explained that when he searched the “GDPR breach register’ no other results appeared during the search.
19. The FCA Data Protection officer then verbally relayed to the Complaints Team Investigator that there were no other records which showed other affected individuals/emails. This is why the FCA Complaints Officer said to you that “There are no other cases of individuals being impacted or affected by GDPR

non-compliance within the small number of email diversions that have been deployed at the FCA in their letter dated 21 March 2024”

20. On a separate matter, the FCA has said that “Searching the register does not create a disclosable record under FoI. Similarly, pulling together a list of email redirections does not tell us a breach of GDPR occurred, only that a redirection was put in place and would not meet disclosure obligations under FoI”. This is to explain why the FOIA Team did not find this information”.
21. There is no record on file noting that either of these events took place: either that the FCA Data Protection Officer undertook the search or that the conversation with the FCA Complaints Team Investigator as described above took place.
22. I hope this answers your query.

Element Two

23. You wrote to the FCA requesting an explanation as to how it would address the Commissioner’s criticisms in report 202300510 but you did not receive a satisfactory reply.
24. Having reviewed the correspondence between yourself and the FCA in respect of this complaint, I can see that the regulator had advised you of some of the internal changes it implemented as a result of my predecessor’s recommendations.
25. I understand that you are particularly dissatisfied with the fact that you were referred to the FCA’s reply to the Commissioner’s Annual Report 2023 because it predates my predecessor’s recommendations and, therefore, could not have addressed them. It is my view that the FCA simply tried to draw your attention to the fact that it is aware of the need for continued performance improvements and the FCA’s response together with the Annual Report show that issues are being addressed. The fact that they had pre-emptively taken action, does not mean it is not sufficient. For this reason, I do not uphold this Element of your complaint.

Element Three

You have asked me to clarify the scope of the ex gratia award in report 202300510.

26. You have alleged that the FCA claims that the ex gratia payment recommended in the report is meant to “cover breaches of GDPR”.
27. I do not see an attempt on the part of the FCA to assume the intention of the previous commissioner. Nor do I read it to mean that the FCA assert that the ex-gratia payment was meant to cover any breach of GDPR rules. I interpret this as meaning that the payment should cover your general distress and inconvenience, however, I would point out that the purpose of an ex-gratia payment for non-financial loss is to cover the impact on the complainant, it is not directly (nor necessarily indirectly) linked to specific actions of the regulators.

The Complaints Commissioner

Complaints Commissioner

16 December 2024