



22 August 2024

## Final report by the Complaints Commissioner

### Complaint number 202400048

1. On 25 April 2024 you submitted a complaint on behalf of your client about the FSA and FCA's oversight, supervision and regulation of Keydata Investment Services Ltd (Keydata) and related matters.
2. Your client previously complained about the matters above (namely, that an OIVOP was imposed hastily on Keydata and due process was not followed by the FCA; and that the OIVOP was predetermined by the FCA) and they were considered by my predecessor in report <https://frccommissioner.org.uk/wp-content/uploads/FCA001187-Issued-16-August-2022.-Published-01-September-20221.pdf> . The complaints were not upheld either by the FCA or my predecessor.
3. The report above is comprehensive in providing context to your current complaint and it is not my intention to repeat here all the information therein.
4. You have now, in effect, resubmitted the complaint on the basis that you allege new evidence proves that the FCA was wrong in its findings on your client's complaint. I note you disagree.
5. There is no provision in the Complaint Scheme to reopen or appeal a Commissioner's decision. Complainants are of course able to go to judicial review if they disagree with a Commissioner's decision or the FCA's decision. In my view where complainants are unhappy with the decision, that is the appropriate course of action in the vast majority of cases.
6. However, I have looked at the evidence to which you refer – an email from the FCA from 2009 which you obtained via a freedom of information (FOIA) request from the FCA. I think it is highly likely that this e-mail was available and taken

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into account by my predecessor. You say that this email demonstrates that the FCA had made up its mind about the financial situation of Keydata prior to the appointment of PWC and that the e-mail amounted to an instruction to PWC to determine that the firm was insolvent. The FCA is entitled, indeed obliged, in its capacity as regulator, to have a view on the financial situation (and, in particular, the solvency) of the firms it regulates. This was not an email to PWC. Although the wording of the email is unhelpful, I do not agree that it is credible to suggest as you have done that the e-mail amounts to an instruction by the FCA to PWC to issue a report that the firm was insolvent irrespective of whether it was. It amounts to an instruction. I also regard it as highly unlikely that the writer meant that they had given such an instruction and that PWC would have interpreted any communication from the FCA as an instruction to determine the firm was insolvent. Even if it had, there is no evidence that PWC wrongly determined the insolvency. I note you have copied your complaint to them.

7. I note that your client nevertheless maintains that “prior to the administration hearing, the Solvency Report prepared by PwC was *separately* relied on to issue the OIVOP, rather than OIVOP and administration procedures. Had the FCA waited for an independent report prepared by PwC, as should have been the case under normal circumstances, the usual steps to issue the OIVOP and take Keydata into administration would have been followed which would have allowed Keydata to make a fair challenge to both actions. It is [our client]’s position that had a proper procedure been followed, this would have in turn impacted the outcome for him and minimised the damage caused”.

8. I remind you that that same point was considered in report FCA00187 in paragraph 21 and it is not my intention to revisit a concluded complaint :

“You believe that OIVOP was imposed hastily and due process was not followed, which you allege should have been a hearing in front of the RDC where both sides (i.e. Keydata management and the FCA) could present their views. You say the imposition of the OIVOP eventually brought on the administration of Keydata and subsequently your own losses stemming from that, and that alternatives were not considered properly”

9. I also note the Upper Tribunal Judgment<sup>1</sup> which states

‘556. Mr Ford was strongly critical of this approach. He characterised it as “plotting” and argued that there was a pre-determined outcome. We do not regard the actions taken by the Authority to address the issues it perceived to have arisen with Keydata in those respects as material to the matters of conduct of Mr Ford and Mr Owen with which we are concerned in these references. Whether the Authority was right in its judgment of the consequences for Keydata, its investors and creditors, and the actions that should be taken is not the subject of our enquiry. We can say, however, that in our view the discussions that took place between HMRC and the Authority were to address various possible outcomes and were not part of any plot or conspiracy. Nor was any outcome pre-determined; the decision of HMRC was not pre-determined and nor was the fact or outcome of any application by the Authority for Keydata to be placed in administration. Furthermore, we do not accept Mr Ford’s submission that, in seeking to show that Keydata was insolvent, the Authority was attempting to avoid “due process” (in the sense of Keydata being able to dispute the Authority’s actions).

557. We have examined the trail of email correspondence at this time. There is much email traffic, and extensive discussion of steps to be taken. We do not find this surprising, and it is not in our view indicative of any pre-determined outcome. It would be expected that a major event in the financial services industry would engage many participants, all of whom would need to be kept informed and consulted on the steps to be taken. We are satisfied that those steps and the outcome of those steps were not engineered by the Authority; they were the consequence of the circumstances that had arisen in Keydata itself.”

10. I therefore think that if your client remains unhappy that the best approach is to take judicial review proceedings.

*Your client’s outstanding queries with the FCA*

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<sup>1</sup> <https://www.gov.uk/tax-and-chancery-tribunal-decisions/stewart-owen-ford-and-mark-john-owen-v-the-financial-conduct-authority-2018-ukut-0358-tcc>

11. Your client continued to ask questions of the FCA about the matters reviewed in his previous complaint and you say that the FCA has not answered all of his questions.
12. Whilst I consider that the FCA ought to answer questions about the actions it did or did not take as a regulator, in this case, your client has already asked a substantial amount of questions over a period over many years, many of which have been answered by the FCA. It is not reasonable to expect the FCA to continue answering questions without finality on matters where it has already provided substantial answers. I note your client would like for the FCA to provide further information, however, given the circumstances I leave this issue to the FCA's discretion.
13. As you are you aware it is FOIA which creates an obligation for the FCA to provide you with information. You have also submitted a FOIA request to the FCA Information Team and you claim that you have not received answers. In my view, issues related to FOIA requests are best dealt with by the Information Commissioner's Office and I suggest you refer this complaint to them as they are the more appropriate organisation to review it.

Rachel Kent

Complaints Commissioner

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