



07 October 2024

## Final report by the Complaints Commissioner

### Complaint number 202400156

#### *The complaint*

1. On 13 and 29 May 2024, you submitted complaints to my office about the FCA's oversight of your firm and its wider oversight of the insurance sector. This include a substantive report you prepared and published in December 2023 (the December 2023 Report).
2. Your firm was authorised by the FCA, and you were the sole holder of a Senior Management Function (SMF) for the firm. You have been engaged with the FCA in relation to a number of complaints made by you since around June 2021. This complaint relates to the three allegations set out below.

#### *VREQ*

3. You have alleged that the VREQ you entered into in May 2023 was entered into under duress and came about as a result of discriminatory beliefs held by the FCA towards you as a result of previous issues about your past. This had previously led to the FCA's Threshold Conditions Team (TCT) issuing a letter before action to the firm. The letter before action was subsequently withdrawn but you feel that the FCA are still discriminating against you and the firm as a result of the original issues.
4. Having reviewed the available information I accept the position in the FCA's decision letter that, at the time the VREQ was entered into, the supervisory team had concerns which they had previously tried to raise with you and the firm and still needed to be addressed. You were absent due to ill health and the FCA felt that a VREQ was appropriate until you had recovered. As the Regulator, the FCA has a statutory duty to protect consumers and to carry out

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due diligence on the firms it authorises. It is clear from ongoing interactions you had with the FCA, that it had concerns about the firm, and in particular about oversight of the firm in your absence. You have said to me in response to my preliminary report that the FCA never specifically indicated what these concerns were and that this represents a “breakdown in the regulatory communication process”. This is not a complaint you have raised with the FCA and it has not been reviewed by the FCA. I will return to this point below in paragraph 15.

5. At the time the VREQ was entered into, you were the firm’s sole holder of a Senior Management Function (SMF). This meant that you were directly responsible to the FCA for the oversight of the firm’s activities. No one else in or connected to the company had such responsibility to the FCA. Unfortunately, at that time you were unable to facilitate the FCA’s request to visit the firm to answer the concerns raised by the supervision team. This was due to your health issues at that time. As such, following correspondence between yourself and the FCA from around July 2022 to address the FCA’s concerns, and following what appears to have been an informal agreement for the firm to not engage in certain activities, in May 2023 it was agreed that a VREQ would be entered into to protect the firm’s customers until matters were resolved.
6. In your complaint to my office you suggested that the VREQ was not in fact voluntarily entered into, rather it was unnecessarily imposed on the firm under duress due to your incapacitation as the sole manager. You felt there was an alternative to the VREQ, you have stated that there were individuals who were fully capable of overseeing operations in your absence, and that you communicated this to the FCA.
7. You did not raise the point above in your complaint to the FCA and therefore, understandably, it has not reviewed the allegation above as part of its investigation. I **invited** the FCA to comment on this point in response to my preliminary report. The FCA has explained that (extract below):
8. “As part of our on going supervisory work FCA supervision team had informed Mr [X] of our intention to conduct an in-person firm visit.
9. Mr [X] is the only SMF at his firm and his involvement in any supervisory review of the firm’s activities would be essential. Mr [X] agreed to a visit date of 25 April

2023, however on 20 April 2023, Mr [X] informed the FCA that he had been advised not to work for two weeks. The FCA agreed to postpone the firm visit.

10. On 12 May 2023, Mr [X] explained on a call to the FCA, that he was still unwell. It was decided, with Mr [X]'s agreement, that it would be inappropriate for the firm to conduct new business without the oversight of their only SMF and it was during this call that he agreed that until he had recovered and was able to accommodate a visit to the firm, that the firm would not trade....
11. I've attached an email following the call where Mr [X] did indicate that he was signing the VREQ under duress, however he did say he had sought legal advice before making the decision to sign it. He did not offer an alternative appropriate solution to the VREQ in this email.
12. A VREQ is the usual supervisory tool that we would use in such circumstances where a firm (especially in this case with a with single SMF) is unable to operate. This is to protect consumers in the interim which is our primary objective. In this email Mr [X] also indicated that he would accommodate our visit soon, but no invitation has subsequently been received by the FCA – however he has since cancelled his permissions.
13. After considering Mr [X]'s additional comments, I am still of the view that the firm was under no undue pressure by the FCA to sign the VREQ. The FCA has made it clear that the VREQ was in the best interests of Mr [X]'s customers. I acknowledge that Mr [X] expressed dissatisfaction and upset with the VREQ process at the time, however he could have objected to the VREQ and/or not sign it. Had Mr [X] objected to the VREQ at the time, then the FCA would have considered it's next options".
14. I find the FCA's response reasonable in the circumstances, although I note you disagree with me.
15. You have said in response to my preliminary report that the FCA's concerns about your firm were unfounded and provided reasons why. You have also said in response to paragraph 4 above that you were not clear what the FCA's concerns were when it asked for a supervisory visit. I am exercising my discretion not to review your concerns about this: first, because these are new matters which you have not raised before and you are out of time to bring these

to both the FCA and to me, and you have provided no exceptional circumstances about this delay, and second, because you took legal advice as a result of which you did agree to the VREQ. If you felt that the FCA's concerns were unfounded or unclear, you should have raised this with your solicitor and/or with the FCA before you signed the VREQ.

16. Given you took legal advice, in my view the issues you now raise ought to have been raised with your solicitor prior to you signing the VREQ so you could have undertaken an appropriate course of action at the time. If you feel you have been misadvised, I suggest you complain to your solicitor.
17. For the reasons above, I do not uphold your complaint and I have not investigated the additional points you made.

*Letter before action issued by the FCA in February 2022*

18. You allege a letter before action issued by the FCA in February 2022 but later retracted, continues to impact the FCA's interactions with you. You allege that the FCA has continued to harass you and that the letter impacted your variation of permission application and has resulted in defamation of both your character and that of the firm. The FCA did not investigate this element, setting out that it had responded to this element under a previous complaint. I agree with the FCA that under paragraph 2.11(c) of the complaint scheme that this aspect of your complaint has previously been considered in earlier complaints to the FCA and that this is not something that will be investigated again.
19. You were provided with the opportunity to raise concerns with the FCA's findings with my office at that time. You did not do so within the three months provided under the Complaint Scheme, and you have not now provided details of any extenuating circumstances that meant you did not do this. I have seen from the FCA's files that you continued to correspond with the FCA in the relevant period about the firm. As such I am satisfied with the FCA's position that this matter was previously considered under the Complaint Scheme and that you are out of time to refer the initial decision to me. I note you disagree with my view.

*FCA role in insurance provider/agent relationship*

20. Your December 2023 report details your concerns about the insurance provider/agent relationship and the actions of specific providers including that “The issues raised regarding the terms and conditions subscribed to by firm(s) are indicative of systemic flaws within the FCA's regulatory framework, warranting further scrutiny”, and that “It's crucial to bear in mind that providers have included clauses in their terms and conditions and other communications, asserting that the FCA has sanctioned the legality of these terms and conditions, and that they operate in accordance with FCA guidelines.”
21. The FCA excluded this complaint on the basis that it is not its role to review the terms of business to business contracts and that the contract between providers and agents is not subject to any specific rules or guidance within ICOBS.
22. My view is that the issues you raise are not limited to FCA rules or lack thereof in relation to contracts between businesses and that you raise wider issues about the operations of insurers : if insurers are acting unlawfully then that is something which the FCA ought to consider, therefore, for the reasons above I do not think your complaint is excluded and I **invited** the FCA to review your submissions and provide its comments. The FCA has responded that it has not seen evidence that insurers are acting unlawfully and that “With regards to the comments made by Mr [X] that “providers have included clauses in their T&C's and conditions and other communications asserting that the FCA has sanctioned the eligibility of these terms and conditions...”, he will need to provide evidence of this for further enquires to be made”. I suggest you do so if you would like the FCA to review this further.
23. You also raised, in response to my preliminary report a number of new points connected to the operation of the insurance industry. I suggest you write to the FCA on these matters in the first instance, as under the Complaints Scheme to which both the regulators and I operate to, that is usually the best way to resolve matters.

The Complaints Commissioner

Complaints Commissioner

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