



17 February 2025

Final report by the Complaints Commissioner

Complaint number 202400498

The complaint

1. The background to your complaint is that you allege “the recruitment process for a paralegal role [you] applied for with two employers one of which was the Financial Ombudsman Service (FOS) involved extensive financial soundness checks, which I [you] believe are excessive and potentially discriminatory”.
2. The FCA excluded your complaint as it was about the actions or inactions of the FOS. It said your complaint would not be investigated because it did not arise in connection with the exercise of, or failure to exercise any, of the FCA’s relevant functions. It explained what these relevant functions were by referring you to Part 6 of the Financial Services Act 2012 for a description of its regulatory functions under the Financial Services and Markets Act 2000. It explained that FOS is operationally independent from the FCA and it has no control over its recruitment process.
3. The FCA was correct when it told you that your complaint could not be investigated. The FCA can not get involved in the recruitment decisions made by firms. It is important to note that the FCA does have an oversight role when it comes to the FOS regarding topics such as reviewing and challenging their annual budget amongst other responsibilities. These are explained here: <https://www.fca.org.uk/about/who-we-are/committees/oversight-committee>. However, I understand from communications with the FCA that your specific issue does not fall within the scope of the FCA’s oversight role. The appropriate route for you in this case would be to take this matter to court.

4. You referred the complaint to me and explained that, in addition to the personal experiences you have had with employers, your complaint is wider in scope than that considered by the FCA because you believe that the FCA should be concerned generally with the financial soundness checks which regulated firms apply to prospective employment candidates. This was not an aspect the FCA had reviewed and, therefore, I suggested (in a previous complaint made) that you submit your complaint on the wider issue to the FCA. I excluded your complaint about the recruitment practices of the firms you applied to.
5. You referred such a complaint to the FCA but were not satisfied with the outcome and you submitted a second complaint to me. You said that:
 - a. “It is the FCA 's responsibility to ensure that financial soundness checks applied by regulated entities adhere to principles of proportionality and fairness under the FCA's statutory objectives;
 - b. Financial institutions, including those regulated by the FCA, may be improperly applying FCA guidelines (specifically, FIT 2.1 and 2.3) without considering individual circumstances. This practice risks contravening principles of fairness and;
 - c. Disproportionate Impact and Indirect Discrimination: Financial soundness checks can disproportionately affect protected groups, raising concerns under the Equality Act 2010.
 - d. Use of Personal Financial Data in Recruitment: The inclusion of personal financial data in recruitment, without clear guidelines for its appropriate use, raises concerns about compliance with the Data Protection Act 2018”.

My analysis

6. The FCA excluded your complaint on the basis that “Complaints about the FCA and financial service firms’ failure to comply with obligations it may have under other legislation, for example the Data Protection Act 2018 and Equality Act 2010, fall outside the scope of the Complaints Scheme. I am therefore unable to investigate whether there has been a breach of the Data Protection Act 2018 or Equality Act 2010. In accordance with paragraph 2.11(b) of the Scheme, these are matters that would be more appropriately dealt with in another way, e.g. through legal proceedings”.

7. I agree with the FCA that an organisation such as the Information Commissioners Office (ICO) may be better placed to deal with matters related to personal data. The ICO is the body to whom Parliament has allocated power to investigate this type of matter.
8. I also agree that the Complaints Scheme should not review breaches of the Equality Act 2010 for similar reasons as above, namely that they are better dealt with elsewhere. You may wish to refer to the Equalities and Human Rights Commission for further guidance.
9. However, the FCA also engages with industry to address non-financial misconduct <https://www.fca.org.uk/news/press-releases/fca-publishes-results-non-financial-misconduct-survey>
10. In your submission to me you suggest, “financial soundness checks, as currently applied, may inadvertently harm groups protected under the Equality Act 2010 and Article 6, 8 and 14 Human Right breaches.” You further contend that this issue is “an area that I believe falls under the FCA’s purview as it relates to fair treatment within financial services, should not be contrary to Section 3 and 4 of the Human Rights Act 1998 or/and duty of care to employees or potential employees like myself”. You have not provided any specific, clear examples of your recruitment experience with particular named Firms, where you believe the financial soundness checks failed to comply with FCA regulations and guidance.
11. I invited you to provide to provide specific and detailed examples in support of this claim, and I understand you intend to do so over the course of the next few months. Under the Complaints Scheme to which both the regulators and I work to, the standard practice is for the FCA to review matters in the first instance as that is usually the best way of resolving complaints. I suggest you send your examples to the FCA for its review, however, please be mindful there is a twelve month time limitation for submitting complaints to the FCA and you ought to discuss timescales with the FCA.

The Complaints Commissioner

Complaints Commissioner

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