



26 March 2025

Final report by the Complaints Commissioner

Complaint number 202400521

The complaint

1. On 7 November 2024 you submitted a complaint to my Office, which raised concerns that are a continuation of your complaints about the level of the fine imposed on you by the FCA following Enforcement action.
2. The background can be found in the reports published by my predecessor with reference number [FCA001645](#) and 202300239. The FCA published a [response](#) to the first report. (These documents can also be found here: [FCA \(The Financial Conduct Authority\) | The Financial Regulators Complaints Commissioner.](#))
3. In the current complaint, you raise the following three issues:
 - a. you state that the FCA's Decision Letter (DL) of 14 August 2024 incorrectly stated that “[*the FCA*] *did not receive any comments from you regarding my summary [in the Scoping Letter of 16 July 2024] , and therefore have proceeded on the basis that it is correct*”. You believe this is evidence of the FCA's continuous failure to deal with your complaints fairly and competently (**Element one**);
 - b. in your view the DL failed to appropriately address all the points put to the FCA in your letter dated 27 November 2023 and “*cherry picks some facts while choosing to omit other relevant ones in an ignorant attempt to justify the FCA's actions*” (**Element two**);
 - c. you allege that the FCA failed to provide a cogent, full and truthful explanation as to why it decided to prejudice you by reducing your co-Director's fine to a substantially lesser amount than yours, when the fact of

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the matter is that the significant reduction, to the same level as that which you have been ordered to pay by the Upper Tribunal (UT or the Tribunal), was only effected because you chose not to settle at the negotiation stage but took the matter to the Upper Tribunal. It is your view that the FCA should not have given your co-Director an “Early Settlement” Reduction (as defined in paragraph 21 below) on the newly reduced figure when you did not get one (**Element three**).

4. To satisfactorily resolve your complaint, you “*want the FCA to properly review the circumstances in this case, as outlined in [your] numerous previous communications and reduce [your] financial penalty to the same level as [your co-Directors], given the identical nature of [your] misconduct. Then to deduct the money owed to [you] by the FCA from that figure, should it continue to refuse the [previous] Complaints Commissioner’s strongly worded recommendation to not offset it against [your] debt. And, rather than any more apologies from these people, [you] want financial recompense. Apologies are no longer an acceptable form of contrition.*”
5. As a final measure, you also want the FCA to inform you about the financial penalties given to the two other individuals you named, who were also involved in the business.

Decision

6. I have upheld Element one of your complaint. I am **recommending** that the FCA reinforces its processes to prevent the same issues identified here (and in other cases) arising again. I am also **recommending** that the FCA apologises to you for the clear distress and inconvenience caused by its repeated failure to log and process correspondence appropriately and in a timely manner. However, this is an administrative oversight on the part of the FCA and the points you raised in the Scoping Letter do not have a bearing on how the FCA handled the substance of your complaint. The FCA has accepted my recommendations.
7. I have not upheld Elements two and three of your complaint.

Preliminary points

Information relating to third parties:

8. I note your request for information about the financial penalties issued to other individuals also involved in your firm. However, I cannot compel the FCA to disclose to you information related to third parties if it is not information already published on its website through the usual channels. Individuals have a right to privacy, which can only be overridden in certain circumstances and your request does not fall into any of these categories.

The FCA offsetting your awards against the sum owed by you

9. In response to the FCA stating that the previous Commissioner dealt with the complaint about offsetting the Tribunal's cost award in your favour against the debt you owe the FCA, I want to clarify that the Commissioner, my predecessor, recommended that an ex-gratia payment for complaints handling failures on the part of the FCA should not be offset against the debts owed by you. It has to be noted that under the rules of the Complaints Scheme, the Commissioner's recommendations are not binding on the regulators. The FCA did not accept this recommendation and offset the compensation amount against the debt you owe it. The Commissioner made no decision on offsetting costs awarded to you by the Tribunal against the financial penalty it determined appropriate to levy against you. Therefore, the previous decision has no bearing on this case.
10. You have asked me to reduce the financial penalty awarded by the UT however, it is not within my remit to do so. Under the Complaints Scheme (the Scheme), I am only able to consider relevant actions or inactions on the part of the FCA.

My analysis

Element one

11. To provide some context for the likely impact of the issues discussed below, it is important for me to set out here that the FCA partially upheld your complaint and apologised to you on the basis that there was significant delay between the receipt of your email of 27 November 2023 and the FCA's eventual response of 18 April 2024, with no communication in between. The FCA accepted that whilst a full response needed to be prepared, which took time, it should have sent you

holding emails and it has undertaken to change its processes in the relevant team to ensure that update/ holding emails are sent in future. I agree with this.

12. However, in the course of preparing its decision on your complaint, your response to its Scoping Letter dated 16 July 2024 was not logged appropriately and as such, was not considered in its review of your complaint.
13. In your complaint to my Office, you provided a copy of an email dated 30 July 2024, which you sent to the FCA's Complaints Team in response to the Scoping Letter. You also provided the FCA's automated acknowledgement email received a few minutes after, showing that your email was received by the intended recipient.
14. Having reviewed the complaint file provided by the FCA, I cannot see any evidence that your email was logged to your complaint, despite it having been addressed to the attention of the complaints investigator and containing your complaint reference number in the subject line.
15. As a result, as set out above, the FCA went on to say in its Decision Letter that it did not receive any comments from you, which caused you understandable frustration.
16. For this reason, I **uphold** this element of your complaint. However, I note this is an administrative error on the part of the FCA and has no bearing on how the FCA handled the substance of your complaint. I **recommend** that the FCA apologises to you. I note from your comments that you do not believe an apology is sufficient, but in my view, and in accordance with normal practice under the Scheme, it is. I also **recommend** that the FCA puts in place robust checking procedures within the Complaints Team to ensure that it does not issue Decision Letters before the time allowed to provide a response to the Scoping Letter expires, and that it ensures that no response has, in fact, been received from the complainant before issuing the Decision Letter.
17. The FCA has confirmed in its response to my Preliminary Report, dated 14 February 2025, that it accepts these recommendations.
18. I note the contents of your response to my Preliminary Report, dated 17 February 2025 (the "PR Response"). In relation to this element of your complaint, your view remains that not logging your email of 30 July 2024 on the

FCA's systems was a "*deliberate act*" and you question the evidential basis of my conclusions that this was an administrative error.

19. As explained above, the Scoping Letter Response was not processed appropriately, but its contents did not have a bearing on the FCA's decision into your complaint, there is no evidence on the file that this email was not logged on purpose and I have seen administrative errors of a similar nature in other complaints, which is why it is my conclusion that this was an error/ omission, rather than a deliberate act.

Additional points

20. As stated, unfortunately, this is not the first case I have seen where the FCA has not taken into account comments provided in response to its Scoping Letter within the time-frame specified. This leads to further upset for complainants who are already concerned about the actions or lack thereof of the FCA.
21. These omissions appear to arise as a result of administrative errors or oversight and are easily preventable.

Element two and three

22. I will address these elements in one response. The key elements you have raised can be summarised as follows:
- (i) You should not pay any fine at all (this is dealt with in paragraph 24 onwards);
 - (ii) The fine levied on your co-Director should not be reduced by the amount of the Tribunal Reduction (as defined below)(this is dealt with in paragraph 27 below);
 - (iii) That you should get the benefit of the Early Settlement Reduction (as defined below)(this is dealt with paragraph 27);
and;
 - (iv) You suggest that the amount the Tribunal awarded you in costs, £4,000, should be set-off from the amount you are required to pay to the FCA in relation to the fine (this is dealt with in paragraph 30).

23. The crux of your argument as to why the FCA should reduce the amount of the fine imposed on you is that your co-Director's fine had been reduced by the FCA, initially as a result of his decision to settle the case before a Final Notice was issued (the "Early Settlement Reduction"), and then once more after your success at the Upper Tribunal to challenge the amount of the original fine set by the FCA (the "Tribunal Reduction").
24. You believe this would be a fair course of action because the misconduct cases against your co-Director and you were almost identical. According to you, your co-Director decided to settle early with the FCA due to issues with his mental health, whilst you decided to challenge the FCA through the appropriate channels. You go on to set out your arguments in more detail in your letter to the FCA dated 27 November 2023 and you conclude that you should not have to pay any fine "*whatsoever*".
25. I note all the arguments you have made about why you believe that you should not pay a fine, or failing that, why your fine should be the same as your co-Directors (or why his fine should match yours). I also note your PR comments, in which you assert that there being a difference between your fine and that of your co-Director cannot be reasonable. I believe the following paragraphs clearly set out why I disagree.
26. As discussed in detail in the previous reports, there is a Tribunal order applying to your case. When hearing your case, the Judge examined the pertinent issues and ultimately decided that the fine imposed on you should be reduced from £236,000 to £60,000. He had sight of all the relevant information, made findings of facts, and he determined the amount of the fine in light of these. Whatever your personal views, the Tribunal concluded that you must pay a fine and it set the amount at a level it found appropriate. The Tribunal's decision, and therefore the amount of your fine, is final (as it is my understanding that you did not appeal it). It is not within the remit of the Scheme to override an order of the Tribunal. Both the FCA and I should respect the Tribunal's findings.
27. I also find that it was not unreasonable of the FCA to re-visit the fine issued to your co-Director. The fact that the Tribunal decided that the FCA's fine was too high was equally relevant to both of you.

28. The FCA took this action on the principle that co-Directors should have the same level of fine levelled against them, when in the FCA's view, they were equally to blame. When the Tribunal indicated that the FCA had got that level wrong, in my view it was reasonable to reduce the level for both of you. You confirm that you accept this.
29. I understand, however, you queried whether it is fair that your co-Director gained a settlement discount and you did not. This is because he did not challenge the FCA's findings and the fine and therefore gained an early settlement discount. You have made the point that the discount should apply to you on the basis that you say you were right not to settle as you wished to contest the level of the fine. The Tribunal upheld your view that the fine was too high. However, in a separate tribunal judgement¹, although connected to a separate matter, the Tribunal finding at paragraphs 164 to 167 was that evidence showed you wished to contest many other issues as well. It seems reasonable to me that if you were going to litigate those other issues, you would not have signed the early settlement agreement even if the fine were lower. Therefore, I do not find the FCA unreasonable in not offering you a settlement discount.
30. Finally on the set-off point, I think that the FCA's position in not actually paying the costs award directly to you, but instead deducting it from the much larger amount you owed, it is not unreasonable. In my Preliminary Report, I asked the FCA to confirm that it had the legal right to take this course of action, and its response was that *"the FCA had no legal obligation to make the payment in a certain way, and offset it against the penalty for the reasons explained in our public response to the Commissioner's first FR for [the complainant]"*
31. Having considered all the circumstances, in my view, this is not a case in which the FCA has failed to consider the arguments you made to it about why it should reduce the fine you are required to pay, rather it is simply one where the conclusions the FCA has reached are not the ones you were hoping for.
32. To summarise, the level of your fine was set by the Tribunal after careful consideration of all aspects of your case. The Complaints Scheme is not the

correct route for you to challenge these findings if you remain dissatisfied with them.

33. I find that the FCA have sufficiently addressed your questions as to why there is a difference in the fines payable by you and by your co-Director and why it is not going to change the amount of the fine set by the Tribunal. I also find that it is not unreasonable for the FCA to comply with an order of the Tribunal which it is bound by, to apply the Tribunal Reduction to the amount payable by your co-Director as well as to you, to not to apply to your fine the Early Settlement Discount (in accordance with the Tribunal decision) and to set off the costs owed to you from the amount of the fine.
34. I do not think the FCA should undertake any further investigations, nor do I recommend they pay you compensation.
35. For these reasons, I **do not uphold** Elements two and three of your complaint.

The Complaints Commissioner

Complaints Commissioner

26 March 2025