

27 October 2021

**Final report by the Complaints Commissioner****Complaint number FCA001374***The complaint*

1. On 7 August 2021 you asked me to review the outcome of your complaint to the Financial Conduct Authority (FCA). I have carefully reviewed the documents that you and the FCA have sent to me. My preliminary report was issued on 31 August 2021 and both you and the FCA have had the opportunity to comment.

*What the complaint is about*

2. On 16 September 2020 you sent an email to the FCA's Supervision Hub stating your concerns about requests from the FCA to submit information regarding your firm. Your email was passed to the FCA's Complaints Team for consideration and response. Your complaint was given reference number 206909555.

*What the regulator decided*

3. The FCA's Decision Letter is dated 23 October 2020. It concluded that your concerns had arisen from a misunderstanding and that you had received a satisfactory level of service. Your complaint was not upheld. You were advised of your right to approach my office within three months if you remained dissatisfied. You responded to the FCA's Complaints Team on 27 October 2020 disagreeing with this decision, but you did not contact my office at that time.
4. On 17 November 2020 you wrote to the Complaints Team again about problems you had had connecting to a link in an email sent to you on 11 November. Although your letter quoted the complaint reference number 206909555, it also referred to a Due Diligence Request and a Freedom of Information Request.

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5. Between December 2020 and May 2021, you continued to send correspondence to the FCA's Complaints Team and to its 'Data Handling Team', referring to your letter of 17 November 2020. In April 2021, you also contacted the FCA's CEO and the Board Chair.
6. On 2 July 2021, the Complaints Team Manager wrote to you, again using the complaint reference number 206909555. He apologised for the delay in replying to you and set out details of the correspondence since September 2020. He said:

"The FCA has not, at any point, put a bug on your system to capture any data. I hope that answers the points you have raised and eases your concerns.

Additionally, it may be helpful to set out why the FCA hasn't considered your request under Data Protection or Freedom of information regulations/laws, as you requested.

The Freedom of Information Act provides individuals with the right to see recorded information held by public authorities. This might be data about the work we do, for example.

Data Protection requests relate to the personal information an organisation holds about an individual, such as address or date of birth information.

Your question was to ask if we had bugged your email or computers. The simple answer to that, as above, is no we haven't.

Finally, as [our] Decision Letter set out, should you remain unhappy with our investigation into your complaint, you have the right to refer your complaint to the Office of the Complaints Commissioner."

*Why you are unhappy with the regulator's decision*

7. Your complaint to me follows correspondence with my office in May 2021 when I advised you that the concerns you had raised in your letter of 13 April 2021 to the CEO of the FCA referred to the DPA and FOIA and were better dealt with by the Information Commissioner's Office. You say that the FCA's heavily delayed response does not answer your concerns, which have four elements:
  - a. Your personal confidential data: FCA's (previously FSA) data breach by not complying with DPAs 1998 and 2018, and relevant legal procedures to the *privacy* GDPR rules, and defying RIPA 2000 by using interception tools and

techniques to control [your] and [your] firm's private and business related communications.

- b. Your firm's confidential data: FCA's data breach has occurred when all the information exchanged freely between FCA and [you] without taking or using any precautionary techniques like designated username and passwords. Subsequently [your] firm's confidential data had been exposed of and unrepairable damages done to [your] intellectual property.
  - c. Allowing and displaying negligently (and/or purposefully) a cloning fraudster's details in the FCA's registered firms section side by side with [your] and [your] firm's confidential details;
  - d. Breach of [your] personal convention rights:
    - i. As to Article 8 of ECHR and in order to respect convention rights and comply with the Human Rights Act 1998 ('HRA 1998')), and
    - ii. breach of DPA 1998 and 2018 and HRA 1998 and RIPA 2000 by damaging or causing to be damaged [you] and [your firm's] legitimate business values such as good name, reputation (Article 10(2)) which encapsulates in [your firm's] intellectual property rights etc., as a 'management consultancy' business activities.
8. You have also referred to an overdue SAR and say that the FCA has failed to adhere to DPA 2018 and GDPR privacy rules, but also 'defied' the IPT 2016 and RIPA 2000 and further relevant sections of HRA 1998 (s. 8 and s.10(a)).
9. You would like me to investigate your concerns, obtain an apology from the FCA and 'to order a substantial remedy' for damages 'due to FCA's negligence'.

*My analysis*

10. I have carefully reviewed all the material you and the FCA have sent to me. Some of the issues you raise have already been considered by my predecessor in his final report dated 14 August 2020 under reference FCA00747 and cannot be considered again.
11. Paragraphs 6.9 and 6.10 of the Complaints Scheme say:

6.9 When the relevant regulator(s) write to a complainant with their final report of their investigation or explaining that they will not investigate a complaint under the Scheme, the relevant regulator(s) will inform the complainant that, if they are dissatisfied, they must refer the relevant regulator(s)' decision to the Complaints Commissioner within three months of the date of that letter.

6.10 It will be for the Complaints Commissioner to decide whether there is a good reason to consider a matter which has been referred to their office outside the three-month time limit

12. The FCA's Decision Letter of 23 October 2020 duly informed you of this three-month time limit. I note that the Complaints Team drafted an email in response to your letter of 27 October 2020, confirming its complaints decision and reminding you of your right to come to my office. For some reason this was not sent to you, which was unfortunate. The FCA may wish to review how this occurred.
13. However, I am satisfied that you were made aware of the time limit and that you did not approach my office to request a review of the FCA's complaint decision dated 23 October 2020 in time. Although the FCA continued to correspond with you after November 2020 using complaint reference number 206909555, which was not particularly helpful, I am satisfied that this is not a good reason to consider your complaint about the Supervision Hub outside the three-month limit.
14. I am also satisfied that the concerns you are now raising with me are not matters that should be considered by my office but are better dealt with elsewhere. If you remain dissatisfied about these matters, you may approach the Office of the Information Commissioner: <https://ico.org.uk/>.
15. Although your correspondence with the FCA from 17 November 2020 was not dealt with as a formal complaint under the Scheme, I consider that the FCA's letter of 2 July 2021 was a satisfactory response and that an apology was a sufficient remedy for the delay in providing that response.
16. There is no power under this Complaints Scheme to require the FCA to pay substantial damages for alleged negligence, which is a legal matter.

*My decision*

17. I appreciate you do not agree with me, however, I have not upheld your complaint for the reasons stated above.

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Complaints Commissioner

27 October 2021