

03 February 2022

Final report by the Complaints Commissioner**Complaint number FCA001385***The complaint*

1. On 12 August 2021 you asked me to investigate a complaint about the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

'In my letter of 21 May 2021, I provided a summary of my understanding of your complaint. I did not receive any comments from you regarding my summary and so I have proceeded on the basis that it was correct.

You are unhappy that the Covid-19 Resilience survey request was sent to Firm X when the firm has not traded for 3 years.

You contacted the Supervision Hub to ask for clarification but were disappointed with the response you received.

The remedy you are seeking is for the FCA systems to be amended and no further returns to be sent to the firm.

What the regulator decided

3. The FCA did not uphold your complaint. However, the FCA told you that 'The last e-mail relating to this survey (Phase 4) was issued on 13 May 2021; no further e-mails will be sent regarding this survey ... the firm has been added to our exemption list, so they won't be included in any of our future Covid-19 Impact Surveys'

Why you are unhappy with the regulator's decision

4. You have told me you did not agree with the FCA's summary of your complaint and wrote to it but received no reply and the FCA did not address the points in your letter dated 4 June 2021.

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5. Your complaint was not only about the Covid 19 survey, but about returns in general. You wrote to the FCA on 5 May 2021 to say, 'Please confirm that your systems will be amended and no further returns of any kind are required by Firm X'. The FCA did not include this in its scoping letter to you dated 21 May 2021. You then wrote back on 4 June 2021 to remind the FCA of the scope of your original letter, but it failed to take this into account and issued a decision letter saying you had not commented on the scoping letter, whereas in fact you had.
6. Firm X has continued to receive various return which need to be completed; including a £250 fine for failing to complete a firm attestation return.
7. The FCA has not taken appropriate steps to remove the authorisation status of Firm X.

My analysis

8. Firm X is a non-trading firm which entered a creditors voluntary arrangement three years ago which concluded in May 2021. The FCA explain that 'the joint supervisor of the CVA emailed the FCA on 4 May 2021 to say: 'I am writing to provide you with an update in relation to the arrangement and am happy to confirm that I am now in a position to conclude the CVA and issue my Final Report to creditors. As part of my duties, creditor claims were handled in line with The Insolvency Act 1986 ("The Act") and the agreed proposals. The Company's attempts to deauthorise from the FCA have not been successful. In February 2020 it was determined by the Financial Services Compensation Scheme ('FSCS') that the Company was unable to pay its debts and as such the Company entered into default. This enabled purported creditors to approach the FSCS. The FSCS throughout this process has made payments of £2,662,317.89 to purported creditors under its compensation scheme. The Company's director and his advisors have maintained that the claims made against the Company are not valid and are mischievous. However, I am not in a position to investigate the FSCS payments and have admitted them for distribution purposes in this CVA in order to enable us to close the case. The CVA has been a success. I can confirm that there are insufficient funds to declare a distribution to any class of creditors due to the committed costs of the

CVA exceeding realisations. Upon receipt of my Final Report, please provide to the Company the required documentation to de-register its FCA authorisations.'

9. On 5 May 2021 you made a formal complaint to the FCA. My review of the file shows that:
 - a. Your complaint on 5 May 2021 was not only about the Covid 19 survey but also included this sentence: 'Please confirm that your systems will be amended and no further returns of any kind are required by Firm X'. The FCA did not include this in its scoping letter to you dated 21 May 2021.
 - b. You wrote to the FCA on 4 June 2021 to say you disagreed with the scope of the complaint and referred the FCA back to your original complaint. The FCA received this but inexplicably say in the decision letter issued 9 June that you did not make any comments on the scoping letter dated 21 May 2021.
10. It is clear that the FCA has made a mistake in assessing your complaint, compounded by a further mistake in failing to consider an email you wrote, and which it received, on 4 June 2021 attempting to address this mistake.
11. The outcome of this mistake is that one of your original complaint points remains unanswered and was not the subject of an FCA investigation. It is this point you have referred to me for an independent review, as well as a new matter: the fact that the FCA is not taking appropriate steps to deauthorise the firm.
12. Under the complaints Scheme to which both the FCA and I operate to, the FCA usually do their own investigation first, as that is usually the best way of resolving matters. I am referring this complaint back to the FCA for review and urge it to provide a response as expeditiously as possible given its failure to address your complaint in its decision letter.
13. Once the FCA has completed its review, you can ask me for an independent investigation if you are not satisfied with the FCA's decision.

My decision

14. I recommended the FCA apologise to you for its shortcomings in dealing with your complaint and it has agreed to do so..
15. I recommended the FCA now investigates the points raised above which it has not addressed and it has agreed to do so.

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Complaints Commissioner

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