

14 January 2022

Final report by the Complaints Commissioner**Complaint number FCA001457***The complaint*

1. On 13 October 2021 you asked me to investigate a complaint against the FCA.

What the complaint is about

2. The FCA summarised your complaint as follows:

Background

You have explained that you worked for (Firm X) up until April 2020, since when you have been trying to become an Appointed Representative (AR) of a network. You say you worked as a pension transfer specialist for (Firm X), but that (Firm X) had nobody qualified to supervise your work. You say this lack of internal supervision has meant networks have been unable to get references from (Firm X) which they feel able to rely on and that the networks have told you the information they can get “would not meet the FCA’s due diligence expectations”. You say this situation has meant that you have had to take employment at a lower salary than you would expect to receive and that it has caused you and your family stress.

Complaint

You have told the FCA about your personal situation but are unaware of whether the FCA has looked into your concerns. You would like to know the extent of the FCA’s action (or inaction) against (Firm X) as you consider it would help you to resolve your employment situation.

You allege the FCA has created a regulatory environment in which firms do not need to supervise their staff, but that it is the staff, rather than the employing firm, which suffers the consequences.

What the regulator decided

3. The FCA did not uphold your complaint, they advised you:

Information we can share

To help manage your expectations, there are limits on the information I can provide you with due to confidentiality and policy restrictions.

Further information can be found here -

<https://www.fca.org.uk/freedom-information/information-we-can-share/>.

The FCA is subject to confidentiality restrictions under Section 348 of Financial Services and Markets Act 2000 (s348 FSMA) which means the FCA is unable to provide information relating to the business or other affairs of any person which has been received by us in the course of our functions unless: the information is already publicly available; we have the consent of the person from whom we obtained the information and, if different, the consent of the person to whom this information relates (person includes a company or partnership).

We also don't make public the fact that we are investigating (or have investigated) a particular firm or individual. This is partly to protect the effectiveness of our investigation, as publicity might encourage people to destroy or hide evidence, and partly because announcing an FCA investigation can damage reputations. Further, we cannot publicly disclose our opinions on a firm's compliance with conduct rules. We must follow formal procedures before we can say publicly that a firm has breached our rules.

Our response to your complaint

You have explained that networks consider any application for AR status would be unsuccessful, due to the internal supervision (or lack of) you received at (Firm X) and that any application "would not meet the FCA's due diligence expectations". I am sorry to tell you that I do not consider that I can investigate this complaint as the Scheme states at 3.2: "Complaints can be made by anyone who is directly affected by the way in which the regulators have carried out their functions, or anyone acting directly on such a person's behalf, provided that the

complaint meets the requirements of the Scheme. To be eligible to make a complaint under the Scheme, a person must be seeking a remedy (which for this purpose may include an apology) in respect of some inconvenience, distress or loss which the person has suffered as a result of being directly affected by the regulators' actions or inaction."

I understand an AR application in your name was previously withdrawn by the firm involved. I also note that you have previously asked the FCA (under reference xxxxxxxx) for an indication of the likely outcome of any Fit and Proper test – given the lack of internal supervision you received whilst at (Firm X). The FCA has told you that we could not assess the likely chances of an application's success outside of an application. Also, on 24 February 2021 we told you "that the fact that you 'acted without supervision' wouldn't initially be something that would disqualify you to apply for authorisation - all applications are assessed on a case by case basis following the Fit and Proper Test."

At present, your situation is hypothetical, as no AR application has been considered by the FCA. As such, I would be unable to assess whether the FCA's supervision of (Firm X) has impact on you or your employment. In other words, I cannot say that the FCA's actions (or inactions) with regard to (Firm X) have "directly affected" you. I should also make clear that the broader point you make about the regulatory environment is a further step from your personal circumstances and I am again, therefore, unable to link the actions (or inactions) of the FCA with any direct impact on you. As such, whilst I do sympathise with your situation, I regret that we are be unable to investigate your complaint under the Scheme.

For completeness, I should make clear that even if I were able to investigate your complaint, for the reasons explained above, related to s348 FSMA, I would be unable to share with you what action the FCA has or has not taken with regard to (Firm X).

Why you are unhappy with the regulator's decision

4. You have asked me to review the FCA's decision.

My analysis

5. You allege your ex-employer has not been following regulations and it has ruined your career. The FCA will not assist you in getting your career back on track or they will not punish the firm in question (to your knowledge).
6. I can sympathise with your situation, however the information the FCA Complaints Investigator gave you was correct, your complaint that the FCA ought to assist you in getting your career 'back on track' falls outside of the complaints scheme, for the reasons the FCA has provided you with, and with which I agree. As a result, I am unable to investigate the matter for you.
7. As detailed in my preliminary report, if you have specific concerns about how the FCA is regulating (Firm X), you will need to submit a new complaint to the FCA as this is not an issue the FCA have investigated under your original complaint. Please note however, that any such investigation may not lead to the FCA disclosing what actions if any it took with respect to Firm X due to confidentiality reasons as stated above.

My decision

8. I realise you may be disappointed with my decision but for the reasons outlined above I am unable to uphold your complaint.

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Complaints Commissioner

14 January 2022