

22 December 2021

**Final report by the Complaints Commissioner****Complaint number FCA001485***The complaint*

1. On 27 October 2021 you asked me to investigate your complaint about the FCA in connection with the Financial Ombudsman Service (FOS).

*What the complaint is about*

2. The FCA summarised your complaint as follows:

You allege the FCA has failed to oversee the Financial Ombudsman Service and their breaches in legislation. You are unhappy that the Financial Ombudsman Service has wrongly calculated the figures due to the client and claim the Financial Ombudsman Service cannot close a case if it has made a mistake on the calculation of the figures.

You claim that the FCA has failed to oversee the Financial Ombudsman Service; that the Financial Ombudsman Service has failed to employ adequate personnel to handle complaints; and the Independent Assessor does not look at serious errors made by the Financial Ombudsman Service.

The remedy you are seeking is for the Financial Ombudsman Service to reopen the case. You have also requested that the FCA investigates Firm X and consider revoking the CEO's credentials for failure to look into this complaint and take the adequate action.

*What the regulator decided*

3. The FCA excluded your complaint but advised that if you provided information about Firm X, it would be passed to the relevant department. The FCA also said

that due to confidentiality restrictions you may not be able to find out what action (if any) the FCA took based on the information you provided.

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

4. You say that 'At the "investigation stage" the FOS has made a mathematical error and has closed a case with wrongly calculated figures. This mistake by the FOS is a breach in the FOS procedures and FSMA ACT legislation. The FOS cannot "close" a case if it has made a mistake on the calculation of the figures, it's against the law'.
5. You have asked for the following remedy:
  - a. We request that you investigate this case as an "independent" organisation (with our assistance to guide you through the documents)
  - b. Look at the original data and figures contained in the email from the FOS. As indicated to the FCA's [staff S], there is a clear error in the FOS calculation
  - c. We request a short, recorded call so we can show you the errors made in the calculation
  - d. Commissioner recommends to the FOS that this case is investigated and evaluated by a senior investigator and not a junior staff

*Preliminary points (if any)*

6. Prior to my appointment as Complaints Commissioner, I held the role of Independent Assessor (IA) for the FOS. Although your complaint to me is about the FCA, it relates to concerns you have about the FOS. I have been in my current role over one year, and I have not dealt with your complaint as an IA for the FOS. For these reasons, I have decided there is no conflict of interest in my reviewing your complaint, although there are provisions in the Complaints Scheme to appoint a solicitor to oversee investigations if I decided a conflict of interest arose. I would consider your complaint completely independently of FOS, and I would not let my previous involvement with FOS affect my consideration.

*My analysis*

7. You have asked me to independently investigate your case with the FOS as you feel the FOS applied incorrect figures in its determination of your case. I should begin by saying that I do not know anything else part from what you have told me above about your case, and that I have declined your request to speak to you about your FOS case whereby you seek to show me the wrong calculations the FOS made.
8. This is because under paragraph 3.4 (e) of the Complaints scheme which says:

Excluded from the scheme are complaints: about the actions, or inactions, of the Financial Ombudsman Service, the Financial Services Compensation Scheme or the Money Advice Service
9. The Complaints Commissioner cannot review FOS decisions, therefore I am unable to award you the remedy you seek in 5 (a-d) above. Your complaint about the FOS's decision on your case is excluded from this Complaints Scheme.
10. You disagree with this and believe I should be reviewing your client's data as submitted to the FOS. You have said:

I disagree with your decision not to appoint a solicitor, and someone professional and independent that will look carefully at all the data. As the IA you must then understand that there is a "gap" that needs to be closed in the procedures, as if a mistake is made at investigation stage and a case is closed, clients do not have anywhere to go.
11. I appreciate you are concerned for your client, however, the rules of the Complaints Scheme and the Financial Services and Markets Act 2000 are very clear: complaints about FOS decisions are excluded from the Scheme. An independent investigator would not be able to reach a different conclusion.
12. There is another, general question about the FCA's oversight of the FOS, and you have alleged in your complaint to the FCA that the FOS has breached legislation in adjudicating your case. Shortcomings in the FOS's performance in a particular case or cases, even if established, do not equate to the kind of

evidence of systemic failure which might require the FCA's intervention, or support a conclusion that the FCA had failed in its duties. By "systemic failure", I mean failure of a kind which might suggest not merely that there are occasional errors in the system, but a failure which might call into question the FOS's ability to fulfil its functions.

13. My predecessor suggested to the FCA in 2019 that
  - a. It reviews its approach to monitoring and collating the information it receives about the performance of the FOS independently of the FOS's own reports.
  - b. the FCA develops a system whereby both the Its Regulatory Affairs Team and Oversight Committee receive and review a regular summary of any complaints received about the FCA's oversight of the FOS, to inform their work.
  
14. The FCA accepted these suggestions and is monitoring issues which it has been alerted to about the FOS. The FCA investigation file on your complaint does not indicate that the type of legislation breach you allege is a systemic issue, and you have not provided evidence it is either. Nevertheless, as part of my review of this complaint I invited the FCA to provide me with an update on any other developments with respect to 11b above. The FCA has confirmed that the appropriate team which meets three times a year, reviews all complaints made about the FCA's oversight of the FOS. Although this will not benefit you directly in the resolution of your case, so will be of little consolation to you, it enables me to provide an independent assessment and although I am also bound by confidentiality restrictions, and may not be able to disclose all that I see, it is better I am able to review it in order to provide assurance which I hope alleviates your concern and that of others about the FCA's general oversight of the FOS.

*My decision*

15. For the reasons set out above, I consider your complaint excluded from the Scheme.

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Complaints Commissioner

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