

11 February 2022

**Final report by the Complaints Commissioner****Complaint number FCA001506***The complaint*

1. On 3 November 2021 you asked me to investigate a complaint about the FCA. My preliminary report was issued on 20 January 2022. Both you and the FCA have provided responses to my preliminary report.

*What the complaint is about*

2. The FCA set out in its decision letter of 27 September 2021 that it understood your complaints was that:

You are unhappy with the FCA's approach to crypto currency firm regulation and specifically, their approach to those with disabilities, who you claim are in an undeniable breach of the Equalities Act 2010.

*What the regulator decided*

3. The FCA set out that under Paragraph 3.5 of the Scheme your complaint is excluded from the Scheme. This is because the FCA will not investigate a complaint under the Scheme which it reasonably considers amounts to no more than dissatisfaction with its general policies or with the exercise of, or failure to exercise, a discretion where no unreasonable, unprofessional or other misconduct is alleged.
4. The Complaints team set out that although it had not investigated your complaint formally under the Scheme, it had liaised with the Supervision hub area of the FCA who confirmed that it had logged your concerns about the firms. The decision letter also set out that it had liaised with the area of the FCA most closely connected to your complaint to provide you with a response to the

FCA001506

matters raised, including Crypto Market and Regulation and the Equality Act 2010.

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

5. In your email to me dated 3 November 2021 you set out that you are unhappy with the FCA's decision letter to you because the FCA will not formally review your complaint and that you feel that the FCA is supporting and endorsing discrimination against the disabled. You have set out that you believe that the FCA should be investigating your complaint, verifying it and suspending or taking away licences if or until the companies won't comply.

*My analysis*

6. Firstly, I want to set out that I am sorry to hear about the frustrating experiences you have had with the companies you have contacted to invest in crypto currencies. This has obviously been very frustrating experience for you and unfortunately, not the first time you have experienced companies breaching their obligations under the Equality Act 2010.
7. Secondly, it is clear that you are knowledgeable about the Equality Act 2010 and the obligations that are placed onto companies under the Act.
8. Your complaint as set out in the FCA's decision letter was that you were 'unhappy with the FCA's approach to crypto currency firm regulation and specifically, their approach to those with disabilities'. A complaint about the FCA's approach to regulation does not fall under paragraph 3.5 of the scheme in that the complaint amounts to no more than a dissatisfaction with its general policies or with the exercise of, or failure to exercise, a discretion where no unreasonable, unprofessional or other misconduct is alleged. On this basis the FCA's decision not to investigate this complaint under paragraph 3.5 was correct and I uphold its decision not to investigate your complaint.
9. In your correspondence to me, you have explained that you are unhappy that the FCA will not formally investigate your complaint about the companies you have identified as being in breach of the Equality Act 2010. This is a slightly different complaint and whilst the FCA did not directly set this complaint out or provide a formal response in its decision letter, I consider that it did essentially

set out what its response would have been to this complaint element in its response, which I will go onto discuss below.

10. I have considered the points that you have set out in your correspondence to both my office and the communications between you and the FCA. In addition to this I have also conducted my own searches on the internet for the firms you identified to the FCA and I have followed the links to the registers the FCA provided to you in its correspondence dated 9 August 2021 to the Financial Services Register, the crypto asset firms with Temporary Registration and the links for the Unregistered crypto asset businesses (that the FCA has recorded), and I have searched the firms that you detailed in your correspondence.
11. My reports are anonymised for confidentiality purposes, so I will not name the firms that I was able to identify on the registers. However, of the firm names that you provided I was able to identify the following information from the FCA records:
  - a. one of the firms is currently listed on the Financial Service Register as being unauthorised to undertake any regulated activities in the UK from 25 June 2021.
  - b. one of the firms is registered under another name on the Financial Services Register (but is noted as using the trading name you provided) and is authorised to conduct payment services/electronic money services. It does not appear to be registered for crypto-asset activities or Money Laundering Regulations.
  - c. one of the firms is listed on the FCA's temporary crypto-asset firm register, and
  - d. one of the firms is registered for certain crypto-asset activities and Money Laundering regulations since 16 December 2021.
12. This shows that these firms are known to the FCA and registered on various registers which the FCA hold. In its email to you on 7 September 2021, the Supervision Hub noted that it had passed the information you had provided to the FCA about the firms you listed to the relevant teams in the FCA who supervise those firms.

13. As part of my review, I requested to see confirmation that this had taken place. The FCA identified and confirmed that the information for two of the firms had been passed on but that it had not completed the process for the other firms. It confirmed that this process was completed on 22 December 2021 and that the information had at that time been passed onto the relevant teams. I find it regrettable that the FCA originally indicated that this had previously taken place when this was not the case, but I am satisfied from the information that I have seen that this action has now been taken. Where the FCA makes a mistake in the information it provides to a complainant in its correspondence I do think that it is appropriate that it should apologise for this error, accordingly I would **recommend** that the FCA should apologise for the error it made about the steps it had taken at the time of your enforcement action. I note that the FCA did not advise in response to my preliminary report whether it would be issuing an apology to you.
14. From my enquiries I also understand that the FCA contacted you on 22 December 2021 and again on 24 December 2021 to inform you of the additional steps it had taken, being that it had identified two firms that were not authorised and were not on its registers and informed you that it had passed this information onto the Unauthorised Business Department for their intelligence. The later email was sent to you to explain the reason it had informed you about its actions, as you had questioned the relevance of this information in relation to your complaint. It is pleasing to see that the FCA has provided you with this update about the actions it has now taken in relation to these firms, but I appreciate that it has not resolved your complaint and why you questioned the purpose of the email.
15. It is important to note at this point that the FCA does not itself enforce the Equality Act 2010, that is the role for the European Human Rights Commission (EHRC) and the courts. However, as it set out to you in its correspondence dated 7 September 2021, the FCA's Supervision Hub explained that the FCA does have its own rules that the firms that it authorises must follow and that they also expect those firms to adhere to any other relevant legislation applicable to their business which would include the Equality Act 2010.

16. The FCA explained in its decision letter to you, that there is a Memorandum of Understanding between the EHRC and the FCA that means that if the FCA suspected that firms weren't making reasonable adjustments for disabled people, this information about the firms it authorises could be shared with the EHRC.
17. However, as the FCA set out to you, the FCA does not generally say what action has been taken in response to the information that it receives. This is because section 348 (s.348) of the Financial Services & Markets Act 2000 (FSMA) classes some information the FCA holds about firms as confidential and restricts how that information is dealt with. In addition to this, any information that is not restricted by s.348 FSMA may be restricted due to the FCA's policy on sharing information about regulated firms and individuals, who also have legal protections. Under this policy, the FCA will not normally disclose the fact of continuing action without the agreement of the firm concerned. There is a good explanation of the statutory and FCA policy restrictions on information sharing at <https://www.fca.org.uk/freedom-information/information-we-can-share>. This means that, as you were told, there is no general right for members of the public to know the outcome of reports that they make.
18. Like the FCA, I am required to respect confidentiality. This means that sometimes I cannot report fully on the confidential material to which I have access. However, as part of the Complaints Scheme, I have access to all the FCA's complaints papers, including confidential material. This is so that I, as an independent person, can see whether I am satisfied that the FCA has behaved reasonably. Sometimes this means that all I can say to complainants is that having studied the confidential material, I am satisfied that the FCA has behaved reasonably – but I am unable to give further details.
19. This can be frustrating for complainants, but it is better that I am able to see the confidential material. On occasions, I have persuaded the FCA to release further confidential information to help complainants understand what has happened, but this is not always possible. I shall continue to pursue this matter with the FCA.

20. Whilst the FCA has not conducted a formal review of your complaint about the companies, following my review of FCA's file I consider that the investigator has handled the information you provided in an appropriate manner contacting the Supervision Hub to confirm that the information you provided had been relayed to the relevant areas of the FCA. I am satisfied on balance that the FCA's complaint response, that it would not inform you of any action to be taken, or not taken, in response to the information you provided was reasonable in the circumstances. For these reasons I consider that your complaint has not been made out.
21. I note some of the firms you identified were not on the various FCA registers. There may be a number of reasons they were not listed including that they may not be UK firms. I have noted that when searching for these firms on the internet it appeared that a number of the firms may be located outside the UK. Whilst any firm trading in the UK should comply with relevant UK legislation, this unfortunately is not always the case and often firms that should be registered with the FCA do not do so either. Whilst this limits what the FCA can do in response to any breaches of legislation and its own rules, the FCA does record these instances and there are steps that the FCA can take to try and protect consumers. This does rely on the FCA receiving intelligence from consumers like yourself and I note that it has thanked you for the information that you provided to it.
22. Finally, as set out above the Equality Act 2010 is regulated by the EHRC and if you wish to pursue the failures of any of these firms to comply with the Act you may wish to contact them with these issues. I note that in your response to my preliminary report you have set out that you have previously tried to contact the EHRC to assist you with a matter and you set out that they did not provide you with any help. I am very sorry to hear about your disappointing experience, but it is still my position that they would be the appropriate body to contact in relation to these issues.

*My decision*

23. Whilst I know this decision will disappoint you, I have not upheld your complaint.

24. I have **recommended** that the FCA provide you with an apology for providing incorrect information in its decision letter to you.

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Complaints Commissioner

11 February 2022